FEDERAL TRADE COMMISSION DECISIONS

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FINDINGS, ORDERS, AND STIPULATIONS

JUNE 1, 1941, TO OCTOBER 31, 1941

PUBLISHED BY THE COMMISSION

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MEMBERS OF THE FEDERAL TRADE COMMISSION AS OF OCTOBER 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,[2] January 9, 1928, September 26, 1934,[2] and February 9, 1935.[1] Reappointment for third term confirmed July 15, 1941.

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] Reappointment 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.

ACKNOWLEDGMENT

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

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

[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.

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[4] For interlocutory order, see "Memoranda," 28–1965=or 1938 S. & D. 485.
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[8] Interlocutory order. See S. & D. 722.
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[12] For final decree of Supreme Court of the District of Columbia, see footnote, 3–542 et seq., S. & D. 190.
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[21] For interlocutory order, see "Memoranda," 20–745 or S. & D. 721.
[22] For interlocutory order, see "Memoranda," 20–744 or S. & D. 721.

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

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

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[41] For interlocutory order, see "Memoranda," 28-1968 or 1938 S. & D. 490.
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FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JUNE 1, 1941, TO OCTOBER 31, 1941

IN THE MATTER OF

ART-WEB MANUFACTURING 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 3471. Complaint, June 30, 1938—Decision, June 2, 1941

Where two corporations and two individuals, who were officers thereof, owned all their capital stock, and controlled and directed their business and policies; engaged in the manufacture and competitive interstate sale and distribution of wearing apparel, including polo shirts—

Made use on a substantial number of such polo shirts of labels inscribed "EDWARD VIII Sportwear 'Fit for a King'" surmounted by a close simulation of the British royal crown, and packaged them in containers bearing a similar label and picture; notwithstanding fact that such goods were all of domestic manufacture, and that they were not holders of a royal warrant authorizing them to supply goods to any member of the British royal family, or indicating approval by any member of such family, as represented and implied through aforesaid labels;

With effect of misleading and deceiving members of the purchasing public into the mistaken belief that their products were those of a British concern enjoying British royal patronage, made in Great Britain and imported into this country, and, because of such belief, into purchasing said products, whereby trade was unfairly diverted to them from their 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.

Before *Mr. John J. Keenan*, *Mr. John P. Bramhall*, *Mr. Lewis C. Russell*, and *Mr. Arthur F. Thomas*, trial examiners.

Mr. Carrel F. Rhodes for the Commission.

Mr. Hyman Lehon, 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 Art-Web Manufac-

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turing Co., Inc., a corporation, A. M. Webb & Co., Inc., a corporation, and Leon J. Isaacs and Jesse Kohn, individually, and as officers of said corporations, 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 Art-Web 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 offices and principal place of business located at 86 Meserole Street, in the city of Brooklyn, State of New York. Said respondent is engaged in the manufacture of knitted underwear, sports clothes, and like products in its said place of business in Brooklyn, N. Y., and in the sale and distribution of such products. Respondent A. M. Webb & 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 93 Worth Street, in the city of New York, State of New York. Said respondent is engaged in the sale and distribution of a line of merchandise including knitted underwear, sports clothes, and like products. Respondents Leon J. Isaacs and Jesse Kohn, whose address is 93 Worth Street, in the city of New York, State of New York, are officers of the aforesaid respondent corporations, and manage, control, and direct the sales policies and business affairs of said corporations, and participated in the acts and practices herein charged.

The above-named corporate respondents caused and cause their products, when sold, to be transported from their places of business in Brooklyn and in New York City, 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 corporations now maintain, and for more than 5 years last past have maintained, a course of trade in the aforesaid garments and other products so sold and distributed 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 said business, the corporate respondents are now, and for more than 5 years last past have been, in competition with other corporations and with individuals and partnerships engaged in the business of manufacturing, selling, and distributing knitted underwear, sports clothes, and like 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 aforesaid business, and for the purpose of inducing the purchase of their products by members of the purchasing public, respondents published and circulated among prospective purchasers in the various States of the United States and in the District of Columbia, advertisements in letters, pamphlets, circulars, and by other means, designed and intended to influence purchasers of their products. In said advertisements, and on the labels on their products, and on the boxes and wrappers in which said products are packed when shipped, respondents have used certain names, ciphers, symbols, trade-marks, and pictorial representations, among which are the following:

A pictorial representation of a crown simulating the British Royal Crown and the words "trade-mark," together with the name or cipher designating a head of the British royal family, in the following manner:

EDWARD VIII

EDWARD "fit for a king"

VIII "fit for a king"

EDWARD VIII, sportwear, "fit for a king"

PAR. 4. The British Royal Crown is the property and symbol of the British Government and of the reigning royal family of the British Government, and the name "Edward VIII" is the name used to designate and describe a reigning head of the British Government. The use of the British Royal Crown, or other royal symbols, or the use of words or symbols implying patronage by the British royal family, is strictly limited and guarded by the British Government. Such use in business is confined to those persons who manufacture articles that have been used by members of the royal family and who have, because of such patronage, been granted royal warrants to use such crown, emblems, or statements implying royal patronage. It is generally recognized throughout the British domain that such warrants are granted only to individuals who, as a result of long and continuous faithful service to members of the British royal family have proved the unquestioned uniform high quality of their products and the dependability of their service.

PAR. 5. There is a preference among a portion of the purchasing public, particularly among persons of British descent and others having a predilection for products processed or fabricated of British materials and manufactured or made in Great Britain, for products of

royal warrant holders, or members of the Royal Warrant Holders Association. Such preference is the result of the belief that royal warrants are granted only to those manufacturers whose products are uniformly of the highest quality and whose service is absolutely dependable in every respect.

PAR. 6. The use by the respondents of the name, cipher, symbols, and pictorial representation set out in paragraph 3, on or in connection with their products and in their advertising matter, serves as a representation to the members of the purchasing public that said products are manufactured by or under the authority of the British Government, the British Crown, a royal warrant holder, or member of the Royal Warrant Holders Association, and that said products are of British manufacture.

PAR. 7. In truth and in fact the products offered for sale and sold by respondents as hereinabove described are not of British manufacture, nor are said products manufactured or sold by or under the authority of the British Government, the British Crown, or a royal warrant holder, or member of the Royal Warrant Holders Association. Respondents are not royal warrant holders or members of the Royal Warrant Holders Association and have no authority to use any names or symbols so indicating in connection with their business or in connection with the products offered for sale and sold by them.

PAR. 8. There are among the competitors of the respondents, hereinbefore described, corporations, partnerships, and individuals likewise engaged in the manufacture, sale and distribution of knitted underwear, sports clothes, and like products, in commerce between and among the various States of the United States and in the District of Columbia, who do not misbrand or falsely represent their products, but truthfully represent the same.

PAR. 9. The use by respondents of "Edward VIII," "Edward 'fit for a king'," "VIII 'fit for a king'," "Edward VIII, sportwear 'fit for a king'," together with the representation of a crown and the words "trade-mark" is deceptive and misleading, and had, and now has, the capacity and tendency to, and did and does, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that respondents' said products so marked or advertised are the products of well known and long established British concerns which enjoy British royal patronage, and, by reason thereof, are royal warrant holders, and that the products so marked or advertised were manufactured or made in Great Britain and imported into this country. On account of such mistaken and erroneous beliefs, a substantial portion

of the purchasing public has been and is now being induced to purchase said products from respondents, and thereby trade has been and is now being diverted unfairly to respondents from competitors designated in paragraphs 2 and 8 hereof. As a result thereof, substantial injury has been and is now being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 10. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 30, 1938, issued and subsequently served its complaint upon respondents Artwebb Manufacturing Co., Inc., a corporation, A. M. Webb & Co., Inc., a corporation, and Leon J. Isaacs and Jesse Kohn, individuals, 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 respondents' answer, testimony, and other evidence in support of the allegations of said complaint were introduced by attorneys for the Commission, and in opposition thereto by attorney 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 the said complaint, the answer thereto, testimony and other evidence, report and supplemental report of the trial examiners and exceptions thereto, 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 Artwebb Manufacturing Co., Inc., is a corporation organized and existing under the laws of the State of New York. This company is not at present actively engaged in business, but during a substantial portion of the time alleged in the complaint

was engaged in the manufacture of wearing apparel, particularly polo shirts, and had its principal place of business at 86 Meserole Street, Brooklyn, N. Y. The correct spelling of respondent's name is Art-Web Manufacturing Co., Inc.

Respondent A. M. Webb & Co., Inc., is a corporation organized and existing under the laws of the State of New York engaged in acting as a selling agent for various manufacturers and having its office and principal place of business at 93 Worth Street, New York, N. Y.

Respondent Leon J. Isaacs, an individual, is vice president and secretary of respondent Art-Web Manufacturing Co., Inc., and president and treasurer of respondent A. M. Webb & Co., Inc., and together with respondent Jesse Kohn owns all the capital stock of both corporate respondents.

Respondent Jesse Kohn, an individual, is president and treasurer of respondent Art-Web Manufacturing Co., Inc., and vice president and secretary of respondent A. M. Webb & Co., Inc., and together with respondent Leon J. Isaacs owns all the capital stock of both corporate respondents.

The two individual respondents, by reason of the offices which they hold and their ownership of the capital stock of the two corporate respondents, own, control, and direct the business and policies of both corporate respondents.

PAR. 2. During a substantial portion of the time alleged in the complaint respondents have been engaged in the manufacture, sale, and distribution of articles of wearing apparel, including polo shirts, and in the course and conduct of such business have caused said articles of wearing apparel to be transported from the State of New York to purchasers in other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business respondents have been engaged in substantial competition with other corporations and individuals, and with partnerships engaged in the business of manufacturing, selling, and distributing wearing apparel, including polo shirts, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. A substantial number of polo shirts sold and distributed in commerce by respondents between and among the several States of the United States and in the District of Columbia bore labels inscribed.

surmounted by a pictorial representation closely simulating the British royal crown, and were packaged in containers bearing labels reading,

EDWARD VIII

Sportwear fit for a King

with a pictorial representation closely simulating the British royal crown imprinted above the word and figures "Edward VIII."

During a portion of the time that respondents used the aforesaid labels, including said pictorial representations, the reigning head of the British Empire was Edward VIII, King of Great Britain and Ireland and of the British Dominions Beyond the Seas, Emperor of India. The labels used by respondents represented and implied that such use was by authority or right and signified to members of the consuming public that the articles bearing such labels, or the manufacturer thereof, had the approval of the head of or some member of the British royal family and that the goods bearing such labels were of English manufacture and were imported into this country.

There is a preference among a portion of the purchasing public for products manufactured in Great Britain or by holders of royal warrants. Respondents' goods bearing said labels were in fact of domestic manufacture and respondents are not holders of a royal warrant authorizing them to supply goods to any member of the British royal family or indicating approval by any member of the British royal family.

PAR. 5. The aforesaid representations are deceptive and misleading and have the capacity and tendency, to, and do, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that respondents' products are those of a British concern enjoying British royal patronage and were manufactured or made in Great Britain and imported into this country. Because of such mistaken and erroneous belief a substantial portion of the purchasing public was induced to purchase said products from respondents, and thereby trade has been unfairly diverted to respondents from their competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before examiners of the Commission theretofore duly designated by it, report and supplemental report of the trial examiners and exceptions 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 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 Art-Web Manufacturing Co., Inc. (Artwebb Manufacturing Co., Inc.), a corporation, A. M. Webb & Co., Inc., a corporation, their officers, agents, representatives, and employees, respondents Leon J. Isaacs and Jesse Kohn, individuals, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale and offering for sale of articles of wearing apparel in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the designation "Edward VIII," either separately or in conjunction with any pictorial representation simulating the British crown, as a label for, or to designate or describe, any article of wearing apparel; or otherwise representing or implying that such products are of British manufacture, or imported from Great Britain, or have the approval of or warrant from any member of the British royal family.

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

Syllabus

IN THE MATTER OF

SOL. RAPHAEL, INC.

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

Docket 4205. Complaint, July 31, 1940—Decision, June 4, 1941

Where a corporation engaged in importing rugs and in competitive interstate sale and distribution thereof to wholesale and retail dealers—

Made use of designations "Khandah," "Aristan," "Karachi," "Numdah," "Calcutta," "Burma," "Daria," "Damascus," "Bagad," "Tamur," and "Chinese," in describing and designating certain of its products in invoices and letters addressed to dealers, and in otherwise referring thereto, and on labels attached to rugs designated "Calcutta," set forth said name with depiction of coat of arms of Persia, and on labels attached to its "Bagad" rugs, said name together with depiction of an oriental scene;

Notwithstanding the fact that aforesaid rugs designated, as case might be, by names "Khandah" and "Aristan," which were those of the genuine product, made in the true oriental manner in India; by name "Karachi" which was that of true oriental rug made in Persia; by name "Numdah" which was that of felted woolen rug made in India; and by other names or designations which, used as aforesaid, connoted places in the Orient and China, were not, as long understood from such designations, oriental rugs made in the Orient, or more particularly certain parts of southwestern Asia, or Chinese oriental rugs made in China, by hand, with pile of wool, or silk and wool, threads of which were knotted by hand in a special manner, long held in great public esteem because of texture, beauty, and durability and therefore decidedly preferred on the part of many of the purchasing public, but were made on power looms in factories in France and Belgium of cotton or jute, or of a combination of both, and did not possess all the characteristics, as aforesaid indicated, of the true oriental or Chinese oriental rugs, which they so closely simulated in appearance as to be indistinguishable therefrom by a large portion of the purchasing public;

With capacity and tendency to mislead purchasers and prospective purchasers into the erroneous belief that said representations and designations were true, and to induce them to purchase said rugs, by reason thereof, as the genuine product, in all respects, and with effect of placing in the hands of retail dealers means of misleading the public in aforesaid particulars, and with further result that trade was unfairly diverted to it from its competitors engaged in interstate sale of rugs of various kinds, including genuine oriental, Chinese oriental, and domestic rugs, who truthfully represent their said products; to the injury of competition in commerce:

Held, That said 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.
Mary Rehan, 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 Sol. Raphael, 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, Sol. Raphael, 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 333 Seventh Avenue, city and State of New York.

PAR. 2. Respondent is now, and has been for more than 3 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 among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations and with firms, partnerships, and individuals likewise engaged in the sale and distribution of rugs in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent the nature of their 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. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Chinese oriental rugs to be made in China, by hand, in the same manner and possessing the same qualities and characteristics

as the oriental rug. Both oriental and Chinese rugs have been for many years, and still are, held in great public esteem because of their texture, beauty, durability, and other qualities, and by reason thereof, there is a decided preference on the part of many of the purchasing public for such rugs.

PAR. 5. In the course and conduct of its business, and for the purpose of inducing the purchase of said rugs, respondent has engaged in the practice of describing and designating certain of its rugs which closely resemble true oriental or Chinese oriental rugs in appearance by the names of "Khandah," "Aristan," "Karachi," "Numdah," "Calcutta," "Burma," "Daria," "Damascus," "Bagad," "Tamur," and "Chinese." There are rugs known as "Khandah" and "Aristan," which are made in the true oriental manner, in India. A true oriental rug, made in Persia, is known as the "Karachi," and a felted woolen rug, made in India, is known as the "Numdah."

The use by respondent of the designations "Khandah," "Aristan," "Karachi," and "Numdah" have the capacity and tendency to create the mistaken and erroneous belief that the rugs so designated are in fact the genuine oriental and Indian rugs of the same names. The other designations, used as aforesaid, connote places in the Orient and China, and have the capacity and tendency to induce the mistaken and erroneous belief that the "Chinese" rugs are made in China, that the others are made in the Orient, that all are made by hand and are, in all respects, including materials, true Chinese oriental or oriental rugs. Respondent uses said names to designate its said rugs in invoices and letters addressed to dealers, and in otherwise referring to the same in the sale thereof to dealers. To the rugs designated as "Calcutta" are firmly attached labels upon which that name appears in connection with a depiction of the coat of arms of Persia; to the rugs designated "Bagad" are firmly attached labels upon which that name appears in connection with the depiction of an oriental scene. 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 said rugs are woven on power looms in factories in France and Belgium. They are not made by hand, nor are the individual threads knotted in the distinctive manner of the true oriental or Chinese oriental rug. Said rugs are made of cotton or of jute or of the two combined. They do not possess all the characteristics of the true oriental or Chinese oriental rug, but do in fact so closely simulate them 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 or Chinese 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 mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct, and to induce them to purchase said rugs on account thereof. Respondent's said acts and practices have the effect of placing in the hands of retail dealers who purchase said rugs and resell the same to the purchasing public, means and instrumentalities of misleading and deceiving the public in the particulars aforesaid.

As a result of respondent's said acts and practices, trade has been unfairly diverted to respondent from its competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of rugs of various kinds, including genuine oriental, Chinese oriental, and domestic rugs, who truthfully represent their products as set forth in paragraph 3 hereof. In consequence thereof, injury has been and is now being done by respondent to competition in commerce among and between various States of the United States and in the District of Columbia.

PAR. 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 July 31, 1940, issued, and on August 1, 1940, served its complaint in this proceeding upon respondent, Sol. Raphael, Inc., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and filing of respondent's answer, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in

the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Sol. Raphael, 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 333 Seventh Avenue, city and State of New York.

PAR. 2. Respondent is now, and has been for more than 3 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 among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations and with firms, partnerships, and individuals likewise engaged in the sale and distribution of rugs in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent the nature of their 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. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Chinese oriental rugs to be made in China, by hand, in the same manner and possessing the same qualities and characteristics as the oriental rug. Both oriental and Chinese rugs have been for many years, and still are, held in great public esteem because of their texture, beauty, durability, and other qualities, and by

reason thereof there is a decided preference on the part of many of the purchasing public for such rugs.

PAR. 5. In the course and conduct of its business, and for the purpose of inducing the purchase of said rugs, respondent has engaged in the practice of describing and designating certain of its rugs which closely resemble true oriental or Chinese oriental rugs in appearance by the names of "Khandah," "Aristan," "Karachi," "Numdah," "Calcutta," "Burma," "Daria," "Damascus," "Bagad," "Tamur," and "Chinese." There are rugs known as "Khandah" and "Aristan," which are made in the true oriental manner, in India. A true oriental rug, made in Persia, is known as the "Karachi," and a felted woolen rug, made in India, is known as the "Numdah."

The use by respondent of the designations "Khandah," "Aristan," "Karachi," and "Numdah" have the capacity and tendency to create the mistaken and erroneous belief that the rugs so designated are in fact the genuine oriental and Indian rugs of the same names. The other designations, used as aforesaid, connote places in the Orient and China, and have the capacity and tendency to induce the mistaken and erroneous belief that the "Chinese" rugs are made in China, that the others are made in the Orient, that all are made by hand and are, in all respects, including materials, true Chinese oriental or oriental rugs. Respondent uses said names to designate its said rugs in invoices and letters addressed to dealers, and in otherwise referring to the same in the sale thereof to dealers. To the rugs designated as "Calcutta" are firmly attached labels upon which that name appears in connection with a depiction of the coat of arms of Persia; to the rugs designated "Bagad" are firmly attached labels upon which that name appears in connection with the depiction of an oriental scene. 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 said rugs are woven on power looms in factories in France and Belgium. They are not made by hand, nor are the individual threads knotted in the distinctive manner of the true oriental or Chinese oriental rug. Said rugs are made of cotton or of jute or of the two combined. They do not possess all the characteristics of the true oriental or Chinese oriental rug, but do in fact so closely simulate them 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 or Chinese 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 mislead purchasers and prospective purchasers thereof

into the erroneous and mistaken belief that such representations and designations are true and correct, and to induce them to purchase said rugs on account thereof. Respondent's said acts and practices have the effect of placing in the hands of retail dealers who purchase said rugs and resell the same to the purchasing public, means and instrumentalities of misleading and deceiving the public in the particulars aforesaid.

As a result of respondent's said acts and practices, trade has been unfairly diverted to respondent from its competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of rugs of various kinds, including genuine oriental, Chinese oriental, and domestic rugs, who truthfully represent their products as set forth in paragraph 3 hereof. In consequence thereof, injury has been and is now being done by respondent to competition in commerce among and between various States of the United States and in the District of Columbia.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and 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, Sol. Raphael, 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 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 "Khandah," "Aristan," "Karachi," "Numdah," "Calcutta," "Burma," "Daria," "Damascus," "Bagad," "Tamur," or "Chinese," or any other words or names indicative of the Orient or

pictorial representations or simulations of the coat of arms of Persia or other oriental arms or of typically oriental scenes, 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

ALTMAN NECKWEAR CORPORATION

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

Docket 4226. Complaint, Aug. 7, 1940—Decision, June 4, 1941

Where a corporation engaged in the manufacture of neckties and in the interstate sale and distribution thereof to members of the purchasing public—

(*a*) Represented that a certain style of tie sold by it was made from materials woven by the Cherokee Indians, through labeling same "Cherokee Indian Homespun Wool," with likeness of an Indian depicted thereon, facts being said products were not made from materials woven or manufactured by the Cherokee or any other Indians;

(*b*) Represented that another style of tie was made wholly of silk, through labeling same "Duo-Silk-All-O Lined Throughout," when said product was not made entirely from silk, product of the cocoon of the silkworm, long held in great public esteem and in substantial demand, but consisted instead of a mixture of silk and rayon, the rayon predominating, so made as to simulate silk and practically indistinguishable by the purchasing public therefrom, with lining of rayon; and

(*c*) Failed to disclose in labeling and designating its said neckwear that lining thereof was composed of rayon and that tie materials consisted of mixture of rayon, predominating usually, with silk;

With tendency and capacity to mislead purchasers and prospective purchasers into the erroneous belief that such representations were true and to induce them to purchase substantial numbers of its said neckties:

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. Herbert L. Slote and *Mr. Harold M. Goldblatt*, 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 Altman Neckwear Corporation, 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, Altman Neckwear Corporation, is a corporation organized and existing under and by virtue of the laws of the

State of New York, and having its principal place of business at 333 Fifth Avenue in the city of New York, State of New York.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of manufacturing, selling, and distributing neckties. The respondent sells its products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said products, when sold, to be transported from its said place of business in New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, for the purpose of promoting the sale of its products, the respondent has engaged in the practice of falsely representing the constituent fiber or material of certain of such products and of falsely representing the source of the material of which certain others of them are made, and the persons by whom made, by means of false representations appearing on labels attached to said products, and otherwise, and by failing to disclose the rayon content of certain of said products.

PAR. 4. Among the products sold and distributed by respondent as aforesaid are two styles of neckties. One of these styles respondent has labeled, "Cherokee Indian Homespun Wool" with the likeness of an Indian depicted thereon. The other style is labeled "Duo-Silk-All-O Lined Throughout." By the use of said labels, words and representations, respondent represents that the material of which the first group of said neckties are made was woven by the Cherokee Indians, and that the material of which the second group of said neckties are made is silk.

PAR. 5. The aforesaid representations are false and misleading. In truth and in fact the material from which said neckties known as "Cherokee Indian Homespun Wool" are made is not woven or manufactured by the Cherokee Indians or any other Indians, and the neckties labeled "Duo-Silk-All-O" are not made entirely from silk. The tie materials consist of a mixture of silk and rayon, the rayon predominating, the lining is rayon and the interlining cotton.

PAR. 6. 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, public esteem for their preeminent qualities, and because of such repu-

tation there is a substantial demand on the part of the purchasing public for such products. "Rayon" is the name of a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk, and when so manufactured has the appearance and feel of silk and is practically indistinguishable by the purchasing public from silk. By reason of these qualities rayon, when manufactured to simulate silk and not designated as rayon, is readily believed to be and is accepted by the purchasing public as being silk, the product of the cocoon of the silkworm. All of the rayon contained in respondent's said neckties labeled "Duo-Silk-All-O," is manufactured so as to simulate silk, and has the appearance and feel of silk. In selling and offering said "Duo-Silk-All-O" neckties for sale, respondent has not at any time mentioned in this complaint disclosed, and does not now disclose, by labels or in any other manner, the fact that the lining of said neckties is rayon, or that the tie materials consist of a mixture of silk and rayon, with the rayon predominating.

PAR. 7. The use by respondent of the aforesaid method of labeling and representing its neckties and of failing to disclose the rayon content thereof has had, and has, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true, and that the rayon fabric and fiber used in the make-up of said ties are silk, and to induce them to purchase substantial numbers of respondent's said neckties.

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 August 7, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Altman Neckwear Corporation, 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 Donovan R. Divet, attorney for the Commission, and in opposition to the allegations of the complaint by Herbert L. Slote, attorney for the respondent, 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 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 (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, Altman Neckwear Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New York and having its principal place of business at 333 Fifth Avenue in the city of New York, State of New York.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of manufacturing, selling, and distributing neckties. Respondent sells its products to members of the purchasing public situated in the various States of the United States and in the District of Columbia and causes said products, when sold, 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 products 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 its said business, for the purpose of promoting the sale of its products, the respondent has engaged in the practice of falsely representing the constituent fiber or material of certain of such products and of falsely representing the source of the material of which certain other products are made, and the persons by whom made, by means of false representations appearing on labels attached to said products, and otherwise, and by failing to disclose the rayon content of certain of said products.

PAR. 4. Among the products sold and distributed by respondent are two styles of neckties. One of these styles respondent has labeled "Cherokee Indian Homespun Wool" with the likeness of an Indian depicted thereon. The other style is labeled "Duo-Silk-All-O Lined Throughout." By the use of said labels, words, and representations, respondent represents that the neckties labeled "Cherokee Indian Homespun Wool" are made from materials woven by the Cherokee Indians and that the neckties designated "Duo-Silk-All-O Lined Throughout" are made wholly of silk.

PAR. 5. The aforesaid representations are false and misleading. The neckties designated "Cherokee Indian Homespun Wool" are not made from materials woven or manufactured by the Cherokee Indians or any other Indians, and the neckties labeled "Duo-Silk-All-O" are not made entirely from silk but, instead, the tie materials consist of a mixture of silk and rayon, usually with rayon predominating, and with a lining of rayon and an interlining of wool or cotton.

PAR. 6. 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 have held, and still hold, public esteem for their preeminent qualities, and because of such reputation there is a substantial demand on the part of the purchasing public for such products. "Rayon" is the name of a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk, and when so manufactured has the appearance and feel of silk and is practically indistinguishable by the purchasing public from silk. All of the rayon contained in respondent's said neckties labeled "Duo-Silk-All-O" is manufactured so as to simulate silk and has the appearance and feel of silk. In labeling and designating its said neckwear, the respondent does not disclose in any manner the fact that the lining of said neckties is composed of rayon and that the tie materials consist of a mixture of silk and rayon, usually with rayon predominating.

PAR. 7. The use by the respondent of the aforesaid method of labeling and representing its neckties and of failing to disclose the rayon content thereof has had, and now has, the tendency and capacity to mislead purchasers and prospective purchasers into the erroneous and mistaken belief that such representations are true, and that the rayon fabric and fiber used in the make-up of said ties are silk, and to induce them to purchase substantial numbers of respondent's said neckties.

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, answer of the respondent, testimony and other evidence taken before Lewis C. Russell, a trial examiner of the Commission theretofore duly designated by it, in sup-

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

It is ordered, That the respondent Altman Neckwear 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 neckties and other similar merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the unqualified term "silk" or any other term or terms of similar import or meaning indicative of silk, to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm: *Provided, however*, 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 if they 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 "Duo-Silk-All-O" or 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 silk, the product of the cocoon of the silkworm.

3. Advertising, offering for sale, or selling neckties 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 rayon, shall be named in letters of at least equal size and conspicuousness by words truthfully describing and designating each constituent fiber or material thereof.

4. Using the term "Cherokee Indian Homespun Wool" or 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 woven or manufactured by the Cherokee Indians.

5. Using any pictorial design of an Indian in connection with any description of, or reference to, fabrics or products which are not woven or manufactured by the American Indian.

6. Using the term "Indian" or any term which includes the word "Indian" 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 woven or manufactured by the American Indian.

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

IN THE MATTER OF

E. B. MULLER & CO. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED

Docket 3224. Complaint, Feb. 11, 1938[1]*—Decision, June 11, 1941*

Where corporations M. and F. with principal places of business in Port Huron, Mich., and Flushing, N. Y., engaged respectively, in the processing of chicory and, as between themselves, in noncompetitive complementary interstate sale and distribution thereof in bulk to coffee roasters and others, and in packaged form to retail outlets for resale to consumers, which, controlled and directed by husband and wife, were, prior to 1930, the only domestic producers of granulated chicory, with their only competition coming from the imported product, total imports of which were relatively small;

Following the installation in 1930 by S., theretofore principal importer of the product, of a plant in New Orleans for roasting and granulating imported dry chicory (operations of which S. concern in 1933 included the installation of a plant for drying chicory in Linwood, Mich., in the limited area in which the domestic product is grown, and in which said M. and F. procured and dried their supply; and shipment of the dried root therefrom to its New Orleans plant, where it roasted, granulated and prepared the root for distribution and sale); and as a part of a concerted and calculated campaign to harass, injure and, if possible, eliminate said S. from the competitive field, and thus to regain the substantially complete monopoly which they previously enjoyed in the distribution of chicory in the United States, and acting through one or the other, or both—

(*a*) Represented that the color and uniformity of color of the chicory of M. were achieved by and attributable only to a superior method of roasting and a painstaking process of selecting and sorting, through affirmative statements in many ways, including published advertisements and letters to customers and prospective customers, when in fact said M. was artificially coloring its granulated chicory by adding iron oxide, which resulted in giving it an exceptionally desirable and uniform color, production of which solely by process of selection and roasting would be much more difficult and expensive, and of which addition it did not in any way advise its customers;

(*b*) Defamed and disparaged the chicory products of said S., its sole competitor, on many occasions, with no sufficient knowledge of the facts to indicate good faith, through representing, by means of officials and sales representatives, that such products contained molasses, sugar beets or other foreign substances and were thus, as considered by the trade, adulterated; threatened customers of said competitor with seizure by governmental authority of chicory purchased from said competitor as being adulterated; and procured the institution of such a proceeding, advising chicory purchasers, on the basis of the analysis of one sample of product purportedly sold by said S., that said competitive product contained approximately 50 percent roasted sugar beet, and took no steps, following the

[1] Amended and supplemental.

abandonment of said proceeding shortly, to correct the disparaging statements previously made to the trade; and

Where said two corporations, with the deliberate intent of hindering, handicapping, injuring and destroying S., their aforesaid only domestic competitor, as shown by a long series of acts and practices including, among others, (1) efforts to secure an increase in the tariff on granulated chicory in order to cut off said competitor's source of supply with result that the increased tariff forced said competitor to cease importing the granulated chicory, and, instead, to import the root; (2) efforts, shortly thereafter, to seek an increase in the tariff on dried chicory root when it was learned that said competitor planned to import the root and manufacture the granulated product domestically; (3) cut in price in the New Orleans market, in which a substantial proportion of the products of M. and F. were sold, theretofore definitely rejected, as involving an unwarranted loss of $30,000 a year; (4) steady and effective opposition to said competitor's efforts to secure a more favorable rate on the domestic chicory root brought by it from its Michigan kiln to its New Orleans plant, with the result that it cost said competitor $70 more to deliver enough chicory root from Michigan to New Orleans to produce 40,000 pounds of the granulated chicory than it cost M. to transport a 40,000 pound carload of the granulated product between the same points, and that in the matter of freight rates (in which matter said M. had also secured, unlawfully, substantially more favorable rates than it was entitled to, through improperly shipping with chicory, cereals or coffee susbtitutes without disclosure), contrary to the usual situation in which a finished product normally pays higher transportation cost than the raw material, the reverse obtained; (5) establishment and use of a "fighting brand"; and, (6) other obstructive acts and practices as shown by discussion of subject in correspondence between officers and employees of the two corporations;

(*c*) Sold, with aforesaid intent, (1) as respects said F. concern, a large proportion of its granulated chicory, during its 1936 and 1937 fiscal years, to two large customers in New Orleans at a loss of approximately 11 cents per hundred pounds during the 6 months ended June 30, 1936, and at cost or slightly below cost during the 8 months ended March 31, 1937, and sold also, from time to time, various other customers who purchased in smaller quantities at a loss also, while making from other profitable sales sufficient gain to overcome the losses set forth, and (2), as respects M., made sales, among others, to customers in New Orleans at losses ranging from 66 cents to $1.11 per hundred pounds, and to those in Memphis, Louisville, St. Louis, and Birmingham at prices ranging from 67 cents per hundred pounds loss to 44 cents per hundred pounds profit, with said company's entire business in granulated chicory in the 1936 and 1937 fiscal years showing losses of approximately 18 cents and 8 cents per hundred pounds respectively, and with prices received by it in the New Orleans trade territory in general substantially lower than those it secured from purchasers for whose trade it did not have to compete with S., and, appealed to on several occasions by S., their said competitor, to increase their prices in the New Orleans area in order that it, S., would not be forced to lose money in attempting to meet their competition, rejected such requests, with result that said competitor eventually, finding it was losing so much money that it could no longer afford to sell at their prices, was compelled to increase its own, following which M. and F. likewise made in-

creases in their prices, though still maintaining them below those of said S. and without terminating their selling below cost; and

Where said corporations, in engaging, as below set forth, in price discrimination under general pattern of making low prices in a few southern States where they were in active competition with said S., and recouping in part by higher prices elsewhere, as said competitor could not, and also in substantial discrimination among purchasers in said States and among those in other States—

(*d*) Discriminated in price, in the case of F., by selling granulated chicory to its two largest customers in New Orleans at lower prices than all others and which, as respected all others, were not justified under the law by differences in cost; and, in the case of M., also discriminated among its customers generally in a variety of ways, including outright price differences, sale of better quality product at or below the price of inferior, use of quantity rebate or discount plans, and others; and, acting under the common control;

(*e*) Discriminated in price in that, among their respective customers, each sold chicory of like grade and quality to some customers at prices different from those charged by the other to some of its customers, and at differences which were not justified as aforesaid;

Effect of which selling below cost and discriminations in price caused by selling to customers in trade area in which said sole competitor operated at lower prices than elsewhere in the United States, was to divert to themselves a substantial volume of business which their competitor might otherwise have obtained, to force said competitor to sell at unprofitable prices or at a loss in order to avoid being forced out of business, and thus to impair its financial position and render it unreasonably difficult, if not impossible, for it to secure capital for its operations, while they were substantially increasing their volume of sales; and tendency of which was to create in themselves a monopoly in the production and sale of domestic chicory, in sale of which even a small price variation is of highly important competitive significance to purchasers and coffee roasters;

With result, as respects aforesaid false disparagements and misrepresentations as to color and uniformity of color of said concerns' artificially colored chicory, of contributing to such injury to and suppression of competition and tendency toward monopoly in said concerns and of misleading and deceiving members of the purchasing public by creating in their minds the mistaken belief that such statements were true, whereby trade was unfairly diverted from competitors to them:

Held. (*a*) That said discriminations in price resulted in substantial injury to their competitors, hindered, obstructed and tended to suppress competition with them and create a monopoly in them in the processing and sale of granulated chicory, and resulted in substantial injury to competition among purchasers of such product by affording material and unjustified price advantages to preferred purchasers and not to others, and violated subsection (a) of section 2 of an act of Congress approved October 15, 1914, as amended by an act of Congress approved June 19, 1936; and

(*b*) That sales below cost by them were made with purpose and effect of substantially injuring and lessening competition and tending to create a monopoly in the processing and sale of domestic granulated chicory in themselves, and that their said and other acts and practices, as aforesaid, were all to the injury and prejudice of the public and their competitors, and constituted unfair methods of competition in commerce.

Before *Mr. William C. Reeves*, *Mr. W. W. Sheppard* and *Mr. John L. Hornor*, trial examiners.

Mr. J. J. Smith, Jr. and *Mr. John Darsey* for the Commission.

Beaumont, Smith & Harris, of Detroit, Mich., for E. B. Muller & Co., and along with—

Rathgeber & Noyes, of Long Island City, N. Y., for Heinr. Franck Sons, Inc.

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (the Federal Trade Commission Act), and pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), as amended by an act approved June 19, 1936, entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes" (the Robinson-Patman Act), the Federal Trade Commission, having reason to believe that E. B. Muller & Co. and Heinr. Franck Sons, Inc., have violated and are now violating the provisions of the said Federal Trade Commission Act and the said Clayton Act, as amended, issues this its amended and supplemental complaint against the said E. B. Muller & Co. and the said Heinr. Franck Sons, Inc., respondents in this proceeding, and states its charges as follows, to wit:

Count I

PARAGRAPH 1. Respondent E. B. Muller & Co. is a corporation organized and existing under the laws of the State of Michigan and has its principal office and place of business at 220 Quay Street in the city of Port Huron, Mich.

PAR. 2. Respondent Heinr. Franck Sons, Inc., is a corporation organized and existing under the laws of the State of Delaware and has its principal office and place of business at 131 Avery Avenue in the city of Flushing, N. Y.

PAR. 3. The officers of the respondent E. B. Muller & Co. are H. Gordon McMorran, president, Miss Charlotte C. McMorran, vice president, and Mrs. Charlotte H. McMorran, secretary-treasurer. Said officers comprise the board of directors of respondent E. B. Muller & Co.

The officers of the respondent Heinr. Franck Sons, Inc., are David McMorran, president, A. F. Kalk, vice president, and Eugen Beitter, secretary-treasurer. Said officers comprise the board of directors of Heinr. Franck Sons, Inc.

David McMorran and Mrs. Charlotte H. McMorran are, respectively, husband and wife, and the father and mother of H. Gordon McMorran and Miss Charlotte C. McMorran.

Respondent E. B. Muller & Co. has outstanding 30,000 shares of common stock, of which the Detroit Trust Co., a banking corporation organized and existing under the laws of the State of Michigan and having its principal office and place of business in Detroit, Mich., holds 25, 578 shares in trust for David McMorran and Mrs. Charlotte H. McMorran for life under a trust agreement which provides that David McMorran and Mrs. Charlotte H. McMorran jointly, or the survivor of them, may terminate said trust at any time and cause said shares to be delivered and transferred to them, or to the survivor of them, absolutely and unconditionally. Mrs. Charlotte H. McMorran owns in her own right 41 shares of the common stock of the respondent E. B. Muller & Co. Respondent E. B. Muller & Co., has no preferred stock outstanding.

Respondent Heinr. Franck Sons, Inc., has outstanding 10,000 shares of common stock, all of which is owned by David McMorran, and 5,430 shares of preferred stock, of which the Michigan Debenture Co., a corporation organized and existing under the laws of the State of Delaware, owns 4,400 shares and Eugen Beitter owns 1,030 shares. David McMorran owns all the stock of the said Michigan Debenture Co.

The respondents dominate the market for green chicory root in the United States and purchase and use in their respective businesses the greater part of all green chicory root produced in the United States. The respondents also dominate the granulated chicory market in the United States, manufacturing and selling the greater part of all granulated chicory manufactured and sold in the United States. In the course and conduct of their respective businesses, as is more particularly hereinafter stated, the respondents are engaged in competition with other purchasers and users of green chicory root in the United States and with other manufacturers and sellers of granulated chicory in the United States, and if those competitively engaged with the respondent in the United States in the purchase and use of green chicory root and the manufacture and sale of granulated chicory are eliminated from the business of purchasing and using green chicory root and manufacturing and selling granulated chicory, the above-mentioned David McMorran and Mrs. Charlotte H. McMorran, husband

and wife, will have and enjoy, through the respondents, a monopoly in the purchase and use of green chicory root in the United States and in the manufacture and sale of granulated chicory in the United States.

PAR. 4. For more than 2 years prior hereto the respondents have been, and are now, engaged in the business of manufacturing granulated chicory from green chicory root and in selling and shipping granulated chicory, and in the course and conduct of their respective businesses the respondents have sold and shipped, and do now sell and ship, granulated chicory in commerce between and among the various States of the United States from the States in which their respective factories are located and from States in which they maintain stocks of granulated chicory across State lines to purchasers thereof located in States other than the States in which respondents' said factories are located and other than the States in which respondents maintain stocks of granulated chicory.

PAR. 5. In the course and conduct of their respective businesses, as aforesaid, the respondents have been, and are now, engaged in substantial competition in commerce with other manufacturers and sellers of granulated chicory who, for more than 2 years prior hereto have been, and are now, manufacturing granulated chicory from green chicory root and selling and shipping granulated chicory in commerce across State lines between and among the various States of the United States.

PAR. 6. In the course and conduct of their respective businesses, as aforesaid, with the intent, purpose, and effect of injuring, restraining, suppressing, and destroying competition in commerce in the manufacture and sale of granulated chicory between themselves and competing manufacturers and sellers of granulated chicory, the respondents have been, and are now, manufacturing granulated chicory and selling, shipping, and delivering the said granulated chicory across State lines to purchasers thereof at prices below the cost to the respondents of manufacturing, selling, shipping, and delivering said granulated chicory.

PAR. 7. The effect and result of the sale and delivery by respondents of granulated chicory in commerce across State lines to purchasers thereof at prices below the cost to the respondents of manufacturing, selling, shipping and delivering the same, as above set forth in paragraph 6 hereof, have been, and are now, unduly and substantially to injure, restrain and suppress competition between respondents and their competitors in the manufacture of granulated chicory and the sale and shipment thereof in commerce across State lines, and to

tend to create in the above mentioned David McMorran and Mrs. Charlotte H. McMorran, through the respondents, a monopoly in the manufacture and sale of granulated chicory in the United States.

PAR. 8. Granulated chicory is an ingredient used principally by commercial processors and roasters of coffee for the purpose of imparting to and fixing in coffee certain flavors desired by many consumers thereof. Such processors and roasters prefer to purchase and use granulated chicory which does not contain molasses, sugar beet, or sugar beet pulp, and granulated chicory which does contain molasses, sugar beet, or sugar beet pulp is regarded by processors and roasters of coffee as an undesirable and adulterated commodity.

In purchasing granulated chicory the color or shade thereof and its uniformity of color or shade are factors which are considered, and to which great importance is attached, by processors and roasters of coffee. Color or shade is generally imparted to granulated chicory by roasting, and uniformity of color or shade is generally attained by separating or assorting such chicory according to color or shade after it has been roasted. Unless otherwise advised and informed processors and roasters of coffee assume that the color or shade of granulated chicory and its uniformity of color or shade are attributable to the method by and manner in which it is roasted and thereafter separated or assorted according to color or shade by the manufacturers of such chicory.

PAR. 9. In the course and conduct of its business, as aforesaid, the respondent, E. B. Muller & Co., has adopted, practiced, and engaged in the following methods of competition in the sale and shipment of granulated chicory in commerce across State lines between and among the various States of the United States, to wit:

(*a*) It has falsely defamed and disparaged the granulated chicory manufactured and sold and shipped in commerce across State lines by one of its competitors, namely, R. E. Schanzer, Inc., of New Orleans, La., by falsely asserting and representing to purchasers and users of granulated chicory that the granulated chicory manufactured and sold by the said R. E. Schanzer, Inc., contained molasses, sugar beet, or sugar beet pulp, or two or more of such substances.

(*b*) It has artificially colored granulated chicory manufactured and sold by it and shipped by it across State lines by adding or applying thereto iron oxide, or some other pigment or pigments, which have imparted to such granulated chicory a commercially attractive and desirable, and exceptionally uniform, color or shade, has failed to advise the purchasers of such granulated chicory that the same was artificially colored, and has affirmatively or impliedly falsely represented to such purchasers that the color or shade of such chicory was achieved by and attributable to the respondent E. B.

Muller & Co.'s superior method of roasting chicory, and that the uniformity of such color or shade was achieved by and attributable to the respondent E. B. Muller & Co.'s careful and painstaking method of separating and assorting such chicory, after roasting, according to color or shade.

(*c*) In single railroad cars, commonly referred to as "combination cars," it has combined, shipped, and caused to be transported across State lines by common carriers by railroad coffee substitutes (generally referred to in the coffee trade as "cereals") and granulated chicory, and has falsely and fraudulently billed, classified, and described the contents of said cars by falsely and fraudulently representing to the carriers thereof that said cars contained only granulated chicory, by means of which false and fraudulent billing, classification, description and representation the respondent E. B. Muller & Co. has caused combination cars of coffee substitutes and granulated chicory to be transported across State lines by common carriers by railroad at freight rates substantially lower than the freight rates lawfully applicable thereto and which should have been paid thereon.

PAR. 10. The effect and result of the use by the respondent, E. B. Muller & Co., of the methods of competition set forth above in paragraph 9 hereof have been, and are now, unduly and substantially to injure, restrain and suppress competition between respondent, E. B. Muller & Co., and its competitors in the manufacture of granulated chicory and in the sale and shipment thereof in commerce across State lines, and to tend to create in the above mentioned David McMorran and Mrs. Charlotte H. McMorran, through the respondents, a monopoly in the manufacture and sale of granulated chicory in the United States.

PAR. 11. The sale of granulated chicory by the respondents below cost as above alleged in paragraph 6 hereof, with the effect and result as above alleged in pargraph 7 hereof, is to the injury and prejudice of the public, and to the injury and prejudice of respondents' competitors, and constitutes an unfair method of competition in commerce within the intent and meaning of section 5 of the aforesaid Federal Trade Commission Act.

PAR. 12. The use by the respondent, E. B. Muller & Co., of the methods of competition set forth above in paragraph 9, hereof, with the effect and result set forth above in paragraph 10 hereof, is to the injury and prejudice of the public, and to the injury and prejudice of respondent E. B. Muller & Co.'s competitors, and said methods of competition are unfair methods of competition in commerce within the intent and meaning of section 5 of the aforesaid Federal Trade Commission Act.

Count II

PARAGRAPH 1. Paragraph 1, paragraph 2, paragraph 3, paragraph 4, and paragraph 5 of count I of this amended and supplemental complaint are, by reference, incorporated herein and made a part hereof as fully and completely as if set out verbatim.

PAR. 2. In the course and conduct of their respective businesses, as aforesaid, since June 19, 1936, the respondents have been, and are now, discriminating in price between different purchasers of granulated chicory of like grade and quality sold and shipped by the respondents in commerce across State lines to said purchasers for use, consumption and resale by said purchasers within the United States, in that the respondents have sold and shipped, and are now selling and shipping, granulated chicory in commerce across State lines, for use, consumption, and resale within the United States, to certain purchasers of said granulated chicory at prices below the prices at which the respondents have sold and shipped, and are now selling and shipping, in commerce across State lines, for use, consumption, and resale within the United States, granulated chicory of like grade and quality to other purchasers of said granulated chicory engaged in competition with the former purchasers in the use, consumption, and resale within the United States of said granulated chicory, and the respondent, E. B. Muller & Co., has been, and is now, further and additionally discriminating in price between different purchasers of granulated chicory of like grade and quality sold and shipped by the said respondent, E. B. Muller & Co., in commerce across State lines to said purchasers for use, consumption, and resale by said purchasers within the United States, in that upon the said respondent, E. B. Muller & Co.'s sales to purchasers of granulated chicory of like grade and quality, sold and shipped in commerce across State lines by the said respondent, E. B. Muller & Co., to said purchasers for use, consumption and resale by them within the United States, the said respondent, E. B. Muller & Co., has been, and is now, granting, allowing, and paying to certain favored purchasers rebates upon said favored purchasers' purchases of granulated chicory from the said respondent, E. B. Muller & Co., and denying to other purchasers engaged in competition with said favored purchasers rebates upon said other purchasers' purchases of granulated chicory from the said respondent, E. B. Muller & Co.

PAR. 3. The effect of the discriminations in price made by the respondents in the sale of granulated chicory as above set forth in paragraph 2 of this count has been and may be substantially to lessen competition, or to injure, destroy, or prevent competition between

respondents and their competitors in the manufacture, sale, and distribution of granulated chicory in the United States and to tend to create in the above-mentioned David McMorran and Mrs. Charlotte H. McMorran, through the respondents, a monopoly in the manufacture, sale, and distribution of granulated chicory in the United States, and has been and may be substantially to lessen competition or to injure, destroy, or prevent competition in the use, consumption, or resale of granulated chicory within the United States between those customers of respondents who receive the benefit of the lower prices or rebates above mentioned in paragraph 2 of this count and those customers of respondents engaged in competition with them who do not receive the benefit of said lower prices or said rebates.

PAR. 4. The aforesaid discriminations in price made by the respondents as above stated in paragraph 2 of this count constitute a violation of the provisions of paragraph (a) of section 2 of the aforesaid Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and 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 September 11, 1937, issued and thereafter served its complaint in this proceeding upon respondents, E. B. Muller & Co., a corporation, and Heinr. Franck Sons, Inc., a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act, and with discriminations in price in the sale of chicory in violation of the provisions of subsection (a) of section 2 of said Clayton Act as amended.

After the issuance of said complaint and the filing of respondents' answers thereto, testimony, and other evidence in support of the allegations of said complaint were introduced by attorneys for the commission, and in opposition thereto by attorneys for respondents, before examiners of the Commission theretofore duly designated by it. On February 11, 1938, the Commission issued and thereafter served upon respondents an amended and supplemental complaint charging violations of the aforesaid statutes. After the filing of respondents' answers to the amended and supplemental complaint, testimony, and other evidence in support of the allegations of said complaint were introduced by attorneys for the Commission, and

in opposition thereto by attorneys for the respondents, before examiners of the Commission theretofore duly designated by it, and the testimony and other evidence taken pursuant to both complaints 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 amended and supplemental complaint, the answers thereto, testimony, and other evidence, report of the trial examiners and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, E. B. Muller & Co., is a corporation organized and existing under the laws of the State of Michigan and having its principal place of business at 220 Quay Street, Port Huron, Mich.

Respondent, Heinr. Franck Sons, Inc., is a corporation organized and existing under the laws of the State of Delaware and having its principal place of business at 131 Avery Avenue, Flushing, N. Y.

Respondents for many years have been engaged in the processing and sale of chicory, and at all times mentioned in the complaint have been, and are now, selling and shipping chicory from the States in which their respective factories are located, and from States in which they maintain stocks of processed chicory, across State lines to purchasers located in States other than those in which such factories or stocks are located, and have maintained a constant course of trade in such products in commerce as "commerce" is defined in said acts.

PAR. 2. Chicory is a root or tuber resembling in appearance the sugar beet and is commercially produced in the United States in only a few counties in the State of Michigan. It is also produced in Belgium and the Netherlands. When dried, roasted, and granulated it is mixed with coffee for the purpose of imparting to or fixing in coffee certain flavors desired by many consumers. The principal market for this product is in New Orleans, La., and in the trade territory served from that city, although it is sold and used to some extent in most, if not all, of the States of the United States. About 75 percent of the production of respondent Heinr. Franck Sons, Inc., and 40 percent of the production of respondent E. B. Muller & Co. is sold in the New Orleans trade territory.

PAR. 3. The officers of respondent, E. B. Muller & Co., are H. Gordon McMorran, president, Miss Charlotte C. McMorran, vice president, and Mrs. Charlotte H. McMorran, secretary-treasurer; and these officers consistute the board of directors of said company.

The officers of respondent, Heinr. Franck Sons, Inc., are David McMorran, president, A. F. Kalk, vice president, Eugen Beitter (until his death during the pendency of this proceeding), secretary-treasurer; and these officers constitute the board of directors of that company.

David McMorran and Mrs. Charlotte H. McMorran are, respectively, husband and wife and father and mother of H. Gordon McMorran and Miss Charlotte C. McMorran.

Prior to 1919 the businesses now conducted by respondents were owned by different interests and presumably competed with each other. David McMorran, who was then an officer and director of E. B. Muller & Co., and who with his father, the then president of that company, owned a controlling interest in it, purchased the stock of Heinr. Franck Sons, Inc., at public auction from the United States Alien Property Custodian. After a hearing by the Federal Trade Commission, David McMorran was advised by the Alien Property Custodian that upon recommendation of said Commission the sale to him would not be confirmed unless he resigned as an officer and director of E. B. Muller & Co., and disposed of his stock in that concern. David McMorran thereupon sold his stock in E. B. Muller & Co., to his father, to his attorney, and to a personal friend, and represented in an affidavit submitted to the Alien Property Custodian for the purpose of securing confirmation of his purchase that his stock in said company had been disposed of absolutely and unconditionally. Subsequently the stock sold to David McMorran's attorney and to his friend was acquired by his brother-in-law. Between 1919 and 1924 Mrs. Charlotte H. McMorran acquired all the stock originally disposed of by her husband, David McMorran, together with the stock previously owned by David McMorran's father, totaling more than five-sixths of the outstanding 30,000 shares of capital stock of E. B. Muller & Co., all upon consideration furnished by David McMorran and upon the understanding that the stock was to be placed in a trust for David McMorran and his wife, Charlotte H. McMorran, for life, provided that David McMorran and Charlotte H. McMorran jointly, or the survivor of them, might terminate the trust at any time and cause the stock to be delivered and transferred to them or to the survivor of them absolutely and unconditionally. This stock was held until 1939 under such a trust agreement by the Detroit Trust Co., a banking corporation, when the

trust was set aside by a State court decree purporting to hold that David McMorran had no interest in the stock. There is no testimony, however, that the understanding with respect to terms upon which the stock was acquired has been abrogated.

Respondent, Heinr. Franck Sons, Inc., has outstanding 10,000 shares of common stock and 5,430 shares of preferred stock. David McMorran owns all of the common stock of this company and 4,400 shares of the preferred stock, the latter being owned by him through the medium of the Michigan Debenture Co., of which he owns all the capital stock.

David McMorran is furnished by respondent, E. B. Muller & Co., with an office and clerical assistance at the principal place of business of said respondent company, has access to the files and records of both respondent companies, advises and consults with and gives directions to officers, agents, and employees of both respondent companies. Gordon McMorran has access to the files and records of respondent, Heinr. Franck Sons, Inc., and advises and consults with officials of that company. Neither Mrs. Charlotte H. McMorran nor Miss Charlotte C. McMorran does more than formally participate in the management and direction of the respondent companies. Upon testimony and other evidence the Commission finds that David McMorran and his wife, Charlotte H. McMorran, own control of respondent companies, and David McMorran dominates, directs, and controls the policies and practices of both companies and operates them in the common interest of the two companies.

PAR. 4. Prior to 1930 respondents were the only domestic producers of granulated chicory and their only competition came from imported chicory. The total imports of such chicory were relatively small in comparison with respondents' production, and the largest importer of this product was R. E. Schanzer, Inc., a Louisiana corporation, having its principal place of business in New Orleans, La.

Respondent, E. B. Muller & Co., has concentrated upon the production of granulated chicory and the sale thereof in bulk. A limited quantity of this product is packed by said respondent in small containers and sold to retail outlets for resale to consumers, but such sales have been insignificant in volume and the company desires and is endeavoring to discontinue the manufacture and distribution of packaged chicory. Substantially all of said respondent's sales volume consists of granulated chicory in bulk, sold largely to coffee roasters.

Respondent, Heinr. Franck Sons, Inc., produces and sells a large quantity of chicory in packaged form to retail outlets for resale to consumers. This packaged chicory is granulated chicory which

has been subjected to a further grinding process and converted into a powder, and thereafter packaged in different forms. Said respondent also sells granulated chicory in bulk form to a very limited number of coffee roasters, but does not actively solicit or seek to sell to coffee roasters generally.

Respondents do not compete with each other in any real sense; the business of each is designedly complementary, rather than competitive, to that of the other. Respondents agreed between themselves that E. B. Muller & Co. would not seek business from established customers of Heinr. Franck Sons, Inc., and when sales representatives of the former sought business from customers of the latter they were advised to avoid this as E. B. Muller & Co. was not competing with Heinr. Franck Sons, Inc. An example of this policy appears in the following extract from a letter of May 14, 1934, from Gordon McMorran to the New York office of E. B. Muller & Co. in which reference is made to a sales representative of that company in New Orleans as follows:

He also must be definitely warned off of F customers with the exception of those customers whom we know are buying from Schanzer. We do not want any of F's business and must concentrate solely on Schanzer's.

PAR. 5. In 1930 R. E. Schanzer, Inc., formerly the principal importer of chicory, installed a plant in New Orleans, La., for roasting and granulating imported dried chicory, and in 1933 this company installed and commenced the operation of a plant for drying chicory in Linwood, Mich., in the limited area in which domestic chicory is grown. It is in this area that respondents procure and dry their supply of chicory which E. B. Muller & Co. subsequently processes in Michigan and Heinr. Franck Sons, Inc., in New York. R. E. Schanzer, Inc., ships dried chicory root from Michigan to its plant in New Orleans where it is roasted, granulated, and prepared for distribution and sale. Even before R. E. Schanzer, Inc., commenced the operation of the abovementioned plant in New Orleans it represented the only substantial competition to respondents, and after the installation of said plant in 1930 respondents began a definite and active campaign to harass, injure, and, if possible, eliminate R. E. Schanzer, Inc., from the competitive field and thus regain the substantially complete monopoly which they previously enjoyed in the distribution of chicory in the United States. This concerted effort on the part of respondents was further intensified after R. E. Schanzer, Inc., established a drying plant in Michigan and became a competitor of respondents in the processing and sale of domestically produced chicory. The calculated course of action taken by respondents look-

ing toward crippling or destroying the competition offered by R. E. Schanzer, Inc., has manifested itself in a number of forms, among which are those set out in subsequent paragraphs.

PAR. 6. Granulated chicory is ordinarily produced in three different shades of color, usually designated light, medium, and dark, and in different sized granules in each color. Inasmuch as granulated chicory is added to coffee by coffee roasters, color and uniformity of color in chicory are of great importance to such customers. Darker colors are more expensive to produce by roasting, and uniformity of color is more expensive and difficult to attain by natural means because of the cost of inspection and selection required. It is the general understanding and belief of coffee roasters that color and uniformity of color in chicory are secured by care in selecting and processing chicory. At all times mentioned in the complaint respondent, E. B. Muller & Co., artificially colored the granulated chicory which it sold by adding iron oxide to such chicory. The addition of iron oxide resulted in giving its granulated chicory an exceptionally desirable and uniform color which would be more difficult and expensive to produce solely by the process of selection and roasting. This respondent did not in any way advise its customers that its chicory was artificially colored. On the contrary, it represented to its customers that the color and uniformity of color of its chicory were achieved by and attributable only to a superior method of roasting and a painstaking process of selecting and sorting. Affirmative representations of this character were made in many ways, including published advertisements such as:

All chicory grown and sold by E. B. Muller & Co. is fully kiln dried and expertly roasted by the Calorithern process. Color and grinds are uniform, * * *.

* * * * * * *

Those roasters who buy Muller Chicory have learned by experience that the full flavor developed by the exclusive Calorithern roasting process makes a noticeable improvement in the coffee blend. Less moisture, quicker solubility and rich color characterize Muller products.

and, further, by letters to customers and prospective customers containing statements such as:

As to Roasts, of which we produce several shades, they are produced actually by roasting light, medium or dark. Other methods can and have been used to produce differences in color but not by us. This also applies to our "Standard" Grade.

At the time representations such as those quoted from above and others of like import were being made, respondent E. B. Muller & Co. was in fact using iron oxide to aid in attaining color and uniformity of color in its chicory products.

Chicory used for blending with coffee should not contain foreign substances such as sugar beet or molasses, and chicory which does contain such foreign substances is considered by the trade to be adulterated. Since 1930 respondent, E. B. Muller and Co., through its officials and sales representatives, has frequently and on many occasions disparaged the chicory products sold by R. E. Schanzer, Inc., by representing to purchasers of chicory that such products contained molasses, sugar beet, or other foreign substances. Customers of R. E. Schanzer, Inc., have been threatened by respondent with seizure by governmental authorities of chicory purchased from R. E. Schanzer, Inc., as being adulterated. A sales representative of respondent was instructed to advise a customer of R. E. Schanzer, Inc., who had on hand a quantity of molasses which he wished to sell that such sales representative knew where this molasses could be sold and to supply the name of R. E. Schanzer, Inc., as the prospective purchaser. Upon consideration of the evidence it is found that respondent, E. B. Muller & Co. has defamed and disparaged the chicory products of its competitor, R. E. Schanzer, Inc., by falsely representing that they contained foreign substances, and many such representations were knowingly and deliberately made without any actual or adequate knowledge of the facts sufficient to indicate good faith on the part of respondent.

Respondent, Heinr. Franck Sons, Inc., had an analysis made of a sample of chicory purported to have been sold by R. E. Schanzer, Inc., the report of which analysis stated that this sample contained approximately 50 percent roasted sugar beet; whereupon the sales representative of said respondent was instructed to, and did, advise chicory purchasers that the chicory sold by R. E. Schanzer, Inc., was adulterated with a large percentage of sugar beet, and further, procured the institution of a proceeding by governmental authorities against R. E. Schanzer, Inc., which proceeding was soon abandoned, but respondent took no steps of any kind to correct the statements previously made to the trade by its representative.

PAR. 8. Frequently the freight rates on granulated chicory differ considerably from those on coffee substitutes, commonly known in the trade as cereals. In order to take advantage of the substantially lower rate frequently prevailing on granulated chicory as compared with coffee substitutes, and of the lower carload freight rates, respondent, E. R. Muller & Co., on numerous occasions over a period of years misbilled to the railroads its products moving in interstate commerce. Muller shipped in single railroad cars combinations of its products consisting of large quantities of chicory and smaller quantities of coffee substitutes, falsely and fraudulently describing and

representing to the railroads that the cars contained chicory only. By this means respondent obtained substantially lower freight rates than those applicable to coffee substitutes properly described and classified, and in some cases rates lower than those applicable to either of the commodities so transported since the less-than-carload rate for less-than-carload shipments would have applied on both products had the proper billing been made except that the carload rate for the minimum carload quantity permitted may be paid in lieu of the less-than-carload rate on the actual quantity shipped. The freight advantage so secured has amounted to as much as $65.16 per car. Such falsified billings were made with the knowledge of officials of E. B. Muller & Co. and with the deliberate intent of obtaining an illegal freight advantage. This is illustrated by the following extract from a letter dated November 16, 1931, from the sales manager of E. B. Muller & Co. to respondent's New Orleans broker:

As we previously advised you, we are not supposed to ship any cereals in Chicory cars, and if it were discovered it would make trouble for us. Port Huron therefore marked these goods only W. R. D. standing for Whole Rye Dark, and it will be advisable that you tell the warehouse not to in any way reveal the fact that these goods are anything but Chicory.

PAR. 9. Detailed cost studies for 1936 and 1937 were made of the granulated chicory business of each respondent. The record shows that respondent, Heinr. Franck Sons, Inc., in its 1936 and 1937 fiscal years sold 5,094,320 and 5,123,974 pounds of granulated chicory, respectively, that of these amounts 3,821,279 and 4,445,149 pounds, respectively, were sold to two customers of respondent in New Orleans, La., and that sales to these two customers were made at a loss of approximately 11 cents per hundred pounds during the 6 months ended June 30, 1936, and at cost or slightly below cost during the 8 months ended March 31, 1937. It is apparent from the record that from time to time various other customers of this respondent who purchased in smaller quantities were also sold at a loss but that the gains from profitable sales were sufficient to overcome the losses mentioned so that the business of this respondent in granulated chicory, considered as a whole, was not operated at a loss. The two large customers in New Orleans referred to above were William B. Reily & Co. and Merchants Coffee Co. Among those purchasing in smaller quantities at prices which represented a loss to this respondent were The Great Atlantic & Pacific Tea Co. in Atlanta, A. Jochelson in New York, McGaffey Coffee Co. in Los Angeles, Jones Thierbach Co. in San Francisco, and others.

The record shows that respondent, E. B. Muller & Co., conducted its entire business in granulated chicory in its 1936 and 1937 fiscal

years at average losses of approximately 18 cents and 8 cents per hundred pounds, respectively. The prices which this respondent received from purchasers in the New Orleans trade territory were in general substantially lower than the prices secured from purchasers for whose trade it did not have to compete with R. E. Shanzer, Inc. For example, in the year ended June 30, 1937, sales were made to customers in New Orleans at losses ranging from approximately 66 cents to $1.11 per hundred pounds, and to customers in Memphis, Louisville, St. Louis, Birmingham, and Atlanta at prices which represented a range of from 67 cents per hundred pounds loss to 44 cents per hundred pounds profit. Examples of losses on sales to specific customers in New Orleans are American Coffee Co., Arnaud Coffee Corporation, Boothe Brothers Coffee Co., and others, who were sold at losses of from 66 cents to 91 cents per hundred pounds, and C. D. Kenny Co., which was sold at losses of $1.10–$1.11 per hundred pounds. From this it is plain that the prices of this respondent in the New Orleans trade territory were more substantially below its costs than the figures shown by the cost study for sales in other territories and for the business as a whole of this respondent in granulated chicory.

The sales below cost made by respondents during the period covered by the cost study, as well as other sales below cost prior to the period covered by such study, were made with the deliberate purpose and intent of hindering, handicapping, injuring, and, if possible, destroying their only domestic competitor, R. E. Schanzer, Inc. This general intent and purpose of both respondents, acting under the common control and direction heretofore mentioned, is demonstrated by a long series of acts and practices consisting not only of selling below cost but also of the use of other means directed toward the same end. Some of these acts and practices were as follows:

In 1929 R. E. Schanzer, Inc., was not a manufacturer of granulated chicory and depended upon imports as its source of supply. It was, however, at that time becoming a serious competitor of respondents. Respondents appeared before a committee of the United States House of Representatives and sought an increase in the tariff on granulated chicory for the purpose of making it impracticable to import granulated chicory and thereby cutting off the source of supply of R. E. Schanzer, Inc., but no request was made for an increase in the tariff on dried chicory root, and the Committee was advised that in the event of a short domestic crop manufacturers wished to be in a position to import foreign chicory root. Soon after this appearance respondents learned that R. E. Schanzer, Inc.,

planned, if the tariff were increased on granulated chicory, to import dried chicory root and manufacture granulated chicory in this country. Thereupon respondents appeared before a committee of the United States Senate and sought an increase in the tariff on dried chicory root. Respondent, Heinr. Franck Sons, Inc., was advised by its New Orleans representative under date of July 5, 1930, in part:

Schanzer has been obliged to raise his price ¼¢ because of the tariff, and the supposition is he will have to raise it more, which will practically put him out of the chicory business, because our chicory being better, and if his reaches the same price, ours will be preferred.

R. E. Schanzer, Inc., was in fact put out of the business of importing granulated chicory but continued in the chicory business by the establishment of a plant in New Orleans in which it made granulated chicory from imported chicory root.

Under date of April 10, 1931, Gordon McMorran wrote the New York office of E. B. Muller & Co. in part:

We have your letter of the 7th in reference to prices in southern territory. We note your persistence in advocating a cut in New Orleans prices. What you seem to overlook is the fact that a cut by us at the present time to 8¢ New Orleans for the New Orleans trade will result in a loss to us of $30,000 per year. The whole New Orleans trade is not worth that to us.

Later in the same year E. B. Muller & Co. in fact reduced its price in New Orleans to 7¾ cents.

On November 2, 1931, David McMorran wrote an official of Heinr. Franck Sons, Inc., in part as follows:

If you think advisable perhaps it would be well to write Reily (one of Franck's largest customers) that Schanzer is making desperate efforts to sell out. * * * If Reily should contract with Schanzer, it would not only reduce his rebate from us but it would be a very uncertain source of supply. Schanzer is liable to pass out at any time and if European root went up or the tariff was increased Schanzer would simply fold up and fail to deliver to Reily.

Under date of January 14, 1933, a sales representative of respondent, E. B. Muller & Co., wrote that company in part:

I am sorry that we have allowed Schanzer to get to the point where he can expand, which was made possible by partner who has some capital. However, if a reduction on tariff should take place, it would make the situation still worse. I certainly hope that we can, as you expect, eliminate him entirely, by making prices that he cannot meet without losing money.

In a letter dated February 2, 1933, David McMorran wrote another official of Heinr. Franck Sons, Inc., discussing the possibility of an offer of lower prices to one of that company's large customers in New Orleans. He said in part:

The reduction in our basis price will put a crimp in Schanzer's operations and probably discourage him from making any further investment.

Under date of March 17, 1933, the production manager for E. B. Muller & Co. wrote the New York office of that company in part:

January reports show largest importation per month on record, 267,000# of root, at an average cost of $1.44, which is, as we recall it, considerable lower than any previous low, so that the cut of ½¢ which he (R. E. Schanzer, Inc.) made following us to some extent is offset by a lower cost to him.

In a letter written 2 days later between the same parties the production manager stated in part:

Regardless of what loss it may involve for the present, we are still in favor of lower Chicory prices, effective at this time. We know it involves a loss, but we fear it will react upon us later because of the strength we are giving competitors by maintaining present basis, but, as you well know, such recommendations would not receive any support now, but we believe we should both do all we can to prevail for a reduction of another ½¢ in the Fall, possibly November first.

At the time R. E. Schanzer, Inc., was beginning the construction of a drying kiln in Michigan in 1933 in order to utilize domestic chicory root, respondents claimed that the patterns and blue prints used by a machinery manufacturer to build machinery for them belonged to them, and when this claim was of no avail purchased such patterns and blue prints to prevent their use in building machinery for R. E. Schanzer, Inc. In July 1933 David McMorran wrote an official of Heinr. Franck Sons, Inc., in part:

Schanzer asked Kinzle (respondent's employee) if we would sell him the cutter from Midland and Kinzle told him he would have to find out. I advised Kinzle to stall Schanzer along as long as possible and then tell him "No."

Under date of November 27, 1933, the sales manager of E. B. Muller & Co. advised its New Orleans representative that the company's St. Louis representative would be visiting in New Orleans soon and would call, and said in part:

As the question of prices will no doubt arise, we wish you would not stress the extremely low prices we are compelled to make at New Orleans for reasons well known to you. He is of course, accustomed to obtaining very much higher prices at St. Louis despite the much lower freight rate to that point from Port Huron. This of course by reason of the fact that New Orleans would have to pay a considerable freight rate on shipments to St. Louis, as he has had the business so well in hand for years, that they have found it impossible to break in—and for us, it is a case of averaging up, as if we were compelled to sell at other points at the same price as we sell in New Orleans, we could just as well close up the plant, as we could not exist on the profit.

Under date of January 3, 1934, David McMorran wrote another official of Heinr. Franck Sons, Inc., in part:

I think Schanzer requires our immediate and careful consideration. You will have noted from the prices on recent imports that Schanzer's imported dried root is costing him approximately $80 per ton delivered. His Linwood dried root this fall will also cost him approximately $80 per ton delivered New Orleans. This means 4¢ per pound for his root. Add to this 20% shrinkage or say 1¼¢ per pound plus 1¼¢ for manufacturing, making a total cost to him of 6½¢. If we maintain present prices in New Orleans and the South, it means that Schanzer can scrape thru the next year at just about cost without any overhead cost which in his case is rather low as he has his crockery business to pay his traveling expenses. I am inclined to think that Schanzer has spent most of his working capital at Linwood this year and is probably pretty hard up. If we lower the price of granulated ½ or ¼ cent it will mean that Schanzer will have to do business at a considerable loss as he is selling approximately 1,000,000 pounds per year. We can justify the lower price on the basis of lower cost of our dried root this year. If Schanzer continues to operate at Linwood after this year, he will be a serious menace as his kiln is now in fairly good operating condition with a few minor changes which he contemplates making. His greatest danger now is fire at Linwood as his kiln draft is tremendous and he loads his floors very lightly and will probably result in charring the lower layer. With a lower price for this year, Schanzer will probably be extremely hard up and unable to finance another crop.

A cut of ¼ to ½¢ will mean some loss to us. Is it better to let him go along and scrape thru this year and be in position to become a serious factor next year, or is it better to lower the price with probably his inability to continue?

At the time R. E. Schanzer, Inc., began using domestic chicory root produced in Michigan the company on two occasions sought to obtain a reduction in freight rates on dried chicory root from its kiln in Michigan to its manufacturing plant in New Orleans. Respondents recognized the reasonableness of the reduction sought, as indicated by a letter of March 2, 1934, from the production manager of E. B. Muller & Co. to the New York office of that concern:

Have just received the inclosed wire from New Orleans, which, of course, follows local carriers' refusal to join the Southern on the basis of 47¢, 80,000# minimum. I do not see how we could consistently fight this 65¢ rate, 60,000# minimum, because of the fact that it is generally conceded that raw material or semi-raw material should command a lower rate than prepared and finished material, and we have a 65¢ rate on the latter, 40,000# minimum.

Respondents, however, opposed both applications. Both were refused and chicory root continued to take the same rate as the finished product, granulated chicory, with the result that it costs R. E. Schanzer, Inc., some $70 more to deliver enough chicory root from Michigan to New Orleans to produce 40,000 pounds of granulated chicory than its costs E. B. Muller & Co. to deliver a 40,000 pound car of granulated chicory from Michigan to New Orleans.

A letter of July 26, 1934, from the New Orleans sales representative to the New York office of E. B. Muller & Co., in referring to competition with R. E. Schanzer, Inc., stated:

In the writer's humble opinion, all that is necessary to finish the job, would be to allow "Free Drayage and Tare on Bags," to the local trade. What think ye?

We realize this is an expensive undertaking, but if the plan is adopted, we know he cannot survive the summer.

Shortly thereafter the plan referred to was in fact put into operation.

In a letter of December 28, 1934, from Gordon McMorran to the New York office of E. B. Muller & Co. it was stated in part:

We learn that Schanzer has applied to the Seatrain for a special rate on chicory from Linwood to New Orleans. This application probably covers a rate on dried root only. Please keep in touch with the Seatrain traffic department and tell them that if the rate is made on dried chicory root we will have to have the same rate applied on manufactured chicory or discontinue our shipments.

In 1934 the sales manager for E. B. Muller & Co. told the wife of the company's New Orleans representative that if her husband succeeded in putting R. E. Schanzer, Inc., out of business he would buy her the best fur coat in New York. This promise was repeated in 1935 and on April 12, 1935, it was referred to in a letter from the wife of the sales manager for E. B. Muller & Co. to the wife of the New Orleans representative of that company in a statement hoping that the New Orleans representative "has a most successful season from all points, as we want to shop for a fur coat this fall."

Ways and means of eliminating R. E. Schanzer, Inc., and the progress made in that direction were frequent topics of conversation among respondent's officers and employees. A former sales representative of E. B. Muller & Co. testified it was his understanding that the purpose of the company in opening a New Orleans office was to break R. E. Schanzer, Inc. In a letter to the New York office of E. B. Muller & Co. this former representative referred to the opening of the New Orleans office and stated, "It was with the intention of breaking Schanzer."

In replying to an observation by a sales representative concerning difficulties which might ensue if customers of E. B. Muller & Co. not solicited by Schanzer discovered that other purchasers received more favorable prices, the sales manager of E. B. Muller & Co. under date of October 2, 1934, wrote in part:

It is quite evident that neither Forbes or Evans have sold these people and not likely that the sale will come to their attention. If it should, your explanation is—that we are fighting an unscrupulous competitor who will

possibly pass out of the picture before long, but in the meantime we will have to do such things to discourage him, but that before long we hope conditions will get back to their normal basis, so that we as in the past could work with the Jobbers entirely. This wish is father to the thought.

In 1934 E. B. Muller & Co. decided to thereafter offer two grades of granulated chicory, one known as "Premium" and the other as "Standard" and to maintain their then current prices on the best grade and use the Standard grade as a competitive brand. On October 9, 1934, the sales manager of E. B. Muller & Co. in a letter to one of its sales representatives explained the plan in part as follows:

The decision arrived at, is to offer hereafter two grades of Chicory, maintaining present prices on our best grade, which will be the goods as we turned them out heretofore, somewhat improved, and use the second grade, which however, will be stock equal to anything our competitor can offer and very likely better than his, as our fighting brand with price. However, the change will not go into effect until Nov. 1 and as it will be necessary that you have samples to show the difference in the grades, it will be just as well not to make mention of it now, especially among the small trade which you are visiting.

The introduction of two grades of chicory by E. B. Muller & Co. was carried out in a manner intended to, and which so far as practicable did, limit the sale of the so-called fighting brand to the territory in which respondent competed with R. E. Schanzer Inc. Respondent sells much the greater part of the Premium grade at higher prices in other territories and the quantity of Premium grade sold as such in the territory covered by R. E. Schanzer, Inc., is relatively quite small.

In a letter of September 9, 1935, from the sales manager of E. B. Muller & Co. to its New Orleans sales representative, in referring to R. E. Schanzer, Inc., it was stated:

Evidently Neal has drawn in the lines on account of poor conditions—so by continuing our efforts and putting a crimp into him wherever possible, we may ultimately curb this competition if we should not succeed in eliminating it entirely.

In a letter of November 14, 1935, from the sales manager of E. B. Muller & Co. to one of its sales representatives an attempt was made to explain the price situation and it was stated in part as follows:

Against that, if we sold trade in St. Louis at rock-bottom prices without considering what competition can do, we would have a good chance of going broke in our efforts to eliminate the competition.

On November 27, 1935, Gordon McMcrran in writing to the New York office of E. B. Muller & Co. stated in part:

Regarding your suggestion to make the differential between Standard and Premium ½¢, we can not quite agree that this is necessary in all cases. In

fact we expressed our opinion a year ago that we are not interested in maintaining any volume on Premium, but must have a higher priced article to protect ourselves in the event that competition should be eliminated, and also to prevent any suggestion that we are engaged in price cutting.

On December 24, 1935, Gordon McMorran in writing to the New York office of E. B. Muller & Co. concerning negotiations with a customer, stated in part:

We would rather sell Drown at a price just below Schanzer as Drown thoroughly understands our position and knows that we are out to beat our competition.

On several occasions prior to 1937 R. E. Schanzer, Inc., appealed to respondents to increase their prices in the New Orleans area in order that it would not be forced to lose money in attempting to meet their competition. Finally, in January 1937 R. E. Schanzer, Inc., found that it was losing so much money that it could no longer afford to sell at respondents' prices and that it was compelled to, and consequently did, increase its prices. Respondents on the occasion of one such request by R. E. Schanzer, Inc., stated if that company could not afford to lose money it should get out of the chicory business, and on another such occasion told R. E. Schanzer, Inc., that while they were not making any money they were satisfied with the way things were going and would not increase their prices, and further that they intended to retain their sales volume at any and all costs.

R. E. Schanzer, Inc., attempted to explain the necessity of the price increase by that company to its customers. An example of one such effort is contained in a letter of January 29, 1937, which reads in part as follows:

Your letter of January 26th received and in connection with our advance on Chicory let me first give the facts that forced us to take this step.

In the first place, the price prevailing during 1936 of 5¼¢ fob New Orleans was in itself below actual cost but we continued selling at this basis hoping that competitive conditions would adjust themselves and that we would be able to obtain a price that would at least cover our cost.

As soon as figures were available for the 1936/7 crop it disclosed that the cost of the new crop was very much higher than we had anticipated * * *.

In view of these conditions and if we want to continue in the Chicory business there was no alternative left but raise our price to where we at least break even. We are fully aware that there will be some customers who will quit us entirely but, on the other hand we have hopes that the majority of our friends will recognize the distinct service we have rendered them in the past and favor us at least with a portion of their requirements. We feel our presence in the Chicory business will always assure them of a fair and reasonable price for this product.

Promptly after the increase in price was made by R. E. Schanzer, Inc., E. B. Muller & Co. made an increase in its price which was followed by an increase in price by Heinr. Franck Sons, Inc., and a few months thereafter a second increase by E. B. Muller & Co. The increases in price made by the respondents did not, however, raise their prices to the same level as those of R. E. Schanzer, Inc., or terminate their selling below cost.

From long experience in the manufacture and sale of chicory and periodical checks upon their costs respondents were aware that they were selling below their own costs in their efforts to destroy and suppress the competition of R. E. Schanzer, Inc. Examples of such knowledge appear in evidence previously referred to and also in the following excerpts from communications by respondents' officials. In a letter from the production manager of E. B. Muller & Co. to its sales manager dated November 8, 1935, it was stated in part:

It is not likely that there will be further reductions at New Orleans as a price of 5½¢ is already substantially below cost * * *.

In a letter of April 15, 1937, to its sales representative in New Orleans the sales manager of E. B. Muller & Co. stated in part:

5.55 with freight of 54¢ and stop-over charge, nets us less than 5¢ and we have been given to understand that cost is slightly over 5¢. It certainly seems a shame that under present conditions we should be compelled to continue working at a loss.

An official of Heinr. Franck Sons., Inc., informed one of its largest customers that his company was losing between $20,000 and $25,000 a year on sales to that customer.

PAR. 10. Respondent, Heinr. Franck Sons, Inc., has discriminated in price among its customers by selling granulated chicory to some at prices materially different from the prices charged others for chicory of like grade and quality. Its largest customers, William B. Reily & Co. and Merchants Coffee Co., both of New Orleans, La., received the lowest prices. Considering these two customers as one group against all other customers of this respondent as a second group, the actual average price differentials between the two groups were substantial and were not justified by reason of differences in cost to respondent of manufacture, sale, or delivery resulting from differing methods or quantities in which chicory of like grade and quality was sold and delivered. Examples of such unjustified price differences as between the two customers mentioned and other customers where the difference is not accounted for by any general change in respondent's prices are: A 50 cents per hundred pounds higher price to American Coffee Co., New Orleans, which failed of justification by 48 cents; a 75 cents per hundred pounds higher price

to Southern Coffee Mills, New Orleans, which failed of justification by 72 cents; a $1.25 per hundred pounds higher price to U & J Lenson Co., New York, which failed of justification by 6 cents; a $2.50 per hundred pounds higher price to Golden Gate Supply Co., San Francisco, which failed of justification by $1.66; and other similar instances. There are, of course, instances where higher prices to others were fully justified by respondent's cost differences.

Respondent, Heinr. Franck Sons, Inc., also discriminated in price as among its customers generally, in addition to the discriminations between its two large customers and others mentioned or referred to above, by selling granulated chicory of like grade and quality to some at materially higher prices than to others, and certain of these differences are not justified by cost differences to the respondent. Examples of such discriminations in prices are: A 25 cents per hundred pounds higher price to U & J Lenson Co. than to S. A. Schonbrunn Co. and Old Dutch Mills, all of New York City, for which difference no cost justification is shown; a 25 cents per hundred pounds higher price to S. B. Cole & Co. than to McGaffey Coffee Co., both of Los Angeles, which difference failed of justification by $1.12; a price of $7.75 to Golden Gate Supply Co. of San Francisco as against a $6 per hundred pounds price to American Coffee Co., New Orleans, resulting in a price difference of $1.75 per hundred pounds, which failed of justification by 93 cents; a price of $8.25 to Haas Baruch & Co. of Los Angeles as against a $6 per hundred pounds price to The Great Atlantic & Pacific Tea Co. of Atlanta, which difference failed of justification by 77 cents per hundred pounds; and others of a similar nature.

Respondent, E. B. Muller & Co., has discriminated in the price of granulated chicory of like grade and quality as among many of its customers by charging materially different prices to some than to others, and many such price differences are not justified by differences in cost to the respondent of manufacture, sale, or delivery resulting from the differing methods or quantities in which said chicory was sold or delivered. The price discriminations by this respondent were accomplished in many different ways: Some resulted merely from outright price differences among customers; some were accomplished by selling a higher grade of chicory to preferred customers at or below the price of a lower grade, when other purchasers of the higher grade were required to pay a premium in price; some were created by the use of a rebate or discount plan under which a few preferred customers who made large annual purchases were granted an additional price reduction or discount; and some were created by other means. The quantity discount or rebate plan referred to was offered to only a few

customers of respondent, and among such preferred customers neither the base price nor the rate of discount or rebate was uniform as among those with whom agreements were entered into prior to June 19, 1936, but pursuant to which sales were made subsequent to that date. As among preferred customers who received such quantity discounts or rebates pursuant to agreements entered into subsequent to June 19, 1936, the rate of discount or rebate was uniform but the base prices were not. Examples of unjustified discriminations in price by respondent, E. B. Muller & Co., are: A 45 cents per hundred pounds higher price to American Coffee Company, New Orleans, than to C. D. Kenny Company, New Orleans, no part of which price difference was justified; a 20 cents per hundred pounds higher price to Southern Coffee Mills, New Orleans, than to Mobala Coffee Co., New Orleans, no part of which difference was justified; a 25 cents per hundred pounds higher price to the Southland Coffee Co., Atlanta, than to McDougall Coffee Co., Atlanta, no part of which difference was justified; and other similar instances.

Respondents, acting under the common control heretofore stated, have discriminated in price as among the customers of each other in that each respondent has sold chicory of like grade and quality to some of its customers at prices different from those charged by the other respondent to some of its customers, and such price differences are not justified by reason of differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such chicory of like grade and quality was sold or delivered. Examples of such discriminatory price differences are: A 25 cents per hundred pounds higher price to William B. Reily & Co., New Orleans, by Heinr. Franck Sons, Inc., than to New South Warehouse Coffee Co., New Orleans, by E. B. Muller & Co., which failed of cost justification by 95 cents; a 30 cents per hundred pounds higher price to Merchants Coffee Co., New Orleans, by Heinr. Franck Sons, Inc., than to Southern Coffee Mills, New Orleans, by E. B. Muller & Co., which failed of justification by 95 cents; a $1.08 per hundred pounds higher price to American Coffee Co., New Orleans, by Heinr. Franck Sons, Inc., than to C. D. Kenny Co., New Orleans, by E. B. Muller & Co., which failed of justification by $1.81; a $1.50 higher price to U & J Lenson Co., New York, by Heinr. Franck Sons, Inc., than to Boothe Bros. Coffee Co., New Orleans, by E. B. Muller & Co., which failed of justification by $1.02; a 63 cents per hundred pounds higher price to American Coffee Co., New Orleans, by Heinr. Franck Sons, Inc., than to Trico Coffee Co., New Orleans, by E. B. Muller & Co., which failed of justification by $1.36; and numerous other similar instances.

The general pattern of the price discrimination followed by respondents has been to make low prices in a few southern States where they are in active competition with R. E. Schanzer, Inc., and make higher prices on sales elsewhere in the United States where their competitor does not attempt to and cannot, because of transportation costs, sell its products. As a result of this respondents recouped in part for the lower prices at which they sold their products in southern States. Respondents' price discriminations, while following the general pattern stated, also included substantial price discriminations as among purchasers within the southern States referred to and among purchasers elsewhere in the United States. In many instances respondents maintained discriminatory prices as between customers located in the same city.

PAR. 11. The effect of respondents' selling below cost in the trade area in which their competitor, R. E. Schanzer, Inc., operates, and the discriminations in price caused by selling to customers in the trade territory covered by R. E. Schanzer, Inc., at lower prices than elsewhere in the United States, has been to divert to themselves a substantial volume of business which their competitor might otherwise have obtained, to force their competitor to sell at unprofitable prices or at prices which represented a loss in order to avoid being forced out of business, and thus to impair their competitor's financial position and render it unreasonably difficult if not impossible for it to secure capital to finance and expand its operations.

During the year 1937 when R. E. Schanzer, Inc., was forced to increase its prices substantially above those of respondents in an effort to avoid financial losses which it could not bear, respondents continued their sales below cost and discriminatory prices and this resulted in a loss of sales volume by R. E. Schanzer, Inc., of nearly 650,000 pounds, or more than 25 percent of its volume in the preceding year. At the time that R. E. Schanzer, Inc., was losing volume of sales because of respondents' pricing and other practices, respondents were substantially increasing their volume of sales. Respondents have by these practices not only weakened and injured competition but have also tended to create in themselves a monopoly in the production and sale of domestic chicory.

The threat of monopoly which might be followed by monopolistic prices was recognized among purchasers of chicory. An intercompany communication by the purchasing officer of a large user of chicory stated in part:

There is no getting around it but what if Schanzer had stayed out of the picture we would be paying much higher prices for chicory from either Heinr. Franck or Muller so we really owe something to them. Muller and Franck

have always had an opportunity to quote on our business and they always quoted the same price. Now, since Schanzer has gotten the business they are making a strenuous effort to get it back and just the minute that they have eliminated Schanzer I feel quite sure that their prices would be much higher.

That this view was warranted is indicated in the following extract from a letter of March 9, 1937, from the sales manager of E. B. Muller & Co. to the Port Huron office of that concern, stating in part:

We would suggest that they be given a price of 6¢ Jacksonville, which with freight Port Huron to New York and New York to Jacksonville, 65½¢ total, would net 5.34½ Port Huron, unless different information should come to hand of Schanzer having actually closed up entirely, in which case of course, a better price could be obtained * * *.

The sales manager of E. B. Muller & Co. used the possibility of creating a monopoly in respondents as a threat to purchasers. He wrote a sales representative of that company in part as follows:

However, we feel sure that if you will diplomatically advise your trade that Schanzer surely will not last much longer, which is certainly proven by the repeated offers he has made to us to buy him out, they will see the handwriting on the wall, and realize that if Schanzer drops out, which he undoubtedly will, they will have to come back to us, and it should appear reasonable to them to consider that we would not feel as kindly towards those who have gotten away from us for a slight consideration in price, than to those who stuck to us and that they would be the ones in future who will receive the greatest consideration.

Of course it is needless to tell you that this will have to be handled very carefully, not in the nature of a threat but just as a friendly suggestion on your part, and we believe it can be handled very much better by you than by the writer, as such intimation coming from him would not take as well.

Many of the discriminatory prices granted by respondents were among purchasers engaged in competition with each other in the sale of coffee containing chicory. In their competition for trade coffee roasters who purchase chicory and use it for blending with coffee which they sell for resale feel the competitive effects of paying a higher price for chicory than their competitors pay. The importance of price is recognized in the trade since a very small difference in price, sometimes as little as one-twentieth of a cent per pound, will result in a change of source of supply. The importance of price is expressed by a coffee roaster in a letter to respondent E. B. Muller & Co. which stated in part:

* * * although we like your product much better we would like to buy Chicory as cheaply as possible on account of the competition we have on cheap mixed goods in which we use Chicory.

A sales representative of E. B. Muller & Co., reporting to that company, stated in part:

They (referring to a customer) were also very appreciative of our telling them about the use of Standard Chicory in the cheaper Coffee blends as the competition is very keen and they were losing business using our higher priced Chicory when it was not necessary.

Respondents themselves recognized and admitted the substantial competitive advantage to a coffee roaster of a lower price for chicory. David McMorran in writing to an official of Heinr. Franck Sons, Inc., stated in part:

This is the danger in letting one customer get too big as we have done by rebates to Reily. Reily has been able to undersell his competitors thru our help and when he gets big enough he will unquestionably attempt to go into the business himself. The only thing that will prevent him will be the fear that if he does do this there will be a fight and every 5 bag buyer in New Orleans will get his chicory just as cheap as Mr. Reily can produce it for itself. Reily would not be able to sell much outside of his own trade and if his chicory costs him as much as his small competitors, all of Reily's advantage is gone.

In another letter to the same official David McMorran stated in part:

What I am trying to get at is to reduce the cost of granulated for a portion of the New Orleans trade. I cannot see my way clear to consenting to making further quantity rebate to Reily. The rebate is altogether too high now and we are damaging our other granulated trade by giving Reily such a large rebate. It is dangerous for us to increase Reily's trade at the expense of his competitors.

The Commission finds that the sales below cost and the discriminations in price made by respondents resulted in substantial injury to competition among their customers and the customers of each of them.

PAR. 12. Respondents attempted to justify their sales below cost and their discriminations in price on the ground that such prices were made in good faith to meet the competition of R. E. Schanzer, Inc. Upon consideration of the evidence the Commission finds that with minor exceptions the discriminatory prices and sales below cost made by respondents were not protective measures on their part to meet previously established lower prices by R. E. Schanzer, Inc., but were aggressive acts in which they deliberately cut their prices below those of their competitor and discriminated in price among their customers as a part of their purpose and design to suppress and destroy competition, and that there is no foundation in fact for the claim of meeting competition in good faith.

At the time R. E. Schanzer, Inc., was selling imported chicory, by reason of a prejudice among purchasers against imported chicory or doubt as to its quality being equal to that of domestic chicory, said company was unable to sell such imported products at the price level

of competing domestic products, and the making of sales of imported goods required the granting of a slightly lower price than that current on domestic chicory. During this period of time the instances where respondents reduced their prices below those of R. E. Schanzer, Inc., as well as those instances where such reductions resulted in prices level with those of R. E. Schanzer, Inc., amounted to more than meeting competition in good faith and were not warranted by competitive necessity.

There have been instances where the prices of R. E. Schanzer, Inc., were lower than the prices of Heinr. Franck Sons, Inc., but not lower than the then current prices of E. B. Muller & Co., or lower than the prices of E. B. Muller & Co. but not lower than the then current prices of Heinr. Franck Sons, Inc. In the great majority of such instances the fact that the prices of R. E. Schanzer, Inc., were lower than those of one of the respondents resulted from an attempt by R. E. Schanzer, Inc., to meet lower prices established by the other respondent.

A former sales representative of respondent E. B. Muller & Co. testified that during his connection with that company it was E. B. Muller & Co. and not R. E. Schanzer, Inc., which assumed the initiative in cutting prices and that his company four or five times reduced its prices below those of R. E. Schanzer, Inc., and that he knew of no instance where R. E. Schanzer, Inc., had cut its prices below those of E. B. Muller & Co.

On November 12, 1931, E. B. Muller & Co. wrote its New Orleans sales representative in part:

> We would like to know just what Schanzer's prices now are. While you wrote us that he met our cut, it is not clear to us to what extent, as we have three prices, * * *.

On January 13, 1932, E. B. Muller & Co. wrote its New Orleans sales representative in part:

> We note that Schanzer has met our prices both locally and in the country. We are wondering how long he will be able to do this without losing a lot of money.

On March 15, 1933, the production manager of E. B. Muller & Co. wrote its New York office with reference to R. E. Schanzer, Inc., and said in part:

> * * * that the cut of ½¢ which he made following us to some extent is offset by a lower cost to him.

On April 24, 1934, the sales manager of E. B. Muller & Co. in writing to its New Orleans sales representative, referring to a recent price reduction made by his company, stated in part:

Black reports having met Schanzer's man in Atlanta the first day he was able to be out again after having been ill, and he sure acted as though he had gotten a Solar Plexus blow, going so far as to rail at Black in front of a customer for having made a reduction at this time, when they appear to be looking for an increase in price.

On February 21, 1935, a sales representative of E. B. Muller & Co. wrote the New York office of that concern in part:

Schanzer recently sold the Jobbers Coffee Co., 902 Main Street, Columbia, S. C., chicory at 6.90 * * * I made them a price of 6.85 on our Standard * * *.

On March 1, 1937, a sales representative of E. B. Muller & Co., writing from Birmingham, Ala., advised the New Orleans office of that concern that he had seen the buyer for Standard Brands, Inc., and had been:

* * * told that Schanzer is charging them 6¼¢ FOB New Orleans on the chicory he is shipping them now. I quoted them 6¢ FOB Birmingham, as you instructed me and this price may swing this business to us.

The contention of respondents that prices in other cities are not discriminatory where they are equal to the New Orleans, Port Huron, or New York base price of respondents plus the amount transportation from the nearest of these three points would cost is not accepted. The costs which may be used in justification of price differences are actual costs as distinguished from theoretical or artificial costs.

PAR. 13. The false and disparaging representations published and circulated by respondents concerning alleged adulteration of the products of competitors, and the false and misleading representations that the color and uniformity of color of their own granulated chicory were obtained by care and selection in roasting when in truth and in fact such granulated chicory was artificially colored as hereinbefore set out, contributed to the injury to and suppression of competition and tendency toward monopoly in respondents resulting from the sales below cost and discriminations in price as aforesaid, and in addition thereto in and of themselves have had, and now have, the capacity and tendency to, and have, and do, mislead and deceive members of the purchasing public by creating in their minds the erroneous and mistaken belief that such statements were, and are, true, with the result that trade has been unfairly diverted from competitors to respondents.

CONCLUSION

The discriminations in price by respondents as hereinabove set out have resulted, and do result, in substantial injury to their competitors, hinder, obstruct, and tend to suppress competition with respondents

and create a monopoly in them in the processing and sale of granulated chicory, and have resulted, and do result, in substantial injury to competition among purchasers of such chicory by affording material and unjustified price advantages to preferred purchasers and not to others, and violate subsection (a) of section 2 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 sales below cost by respondents were made with the intent and purpose and with the effect of substantially injuring and lessening competition and tending to create a monopoly in the processing and sale of domestic granulated chicory in respondents and this practice and the other acts and practices of respondents as aforesaid 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 and the amended and supplemental complaint of the Commission, the answers of respondents, testimony and other evidence in support of the allegations of said complaints and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiners 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 respondents have violated the provisions of the Federal Trade Commission Act and of subsection (a) of section 2 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).

It is ordered, That respondents, E. B. Muller & Co., a corporation, and Heinr. Franck Sons, Inc., a corporation, their officers, representatives, agents, and employees, either jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of granulated chicory in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Disparaging the products of competitors by falsely representing that such products contain molasses, sugar beets, sugar beet pulp, or

other foreign substances, or are adulterated in any manner; or otherwise making and publishing any false and disparaging representations concerning the products of competitors.

2. Representing that granulated chicory the color or uniformity of color of which has been affected by the use of iron oxide or any other artificial coloring agent is not artificially colored, either by affirmative representations or by failure clearly to disclose that such product has been artificially colored.

3. Selling or offering to sell granulated chicory at a price less than the cost thereof to respondents with the purpose or intent, and where the effect may be, to injure, suppress, or stifle competition or tend to create a monopoly in the production or sale of such products. (As used in this paragraph the term "cost" means the total cost to respondents of any such transactions of sale, including the costs of acquisition, processing, preparation for marketing, sale, and delivery of such products.)

It is further ordered, That said respondents, their officers, representatives, agents, and employees, either jointly or severally, directly or through any corporate or other device, in the sale of granulated chicory in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating directly or indirectly in the price of such products of like grade and quality, as among purchasers from either or both of them, where the differences in price are not justified by differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such products are sold or delivered:

(A) By selling any material quantity of such products to purchasers in one or more general trade areas at prices different from those to purchasers in any other general trade area.

(B) By selling such products to some purchasers in any general trade area at prices materially different from those to other purchasers in the same general trade area.

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

VON SCHRADER MANUFACTURING 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 3924. Complaint, Oct. 12, 1939—Decision, June 11, 1941

Where two partners, successors to a discontinued corporate business, engaged in the competitive interstate sale and distribution of electrically operated portable rug and carpet washing machines, cleaning function of which involved the automatic application to, and removal from, the surface being cleaned, of soap solution fed to machines' oscillating rubber brushes; by advertisements in magazines and other publications of general circulation, circulars, other printed matter, and letters distributed to members of the purchasing public—

(*a*) Represented that their machine would restore the original color of rugs or carpets, destroy germs or other micro-organisms therein and sterilize or substantially sterilize the same, through such statements, among others, as "Let us restore the exquisite colorings in your rugs and carpets," "All the delicate colors, the beautiful shades that you have long forgotten were in your rug or carpet, are brought back * * *," and "* * * removes the deeply imbedded grime and the microbes of disease which are carried into the home by every shoe that crosses the threshold";

Facts being soap solution used therein was not a germicide, and would not "destroy every vestige of germs" or remove "the microbes of disease," the cleaning action of the machine being limited to the removal of such dirt and other foreign material as might be loosened by its scrubbing action and incorporated in the lather, and machine did not restore the original colors of carpets and rugs, except for any freshness of appearance which might result from such cleaning; and

(*b*) Represented that the profits of operators of their said machine averaged $200 or $400 a month, through such statements as "$200 to $400 a month is an easy average," and "$200 my first week";

Facts being business in question is a seasonal one and there are periods when little business is obtained by operators; $200 to $400 a month profit was not an easy average for operators nor an average of any kind of their earnings, and representations as to large gross amounts which had been earned by individual operators in their best day, week, or month, were false and misleading, in that they represented unusual and exceptional conditions and not the ordinary course of business under normal conditions;

With capacity and tendency to mislead and deceive members of the purchasing public as to the effectiveness of their machines and earnings which might be secured from operation thereof, with result that many members of such public were thereby induced to purchase their products under the erroneous belief that said representations were true, and trade was diverted to them from competitors, to the substantial injury of competition in interstate commerce:

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

Before *Mr. Lewis C. Russell*, trial examiner.
Mr. B. G. Wilson for the Commission.
Mayer, Meyer, Austrian & Platt, of Chicago, Ill., for respondents.

COMPLAINT [1]

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Von Schrader Manufacturing 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 Von Schrader Manufacturing Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin and having its office and principal place of business at Sixteenth Street and Junction Avenue, Racine, Wis. Respondent is now, and for some time past has been, engaged in the business of selling an electric machine designated "Von Schrader Portable Carpet Washer." Respondent causes and has caused said machines, when sold, to be transported from its place of business in the State of Wisconsin to purchasers thereof at their respective points of location in various States of the United States other than the State of Wisconsin.

There is now, and has been during all the times mentioned herein, a course of trade by said respondent in said machines 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, re-

[1] The evidence having disclosed at hearing before Trial Examiner Lewis C. Russell on June 4, 1940 that respondent corporation was dissolved on June 26, 1937, and was succeeded by a partnership which, subsequent to December 31, 1939, was composed of H. D. Rench and F. U. Von Schrader, trading as Von Schrader Manufacturing Co., it was agreed by W. T. Kelley, chief counsel for the Commission, and by said individuals, trading as aforesaid, through stipulation duly approved on October 2, 1940, "that the complaint in this cause be amended so as to include H. D. Rench and F. U. Von Schrader, trading as Von Schrader Manufacturing Co., as parties respondent in this proceeding for all purposes; that said H. D. Rench and F. U. Von Schrader waive issuance and service of such amended complaint naming them as additional respondents herein; and that all the testimony and other evidence heretofore taken at hearings before Lewis C. Russell, trial examiner, may be considered in connection with the amended complaint to the same extent and with the same effect as if such testimony and other evidence had been originally taken in connection with the proceedings under the amended complaint and may also be considered as being applicable to the activities of H. D. Rench and F. U. Von Schrader subsequent to the dissolution of the corporate respondent on January 26, 1937."

spondent is in competition with other corporations and with partnerships and individuals also engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its aforesaid business, and in furtherance of the sale of its said machines, respondent has caused various false and misleading statements and representations relative to the effectiveness in use of said machines and relative to earnings made by purchasers of respondent's said machines to be inserted in magazines and other publications having a general circulation throughout the United States and in circulars and other printed matter distributed to members of the purchasing public situated in various States of the United States. Among and typical of said statements and representations are the following:

You may have a vacuum cleaner, but * * * you must have them washed to dissolve and destroy every vestige of germ and grime.

The Von Schrader carpet washer which we use removes the deeply imbedded grime and the microbes of disease which are carried into the home by every shoe that crosses the threshold.

Let us restore the exquisite colorings in your rugs and carpets.

Restores colors. All the delicate colors, the beautiful shades that you have long forgotten were in your rug or carpet, are brought back by the sanitary up-to-date method we employ.

Renews colors.

Thoroughly cleans carpets and rugs. Demoths and Sanitizes.

When you are getting started, naturally your profits depend on how diligently you go after business, but $200 to $400 a month is an easy average.

$200 my first week.

Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondent represents directly, or by implication, that said carpet washers remove germs and microbes from carpets and rugs, that said carpet washers restore and renew the colors and shades of carpets and rugs, and that purchasers of respondent's carpet washers earn $200 a week, $400 a month and various other sums approximately equal thereto under normal conditions and circumstances and in the ordinary course of their business of washing rugs and carpets.

PAR. 3. The aforesaid statements and representations which respondent has made are false and misleading. In truth and in fact respondent's said carpet washers will not remove germs or microbes from carpets or rugs. Said carpet washers will not renew or restore the colors or shades of carpets or rugs. Purchasers of respondent's said carpet washers do not earn $200 a week or $400 per month or any other sums approximately equal thereto under normal conditions and circumstances and in the ordinary course of their business of

washing carpets and rugs. In fact, the earnings of said persons are substantially less than such amounts.

PAR. 4. The use by respondent of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of substantial quantities of respondent's carpet washers because of such erroneous and mistaken belief. As a direct result thereof, trade in commerce among and between the various States of the United States and the District of Columbia, is being, and has been, diverted unfairly to the respondent from its said competitors who do not falsely represent the effectiveness in use of their respective products or the earnings of the users of their respective products. In consequence thereof, substantial injury is being, and has been, done by respondent to competition in commerce among and between the various States of the United States.

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 October 12, 1939, issued and subsequently served its complaint upon respondent Von Schrader Manufacturing 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 the filing of respondent's answer, testimony and other evidence in support of the allegations of said complaint were introduced by an attorney for the Commission and in opposition thereto by attorney for the respondents before Lewis D. Russell, an examiner of the Commission theretofore duly designated by it, the complaint was amended by stipulation, 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, stipulation amending the complaint, report of the trial examiner 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 Von Schrader Manufacturing Co. was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin and having its principal place of business at 1600 Junction Avenue, Racine, Wis. After the commencement of the present proceeding it was found that the respondent corporation was dissolved on June 26, 1937 (but was still in existence for purposes of suing or being sued), and was succeeded by a partnership which subsequent to December 31, 1939, was composed of H. D. Rench and Francis U. Von Schrader, trading as Von Schrader Manufacturing Co. and having their principal place of business at 1600 Junction Avenue, Racine, Wis. By stipulation the partners agreed to amendment of the complaint in this proceeding to include them as parties respondent and waived issuance and service of an amended complaint, and further agreed that all testimony and other evidence theretofore taken in this proceeding might be considered in connection with the amended complaint to the same extent and with the same effect as if such testimony and other evidence had been originally taken in connection with proceedings under the amended complaint and as applicable to the activities of the copartners subsequent to the dissolution of the corporate respondent. The partnership took over the assets and liabilities of the respondent corporation which had been engaged in the business of selling an electric machine designated as the "Von Schrader Portable Carpet Washer" and has continued such business to the present time.

PAR. 2. Respondents at all times alleged in the complaint have been engaged in the sale and distribution of electrically operated portable carpet washing machines, and in the course and conduct of said business have caused said machines, when sold, to be transported from their place of business in the State of Wisconsin to purchasers located in various other States of the United States and in the District of Columbia. There is now, and has been during all times mentioned herein, a course of trade in said machines in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are in competition with other corporations and partnerships, and with individuals, also engaged in the sale and distribution of similar arti-

cles of merchandise between and among the various States of the United States.

PAR. 3. In the course and conduct of their business and in furtherance of the sale of said machines respondents have caused various statements and representations relative to the effectiveness in use of said machines and with respect to earnings made by purchasers of such machines to be inserted in magazines and other publications having general circulation throughout the United States, and in circulars, other printed matter, and letters distributed to members of the purchasing public in various States of the United States. Among and typical of said statements and representations are:

You may have a vacuum cleaner, but * * * you must have them washed, to dissolve and destroy every vestige of germ and grime.

The VON SCHRADER carpet washer which we use removes the deeply imbedded grime and the microbes of disease which are carried into the home by every shoe that crosses the threshold.

Let us restore the exquisite colorings in your rugs and carpets.

Restores Colors

All the delicate colors, the beautiful shades that you have long forgotten were in your rug or carpet, are brought back by the sanitary up-to-date method we employ.

When you are getting started, naturally your profits depend on how diligently you go after business, but $200 to $400 a month is an easy average. $200 my first week.

PAR. 4. In substance the machine sold by respondents performs its cleaning function by means of rapidly oscillating rubber brushes which are in contact with the rug or carpet to be cleaned and which create a lather from a soap solution automatically fed to them from a container carried on the machine, and when the machine is moved forward a suction fan removes the lather from the surface of the rug or carpet, with such dust and dirt as may have been incorporated therein, and deposits it in an appropriate container attached to the machine. The soap solution sold by respondents to operators of such machines for use therein is not a germicide and will not "destroy every vestige of germ" or remove "the microbes of disease which are carried into the home by every shoe that crosses the threshold." The cleaning action of said machine is limited to the removal from rugs and carpets of such dirt and other foreign material as may be loosened by the scrubbing action of the machine and incorporated in the lather which is then removed. The machine does not operate to restore in whole or in part the original colors of the carpets and rugs cleaned by it. If such colors have faded or bleached or been changed or destroyed in any way the operation of respondents' machine does not have any restorative effect whatsoever except

for any freshness of appearance as may result from such cleaning of the rug or carpet as is performed by said machine. Respondents conceded that their machine does not "restore" color to rugs or carpets but testified to a belief that the term used does not mislead or deceive and is understood to mean no more than such freshness of appearance as results from removal of dirt and grime from rugs and carpets.

In order to assist purchasers of their machines in establishing a business, respondents, among other things, advise such purchasers of methods which may be used to secure business, furnish suggested forms of sales letters to be used in soliciting cleaning work, suggest newspaper copy, furnish electrotypes for use in advertising, and supply advertising circulars for distribution to prospective customers.

PAR. 5. The representations by respondents with respect to amounts earned by operators of their machines, including those specifically set out in the complaint—"$200 to $400 a month is an easy average" and "$200 my first week"—are false and misleading in that respondents have no knowledge of what the actual average profits or earnings of purchasers of their machines may be, and such knowledge as they do have with respect thereto is limited to verbal and written statements made to them or their representatives by a limited number of purchasers of the machines sold by them. Individual witnesses produced by respondents to testify with respect to their profits and earnings from the operation of the rug cleaning machines sold by respondent stated that the business of rug and carpet cleaning is a seasonal one and the time of largest earnings is usually in the spring of the year. There are periods during the year when relatively little business is obtained by them. Among the witnesses who testified as to earnings during their best week the amounts ranged from about $135 to $411 " or something." The witness who named the maximum amount of gross income in his best week stated that his yearly average gross income was about $2,000. Testifying to the gross earnings in their best month, the range shown was from about $340 to $779.81. The witnesses as a group, in selecting their respective best weeks and best months, covered the years 1936 to 1940, inclusive, although all of them did not testify as to each of the five years in the period named. The annual gross income among operators who testified on behalf of respondents with respect thereto ranged from $1,593.68 to about $3,000. In the case of the witness testifying as to an annual gross income of $1,593.68 his expenses of operation during that year were stated to be $869.21. It is concluded that $200 to $400 a month profit is not an "easy average" for operators of respondents' machines, nor in fact an average of any

kind of the earnings of such operators. Because of the seasonal nature of the business, representations as to large gross amounts which may have been earned by individual operators in their best day, week, or month are false and misleading in that they represent unusual and exceptional conditions and not the ordinary course of business under normal conditions.

PAR. 6. On February 2, 1937, a stipulation as to the facts and an agreement to cease and desist from certain representations was entered into between the Federal Trade Commission and respondent Von Schrader Manufacturing Co., by its president, Francis U. Von Schrader. By this stipulation it was admitted that it is impossible for the Von Schrader carpet washer to restore colors or shades when faded, or to remove all microbes or germs of disease from carpets and rugs, and that in the operation of said machine success is not assured, and it was agreed that the corporation would cease and desist from representing that said machine restores colors or shades to carpets or rugs or that it removes microbes or germs from carpets or rugs, and that owning and operating such a machine assures one of success.

PAR. 7. The false and misleading representations made by respondents and circulated as aforesaid have the capacity and tendency to mislead and deceive members of the purchasing public as to the effectiveness in use of respondents' machines and the earnings which may be secured from the operation thereof, and many members of such public have thereby been induced to purchase respondents' products under the erroneous belief that such representations were true. The aforesaid practices are to the detriment and injury of competitors of respondents and have the capacity and tendency to divert to respondents the trade of competitors selling in interstate commerce products of the nature of those sold by respondents, and thereby substantial injury is done, and has been done, by respondents to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices have been, and are, all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce 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, Von Schrader Manufacturing Co., a corporation, 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, stipulation amending the complaint, report of the trial examiner and exceptions thereto, 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 said respondent and respondents included by said stipulation amending the complaint have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents H. D. Rench and Francis U. Von Schrader, copartners trading as Von Schrader Manufacturing Co., or under any other trade name or style, their 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 rug and carpet cleaning machines, do forthwith cease and desist from representing or implying:

1. That the Von Schrader rug and carpet washer, or any substantially similar machine, will in any way or to any degree restore the original color or colors of rugs or carpets;

2. That the Von Schrader rug and carpet washer, or any substantially similar machine, will destroy germs or other microorganisms in, or otherwise, sterilize or substantially sterilize, rugs and carpets;

3. That the profits of operators of the Von Schrader rug and carpet washer, or any substantially similar machine, average $200 or $400 per month, or any other sum in excess of the actual average net profits of such operators over a sufficient period of time to give effect to the seasonal nature of such business, or using statements of specific sums earned by any particular operator or operators in any stated periods of time in a manner which imports or implies that any unusual or exceptional earnings represent the usual and ordinary course of business.

It is further ordered, That respondents shall, within 60 days after the services 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 in view of the dissolution of respondent Von Schrader Manufacturing Co., a corporation, the complaint against said corporation be, and the same is, hereby dismissed.

IN THE MATTER OF

ETHEL'S CANDY & SALES COMPANY, INC.

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

Docket 4056. Complaint, Mar. 12, 1940—Decision, June 11, 1941

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of candy to retail dealers—

Furnished to purchasers various devices and plans which involved the operation of games of chance, gift enterprises, or lottery schemes for sale and distribution of its merchandise to the ultimate consumer wholly by lot or chance, including, as typical, assortment consisting of a number of bars of candy and a push card displaying 40 feminine names, with adjoining disks, for use in sale of candy under a plan which provided that purchasers pay for a "push" from 1 to 5 cents, depending upon the number disclosed by disk pushed, and thereby placed in the hands of others various plans and devices whereby its said candy was distributed to the ultimate consumer wholly by lot or chance;

With result that many persons were attracted by aforesaid sales methods and the element of chance involved therein, and were thereby induced to purchase its candy in preference to that of its competitors who did not use similar methods, and trade was unfairly diverted from such competitors to it:

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

Before *Mr. Miles J. Furnas*, *Mr. Randolph Preston*, and *Mr. John J. Keenan*, trial examiners.

Mr. D. C. Daniel for the Commission.

Mr. Isaac M. Wengrow, of Atlanta, Ga., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Ethel's Candy & Sales 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, Ethel's Candy & Sales Co., Inc., is a corporation, organized and doing business under the laws of the State of Georgia, with its principal office and place of business located at 164 Whitehall Street, SW., Atlanta, 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 its said products, when sold, to be shipped or transported from its aforesaid principal place of business in the State of Georgia, to purchasers thereof in the various other States of the United States and in the District of Columbia, at their respective points of location. There is now, and for more than 1 year last past has been, a course of trade by said respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to dealers certain assortments of said candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said candy is sold and distributed to the consumers thereof. One of said assortments consists of a number of bars of candy, together with a device commonly called a push card. Said push card contains a number of partially perforated disks with the word "push" appearing on the face of each of said disks. Printed within each of said disks is either 1¢—2¢—3¢—4¢ or 5¢. Each purchaser selects and removes one of said disks from said card and receives a bar of said candy for the amount disclosed when said disk is removed from the card. Each of said bars of candy has a retail value greater than 1 cent. The said amounts are effectively concealed from purchasers and prospective purchasers until the disks have been selected and removed from said card. The amounts to be paid for said bars of candy are thus determined wholly by lot or chance.

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

PAR. 3. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail prices thereof. The use by respondent of said methods in the sale of candy and the sale of candy by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to an established public policy of the Government of the United States

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

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 12th day of March, A. D., 1940, issued and thereafter served its complaint in this proceeding upon the

respondent, Ethel's Candy & Sales Co., 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, testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission before duly appointed trial examiners 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 testimony and other evidence, report of the trial examiners thereon, and brief of attorney for the Commission, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Ethel's Candy & Sales Co., Inc., is a corporation organized in October 1939 under the laws of the State of Georgia and having its principal place of business in the city of Atlanta, State of Georgia.

PAR. 2. Respondent for some time prior to the issuance of the complaint herein was engaged in the manufacture and sale of candy, which it distributed to retail dealers and caused its candy 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 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 candy 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 candy was sold and distributed to the ultimate consumer wholly by lot or chance. Typical of the methods used by the respondent is the following:

One of respondent's assortments consisted of a number of candy bars and a push card. Upon the face of this card appear 40 disks each bearing the word "push," and above the disk appears a feminine name. Printed on the under side of each disk appear numbers rang-

ing from 1¢ to 5¢. These numbers are not disclosed until the disk is pushed. The price paid for each push is determined by the number disclosed after the disk is pushed.

Respondent has used other similar devices in disposing of its candy, which differ from the above in detail only.

PAR. 5. Respondent by its sales methods hereinabove described has placed 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 its candy, and by the use of said plan, methods, and devices said candy was distributed to the ultimate consumer wholly by lot or chance.

PAR. 6. Many persons have been and are attracted by the sales methods employed by respondent in the sale and distribution of its candy and by the element of chance involved therein, and have been thereby induced to purchase respondent's candy in preference to that offered for sale by respondent's competitors who do not use the same or a similar method.

PAR. 7. During all the times herein mentioned, respondent has been in competition with corporations, individuals, and partnerships engaged in the sale and distribution of candy similar to that sold by respondent 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 candy 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 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 acts and practices in commerce within the intent and meaning of the Federal 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 duly appointed trial examiners of the Commission designated by it to serve in this proceeding, the report of the trial examiners thereon, and brief filed by the attorney for the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent, Ethel's Candy & Sales

Co., Inc., a corporation, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Ethel's Candy & Sales Co., Inc., a corporation, its officers, directors, agents, and employees, jointly and severally, directly or indirectly, or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, 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 a 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 respondent shall within 60 days after service upon it of this order file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF

J. R. OLNEY, SR., AND J. R. OLNEY, JR., DOING BUSINESS AS J. R. PHARMACAL COMPANY

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

Docket 4127. Complaint, May 7, 1940—Decision, June 11, 1941

Where two individuals engaged in interstate sale and distribution of their "J. R." medicinal preparation; by advertisements disseminated through the mails, newspapers, and periodicals, and circulars, leaflets, and other advertising literature—

(*a*) Represented that their preparation constituted a cure or remedy for all cases of athlete's foot and afforded immediate relief from said condition, itching toes, ringworm, and raw, inflamed feet, that it was endorsed by leading health institutions, and was the only known treatment of its kind;

Facts being no method of treating the condition known as athlete's foot is applicable or suitable in all cases, extended treatment is usually required, and in certain cases it is practically impossible to kill or destroy all of the fungi; while the drugs in said preparation were among those used by dermatologists in treatment of athlete's foot or ringworm generally, they were rarely used by such persons in the proportions found therein, and might in some cases aggravate rather than improve the condition; said preparation would not afford cure or remedy or immediate relief in all cases, though possibly affording temporary relief in some cases from frequent itching symptom associated therewith; and said product had not been endorsed as claimed, and was not the only known treatment of its kind; and

(*b*) Represented through the statement "Athlete's foot fungi killed in less than 3 minutes in laboratory test," that said product would in all cases kill or destroy such fungi, so that thereby speedy cure would be effected;

Facts being that while said statement might be literally true, as used it was deceptive and misleading: conditions under which laboratory tests were made and those existing when the fungi were on the foot were so dissimilar that results obtained in the former instances are not necessarily indicative of what might be expected in latter; and said preparation was wholly incapable of killing all fungi under ordinary conditions of use;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic value of their said preparation, and to cause it to purchase their product as a result of such erroneous belief:

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

Before *Mr. John J. Keenan*, trial examiner.
Mr. R. P. Bellinger for the Commission.
Mr. Guy W. Davis, of Chester, 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 J. R. Olney, Sr., and J. R. Olney, Jr., individuals, doing business as J. R. Pharmacal Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a prbceeding by 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, J. R. Olney, Sr., and J. R. Olney, Jr., are individuals doing business as J. R. Pharmacal Co., with their principal office and place of business located at 2011 Edgmont Avenue, Chester, Pa. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of a medical preparation designated "J. R." 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 Pennsylvania 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 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 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 periodicals and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Can't get rid of athlete's foot? Then you haven't used J. R.

Athlete's foot, itching toes, ringworm, raw inflamed feet, here is new instant relief.

Athlete's foot is generally relieved by a single application. Contains a valuable healing agent which heals the inflamed tissues.

J. R. is indorsed by leading health institutions as a most thorough scientific treatment for athlete's foot.

PAR. 3. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondents have represented and now represent that the use of their preparation "J. R." assures a cure of all cases of athlete's foot; that it gives instant or immediate relief from athlete's foot, itching toes, ringworm, and raw, inflamed feet; that it is endorsed by leading health institutions; that it is unique or the only known treatment of its kind.

The representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading, and untrue and constitute false advertisements. In truth and in fact the condition known as athlete's foot is caused by several different types of organisms and "J. R." is not a remedy or cure for all forms of the disorder and is not effective in all instances. It will not give instant or immediate relief from athlete's foot, itching toes, ringworm, or raw, inflamed feet in excess of alleviating the symptomic itching which accompanies or is associated with such conditions. Respondents' preparation has not been endorsed by leading health institutions; and it is not unique or the only known treatment of its kind.

Through the dissemination of the further advertising claims "athlete's foot fungi killed in less than 3 minutes in laboratory tests," respondents represent that their preparation "J. R." will kill the fungi causing athlete's foot. By the use of said representation, respondents induce purchasers to believe that said preparation will destroy athlete's foot fungi in all instances when applied to the affected portion. In truth and in fact the application of respondents' preparation "J. R." will not kill athlete's foot fungi in all instances since the condition known as athlete's foot is caused by several different types of organisms and "J. R." is not a remedy or cure for all forms of the disorder and is not effective in all instances.

PAR. 4. 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 substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said medicinal preparation.

PAR. 5. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission 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 subsequently served its complaint in this proceeding upon the respondents, J. R. Olney, Sr., and J. R. Olney, Jr., individuals, doing business as J. R. Pharmacal 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 R. P. Bellinger, attorney for the Commission, and in opposition to the allegations of the complaint by Guy W. Davis, 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 said complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions thereto, 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, J. R. Olney, Sr., and J. R. Olney, Jr., are individuals doing business as J. R. Pharmacal Co., with their principal office and place of business located at 2011 Edgemont Avenue, Chester, Pa. Respondents are now, and for more than 3 years last past have been, engaged in the sale and distribution of a medicinal preparation designated by them as "J. R." and intended for use in the treatment of certain ailments and conditions of the human body.

In the course and conduct of their business respondents cause their preparation, when sold, to be transported from their 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. Respondents maintain, and for more than 3 years last past have maintained, a course of trade in their 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 their business the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning their preparation 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, advertisements concerning their preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their preparation in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in such advertisements, disseminated and caused to be disseminated as herein set forth, by the United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets, and other advertising literature, are the following:

ATHLETE'S FOOT, ITCHING TOES—RINGWORM, RAW INFLAMED FEET.

Here is instant relief. The only known treatment of its kind. J. R. is endorsed by leading health institutions as the most thoroughly scientific treatment for Athlete's Foot. Don't take chances use J. R.

CAN'T GET RID OF ATHLETE'S FOOT? THEN YOU HAVEN'T USED J. R.

ATHLETE'S FOOT, RINGWORM, ITCHING TOES QUICKLY RELIEVED BY J. R.

At the first sign of itching of the feet or toes, something should be applied which is capable of killing the fungi. J. R. is especially recommended for this purpose; it also stops that annoying itching immediately; In this early stage, Athlete's Foot is generally relieved by a single application of J. R.

J. R. FOR ATHLETE'S FOOT, INSTANT RELIEF FROM ITCHING.

A scientific treatment for Athlete's Foot, "ringworm," toe itch.

J. R. contains a most valuable healing agent which soothes the inflamed tissues, and other ingredients allay the itching, toughening the tender surface.

ITCHING TOES (due to fungus infection) RAW INFLAMED FEET—RINGWORM ATHLETE'S FOOT ENTIRELY CLEARED UP * * *.

PAR. 3. The Commission finds that through the use of these advertisements, and others of a similar nature, the respondents have represented that their preparation constitutes a cure or remedy for all cases of athlete's foot; that it affords instant or immediate relief from

athlete's foot, itching toes, ringworm, and raw, inflamed feet; that it is endorsed by leading health institutions; and that it is the only known treatment of its kind.

PAR. 4. The evidence shows, and the Commission finds, that the condition known as athlete's foot is a form of ring worm. It is caused by fungi, of which there are many varieties. There is no method of treating the condition which is applicable or suitable in all cases. The treatment must in each case be governed by the variety of the fungi, the condition prevailing in the particular case and the acuteness of the condition, Rarely, if ever, can a case of athlete's foot be cured within a short period of time, extended treatment usually being required. And, in many cases, even after extended treatment and after the condition appears to have been eliminated, certain of the fungi still remain. There are, in fact, certain cases of athlete's foot in which it is practically impossible to kill or destroy all of the fungi.

The active ingredients of respondents' preparation are:

Salicylic acid
Benzoic acid
Tannic acid and
Phenol.

While these drugs are among those used by dermatologists in the treatment of athlete's foot and ringworm generally, the drugs are rarely used by dermatologists in the proportions found in respondents' preparation. For example, the salicylic acid content in the preparation is unusually high, and this would in some cases cause the preparation to aggravate rather than improve the condition. The preparation does not in any event constitute a cure or remedy for athlete's foot in all cases. Nor will the preparation afford instant or immediate relief from athlete's foot, itching toes, ringworm, or raw, inflamed feet, although it may, by reason of its phenol content, afford temporary relief in some cases from the itching symptom frequently associated with such conditions. Respondents' preparation has not been endorsed by leading health institutions, nor is it the only known treatment of its kind. The drugs constituting the preparation have long been known to and used by dermatologists generally.

The Commission therefore finds that these representations of the respondents with respect to their preparation and its therapeutic value are grossly exaggerated, deceptive, and misleading, and constitute false advertisements.

PAR. 5. The respondents have also used in their advertisements the statement, "Athlete's foot fungi killed in less than 3 minutes in laboratory test." The testimony of a number of members of the

purchasing public shows, and the Commission finds, that to a substantial portion of the purchasing public this statement constitutes a representation that respondents' preparation will in all cases kill or destroy athlete's foot fungi, and that thereby a speedy cure of athlete's foot will be effected.

Respondents introduced in evidence a report of a chemical laboratory showing that under certain tests conducted by the laboratory certain athlete's foot fungi were killed in 3 minutes when subjected to respondents' preparation. However, the conditions under which laboratory tests are made and the conditions existing when the fungi are actually on the foot are so dissimilar that results obtained in the former instance are not necessarily indicative of results which may be expected in the latter instance. The uncontradicted expert testimony in the record is to the effect that respondents' preparation is wholly incapable of killing athlete's foot fungi in all cases under ordinary conditions of use. The Commission therefore finds that while respondents' statement with respect to the laboratory test of their preparation may be literally true, such statement is deceptive and misleading when used in connection with the advertising of the preparation to the general public.

PAR. 6. The Commission further finds that the use by the respondents of the false advertisements herein referred to has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic value of respondents' preparation, and to cause such portion of the purchasing public to purchase respondents' preparation as a result of the erroneous and mistaken belief so engendered.

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 John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence and the exceptions thereto, and briefs filed by R. P. Bellinger, attorney for the Commis-

sion and Guy W. Davis, attorney for the respondents (oral argument not having been requested) and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, J. R. Olney, Sr., and J. R. Olney, Jr., individually and trading as J. R. Pharmacal 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, or distribution of respondents' medicinal preparation designated "J. R.," 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:

(*a*) Represents, directly or through inference, that said preparation is in all cases a cure or remedy for athlete's foot.

(*b*) Represents, directly or through inference, that said preparation affords instant or immediate relief from athlete's foot, itching toes, ringworm, or raw, inflamed feet, in excess of temporarily relieving the itching symptom associated with such conditions.

(*c*) Represents, directly or through inference, that said preparation is endorsed by leading health institutions, or that it is the only known treatment of its kind.

(*d*) Uses the statement, "Athlete's foot fungi killed in less than three minutes in laboratory test," or otherwise represents that said preparation will in all cases kill or destroy athlete's foot fungi.

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

D. J. MAHLER 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 4228. Complaint, Aug. 7, 1940—Decision, June 11, 1941

Where a corporation engaged in interstate sale and distribution of its "Mahler Electrolysis Apparatus" for electrolytic removal of superfluous hair by individual self-application in the home; by advertisements disseminated through the mails, newspapers, circulars, leaflets, pamphlets, and other advertising literature—

(a) Represented that said device was an efficient, effective and safe method for the permanent removal of hair by individual self-application in the home, and that its operation required only ordinary care and skill, when in fact its operation required the services of a skilled operator who must be acquainted with anatomy and physiology, particularly of the areas to be covered, and also with bacteriology and sepsis, as well as the properties of the machine used, proper use whereof by lay person is extremely difficult, while improper use may cause scarring, pitting or infection, with particular danger where used on certain areas and possibility of infection leading to abscess of the brain; use to remove hairs from some pigmented moles may stimulate quiescent cells to growth terminating in cancer, treatment of cancerous mole may cause dissemination of cancer cells all over the body; and use thereof to remove hairs from syphilitic lesions or other areas showing local pathological conditions may produce serious injury; and

(b) Failed to reveal facts material in the light of aforesaid representations, and that use of said device under prescribed or usual conditions might result in permanent disfigurement or cause infections or other irreparable injury to health, and that said device should not be used to remove hair from cancerous or syphilitic lesions, pigmented moles, or other areas showing local pathological conditions;

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 a portion of it, because of such belief, to purchase its said device:

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

Before *Mr. Robert S. Hall*, trial examiner.
Mr. William L. Taggart for the Commission.
Mr. Hugh F. O'Donnell, 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 D. J. Mahler 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. D. J. Mahler Co., Inc., is a corporation created, organized, and existing under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business at 3124 Pawtucket Avenue, East Providence, R. I.

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 as the Mahler Electrolysis Apparatus, advertised and 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 its business, the respondent causes said device or apparatus, when sold, to be transported from its place of business in the State of Rhode Island 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 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 the aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said device or apparatus 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 device or apparatus, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said device or apparatus 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:

KILL THE HAIR ROOT

Remove superfluous hair privately at home, following directions with ordinary care and skill. The Mahler Method positively prevents the hair from

growing again by killing the hair root. The delightful relief will bring happiness, freedom of mind and greater success. Backed by 45 years of successful use all over the world. Send 6¢ in stamps today for illustrated booklet "How to remove superfluous hair forever."

D. J. MAHLER CO., INC.,
Dept. 56F,
Providence, R. I.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto, not specifically set out herein, the respondent represents that its device designated as the Mahler Electrolysis Apparatus or the Mahler Method is an efficient, effective, and safe device and method for the permanent removal of superfluous hair from the human body and that said device or apparatus can be successfully operated by an unskilled layman with ordinary care and skill.

PAR. 5. In truth and in fact, the device or apparatus sold and distributed by the respondent, as aforesaid, designated as the Mahler Electrolysis Apparatus, is composed principally of an electric battery to which is attached a cord terminated by a needle. Said device is used by inserting the needle 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 or method is not an effective, efficient device or method for the permanent removal of superfluous hair from the human body by individual self application in the home. Said device cannot be successfully operated by an unskilled layman with ordinary care and skill, and its use by individual self application in the home is not safe.

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 device or apparatus under conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious physical injury, permanent disfigurement and in serious irreparable danger to health.

Such use, as aforesaid, may result in local infections, erysipelas, skin burns, scars, metallic tattoo marks, pitting and permanent disfigurement. When infection occurs as a result of the use of said device in the area about the nose, on the upper lip or over the glabella, it may be so serious as to cause serious injury to health, and in 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 its 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 respondent's said device or apparatus.

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 7, 1940, issued and subsequently served its complaint upon the respondent, D. J. Mahler 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 William L. Taggart, attorney for the Commission, and in opposition to the allegations of the complaint by Hugh F. O'Donnell, attorney for the respondent, before Robert S. Hall, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this 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 and exceptions filed thereto, 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, D. J. Mahler Co., Inc., is a corporation created, organized, and existing under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business at 3124 Pawtucket Avenue, East Providence, R. I.

Findings

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 as the Mahler Electrolysis Apparatus, advertised and 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 its business, the respondent causes said device or apparatus, when sold, to be transported from its place of business in the State of Rhode Island 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 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 the aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said device or apparatus 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 device or apparatus, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said device or apparatus 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:

KILL THE HAIR ROOT

Remove superfluous hair privately at home, following directions with ordinary care and skill. The Mahler Method positively prevents the hair from growing again by killing the hair root. The delightful relief will bring happiness, freedom of mind and greater success. Backed by 45 years of successful use all over the world. Send 6¢ in stamps today for illustrated booklet "How to remove superfluous hair forever."

D. J. Mahler Co., Inc.,

Dept. 56F,

Providence, R. I.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondent represents that its device designated as the Mahler Electrolysis Apparatus or the Mahler Method is an efficient, effective, and safe device and method for the permanent removal of superfluous hair from the human body by individual self-application in the home, and that the operation of said device requires only ordinary care and skill.

PAR. 5. The device or apparatus sold and distributed by the respondent as aforesaid designated as "Mahler Electrolysis Apparatus" or "Mahler Method" is composed principally of an electric battery to which is attached a cord terminated by a needle. The needle is inserted into the hair follicle, usually from $\frac{1}{16}$ to $\frac{3}{16}$ of an inch beneath the surface of the skin. The current produced by the device brings about a chemical action which destroys the root of the hair.

The operation of this device requires the services of a skilled operator who must be acquainted with anatomy and physiology, particularly of the areas to be covered, and also with bacteriology and sepsis, as well as the properties of the machine used. The skin must be properly examined and prepared before the use of electrolysis and the operator must be able to determine when enough current has been used, as the amount of current necessary depends upon differences in response of the hair follicle treated.

It is extremely difficult for a lay person to properly use this device and to insert the needle naturally so as to reach the hair follicle without injury to the surrounding tissue. Improper use of this device might cause scarring, pittinfi or infection. There is particular danger in the use of this device on the areas of the upper lip or around the nose by reason of the nature of the blood supply and the lymphatic system in that area, enabling an infection to easily spread up through the nose to the sinuses or the brain, causing abscess of the brain, with very serious results.

The use of this device to remove hairs from some pigmented moles may have very serious consequences, as it might stimulate the pigmented cells to growth terminating in cancer which ordinarily would remain in the quiescent state, and the insertion of this needle into a cancerous mole might cause dissemination of the cancer cells all over the body. The use of this device to remove hairs from syphilitic lesions or other areas showing local pathological conditions might produce serious injury.

PAR. 6. In addition to the representations hereinabove set forth, respondent is also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so dis-

seminated fail to reveal facts material in the light of such representations and fail to reveal that the use of said device or apparatus under conditions prescribed in said advertisements or under such conditions as are customary or usual may result in permanent disfigurement or cause infections or other irreparable injury to health and that said device should not be used to remove hair from cancerous or syphilitic lesions, pigmented moles, or other areas showing local pathological conditions.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its 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 induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said device or apparatus.

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, answer of the respondent, testimony and other evidence taken before Robert S. Hall, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed herein 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, D. J. Mahler 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 device or apparatus designated as "Mahler Electrolysis Apparatus" or "Mahler Method," 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 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 respondent's device "Mahler Electrolysis Apparatus" or "Mahler Method" is a safe device for the electrolytic removal of superfluous hair from the human body by individual self-application in the home or that said device can be operated with ordinary care and skill, or which advertisement fails 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, cause infections or other irreparable injury to health, and that said device should not be used to remove hair from cancerous or syphilitic lesions, pigmented moles or other areas showing local pathological 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 or apparatus designated "Mahler Electrolysis Apparatus" or "Mahler Method," which advertisement contains any of the representations prohibited in paragraph 1 hereof or which fails 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, cause infections or other irreparable injury to health, and that said device should not be used to remove hair from cancerous or syphilitic lesions, pigmented moles or other areas showing local pathological conditions.

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

BURRY BISCUIT CORPORATION AND TASTY BUD BISCUIT 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 4374. Complaint, Nov. 9, 1940—Decision, June 11, 1941

Where two corporations engaged in manufacture of bakery products, including crackers, and in interstate sale and distribution thereof to purchasers, including retail stores—

(*a*) Caused certain of their cracker products, called "Bisc-O-Bits," to be packaged, offered for sale and sold in cardboard containers bearing in conspicuous type, visible to shoppers, the statement "Average 90 Crackers," when in fact said packages did not contain or average 90 crackers, but contained substantially less; and

(*b*) Made use of practice of slack filling, in that aforesaid containers were substantially larger than reasonably required to package the 10 ounces of crackers actually placed therein, and, when offered and sold to purchasing public, were not filled to capacity, but, as aforesaid, contained substantially less;

With effect of misleading and deceiving a substantial portion of the buying public into the false belief that aforesaid packages contained 90 crackers, or more, and that they were filled to capacity, and into purchase of such crackers in reliance upon such erroneous belief, and with further effect of placing in the hands of retail sellers the means of deceiving members of the buying public;

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

Mr. Jay L. Jackson for the Commission.

I

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 Burry Biscuit Co.,

[1] The Commission on April 30, 1941 granted request of respondents to substitute parties and amend complaint and granted leave to file substitute answer by the following order:

This matter coming on to be heard upon the request of Burry Biscuit Corporation and Tasty Bud Biscuit Co., Inc., that they be substituted as parties respondent in lieu and instead of Burry Biscuit Co., Inc., and Tastybud Biscuit Co., Inc., respectively, and that the complaint be considered and taken as amended by the substitution of the names of said petitioners in lieu of the names appearing in said complaint, and requesting leave to withdraw their answer filed herein on November 27, 1940, and to substitute in lieu thereof their answer dated January 22, 1941, and annexed to said request; and it appearing to the Commission that said petitioners Burry Biscuit Corporation and Tasty Bud Biscuit Co., Inc., corporations, have heretofore been duly served in this proceeding, that they are proper parties respondent, having been erroneously named in the complaint as Burry Biscuit Co., Inc., and Tastybud Biscuit Co., Inc., respectively, and the Commission having duly considered the matter and being now fully advised in the premises.

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

PARAGRAPH 1. Respondent Burry Biscuit Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 925 Newark Avenue, in the city of Elizabeth, State of New Jersey. Said respondent also maintains a branch office and plant in the city of Chicago, State of Illinois.

Respondent Tastybud Biscuit Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 925 Newark Avenue, in the city of Elizabeth, State of New Jersey. Said respondent is a wholly owned and controlled subsidiary of respondent Burry Biscuit Co., Inc.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the business of manufacturing bakery products including crackers, and in the sale thereof in commerce among and between the various States of the United States and in the District of Columbia. Said respondents cause said products, when sold, to be transported from their places of business in the States of New Jersey and Illinois to purchasers thereof located in various States of the United States other than the States of New Jersey and Illinois, and to purchasers located 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, in the course of which commerce respondents sell and have sold their said products to retail stores and other resale outlets.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have offered and offer for sale, and have sold and sell, crackers under the brand name "Bisc-O-Bits Crackers," packaged in a cardboard container which is sealed and wrapped in wax paper. Imprinted and labeled on the visible surface of said containers and wrappers, among other printed statements, in conspicuous type and

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It is ordered, That said request be granted and that Burry Biscuit Corporation and Tasty Bud Biscuit Co., Inc., corporations, be, and they hereby are, substituted as parties respondent in this proceeding in lieu and instead of Burry Biscuit Co., Inc., and Tastybud Biscuit Co., Inc., respectively, and that the complaint herein be considered as if so amended;

It is further ordered, That the respondents' request for leave to withdraw their answer filed herein on November 27, 1940, and to file in lieu thereof their answer dated January 22, 1941, and annexed to said request, be, and the same hereby is, granted.

visible to the eye of shoppers and members of the purchasing public, appears the following statement:

Average 90 Crackers.

The foregoing statement and representation, as caused by respondents to appear on the containers and wrappers of its Bisc-O-Bits Crackers, packaged as aforesaid, is false and misleading in that the said packages did not, and do not, contain 90 crackers, nor do they average 90 crackers to a box. In truth and in fact, the said packages contain substantially less than 90 crackers to a box.

The aforesaid cardboard containers measure 6⅜ by 3 by 8⅝ inches and are of a capacity and size in excess of that reasonably required to package 10 ounces of said crackers, the quantity of crackers actually placed therein by respondents. Said containers, when offered for sale and sold to the purchasing public, are not filled to capacity, and the quantity of crackers contained therein is substantially less than the capacity of said containers. The practice of using oversize containers is known in the trade and generally as "slack filling" and has the force and effect of misleading or deceiving members of the purchasing public with respect to the quantity of product contained in such packages.

PAR. 4. The aforesaid acts and practices of the respondents have had, and have, the tendency and capacity to, and do, mislead and deceive a substantial portion of purchasers and prospective purchasers, members of the buying public, into the false and erroneous belief that the aforesaid packages contain 90 crackers, or more, and that said containers are filled to capacity and contain the quantity of crackers indicated by the capacity of said containers, and into the purchase of said crackers in reliance upon such erroneous belief. The said practice further places in the hands of retail sellers the means whereby to mislead and deceive members of the buying public.

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 November 9, 1940, issued, and on November 12, 1940, served its complaint in this proceeding upon respondents, Burry Biscuit Corporation and Tasty Bud Biscuit Co., Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondents' answer, the Commission, by an order 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 said 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 Burry Biscuit 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 925 Newark Avenue, in the city of Elizabeth, State of New Jersey. Said respondent also maintains a branch office and plant in the city of Chicago, State of Illinois.

Respondent Tasty Bud Biscuit Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 925 Newark Avenue, in the city of Elizabeth, State of New Jersey. Said respondent Tasty Bud Biscuit Co., Inc., is a subsidiary of, and wholly owned and controlled by, respondent Burry Biscuit Corporation.

PAR. 2. Respondents now are, and for the past several years have been, engaged in the business of manufacturing bakery products, including crackers, 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, and have maintained and maintain a constant course of trade in said products in said commerce. Respondents have caused and cause said products, when sold, to be transported from their aforesaid places of business in the States of New Jersey and Illinois to purchasers thereof, inclusive of retail stores, located in States of the United States other than the States of New Jersey and Illinois, and to such purchasers in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business prior to August 1940, respondents caused certain of their cracker products, called "Bisc-O-Bits," to be packaged, offered for sale and sold in

cardboard containers wrapped and sealed in wax paper, and bearing on the surface thereof, in conspicuous type, visible to the eye of shoppers and members of the purchasing public, the following statement:

Average 90 Crackers.

The foregoing statement and representation, as caused by respondents to appear on the packages referred to, was in fact false and misleading for the reason that said packages did not contain 90 crackers and did not average 90 crackers each. In truth, said packages contained substantially less than 90 crackers.

The aforesaid cardboard containers measure 6⅜ by 3 by 8⅝ inches and are of a capacity and size in excess of that reasonably required to package 10 ounces of said crackers, the quantity of crackers actually placed therein by respondents. Said containers, when offered for sale and sold to the purchasing public, are not filled to capacity, and the quantity of crackers contained therein is substantially less than the capacity of said containers. The practice of using over-size containers is known in the trade and generally as "slack filling" and has the force and effect of misleading or deceiving members of the purchasing public with respect to the quantity of product contained in such packages.

PAR. 4. The aforesaid acts and practices of respondents have had, and have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the buying public into the false and erroneous belief that the aforesaid containers or packages contain 90 crackers, or more, and that such packages are filled to capacity and contain the quantity of crackers indicated by the capacity or size thereof, and into the purchase of such crackers in reliance upon such erroneous belief. The said practice further places in the hands of retail sellers the means whereby to mislead and deceive members of the buying public.

CONCLUSION

The aforesaid acts and practices of respondents, Burry Biscuit Corporation and Tasty Bud Biscuit Co., Inc., are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allega-

tions of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Burry Biscuit Corporation and Tasty Bud Biscuit Co., Inc., corporations, 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 bakery products, inclusive of crackers, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the number or quantity of any of said products contained in any container or package in which the same is offered for sale or sold is greater than the number or quantity of such product actually contained or placed therein.

2. Offering for sale or selling any of said products in a container or package which is substantially larger in size or capacity than that required for packaging the quantity of product contained therein.

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

HELEN HARRISON 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 4467. Complaint, Feb. 21, 1941—Decision, June 11, 1941

Where a corporation engaged in the manufacture and the competitive interstate sale and distribution of candy, including certain 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; a typical assortment including thirty boxes of candy and a punchboard for use in sale thereof under a plan, as thereon explained, by which a purchaser paid one to five cents or nothing for a punch depending on the last digit of the number of the slip he secured from the 500-hole punchboard, and whether he received a box of candy or nothing for his money was similarly determined;

Sold such assortments to wholesalers, jobbers, and retailers, by whom, as direct or indirect purchasers, they were exposed and sold to the purchasing public, in accordance with aforesaid sales plan, involving game of chance to procure candy at price much less than normal retail price thereof; and thus supplied to and placed in the hands of others means of conducting lotteries in the sale of its products, contrary to the established public policy of the United States Government; and in competition with many who are unwilling to use such or other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by its said sales plan and the element of chance involved therein and were thereby induced to buy and sell its candy in preference to that of its said competitors, whereby trade was unfairly diverted to it from such competitors and substantial injury was done to competition:

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

Mr. J. W. Brookfield, Jr., for the Commission.
Latimer, Donovan & Brown, 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 Helen Harrison 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 Helen Harrison Candies, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 325 North Wells Street, Chicago, Ill. Respondent is now and for more than one year last past has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said candy, when sold, to be transported from its place of business in the city of Chicago, Ill., to purchasers thereof at their respective points of location in various States of the United States other than Illinois and in the District of Columbia. There is now and has been for more than six 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 includes 30 boxes of candy and a punchboard. Appearing on the face of the punchboard is the following legend:

CHATTERBOX ASS'T
With Helen Harrison Candies
Nos. 11—22—33—44—55—
66—77—88—99—100
RECEIVE A 1 LB.
WINDMILL ASSORTMENT
Nos. 25—50—125—150—
225—250—325—425—450
RECEIVE A 1 LB.
VICTORIAN ASSORTMENT
LAST SALE IN EACH OF FIRST
9 SECTIONS COMPLETED
RECEIVE A 1 LB. FLORAL BOX
LAST SALE ON BOARD RECEIVES THE
BEAUTIFULLY LITHOGRAPHED 3 LB. TIN

50 FREE
NUMBERS
All Numbers
Ending In
1—PAY—1¢
2—PAY—2¢
3—PAY—3¢
4—PAY—4¢
5—6—7—8—9
PAY 5c

"0" are FREE

Said candy is distributed to the purchasing public in accordance with the foregoing legend and in the following manner:

The punchboard contains 500 punches, each concealing a number; said numbers are not arranged in numerical sequence. Whether a purchaser pays 1, 2, 3, 4, or 5 cents, or receives his chance free, is determined by the last digit of the number of the slip punched by him from the punchboard, and whether he receives a box of candy or nothing for his money is determined by the number appearing on the slip punched by him from said board. Persons who qualify by receiving one of the designated numbers receive a box of candy. Persons not obtaining one of the designated numbers receive nothing. The numbers are effectively concealed from purchasers and prospective purchasers until a punch selection has been made and a particular punch separated from the board. The candy is thus distributed to purchasers of punches from the board wholly by chance, and the amount to be paid for each punch or purchase is also determined wholly by chance.

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

PAR. 3. Retail dealers who purchase respondent's candy directly or indirectly, expose and sell the same to the purchasing public in accordance with the 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 sales 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 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 dis-

tribution 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 February 21, 1941, issued and on February 24, 1941, served its complaint in this proceeding upon the respondent Helen Harrison Candies, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 31, 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 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 now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Helen Harrison Candies, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 325 North Wells Street, Chicago, Ill. Respondent

is now and for more than six months last past has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said candy, when sold, to be transported from its place of business in the city of Chicago, Ill., to purchasers thereof at their respective points of location in various States of the United States other than Illinois and in the District of Columbia. There is now and has been for more than 6 months last past a course of trade by respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondent is and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment includes 30 boxes of candy and a punchboard. Appearing on the face of the punchboard is the following legend:

CHATTERBOX ASS'T
With Helen Harrison Candies
Nos. 11—22—33—44—55
—66—77—88—99—100
RECEIVE A 1 LB.
WINDMILL ASSORTMENT
Nos. 25—50—125—150—
225—250—325—425—450
RECEIVE 1 LB.
VICTORIAN ASSORTMENT
LAST SALE IN EACH OF FIRST
9 SECTIONS COMPLETED
RECEIVE A 1 LB. FLORAL BOX
LAST SALE ON BOARD RECEIVES THE
BEAUTIFULLY LITHOGRAPHED 3 LB. TIN

50 FREE NUMBERS
All Numbers Ending in
1—PAY—1¢
2—PAY—2¢
3—PAY—3¢
4—PAY—4¢
5—6—7—8—9
PAY 5¢
"0" are FREE

Said candy is distributed to the purchasing public in accordance with the foregoing legend, and in the following manner:

The punchboard contains 500 punches, each concealing a number; said numbers are not arranged in numerical sequence. Whether a purchaser pays 1, 2, 3, 4, or 5 cents, or receives his chance free, is determined by the last digit of the number of the slip punched by him from the punchboard, and whether he receives a box of candy or nothing for his money is determined by the number appearing on the slip punched by him from said board. Persons who qualify by receiving one of the designated numbers receive a box of candy. Persons not obtaining one of the designated numbers receive nothing. The numbers are effectively concealed from purchasers and prospective purchasers until a punch selection has been made and a particular punch separated from the board. The candy is thus distributed to purchasers of punches from the board wholly by chance, and the amount to be paid for each punch or purchase is also determined wholly by chance.

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

PAR. 3. Retail dealers who purchase respondent's candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the 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 sales 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. 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 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 equiva-

lent 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.

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that 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 respondent, Helen Harrison Candies, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing 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, 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.

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

SANDERS 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 3526. Complaint, Aug. 4, 1938—Decision, June 12, 1941

Where a corporation engaged in the manufacture and the competitive interstate sale and distribution of advertising novelties, rulers, calendars, fans, flyswatters, punchboards, and various other articles—

Furnished purchasers various plans and devices which involved the operation of games of chance, gift enterprises, or lottery schemes by means of which said merchandise was distributed to the ultimate consumers wholly by lot or chance, and included, as typical, combination of one of the aforesaid articles of merchandise together with a punchboard for use under a sales plan providing that the purchaser of a "punch" who punched certain concealed number, received the article without additional payment, and purchasers of all other punches received nothing for their 5 cents except the "punch"; placing thereby in the hands of others various devices involving games or schemes of chance for distribution of its said merchandise to the ultimate consumer wholly by lot or chance, contrary to established public policy of the United States Government;

With result that many persons were attracted by aforesaid sales method and the element of chance involved therein and were thereby induced to purchase its merchandise in preference to that of its competitors who were unwilling to and did not use any such methods, and trade was unfairly diverted from them to it:

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

Before *Mr. Arthur F. Thomas*, *Mr. John W. Addison*, *Mr. Miles J. Furnas* and *Mr. W. W. Sheppard*, trial examiners.

Mr. D. C. Daniel for the Commission.

COMPLAINT

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

PARAGRAPH 1. The respondent is a corporation organized and doing business under the laws of the State of Tennessee with its principal office and place of business located at 122–126 Fourth Avenue, South, in the city of Nashville, State of Tennessee. Respondent is now, and for some time last past has been, engaged in the business of selling and distributing various articles of novelty merchandise, including pencils, knife sharpeners, billhooks, pocket mirrors, key tags, and sand glasses. Respondent also sells and distributes knives and watches together with various punchboards and push cards. All of the above-described merchandise is sold and distributed by respondent for resale or distribution to the purchasing public. Respondent's customers are located in various States of the United States and in the District of Columbia, and the respondent causes its merchandise, when sold, to be transported from one of its places of business in the State of Tennessee or from the place of manufacture to the purchasers thereof in other States of the United States and in the District of Columbia, at their respective addresses. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is 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 certain of its products in commerce, has furnished or sold various punchboards or push cards which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is or may be or is designed to be distributed to the ultimate purchasers or consumers thereof wholly by lot or chance.

The punchboards or push cards, as sold or distributed by the respondent, have attached thereto watches or pocket knives and have printed on the top of said punchboards or push cards various statements or legends showing the manner or sales plan by which said articles of merchandise are to be sold or distributed to the purchasing or consuming public. Sales are generally 5 cents each and said punchboards or push cards have a number of holes or partially perforated disks and each purchaser is entitled to a punch or push from said punchboard or push card, and when a punch or push is made a printed slip or disk is separated and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until

a selection has been made and the punch or push completed. Certain specified numbers entitle purchasers to an article of merchandise. Persons obtaining numbers not so specified receive nothing for their money other than the privilege of making a punch or push from said board or card. The articles of merchandise attached to said board are offered for distribution and distributed to the public in accordance with the above described sales plan and the merchandise attached to said punchboards or push cards is thus distributed to the consuming or purchasing public wholly by lot or chance.

PAR. 3. Retail dealers who purchase or procure respondent's said merchandise and punchboards or push cards either directly or indirectly from respondent expose said devices and the merchandise attached thereto to the purchasing public and sell or distribute such articles of merchandise in accordance with the above described sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale of said merchandise in accordance with the sales plan hereinabove set forth. Such sales plan has the tendency and capacity to induce the consuming or purchasing public to purchase respondent's merchandise in preference to similar merchandise offered for sale and sold by its competitors.

PAR. 4. The sale of said merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure said articles of merchandise. The use by respondent of said method in the sale of its merchandise and the sale of its merchandise by and through the use thereof is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws. The use by respondent of said sales plan or method has the tendency to unfairly hinder competition. Many persons, firms and corporations who sell and distribute merchandise in competition with the respondent as above described are unwilling to adopt and use said 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.

PAR. 5. Many dealers in and ultimate purchasers of merchandise similar to that distributed by respondent are attracted by respondent's said sales plan or method and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to purchase said merchandise from respondent in preference to similar merchandise offered for sale and sold by said competitors of respondent who do not use the same or a similar method. The use of said method by respondent has the capacity and tendency, because of said

game of chance, lottery scheme, or gift enterprise, unfairly to divert to respondent trade and custom from its competitors who do not use the same or an equivalent or similar method, and has the capacity and tendency to deprive the purchasing public of free competition in said merchandise.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 4th day of August, A. D. 1938, issued and thereafter served its complaint in this proceeding upon the respondent, Sanders Manufacturing Co., a corporation, charging it 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 respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission before duly appointed trial examiners of the Commission designated by it to serve in this proceeding. No testimony or evidence was offered on behalf of the respondent. The testimony and other evidence introduced were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence and the report of the trial examiners thereon, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Sanders Manufacturing Co. is a corporation organized under the laws of the State of Tennessee with its principal office and place of business located at Nashville, Tenn., and it also operates two branches at Shelbyville, Tenn.

PAR. 2. Respondent is engaged in the business of manufacturing, selling, and distributing advertising novelties, rulers, calendars, fans, flyswatters, punchboards and various other articles.

PAR. 3. Respondent causes its said merchandise described in paragraph 2, when sold, to be shipped or transported from its said places

of business to purchasers thereof located in various States of the United States at their respective points of location.

PAR. 4. Respondent in the course and conduct of its business as set forth in paragraphs 2 and 3 hereof now is, and has been, 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. 5. Respondent in the sale and distribution of its merchandise 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 respondent is the following:

One of respondent's combinations consists of one of the articles of merchandise mentioned in paragraph 2 hereof, and a punchboard. This punchboard has 100 covered tubes, for the right to punch which a charge of 5 cents is usually made. Each of these tubes contains a ticket which is effectively concealed until the cover of the tube has been punched. On each of the tickets is printed a number, and one of the numbers entitles the purchaser to receive the article of merchandise as a prize, without any additional payment. The purchasers of all the other punches received nothing for their investment except the right to punch one of the tubes.

Other like or similar devices, differing only in detail, are used by respondent in disposing of its merchandise.

PAR. 6. The 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. Respondent's said sales methods are contrary to the established public policy of the Government of the United States.

PAR. 7. Many persons have been and are attracted by the sales methods employed by respondent in the sale and distribution of its merchandise, and by the element of chance involved therein, and have been thereby induced to purchase respondent's merchandise in preference to merchandise offered for sale by respondent's competitors who do not use the same or a similar method.

PAR. 8. Respondent, for some time last past, has been in competition with other manufacturers and distributors of merchandise similar to that mentioned in paragraph 2 hereof, 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 of 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 within the intent and meaning of the Federal 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 duly appointed trial examiners of the Commission designated by it to serve in this proceeding, and the report of the trial examiners thereon, and the Commission having made its findings as to the facts and its conclusion that the respondent Sanders Manufacturing Co. has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Sanders Manufacturing Co., 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 advertising novelties, rulers, calendars, fans, flyswatters, punchboards or any other merchandise in commerce as "commerce" is defined in the Federal Trade Commisison 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 respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

FRED P. WEISSMAN, INC.

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

Docket 3532. Complaint, Aug. 9, 1938—Decision, June 12, 1941

Where a corporation engaged in competitive interstate sale and distribution of women's coats and other garments—

Caused to be attached to its products certain labels carrying legend "100 percent CAMEL'S HAIR," and thereby represented that such products were composed entirely of said hair, when said coats in fact contained only about 30 percent of camel's hair, preferred by substantial portion of purchasing public over those made of other fibers or materials, with remaining fibers consisting of wool and mohair in about equal proportions;

With effect of misleading and deceiving a substantial portion of the purchasing public with respect to the composition of said coats, and of inducing it, as a result of the erroneous belief so engendered, to purchase its products in preference to those of its competitors, and of thereby diverting trade unfairly to it from said competitors, many of whom do not misrepresent the constituent materials of their products:

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

Before *Mr. John J. Keenan*, *Mr. Miles J. Furnas*, and *Mr. Lewis C. Russell*, trial examiners.

Mr. John R. Phillips, Jr., for the Commission.

Mr. David Leavenworth, 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 the said act, the Federal Trade Commission having reason to believe that Fred P. Weissman, 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. Fred P. Weissman, Inc., is a corporation created by and existing under the laws of the State of New York, with its principal offices and place of business located at 270 West Thirty-Eighth Street, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for more than 4 years last past has been engaged in the business of distributing and selling a line of sport and dress coats and garments. Respondent causes said coats and garments when sold to be transported from its place of business in the State of New York to its customers located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said coats and garments sold and distributed by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent is in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of coats and garments in commerce between and among the various States of the United Sates and the District of Columbia.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said coats and garments, respondent has made, by means of labels affixed and attached to its coats and garments, and by means of suggesting and assisting in the phrasing and wording of advertisements used by the retailers of said coats and garments, which are inserted in newspapers having a general interstate circulation, many representations concerning the character, quality, nature, fiber, and fabric of its coats and garments. Among said representations made by respondent are the following:

[Label]

"100% CAMEL'S HAIR"

[Label]

"SPORTLEIGH"
Reg.
"MASTER (Picture of Crown) CAMEL"

The above label depicts a crown between the words "Master" and "Camel."

[Label]

"CAMEL
(picture)
and Wool"

In the above label the word "Camel" is in large cap type letters and the words "and Wool" are in small letters, not caps. There is de-

picted between the word "Camel" and the words "and Wool" a pictorial representation of palm trees, pyramids, and a man leading a camel.

NEW HUNCHES ON THE GOOD OLD CAMEL—

Slip on a Coat—see how light it is! Roll it up in a ball—see how fluffy it is! We've mixed Camel's Hair with llama and wool in a mixture that is soft as baby's bunting. We've made it into good, roomy coats. What's more, we have lined them with Earl-Glo DeLuxe Rayon Satin Acetate—long wearing enough for all you college girls, business girls, chauffeuring-suburbanites and others who will live in them!

SLIP ONE ON—

See how light it is. That's because the fabric is a mixture of Camel's Hair with llama and wool (in about equal proportions) that gives ample warmth without an ounce of extra weight.

All of said statements, together with similar statements appearing on the labels affixed to respondent's coats and garments, and the aforesaid advertising matter, purport to be descriptive of the character, quality, nature, fiber, and fabric of respondent's coats and garments. By use of said labels affixed to its coats and garments, and of the aforesaid advertising matter, and through other means, the respondent, through the statements and representations herein set out, and other statements of similar import and effect, represents that its coats and garments are either in whole or in predominant part camel's hair, and that its coats and garments have the warmth, long-wearing qualities, and lightness in weight of genuine camel's hair coats and garments.

PAR. 5. The representations made by respondent with respect to the character, quality, nature, fiber, and fabric of its coats and garments, are grossly exaggerated, false, misleading, and untrue. In truth and in fact the coats and garments of respondent are not in whole or in predominant part of camel's hair, and do not have the warmth, long-wearing qualities, and lightness in weight of genuine camel's hair coats and garments.

The true fact is that respondent's coats and garments contain but approximately 20 percent genuine camel's hair.

The manufacturers, distributors, and sellers of fabrics and garments made therefrom have generally adopted and followed, and they now follow, the common practice and custom of truthfully disclosing the various fibers and materials out of which such fabrics and garments are made and, in the case of mixed goods, of disclosing each fiber present therein by naming each constituent fiber or materials in the order of its predominance by weight. This custom and practice on the part of said manufacturers, distributors, and sellers of fabrics and garments made therefrom is understood and relied upon by the

purchasing public to a considerable extent in its purchase of fabrics and garments.

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

PAR. 6. There are, among respondent's competitors, many who manufacture, distribute, and sell coats and garments who do not in any way misrepresent the quality or character of their respective coats and garments.

PAR. 7. Each and all of the false and misleading statements and representations made by respondent in designating or describing its coats and garments, as hereinabove set-out, were and are calculated to, and have had and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that all of said representations are true and that said coats and garments are made from fabrics composed wholly and entirely of camel's hair or are made from fabrics made up of camel's hair in predominant part together with other wool in less than a predominant part, and into the purchase of a substantial volume of respondent's coats and garments on account of said belief so induced, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of distributing and selling coats and garments, who truthfully represent the quality and character of their respective coats and garments and the material or fabrics from which they are made. As a consequence thereof, injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 9, 1938, issued, and subsequently served, its complaint in this proceeding, charging the respondent, Fred P. Weissman, Inc., a corporation, with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act. Respondent filed its answer to the complaint on August 26, 1938. Thereafter testimony and other evidence in support of the allegations of the complaint were introduced by John R. Phillips, Jr., attorney for the Commission, and in opposition thereto by David Leavenworth, attorney for the respondent, before trial examiners of the Commission theretofore duly designated by it, and the testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, the answer of the respondent, testimony and other evidence, the report of the trial examiners thereon and briefs of attorney for the Commission and attorney for the respondent, and the Commission having duly considered the matter and being now fully advised in the premises, finds that the proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Fred P. Weissman, Inc., is a corporation organized under the laws of the State of New York, with its principal place of business at 270 West Thirty-eighth Street, New York, N. Y. It is now and for more than 5 years last past has been engaged in the sale and distribution of women's coats and other garments. Respondent sells its products to numerous retail dealers located in various States of the United States and in the District of Columbia, and respondent causes its products, when sold, to be transported from its place of business in the State of New York to such purchasers. Respondent maintains a course of trade in its products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the sale and distribution of its products respondent is in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of similar products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, and for the purpose of furthering the sale of its products, the respondent has caused to be attached to its products certain labels purporting to designate and describe the constituent fibers or materials of which such products are made. One of such labels carried the legend "100% CAMEL'S HAIR." Through the use of this legend the respondent represented that the garments so labeled were composed entirely of camel's hair.

PAR. 4. The Commission finds that this representation was false and misleading. The garments labeled "100% CAMEL'S HAIR" were not composed entirely of camel's hair, but in fact contained only about 30 percent camel's hair, the remaining fibers being wool and mohair in about equal proportions.

PAR. 5. The Commission further finds that there is a preference on the part of a substantial portion of the purchasing public for coats made of camel's hair over coats made of other fibers or materials.

PAR. 6. The use by the respondent of the representation herein set forth has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public with respect to the fibers or materials of which respondent's products are made. As a result of the erroneous and mistaken belief so engendered by the respondent, a substantial portion of the purchasing public has been induced to purchase, and has purchased, respondent's products in preference to the products of respondent's competitors. Thereby, trade has been diverted unfairly to the respondent from its competitors, many of whom do not misrepresent the constituent fibers or materials of which their products are made.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce 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, the report of the trial examiners thereon and briefs filed by counsel for the Commission and for respondent (no request for oral argument having been made) and the Commission having made its findings as

to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Fred P. Weissman, 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 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 term "100% Camel's Hair", or any other term of similar import or meaning, to designate, describe or refer to any fabric or product which is not composed entirely of camel's hair.

2. Representing in any manner that respondent's products 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 it of 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

GRAND RAPIDS EXCHANGE, INC., ALSO TRADING AS DENIS FURNITURE COMPANY

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

Docket 3703. Complaint, Feb. 8, 1939—Decision, June 12, 1941

Where a corporation engaged in wholesale distribution of household furniture at Brooklyn under its corporate name, and in retail sale thereof under separate trade name at New York City, in interstate sale of its said products, in competition with many who thus sell and distribute household furniture which was manufactured and had its origin in the city of Grand Rapids, Mich., and others who sell and distribute such furniture which was neither made nor originated there and who do not misrepresent their business, the quality or the origin or manufacture of their said products or that they own or conduct a factory or factories where such furniture is made—

Represented and implied that its said household furniture was manufactured at Grand Rapids, Mich., that its places of business were exchanges or headquarters or central offices for the Grand Rapids furniture industry, of which it was the authorized agency, and that it sold and distributed only Grand Rapids furniture made in its own factory at Grand Rapids, Mich., through use of its corporate name, together with the words "Factory and Show Rooms", on its letterheads, invoices and other printed matter, and prominent display on conspicuous signs at its aforesaid place of business of the statements "THE ORIGINAL GRAND RAPIDS EXC. INC. FURNITURE Main Show Rooms," "FIRST visit GRAND RAPIDS FURNITURE EXC. INC. SALES ROOMS," and "Authorized Agent for GRAND RAPIDS EXCH. Show Rooms," and through statements of its officers, agents and employees, that it was "The only authorized agent in New York City handling Grand Rapids Furniture," that it was "One of the two places in New York where a dealer can get Grand Rapids Furniture," and that "We are the real McCoy because we have our factory in Grand Rapids, Mich., and the name of it is the Grand Rapids Furniture Company";

The facts being it dealt and traded extensively in household furniture of other origin and manufacture, and sold or distributed only a small portion of furniture made at Grand Rapids, Mich.—the furniture products of which are preferred and bought by a substantial number of the purchasing public—and it did not own, operate or control a factory, was not the headquarters or central office or exchange for the Grand Rapids Furniture industry, was not an authorized agent thereof or, as aforesaid indicated, a factory or headquarters of such furniture, from which a substantial portion of said public prefers to purchase as securing advantages not ordinarily obtainable through middlemen and others who do not deal exclusively in such furniture;

With effect of misleading and deceiving a substantial portion of the purchasing public, and of causing a number of members of such public mistakenly and erroneously to believe that said representations and implications were true,

whereby trade in commerce was diverted unfairly to it from its competitors; to their injury and that of the public:

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

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

Mr. John R. Phillips, Jr., for the Commission.

Mr. Nathan R. Shapiro, 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 Grand Rapids Exchange, Inc., a corporation, also trading as "Denis Furniture Company," hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Grand Rapids Exchange, 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 55 Hope Street in the city of Brooklyn, State of New York, and also trades under the style and name of "Denis Furniture Company" at 2182 Third Avenue in the city of New York, State of New York. Said respondent is engaged in the wholesale distribution of household furniture under its corporate name, at Brooklyn, and in the retail sale thereof under its trade name of "Denis Furniture Company" at New York City, as aforesaid:

Respondent caused and causes its household furniture, when sold, to be transported from its places of business in New York and Brooklyn, in the State of New York, to the purchasers thereof located in the States of the United States other than the State of New York and in the District of Columbia.

Respondent now maintains, and for more than three years last past has maintained, a course of trade in household furniture, distributed and sold by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as aforesaid, the respondent is, and for more than three years last past has been, in competition with corporations, individuals and partnerships engaged in the sale and distribution of household furniture, in commerce, be-

tween and among the various States of the United States and in the District of Columbia.

Among the competitors of respondent are many corporations, individuals and partnerships who sell and distribute, in said commerce, household furniture, manufactured and having its origin in the city of Grand Rapids, Mich., and others selling and distributing household furniture not having been manufactured nor having its origin in said city of Grand Rapids, who do not misrepresent their business, the quality, nor the origin of the manufacture of their household furniture, or that they own or conduct a factory or factories where such household furniture is manufactured.

PAR. 3. In the course of its aforesaid business and for the purpose of inducing the purchase of its household furniture by members of the purchasing public, respondent uses, and has used, for the last three years, its corporate name, and prominently displays certain conspicuous signs on its principal place of business in the city of Brooklyn, and also at its retail store in the city of New York, the arrangement and the wording of the signs being as follows:

THE ORIGINAL
GRAND
R
A
P
I
D
S
Exc. Inc.
FURNITURE
Main Show Rooms

Also:

FIRST
visit
GRAND
RAPIDS
F
U
R
N
I
T
U
R
E
Exc. Inc.
SALES ROOMS

Also:

Authorized Agent
For
GRAND
RAPIDS Exch.
Show Rooms

Respondent also makes oral representations to its purchasers and prospective purchasers through its officers, agents and employees as being "The only authorized agent in New York City handling Grand Rapids Furniture"; also that it is "One of the two places in New York where a dealer can get Grand Rapids Furniture"; that "We are the real McCoy because we have our factory in Grand Rapids, Mich., and the name of it is the Grand Rapids Furniture Company."

Respondent also uses its corporate name, to wit: "Grand Rapids Exchange, Inc.", to appear variously on its letterheads, invoices and other printed matter, accompanied with the words and phrases "Factory and Showrooms," which are used and circulated by the respondent through the United States mails and otherwise to its customers and prospective customers located in the various States of the United States and in the District of Columbia.

PAR. 4. The city of Grand Rapids, Mich., has been for many years, and is now, a large and important center of the furniture industry in the United States, which fact is generally known to the public throughout the United States, and furniture manufactured in said city of Grand Rapids has for many years enjoyed, and now enjoys, a widespread popularity, reputation, good will and demand throughout the United States as being furniture of dependable quality and other desirable characteristics.

PAR. 5. By means and in the manner aforesaid, respondent represents and implies that said household furniture is manufactured at Grand Rapids, Mich.; that its places of business are exchanges, implying that its said places of business are headquarters or central offices for the Grand Rapids furniture industry; that it is the authorized agency for the Grand Rapids furniture industry; that only Grand Rapids furniture is sold and distributed by it; that such household furniture is manufactured in its own factory at Grand Rapids, Mich., and that it controls or operates its own factory.

By reason of the widespread reputation, popularity and good will among the public throughout the United States enjoyed by the aforesaid furniture industry of Grand Rapids, Mich., and its products, there are among the members of the purchasing public a substantial number who prefer to purchase household furniture manufactured and having its origin in said city of Grand Rapids, and to purchase

the same from a factory or a headquarters of the Grand Rapids furniture industry, believing that in so doing they secure better prices, superior quality and other advantages not ordinarily obtainable when purchasing through middlemen and others who do not deal exclusively in Grand Rapids furniture.

Respondent sells or distributes only a small portion of household furniture originating and manufactured at Grand Rapids, Mich. It does not own, operate, or control a factory, and is not the headquarters or central offices nor exchange for the Grand Rapids furniture industry. Respondent is not an authorized agent handling Grand Rapids furniture, but deals and trades extensively in household furniture of other origin, make, and manufacture.

PAR. 6. Respondent's 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 respondent's places of business as aforesaid are actually the New York headquarters, central office and exchanges of the Grand Rapids furniture industry; that the respondent is the authorized agency for Grand Rapids furniture; that respondent deals exclusively in furniture manufactured in Grand Rapids, Mich., and that it owns, operates and controls its own factory or factories. As a result thereof, trade in said commerce has been, and is, diverted unfairly to the respondent from its competitors to the injury of said competitors and to the injury of the public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 8, 1939, issued, and on February 9, 1939, served its complaint in this proceeding upon respondent, Grand Rapids Exchange, Inc., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. 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, Grand Rapids Exchange, 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 55 Hope Street in the city of Brooklyn, State of New York, and also trades under the style and name of Denis Furniture Co. at 2182 Third Avenue in the city of New York, State of New York. Said respondent is engaged in the wholesale distribution of household furniture under its corporate name, at Brooklyn, and in the retail sale thereof under its trade name of Denis Furniture Company at New York City, as aforesaid.

Respondent caused and causes its household furniture, when sold, to be transported from its places of business in New York and Brooklyn, in the State of New York, to the purchasers thereof located in the States of the United States other than the State of New York and in the District of Columbia.

Respondent now maintains, and for more than three years last past has maintained, a course of trade in household furniture, distributed and sold by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as aforesaid, the respondent is, and for more than three years last past has been, in competition with corporations, individuals, and partnerships engaged in the sale and distribution of household furniture, in commerce, between and among the various States of the United States and in the District of Columbia.

Among the competitors of respondent are many corporations, individuals and partnerships who sell and distribute, in said commerce, household furniture, manufactured and having its origin in the city of Grand Rapids, Mich., and others selling and distributing household furniture not having been manufactured nor having its origin in said city of Grand Rapids, who do not misrepresent their business, the quality, nor the origin of the manufacture of their

household furniture, or that they own or conduct a factory or factories where such household furniture is manufactured.

PAR. 3. In the course of its aforesaid business and for the purpose of inducing the purchase of its household furniture by members of the purchasing public, respondent uses, and has used, for the last three years, its corporate name, and prominently displays certain conspicuous signs on its principal place of business in the city of Brooklyn, and also at its retail store in the city of New York, the arrangement and the wording of the signs being as follows:

THE ORIGINAL

GRAND

R

A

P

I

D

S

Exc. Inc.

FURNITURE

Main Show Rooms

Also:

FIRST

visit

GRAND

RAPIDS

F

U

R

N

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R

E

Exc. Inc.

SALES ROOMS

Also:

Authorized Agent

For

GRAND

RAPIDS Exch.

Show Rooms

Respondent also makes oral representations to its purchasers and prospective purchasers through its officers, agents and employees as being "The only authorized agent in New York City handling Grand Rapids Furniture"; also that it is "One of the two places in New York where a dealer can get Grand Rapids Furniture"; that "We are the real McCoy because we have our factory in Grand Rapids, Mich., and the name of it is the Grand Rapids Furniture Company."

Respondent also uses its corporate name, to wit: "Grand Rapids Exchange, Inc.," to appear variously on its letterheads, invoices and other printed matter, accompanied with the words and phrases "Factory and Showrooms," which are used and circulated by the respondent through the United States mails and otherwise to its customers and prospective customers located in the various States of the United States and in the District of Columbia.

PAR. 4. The city of Grand Rapids, Mich., has been for many years, and is now, a large and important center of the furniture industry in the United States, which fact is generally known to the public throughout the United States, and furniture manufactured in said city of Grand Rapids has for many years enjoyed, and now enjoys, a widespread popularity, reputation, good will and demand throughout the United States as being furniture of dependable quality and other desirable characteristics.

PAR. 5. By means and in the manner aforesaid, respondent represents and implies that said household furniture is manufactured at Grand Rapids, Mich.; that its places of business are exchanges, implying that its said places of business are headquarters or central offices for the Grand Rapids furniture industry; that it is the authorized agency for the Grand Rapids furniture industry; that only Grand Rapids furniture is sold and distributed by it; that such household furniture is manufactured in its own factory at Grand Rapids, Mich., and that it controls or operates its own factory.

By reason of the widespread reputation, popularity and good will among the public throughout the United States enjoyed by the aforesaid furniture industry of Grand Rapids, Mich., and its prod-

ucts, there are among the members of the purchasing public a substantial number who prefer to purchase household furniture manufactured and having its origin in said city of Grand Rapids, and to purchase the same from a factory or a headquarters of the Grand Rapids furniture industry, believing that in so doing they secure better prices, superior quality and other advantages not ordinarily obtainable when purchasing through middlemen and others who do not deal exclusively in Grand Rapids furniture.

Respondent sells or distributes only a small portion of household furniture originating and manufactured at Grand Rapids, Mich. It does not own, operate or control a factory, and is not the headquarters or central offices nor exchange for the Grand Rapids furniture industry. Respondent is not an authorized agent handling Grand Rapids furniture, but deals and trades extensively in household furniture of other origin, make and manufacture.

PAR. 6. Respondent's 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 respondent's places of business as aforesaid are actually the New York headquarters, central office and exchanges of the Grand Rapids furniture industry; that the respondent is the authorized agency for Grand Rapids furniture; that respondent deals exclusively in furniture manufactured in Grand Rapids, Michigan, and that it owns, operates, and controls its own factory or factories. As a result thereof, trade in said commerce has been, and is, diverted unfairly to the respondent from its competitors to the injury of said competitors and to the injury of the public.

CONCLUSION

The acts and practices of the respondent, as herein found, 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.

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, Grand Rapids Exchange, 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 furniture in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Grand Rapids" or "Grand Rapids Exchange," or words or terms of similar import or meaning, as a corporate or trade name or as a part of its corporate or trade name, or in any other manner, unless all furniture sold by it is manufactured in the city of Grand Rapids, Mich.;

2. Representing, directly or indirectly, that it is the authorized agency or is the central office or headquarters for the Grand Rapids Furniture industry;

3. Representing, directly or indirectly, that only furniture made in Grand Rapids, Mich., is sold or distributed by it;

4. Using the word "Factory" 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 furniture sold by it, unless and until respondent actually owns and operates or directly and absolutely controls the plant or factory wherein such furniture is manufactured.

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

IN THE MATTER OF

THOMSEN-KING & COMPANY, INC., WINSHIP CORPORATION, JAMES M. WOODMAN, JESSE L. STEWART, 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 3998. Complaint, Jan. 24, 1940—Decision, June 12, 1941

Where two corporations, which were created to continue the business of engaging in prize contests as a means of merchandising cosmetics, and which were the most recent of 16 companies organized, discontinued, or dissolved, and reorganized under the plan below set forth, over a period of some 10 years; and numerous individuals cooperating with one another, directly or indirectly, in conducting prize contests through such contest companies, which they organized, and including among their number (1) 10 partners operating "The Committee for General Investments," who, together with other investors, financed and aided the financing of one or more "prize contests" as hereinafter described, (2) a number of partners or associates, who conducted "prize contests" under various trade names such as "Woodman-Stewart Advertising Agency," and prepared advertisements used in connection therewith, and (3) some 20 others engaged, at some time during period concerned, directly or indirectly, in financing, operating or managing one or more of the aforesaid contests;

Acting in furtherance of a common plan, pursuant to which they—

I. Organized and operated some 16 corporations, or companies operating under trade names, to disseminate advertisements concerning numerous "prize contests" and induce the sale of certain cosmetics, and under which, when cited to appear before the Commission, they would, (1) in some cases, stipulate therewith to cease and desist the objectionable acts and practices, following which they would make little, if any, effort to comply, but would either discontinue or dissolve the particular company, organize a new one, and proceed with acts and practices substantially similar to, and in some instances identical with those which they had agreed to discontinue; and (2) in other instances, following issuance of complaints by Commission against one or more of their companies, they would, during the pendency of the proceedings, complete the particular contest involved and then dissolve or discontinue the particular company respondent in the proceeding concerned, filing either an admissive answer or entering a dilatory contest for purposes of delay, and then organize new companies to continue practices substantially similar to and, in some instances, identical with those involved in complaints and orders referred to;

II. Frequently changed the corporate or trade names used in promoting sale of their cosmetics, dissolving the existing company, distributing its principal and profits, and transferring its physical properties to a new concern; and

III. Employed or designated new "prize managers" for newly organized prize contests, and new officers and so-called owners of new companies, to continue such contests, the new managers, officers and owners being

such, however, in name only, in most instances with no financial interest involved and in some instances financially irresponsible;

By means of advertisements disseminated through the mails, newspapers, and periodicals of general circulation, and circulars and other printed or written matter—

(*a*) Represented that they were conducting a contest confined to the solution of a picture puzzle or similar device, involving only skill in submitting solutions, without expenditure of either money or work on the part of contestants, in order to win a prize; that the simple act of sending in a correct solution to a puzzle or contest would entitle contestant to one of the grand prize awards given free; and that they were giving free substantial sums of money or other awards, as a means of advertising their products; and

(*b*) Represented that the recipient of a so-called Grand Prize Promptness Certificate had gained an advantage by virtue of skill in solving a puzzle and that an award was guaranteed or assured by simply mailing in such certificate to them; that purchasers of small quantities of their cosmetics stood in as favorable a position as large quantity purchasers, with a favorable or reasonable chance of winning the grand prize or other cash prizes; that by simply replying to their advertising literature and requests therein made, contestant would receive specified or other prizes; that hundreds had already won big prizes in similar friendship campaigns conducted by the same prize company; and that the giving of a certain order and the payment of a specified amount therefor, would assure the contestants addressed of securing a money prize;

Facts being said puzzle or picture contest and offer of awards or prizes was used solely as a means to obtain names of people who would later be encouraged to enter a competitive selling contest, said puzzle contest constituting merely the initial step in a system of effecting sales; picture puzzle advertised by them was so simple as to remove it from the category of a competitive contest or one of skill, being such that a substantial majority, if not all, of those replying would submit correct solutions; said advertised contest and offer of awards or prizes in connection therewith was but a deceptive form of bait or decoy for unsuspecting members of the buying public; said various contests were buying contests, requiring quantity purchases of their products by contestants, and the winning of any contest required the purchase of quantities of their cosmetics equal to or in excess of the awards or prizes granted, which in fact constituted bonuses for sales made by individual contestants;

(*c*) Failed to reveal to prospective contestants that participation in the awards depended in whole or in part upon purchase or sale of cosmetics, and obscured the fact that requirements for winning a prize were neither easy nor simple, so that, mostly, such fact was not ascertained by contestant until after making purchases of cosmetics; and

(*d*) Falsely represented that the preparations sold to persons entering the contest were sold at reduced and introductory prices and at less than an established retail price and value, and that they had been in business under various trade names for a long period of years, had an established reputation with respect to their products and for business success, and that their products, which they represented directly or impliedly as originating with them, were of national reputation and of such quality that resale to the general public was not difficult, and that their cosmetics

would restore a youthful condition to the skin, removing wrinkles, etc., and their dental preparations help to make the gums healthy;

Facts being products offered were not of established reputation, in use among usual retail outlets, were not offered at reduced, introductory, or advertising prices and would not accomplish results claimed therefor;

(e) Represented that telegrams, requests for photographs and other forms of encouragement received by contestants indicated that the particular contestant was about to, or certain or likely to, win a cash prize in the contest, that a money prize or reward was guaranteed to persons who became members of so-called prize clubs and that such members were among the leading contestants, that the recipient of points or votes in the form of a certificate of award was the subject of a special favor or advantage which substantially enhanced his chance of winning; that so-called advice and suggestions given in letters to contestants were due to a personal interest in the person addressed and given exclusively to him, and that his position was equal or superior to that of other contestants; that the certificate of award, diploma, or other form supplied to the participant was good for an emolument or advantage not held by other contestants, that in the preliminary stages contestant had already made such progress that his choice of prize was requested, that his score was so high that a request for his photograph was warranted, and that receipt of a facsimile check indicated that the recipient was in a favorable position to win the amount indicated thereon;

The facts being that they granted no special favor to any particular contestant, and aforesaid representations were only stimuli for the purchase of additional cosmetics, and were integral parts of their system to lead on the prospect, step by step, and induce his purchases, award of points or votes, following initial award, being conditioned solely upon and made incident to purchase orders for their products; and such awards or points or votes in the early stages of the contest and incident to the first purchase order having no material or substantial value; and the majority of persons addressed by said corporation and individuals at no time stood in a position affording them a favorable chance of winning the grand prize or any other of the money prizes offered;

With the result that through said means they sold, by means of each contest, to between 10,000 and 234,000 individual contestants, each of whom was induced to spend from a few dollars up to $11,000, in one instance, and sold as much, in single contest, as $1,643,000 in cosmetics; and

Where said corporations and individuals, at various stages of progress of the contest—

(f) Furnished to contestants and urged use by them of punch or pull cards or other devices involving a lottery or game of chance in the resale of their products in which the cosmetics or article to be purchased and price to be paid therefor were determined entirely by chance, thereby supplying to and placing in the hands of others the means of conducting lotteries in the sale of their said products, contrary to the established public policy of the United States Government and in violation of the criminal laws of many of the States, and in competition with many who, unwilling to use any such method, refrain therefrom;

With the result that many persons were attracted by their said sales plans and the element of chance involved therein, and were thereby induced to

buy and sell their cosmetics in preference to those sold by their competitors who do not use such methods, whereby trade was unfairly diverted to them from their competitors, to the substantial injury of competition in commerce:

Capacity, tendency, and effect of which acts, practices, and methods were to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said false and deceptive representations were true; to induce it to purchase quantities of their said products; and unfairly to divert trade from competitors to them:

Held, That said acts and practices, performed and carried out as part of wrongful and unlawful understandings and agreements entered into by individuals concerned, for more than 10 years last past in order to continue same directly and indirectly, in interstate commerce and to avoid and render ineffectual the orders and processes of the Commission, were all to the prejudice and injury of the public and said individuals' competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Curtis Shears and *Mr. Donovan R. Divet* for the Commission.

Schaetzle & Williams, of Des Moines, Iowa, for Winship Corporation, Don W. Parmelee, George Schaffer, Evelyn Henderson, Richard E. Williams, Prentice W. Shaw, Steve W. Phillips, Warren Lee Eastman, Ernie A. Storesund, A. Leonard Anderson, Gerald G. Grant, W. W. Young, and Paul Manning.

Mr. Lewis F. Mason, of Chicago, Ill., for James M. Woodman, Jesse L. Stewart, Merrold Johnson, Joseph Furth, Albert L. Bisson, Glenn Tate, George Thomsen, Amber M. McCluskey, James L. Decker, J. G. Hamer, B. Brown, H. Rosenstein, Claude A. Burnett, Ross J. Miller, Joseph Kane and John E. Woodman.

Parrish, Guthrie, Colflesh & O'Brien, of Des Moines, Iowa, for G. Fred Stayton and Leta M. Clanton.

Mr. Paul H. Williams, of Mt. Rainier, Md., for Sibley F. Everitt.

Nash & Donnelly, of Chicago, Ill., for Walter C. Phillips.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Thomsen-King & Co., Inc., a corporation, Winship Corporation, a corporation, F. W. Fitch Co., a corporation, James M. Woodman, Jesse L. Stewart, Merrold Johnson, G. Fred Stayton, Joseph Furth, Walter Rubens, Albert L. Bisson, Leta M. Clanton, Glenn Tate, George Thomsen, Amber M. McCluskey, James L. Decker, Sibley F. Everitt, Walter C. Phillips, Paul H. Williams, Don W. Parmelee, George Schaffer,

Evelyn Henderson, Richard E. Williams, Prentice W. Shaw, J. G. Hamer, B. Brown, H. Rosenstein, Claude A. Burnett, Ross J. Miller, Joseph Kane, John E. Woodman, Steve W. Phillips. Warren Lee Eastman, Ernie A. Storesund, A. Leonard Anderson, Gerald G. Grant, W. W. Young, Paul Manning, Fred W. Fitch, Mrs. Fred. W. Fitch, Lucius W. Fitch, Mrs. Lucius W. Fitch, Gail W. Fitch, Mrs. Gail W. Fitch, Lester R. Sandahl, Mrs. Lester R. Sandahl, Richard H. Young, and Mrs. Richard H. Young, hereinafter designated and referred to as respondents, have violated the provisions of the said act and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH. 1. Respondent, Thomsen-King & Co., Inc., is an Illinois corporation with its principal office and place of business at 710 South Plymouth Court, city of Chicago, State of Illinois. It is the immediate successor of Van Dear Products, Ltd., at the same address.

Respondent, Winship Corporation, is an Iowa corporation with its principal office and place of business at 112–114 West Eleventh Street, city of Des Moines, State of Iowa. It is the immediate successor of the Lorna Gay Co., at the same address.

Said corporate respondents are engaged in the business of selling and distributing certain various cosmetics such as beauty preparations and toiletries, perfumery, face powder, cleansing cream, astringent lotion, foundation cream, pore cream, lipstick, tooth powder and tooth paste under their respective corporate names by means of a series of prize contests for the purpose of inducing the purchase of said cosmetics.

Respondent, F. W. Fitch Co., an Iowa corporation, with its principal office and place of business in 304 Fifteenth Street, city of Des Moines, State of Iowa, manufactures hair tonics, beauty preparations, perfumery, and other toiletries, a substantial portion of which are sold and distributed by means of a series of prize contests. Through its officers, directly or indirectly, and by means of a committee for general investments, this respondent has financed or aided in the financing of a number of said prize contests, and acting through certain designated agents, Prentice W. Shaw, R. E. Williams, W. C. Phillips, A. Leonard Anderson, and others unknown to the Commission, has exercised a substantial measure of control over the management and policies of one or more of the prize contest companies hereinafter more particularly described.

The respondents, Fred W. Fitch, Gail W. Fitch, Lucius W. Fitch, Lester R. Sandahl, and Richard H. Young, are officers of the F. W.

Fitch Co. and with the respondents, Mrs. Fred W. Fitch, Mrs. Gail W. Fitch, Mrs. Lucius W. Fitch, Mrs. Lester R. Sandahl, and Mrs. Richard H. Young, constitute said committee for general investments.

Respondents, James M. Woodman, Jesse L. Stewart, Merrold Johnson, G. Fred Stayton, and Joseph Furth, were at one time or another during the period involved herein associated as partners or associates under various names including the Woodman-Stewart Advertising Agency and the Jesse L. Stewart Advertising Agency, with their principal office and place of business at 520 North Michigan Avenue, Chicago, Ill., in preparing and otherwise writing advertisements and advertising copy for said prize contest companies. They exercise a substantial measure of control over the policies of certain of the various prize contest companies hereinafter more particularly designated and described by devising and preparing or aiding in devising and preparing the false advertisements hereinafter more particularly described. Respondents, Woodman, Johnson, and Stayton, were actively engaged, at one time or another, in the management of several of said prize contests.

Respondent, Walter Rubens, an individual, under various names including Vanderbie & Rubens, with a principal office and place of business at 540 North Michigan Avenue, Chicago, Ill., has been at one time or another during the period involved herein, active in preparing, revising, and otherwise writing advertisements and advertising copy for, and has exercised a substantial measure of control over, the policies of one or more of said prize contest companies.

Respondents, Sibley F. Everitt, John E. Woodman, Walter C. Phillips, Don W. Parmelee, Albert L. Bisson, Leta M. Clanton, George Schaffer, Evelyn Henderson, Glenn Tate, Paul H. Williams, Richard E. Williams, Prentice W. Shaw, James M. Woodman, Merrold Johnson, George Thomsen, Amber M. McCluskey, James L. Decker, G. Fred Stayton, Steve W. Phillips, Warren Lee Eastman, Ernie A. Storesund, A. Leonard Anderson, Gerald G. Grant, W. W. Young, and Paul Manning, were at one time or another during the period involved herein actively engaged in the financing or operating of one or more of the prize contest companies hereinafter more particularly described.

Respondents, J. G. Hamer, B. Brown, H. Rosenstein, Claude A. Burnett, Ross J. Miller, and Joseph Kane, are individuals who have incorporated one or more of the recent prize contest companies and actively participated in the control of their policies.

All of the aforesaid individual respondents have acted together and in cooperation with each other and with the corporate respondents in doing the acts and practices hereinafter alleged, and

such individuals exercise, individually and collectively, directly, or indirectly, a substantial measure of control over the organization, management, policies, operation, and financing of said prize contest companies.

The residence or business addresses of said individual respondents, so far as are known to the Commission, are as follows:

James M. Woodman, R. F. D. No. 2, Box 40A, Lake Villa, Ill.
Jesse L. Stewart, Room 434, 520 North Michigan Avenue, Chicago, Ill.
Merrold Johnson, 2636 North Seventy-sixth Street, Chicago, Ill.
G. Fred Stayton, c/o Central Insurance Agency, 75 East Wacker Drive, Chicago, Ill.
Joseph Furth, Room 434, 520 North Michigan Avenue, Chicago, Ill.
Sibley F. Everitt, now residing in Hamilton, Bermuda.
Walter C. Phillips, 676 Shatto Place, Los Angeles, Calif.
Don Parmelee, c/o Winship Corporation, 112–114 West Eleventh Street, Des Moines, Iowa.
Albert L. Bisson, 7018 Woodlawn Avenue, Chicago, Ill.
Leta M. Clanton, c/o Central Insurance Agency, 75 East Wacker Drive, Chicago, Ill.
George Schaffer, c/o Winship Corporation, 112–114 West Eleventh Street, Des Moines, Iowa.
Evelyn Henderson, 1821 Grand, Des Moines, Iowa.
Glenn Tate, 75 East Wacker Drive, Chicago, Ill.
Paul H. Williams, c/o State Loan Co., Rosslyn, Va.
Richard E. Williams, 1216 Forty-sixth Street, Des Moines, Iowa.
Prentice W. Shaw, 709 Crocker Building, Des Moines, Iowa.
George Thomsen, c/o Thomsen-King & Co., Inc., 710 South Plymouth Court, Chicago, Ill.
Walter Rubens, c/o Vanderbie & Rubens, 540 North Michigan Avenue, Chicago, Ill.
Amber M. McCluskey, c/o Thomsen-King & Co., Inc., 710 South Plymouth Court, Chicago, Ill.
James L. Decker, c/o Thomsen-King & Co., Inc., 710 South Plymouth Court, Chicago, Ill.
J. G. Hamer, 11 South LaSalle Street, Chicago, Ill.
B. Brown, 11 South LaSalle Street, Chicago, Ill.
H. Rosenstein, 11 South LaSalle Street, Chicago, Ill.
Claude A. Burnett, 29 South LaSalle Street, Chicago, Ill.
Ross J. Miller, 29 South LaSalle Street, Chicago, Ill.
Joseph Kane, 29 South LaSalle Street, Chicago, Ill.
John E. Woodman, R. F. D. No. 2, Box 40A, Lake Villa, Ill.

Steve W. Phillips, 333 Tonawanda Drive, Des Moines, Iowa.
Warren Lee Eastman, 1131 Thirty-fifth Street, Des Moines, Iowa.
Ernie A. Storesund, 2730 Lyons Street, Des Moines, Iowa.
A. Leonard Anderson, 112–116 West Eleventh Street, Des Moines, Iowa.
Gerald G. Grant, c/o Scovill Brass Works, Chicago, Ill.
W. W. Young, Iowa City, Iowa.
Paul Manning, c/o Manning-McComb Co., Des Moines, Iowa.
Fred W. Fitch, 669 Foster Drive, Des Moines, Iowa.
Mrs. Fred W. Fitch, 669 Foster Drive, Des Moines, Iowa.
Lucius W. Fitch, 5403 Harwood Drive, Des Moines, Iowa.
Mrs. Lucius W. Fitch, 5403 Harwood Drive, Des Moines, Iowa.
Gail W. Fitch, 3802 Maquoketa Drive, Des Moines, Iowa.
Mrs. Gail W. Fitch, 3802 Maquoketa Drive, Des Moines, Iowa.
Lester R. Sandahl, 4835 Algonquin Street, Des Moines, Iowa.
Mrs. Lester R. Sandahl, 4835 Algonquin Street, Des Moines, Iowa.
Richard H. Young, 5010 Woodland Avenue, Des Moines, Iowa.
Mrs. Richard H. Young, 5010 Woodland Avenue, Des Moines, Iowa.

PAR. 2. Each of said respondents, at one time or another, individually and in concert and cooperation with each other, has engaged, directly or indirectly, in the business of conducting prize contests, through various contest companies organized for the purpose of inducing the purchase of cosmetics through advertising matter mailed directly to members of the purchasing public located in the various States of the United States. When sales are made through said contest companies to persons contacted by direct mail or other means and as a part of said sales, said respondents ship said cosmetics from their respective places of business or direct from the place of business of the manufacturer of said cosmetics to such purchaser-contestants located in the various States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cosmetics in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business hereinbefore described, said respondents from September 1, 1929, to the present time have entered into certain unlawful understandings, agreements and conspiracies with each other and with other persons not specifically named herein to do certain unlawful acts for the purpose of inducing the purchase of various cosmetics and of avoiding and

rendering ineffectual the orders and other processes of the Federal Trade Commission through various acts and practices hereinafter more particularly described.

In furtherance of such unlawful understandings, agreements, and conspiracies, and as a part thereof, the respondents would organize and operate a corporation or a company under a trade name for the purpose of engaging in the dissemination of false advertisements with respect to a prize contest in order to induce the sale of certain cosmetics. When the acts and practices of a particular company operated by the respondents would come before the Federal Trade Commission for action as the result of an investigation instituted by the Commission, the particular company then under investigation would in some cases enter into a stipulation with the Federal Trade Commission to cease and desist from the acts and practices then being conducted and substantially similar if not identical to those set out in this complaint. The respondents, after execution of such stipulation, would make no effort to conform their practices to the terms of said stipulation but instead would either discontinue or dissolve the particular operating company and organize a new company and proceed with substantially similar and in many cases the identical acts and practices which they had stipulated to discontinue in the proceeding before the Federal Trade Commission. In other cases in which a complaint had been issued by the Federal Trade Commission, the respondents, during the pendency of such proceedings, would complete the particular prize contest involved and then dissolve or discontinue the particular company made respondent in such complaint and either file an admission answer in the Commission's proceeding or enter a dilatory contest for the purpose of delay. During the pendency of such proceedings or after a cease and desist order had been issued by the Commission, the respondents would organize new corporations or companies to continue with the identical practices involved in such complaints or orders to cease and desist. In furtherance of this plan it was the practice of the respondents to frequently change the corporate or trade name used in promoting the sale of such cosmetics, dissolve the existing company, distribute its principal and profits, and transfer its physical properties to a new company designed to take over the operation of the business conducted by the former company. It was further a part of said plan that respondents would employ or designate a new prize manager for each contest and new officers and so-called owners for each new company to continue said prize contest under said new names and with said new personnel. Such prize managers, officers, and so-called owners were in many cases owners, officers, and managers in name only and had in most

instances no financial interest in said companies and were in some cases financially irresponsible. Among the companies organized, reorganized, and discontinued or dissolved under the operation of this plan were the following: Helen Dawn Co., Co-Ed, Inc., Paramount Products Co., Betty White Corporation, Paradise Company, Van Dear Products, Ltd., Century Co., Sterling Co., Knight Co., Marena Co., Lorna Gay Co., E. M. Davis Co., Nannette Co., Super-Franklin Co., and others, as well as the present operating corporations, Thomsen-King & Co., Inc. and Winship Corporation.

In furtherance of said conspiracy and as a part thereof, the respondents would disseminate or cause to be disseminated to purchasers and prospective purchasers of said cosmetics, in and through the various States of the United States and in the District of Columbia, letters, circulars, telegrams, advertisements, and other forms of printed and written matter in which false, deceptive, and misleading statements and representations were made.

In furtherance of said conspiracy and as a part thereof, the respondent, F. W. Fitch Co., its officers, and employees, in their representative as well as their individual capacities, would counsel and aid in the selection of so-called owners, officers, and prize managers of said prize contest companies and would aid in the financing of some of said prize contest companies and assist said companies to obtain bank and other credit references and other facilities. For the purpose of protecting such financial investment, the F. W. Fitch Co., acting through a committee for general investments, would employ or cause to be employed various individuals to represent the interest of said committee from time to time in the management and operation of said prize contest companies.

The acts and practices and methods in conducting said business described above, and other acts, practices, and methods not described herein, to which each and all of said respondents have at any time or another participated were all in furtherance of said conspiracy.

PAR. 4. In the course and conduct of their various prize contests, under various trade and corporate names, the respondents have disseminated, and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning the various cosmetic products sold and distributed by them, 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 cosmetic 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. That the simple act of sending in a correct solution to a puzzle or contest will entitle the contestant to one of the grand prize awards and that such prize will be given free without the expenditure of either money or work on the part of such contestant.

2. That the respondents are conducting a prize contest and giving free substantial sums of money or other awards as a means of advertising their products.

3. That the recipient of a so-called "Grand Prize Promptness Certificate" has gained an advantage for himself by virtue of skill in solving a puzzle and that an award is guaranteed or assured by simply mailing in such certificate to the respondents.

4. That the purchasers of small quantities of cosmetics stand in as favorable a position as large quantity purchasers of said cosmetics, offering them a favorable or reasonable chance of winning the grand prize or any other of the cash prizes offered.

5. That the telegrams, requests for contestant's photographs, and other forms of encouragement received by contestants indicates that said contestant is about to, or is certain or likely to win a cash prize in said contest.

6. That said cosmetics are of national reputation and are of such quality that resale to the general public is not difficult.

7. That a money prize or reward is guaranteed to that person who becomes a member of one of the so-called "Prize Clubs," and that such members are among the leading contestants.

8. That, by the simple act of responding to the advertising of respondents and to literature received from respondents and to the requests therein made by respondents, such contestants will receive or win a specified grand prize, or various other prizes.

9. That hundreds have already won big cash prizes in similar friendship campaigns conducted by the same prize company which is conducting the current contest.

10. That the preparations and products sold to persons who enter said contest are sold at reduced prices and at less than an established retail price and value.

11. That the recipient of points or votes in the form of a certificate of award, is the subject of a special favor or advantage not generally extended to other individual contestants, and that the said points or votes substantially enhance the chance of said recipient

toward the winning of one or more of the prizes offered by respondents.

12. That respondents, under each of the trade names used by them, have been in business for a long period of years and have an established reputation with respect to their products and for business success.

13. That the giving of a certain order for goods and the payment of a specified amount therefor, will assure the contestant addressed of securing a money prize.

14. That so-called advice and suggestions given in letters to contestants are due to a personal interest in the contestant addressed and that such advice and suggestions are given exclusively to the one addressed.

15. That each contestant or person addressed stands in a position equal to or superior to that of other contestants and have a favorable or reasonable chance of winning the grand prize or various other of the prizes offered.

16. That the prize company conducting the contest is a manufacturing concern and that such company originates, compounds, and prepares the preparations and products sold by it.

17. That there is no element of lottery in connection with the contest or the sale of the merchandise.

18. That by answering promptly or before a given date the contestant will qualify for his share of the prize money that must be given away for advertising purposes.

19. That the sending of one or more initial payments completely qualifies the participant for the promptness prize or other awards.

20. That the certificate of award, diploma or other forms supplied to the participant are good for an emolument or advantage not held by other contestants.

21. That in the preliminary stages the contestant has already made such progress that his choice of prize is requested and that his score is so high that a request for his photograph is warranted.

22. That the receipt of a facsimile check for various sums of money indicates that the recipient is in a favorable or reasonable position to win the amount indicated on said check.

PAR. 5. The aforesaid representations as well as others similar thereto not specifically set out herein which have been disseminated and are now being disseminated by the respondents in the manner and form above described, are grossly exaggerated, misleading, and untrue and constitute false advertisements. In truth and in fact, respondents do not conduct any contest involving competition among contestants in promptness or skill as a means of advertising their

products and of gaining publicity for the aforesaid cosmetics. The picture puzzle advertised by respondents is so simple of solution as to remove it from the category of a competitive contest or contest of skill, and is such that substantial number or majority, if not all, of the persons responding thereto would submit correct solutions. The said advertised puzzle contest and offer of awards or prizes in connection therewith is but a deceptive form of "bait" or "decoy" attractive to the innocent, unwary, and unsuspecting members of the buying public, and has been and is used by respondents as the initial step in a system of effecting sales.

The various contests conducted by respondents are buying contests requiring quantity purchases of respondents' cosmetic products by the contestants or persons entered therein. The winning of a prize is dependent upon the quantities of respondents' products which are purchased by the individual contestants and has no material connection with the promptness or solution of any picture puzzle or other form of contest. In fact, in order to win any such contest, the contestant must necessarily purchase quantities of respondents' cosmetics, equal to, or in excess of the awards or prizes granted. The sums of money or other awards given by the respondents as prizes are not in fact prizes but instead each constitutes a bonus for the sales made by the individual contestant.

The conditions and requirements for winning a prize offered by the respondents are neither easy nor simple. Respondents do not generally disclose these facts but otherwise so obscure them that for the most part they are not ascertained by contestants or persons responding to such sales promotional literature until after said persons have made one or more purchases of assortments of the cosmetics distributed by the respondents.

The aforesaid false and misleading representations are joined together as integral parts of the system employed by respondents in selling their products to persons responding to the puzzle or other form of contest. Having first created the general impression in the minds of persons responding thereto that each has a certain or reasonable chance of winning one or more of the prizes offered, the plan moves to include a system of awarding points or votes to contestants in the form of printed certificates which, by their form and substance, grossly exaggerate the value or significance of said award in relation to the recipient's chance or chances of winning any prize. Such practice also serves to and does in fact create and enliven the impression that the recipient does in fact have a certain or reasonable chance of winning a prize.

By means of such certificates and accompanying circulars and letters, the respondents create the impression in the mind of the recipient that such recipient is the subject of a special favor or advantage as a contestant, and that the award of points or votes is in itself sufficient to entitle the recipient to consideration as a contestant at the time of the final award of prizes. The award of points or votes following the initial award is conditioned solely upon and made incident to purchase orders for products of the respondents.

The interest and zeal of each contestant to acquire additional points or votes through purchases is repeatedly heightened by the respondents by way of false assurances, requests for photographs, statements implying personal interest in the particular contestant, and other means implying that such contestant is guaranteed or is sure or certain to be a winner of the grand prize or to be among the winners of other prizes offered by the respondents. By this means, repeated orders in various amounts are thus induced in the course of which the respondents further allay sales resistance and otherwise induce purchases to be made by the contestants by means of false and misleading statements and representations with reference to the reputed quality, value and prices of the products offered. It is not until the latter stages of the contest that the respondents convert the program into a selling contest requiring quantity purchases and resale of the products of the respondents on the part of the contestants in the course of which the respondents continue to further misrepresent the standing of individual contestants in the contest as a means of stimulating additional purchases by such contestants.

PAR. 6. By the aforesaid means, respondents accomplish the maximum number of sales in the course of the system's operation, and as a result have sold, entirely through and by means of each such contest, to between 104,000 and 234,000 individual contestants, each of whom was induced to spend sums of money ranging from a few dollars up to and including $11,000 in one instance. By this practice, the respondents have sold between $736,000 and $1,643,000 in cosmetics to contestants in various of said contests.

In the course and conduct of their various prize contests, the respondents do not grant any special favor or interest to any particular contestant as represented and implied, and the representations made by the respondents to the effect that any particular contestant has an advantage toward the winning of any prize offered is without basis of fact and serves only as a stimulation for the purchase of additional cosmetics. The awards of points or votes in the early stages of the contest and incident to the first purchase order have no material or substantial value and as among the great majority of recipients, the

same do not give rise to, or materially or substantially enhance, the chance or chances of winning any money or prize. The majority of persons addressed by respondents at no time stand in any position affording them a favorable chance of winning the grand prize, or any other of the money prizes offered. The products offered are not of established reputation in use among usual retail outlets, are not offered at a reduction in established retail prices, and are not introductory or for advertising purposes.

At various stages of progress of the contest respondents furnished to contestants and urged the use by them of certain punch or pull cards or other devices involving a lottery or a game of chance in the resale of the products purchased by contestants from respondents. The sale of cosmetics to the purchasing public in this manner involves a game of chance or the sale of a chance to procure said cosmetics through a lottery in which the article to be purchased and the price to be paid for said article are determined entirely by chance. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their cosmetics. The sale of said cosmetics by and through the use of such sales plans or methods, is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws of many of the States of the United States.

Many persons, firms, and corporations who sell or distribute cosmetics in competition with respondents, as hereinabove alleged, are unwilling to adopt or use said sales plans or methods or any methods involving a game of chance or the sale of a chance to select and pay for said cosmetics by chance, or any other methods that are contrary to public policy or in violation of criminal statutes, and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondents in the sale and distribution of their cosmetics and the element of chance involved therein, and are thereby induced to buy and sell respondents' cosmetics in preference to cosmetics offered for sale and sold by competitors of respondents who are likewise 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 and who do not use the same or equivalent methods. The use of said methods by respondents, because of said game of chance, has a tendency and capacity to and does unfairly divert trade to respondents from their said competitors who do not use the same or equivalent methods, and as a result thereof, substantial injury is being 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. 7. In addition to the acts and practices hereinabove set forth, the respondents have disseminated and are now disseminating, and have caused and are now causing, the dissemination of false advertisements in the same manner as hereinabove set forth, with reference to the effectiveness of the use of their various cosmetics to the effect that said cosmetics will restore a youthful condition of the skin, produce a youthful appearance, make skin younger, remove wrinkles and worry lines, tone and strengthen the muscles, and help make gums healthy, and also that the retail value or worth of said cosmetics is greatly in excess of the regular, usual, or customary retail value or worth thereof.

In truth and in fact, the aforesaid statements, representations and advertisements hereinabove set forth, and others similar thereto not specifically set out herein, are false, misleading, and deceptive for the reason that none of said preparations will restore a youthful condition of the skin, produce a youthful appearance, make the skin younger, remove wrinkles and worry lines, tone and strengthen the muscles, or help make the gums healthy, nor are the said cosmetics of the regular or customary retail value or worth as represented by the respondents.

PAR. 8. The use by the respondents of the aforesaid acts and practices and methods, and the aforesaid false, misleading, and deceptive representations, statements and advertisements, disseminated as aforesaid, in soliciting and offering for sale and selling various cosmetics by means of so-called prize contests, has had and now has a tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive representations and statements are true, and induce a substantial portion of the purchasing public to purchase quantities of respondents' cosmetics on account of such erroneous and mistaken belief.

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 the 24th day of January 1940,

issued and thereafter 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 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 answers by all the respondents except Thomsen-King & Co., Inc., evidence was introduced in support of the allegations of the complaint by Curtis Shears and Donovan R. Divet, attorneys for the Commission before Randolph Preston, a duly appointed trial examiner of the Commission theretofore designated by it to serve in this proceeding. Said evidence was duly filed in the office of the Commission. No testimony or other evidence was introduced by any of the respondents or their attorneys.

A stipulation as to the facts was entered into between all the respondents herein and W. T. Kelley, chief counsel of the Federal Trade Commission, and approved by the Commission, in which it was provided that the Commission may proceed upon such statement of facts, including the inferences which may be drawn therefrom and any testimony introduced in support of the charges of the complaint and in opposition thereto, to make its findings as to the facts and its conclusion based thereon, and to enter its order disposing of the proceeding.

Thereafter this proceeding regularly came on for final hearing before the Commission upon the said complaint, the answers thereto, the evidence introduced on behalf of the Commission, the said stipulation as to the facts, briefs in support of the complaint and in opposition thereto, and the report of the trial examiner; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Thomsen-King & Co., Inc., was incorporated under the laws of the State of Illinois in the fall of 1939; its principal office and place of business was located at 710 South Plymouth Court, in the city of Chicago, State of Illinois; respondent George Thomsen was its president, respondent Amber M. McCluskey was its secretary and treasurer, and respondent James L. Decker was its majority stockholder; respondents, J. G. Hamer, B. Brown, and H. Rosenstein, were its incorporators. This corporation was organized to take over the physical assets of Van Dear Products, Ltd., and to continue the business of engaging in "prize contests."

Respondent, Winship Corporation, which was organized in the fall of 1939 under the laws of the State of Iowa, is a corporation having its principal place of business located in the city of Des Moines, State of Iowa; respondent, Don W. Parmelee, was its president and general manager. Respondent, Evelyn Henderson, from October 23, 1939, to December 20, 1939, was a member of its board of directors; respondent George Schaffer, from October 22 to December 20, 1939, was a member of its board of directors.

Respondent, F. W. Fitch Co. is a corporation organized under the laws of the State of Iowa, with its principal place of business located at 305 Fifteenth Street in the city of Des Moines, State of Iowa. It is engaged in the business of manufacturing beauty preparations, perfumery, and other toiletries which it sells and ships in interstate commerce. Respondents, Fred W. Fitch, Gail W. Fitch, Lucius W. Fitch, Lester R. Sandahl, and Richard H. Young, are officers of respondent F. W. Fitch Co.

Respondents, Fred W. Fitch, Gail W. Fitch, Lucius W. Fitch, Lester R. Sandahl, Richard H. Young, Mrs. Fred W. Fitch, Mrs. Gail W. Fitch, Mrs. Lucius W. Fitch, Mrs. Lester R. Sandahl, and Mrs Richard H. Young, are copartners operating what was styled "The Committee for General Investments," and who, together with other investors, financed and aided in the financing of one or more of the hereinafter described "prize contests."

Respondents, James M. Woodman, John E. Woodman, Jesse L. Stewart, Merrold Johnson, G. Fred Stayton, and Joseph Furth were copartners or associates in business under various trade names, including "Woodman-Stewart Advertising Agency," and "Jesse L. Stewart Advertising Agency," with their principal place of business at 520 North Michigan Avenue, in the city of Chicago, State of Illinois. They conducted "prize contests" and prepared the advertisements used in connection therewith.

Respondent, Walter Rubens, is an officer and director of Vanderbie & Rubens, Inc., an advertising agency with its principal place of business at 540 North Michigan Avenue, in the city of Chicago, State of Illinois.

Respondents, Sibley F. Everitt, Walter C. Phillips, Don W. Parmelee, Albert L. Bisson, Leta M. Clanton (now Leta M. Frazier), George Schaffer, Evelyn Henderson, Glenn Tate, Paul H. Williams, Richard E. Williams, Prentice W. Shaw, George Thomsen, Amber M. McCluskey, James L. Decker, Steve W. Phillips, Warren Lee Eastman, Ernie A. Storesund, A. Leonard Anderson, Gerald G. Grant, W. W. Young, and Paul Manning, at some time covered by the complaint herein were engaged, directly or indirectly, in financing,

operating or managing one or more of the hereinafter mentioned prize contests.

Respondents, Claude T. Burnett (designated in the complaint as "Claude A. Burnett"), Ross J. Miller, and Joseph Kane, caused to be incorporated "prize contest" companies and actively participated in the control of their policies.

PAR. 2. Each of the respondents named in paragraph 1 hereof, except the F. W. Fitch Co., J. G. Hamer, B. Brown, H. Rosenstein, Claude T. Burnett, Ross J. Miller, Joseph Kane, and Walter Rubens, at some time prior to the issuance of the complaint herein, individually and in concert and cooperation with each other, have engaged, directly or indirectly in the business of conducting prize contests through various "contest companies" organized by them for the purpose of inducing the purchase of cosmetics through advertising matter mailed to members of the purchasing public located in various States of the United States. When sales are made through said contest companies to persons contacted by mail or other means, said respondents ship and have shipped said cosmetics from their respective places of business, or direct from the manufacturers thereof, to the purchasers located in various States of the United States other than the State of origin of such shipments.

PAR. 3. In the course and conduct of said business, each of said respondents, individually and in cooperation with one or more of the other of said respondents, in the furtherance of a common plan to do and perform the acts and practices hereinafter set out, and as a part thereof, have organized and operated approximately sixteen corporations or companies operating under trade names, for the purpose of engaging in the dissemination of advertisements concerning numerous prize contests, in order to induce the sale of certain cosmetics. When one of these companies was cited to appear before the Federal Trade Commission, the respondents in some cases would enter into a stipulation with the Commission to cease and desist from the acts and practices then being conducted, and after the execution of such stipulation the respondents would make little, if any, effort to comply with the terms of the stipulation, but instead, would either discontinue or dissolve the particular operating company, organize a new company, and proceed with substantially similar, and in some instances identical, acts and practices which they had stipulated to discontinue in the proceedings before the Commission. In some instances complaints have been issued by the Commission against one or more of the companies operated by said respondents, and the respondents, during the pendency of such proceedings, would complete the particular prize contest involved and then dissolve or

discontinue the particular company made respondent in such action, and either file an admissive answer in the Commission's proceeding, or enter a dilatory contest for the purpose of delay. During the pendency of such proceedings, or after a cease and desist order has been issued by the Commission, said respondents would organize new corporations or companies, to continue substantially similar, and in some instances identical, practices involved in said complaints and orders to cease and desist.

In furtherance of this plan it was the practice of said respondents to frequently change the corporate or trade names used in promoting the sale of such cosmetics, dissolve the existing company, distribute its principal and profits, and transfer its physical properties to a new company designed to take over the operation of the business conducted by the former company. It was further a part of said plan that respondents would employ or designate new "prize managers" for some of the newly organized prize contests, and new officers and so-called owners of some of the new companies, to continue such prize contests under new names and with a new personnel. Such prize managers, officers, and so-called owners were such only in name, and in most instances had no financial interest in such companies, and in some instances were financially irresponsible.

Among the companies so organized, discontinued, or dissolved, and reorganized under the operation of said plan were the following: Hazel Dawn Co.; Co-Ed, Inc.; Paramount Products Co.; Betty White Corporation; Paradise Co.; Van Dear Products, Ltd.; Century Co.; Sterling Co.; Knight Co.; Marena Co.; Lorna Gay Co.; E. M. Davis Co.; Nannette Co.; Super-Franklin Co.; Thomsen-King & Co., Inc.; Winship Corporation, and others.

In furtherance of said plan, and as a part thereof, said respondents disseminated, or caused to be disseminated, to purchasers and prospective purchasers of said cosmetics, in and through the various States of the United States and in the District of Columbia, letters, circulars, telegrams, advertisements, and other forms of printed and written matter, in which certain statements and representations were made, as hereinafter set out, in paragraphs 4 and 7.

As as part of said plan and in furtherance thereof, the respondents named in paragraph 1 hereof as composing the "Committee for General Investments," in their individual capacities counseled and aided in the selection of so-called owners, officers, and prize managers of said prize contest companies and aided in financing some of said companies; and in order to protect their financial investments therein, said respondents employed or caused to be employed various individuals, to represent the interests of said committee and other inves-

tors from time to time in the management or operation of said contest companies.

Some of said respondents, between 1933 and 1940, employed or designated as owners, officers, or managers of said prize contest companies, persons having no actual financial interest in said company and who served in the nominal capacity of owners, officers, and managers, in name only. Among and typical of said respondents employed to act as officers and managers in name only was respondent George Thomsen, who was employed as a bookkeeper by respondent James L. Decker, owner of Van Dear Products Co., in February, 1939. Shortly thereafter he was named director of said company but had no voice in, or knowledge of, the policies, acts, practices, and methods of business of said company outside of his work as bookkeeper. In the fall of 1939, James L. Decker designated said George Thomsen as president of Thomsen-King & Co., Inc., and gave him a check for $1,000, payable to Thomsen-King Co., Inc., which said George Thomsen entered as payment for the stock issued by the company to him, but he did not actually invest any money therein, nor did he receive any compensation other than his salary as bookkeeper. At all times while George Thomsen was president of Thomsen-King & Co., Inc., respondent James L. Decker, Merrold Johnson and Amber M. McCluskey directed the policies, acts, and practices of said company.

The acts and practices of each of the said prize contest companies, as well as the advertisements disseminated in interstate commerce by said respondents through said companies, were substantially similar, and in many cases identical, with the acts and practices of the other prize contest companies referred to herein, as were the advertisements disseminated through all said prize contest companies.

Some of the corporations, or the trade names used in promoting the sales of said cosmetics, when dissolved or discontinued, as aforesaid, have distributed their principal and profits and transferred their physical properties to another prize contest company, usually organized for the purpose of taking over the business of its predecessor company.

For one year prior to September 1930, respondent Sibley F. Everitt was employed by the Gates Manufacturing Co., of Chicago, and sold a line of cosmetics under the trade name "Helen Dawn," through the "one-pay, or non-progressive plan" of contest. In September 1930, respondent James M. Woodman became associated with said respondent Everitt, and they purchased a quantity of the Helen Dawn cosmetics from said Gates Manufacturing Co. and offered said cosmetics for sale through the prize contest plan of merchandising devised by

respondents James M. Woodman and Jesse L. Stewart, who organized the Woodman Advertising Co. (unincorporated)for the purpose of devising, writing, and placing advertisements in periodicals, newspapers, and other mediums. The Woodman Advertising Co. financed through the usual trade credits, and placed, advertisements for many of the prize contest companies hereinafter more particularly described, including the Helen Dawn Co. The Helen Dawn Co. (unincorporated) was organized on or about December 27, 1930, in Chicago, Ill., for the purpose of selling cosmetics by means of prize contests. The respondents Sibley F. Everitt, James M. Woodman, and John E. Woodman were associated in the control and management of this business. On or about January 1, 1931, the Helen Dawn Co. was incorporated in the State of Illinois. After numerous complaints, respondent Sibley F. Everitt, on or about November 10, 1931, signed a stipulation, No. 0195, and presented same to the Federal Trade Commission.

On February 10, 1934, respondents James M. Woodman and John E. Woodman sold their stock in Woodman Advertising Agency to Jesse L. Stewart, and in 1937 reorganized the agency as the Jesse L. Stewart Co.

In March 1932, respondent James M. Woodman sold his stock in the Dawn Co. to Sibley F. Everitt. Prior to this time respondent James M. Woodman had purchased the assets of the E. M. Davis Co. (unincorporated) which, prior to September 1931, had been in the business of selling a line of household goods and cosmetics by house-to-house canvassing. Respondent James M. Woodman had been one of the incorporators of E. M. Davis Co., Inc., and was also a director and the secretary and treasurer of said Davis Co. and owned 60 percent of its stock.

In 1936, E. M. Davis Co. conducted two sales promotion contests, all the advertising in connection therewith being written and placed through the Woodman-Stewart Co., later the Jesse L. Stewart Co. E. M. Davis Co. was dissolved May 7, 1937, but in January 1937, Nannette, Inc., had been purchased by respondent James M. Woodman to take over the physical assets of the company to be dissolved and continue the prize contest business. During 1937, Nannette, Inc., of which respondent James M. Woodman was president and majority stockholder, conducted two prize contests, and the advertisements used in connection therewith were written by and placed through the Jesse L. Stewart Co.

On September 4, 1937, a complaint was issued by the Federal Trade Commission against Nannette, Inc., and respondent James M. Wood-

man as president of said company, and shortly thereafter Nannette, Inc., was dissolved.

Respondent Glenn Tate, who had formerly been a postoffice clerk, was employed to act as president of the Super-Franklin Co., which operated prize contests from the fall of 1937 to the spring of 1939, using advertisements prepared and placed by the Jesse L. Stewart Co. Respondent James M. Woodman was the majority stockholder in this company and respondent Glenn Tate was given 199 shares of stock of the said Super-Franklin Co. without his paying any consideration therefor. On the 28th day of September 1938, the Federal Trade Commission issued a complaint against the Super-Franklin Co., which is still pending before the Commission.

In 1931 and 1932, respondent Amber M. McCluskey, as office manager and auditor, and respondent James L. Decker as president, were actively associated in the control and management of Co-Ed, Inc., successor to National Home Magazines, Inc., with which said respondents had formerly been associated. Respondents James L. Decker and G. Fred Stayton had been associated with the W. D. Boyce Co., publishers, who ran magazine subscription contests. Co-Ed, Inc., was dissolved in 1932.

In the fall of 1938, Van Dear Products, Ltd., was organized, with respondent Amber M. McCluskey as president, respondent George Thomsen vice-president, and respondent James L. Decker secretary and treasurer. The Van Dear Products, Ltd., purchased some of the physical assets of the Super-Franklin Co.

In the fall of 1939, respondent Thomsen-King & Co., Inc., was organized, with respondent George Thomsen as president, respondent Amber M. McCluskey, secretary and treasurer, and respondent James L. Decker as majority stockholder. This company was organized to take over the physical assets of Van Dear Products, Ltd., and continued the prize contests formerly conducted by Van Dear Products, Ltd.

In the fall of 1932, respondents Sibley F. Everitt and G. Fred Stayton organized the Paramount Products Co. of Des Moines, Iowa, the entire capital of which was supplied by respondent Sibley F. Everitt. After conducting one prize contest said company was dissolved in the spring of 1933, and in February 1934, respondent G. Fred Stayton organized Paramount Products, Inc., of Des Moines, which continued the prize contests. In April 1934, respondent Albert H. Bisson purchased stock in this company, as did also Leta M. Clanton (now Frazier) in July of that year.

Respondent Sibley F. Everitt, after the dissolution of Paramount Products Co. organized the Century Co. of Des Moines, and employed

respondent Merrold Johnson as president of said company and Paul H. Williams as attorney, in connection with the first prize contest conducted by said company. Respondent Paul H. Williams, acting as counsel, procured the charter for the Century Co. in 1933, and received 10 percent of the net profits of the company for his services.

On February 26, 1934, an informal hearing was held by the Special Board of Investigation of the Federal Trade Commission as the result of an application for complaint against the Century Co., at which hearing respondent Paul H. Williams represented the Century Co. and prepared a stipulation admitting the charges against said company and agreed to cease and desist from continuing the practices complained of. Respondent Merrold Johnson signed the stipulation as general manager of the company and submitted same to the Commission. On July 31, 1934, the company surrendered its corporate charter. A prize contest was being conducted at this time by said company, and from July 31, to August 31, 1934, said contest was conducted as a partnership by respondents Merrold Johnson and Sibley F. Everitt, and the wife of the latter who is not a respondent.

On or about September 17, 1934, a complaint against the Century Co. was issued by the Commission, and respondent Paul H. Williams, on or about October 1, 1934, filed with the Commission proof of publication of the notice of dissolution of the company, whereupon the Commission dismissed its complaint.

About October 6, 1934, respondent Paul H. Williams procured a charter for the Sterling Co. The wife of respondent Sibley F. Everitt transferred the equipment of the Century Co. to the Sterling Co. Respondent Paul H. Williams was the active manager of this company and respondent Sibley F. Everitt was actively associated in its control and management. Respondents Don W. Parmelee, George Schaffer, and Evelyn Henderson were employed by the company but had no financial or stock interest in it. Don W. Parmelee was designated as president; Paul H. Williams, Sibley F. Everitt, and Mrs. Everitt were stockholders and managers. The Sterling Co. used the same methods of selling cosmetics through prize contests as were used by the Century Co., including the names and pictures of some of the alleged prize winners of the latter company, and in its literature stated that the said prizes had been won "in our former prize campaigns." The Sterling Co. ran three prize contests from October 1933 to April 30, 1936, using the name of an employee as prize manager in each of said contests.

On or about November 15, 1935, the Commission issued a complaint against the Sterling Co. and respondents Don. W. Parmelee, Sibley F. Everitt and Paul H. Williams, Docket No. 2629, and on August 12,

1936, the Commission issued a cease and desist order against said respondents.

Three prize contests were conducted by the Sterling Co., the last beginning in the fall of 1935 and ending April 30, 1936. These contests were operated under the name of respondent George Schaffer, who was designated as "prize manager." Said respondent Schaffer had been employed by the Century Co. in charge of the printing department and his duties and work were not changed. The Sterling Co. was dissolved several months prior to August 12, 1936, and on or about April 30, 1936, respondent Paul H. Williams sold the equipment of this company, through respondent Walter C. Phillips, to respondent Richard E. Williams.

In the late summer of 1933, respondent Walter C. Phillips had secured and serviced the advertising account of the Century Co., as a representative of the Archer Advertising Co. of Cincinnati, Ohio, and when, in the spring of 1934, the Archer Co. went into bankruptcy, respondent Walter C. Phillips took the Century account to the Heath-Seehoff Co. of Chicago, Ill., opening offices in Des Moines, Iowa, where he at first handled only the Century account, and later continued, in servicing the advertising account of the Sterling Co., until May 1936.

In June 1936, respondents Richard E. Williams and Walter C. Phillips formed a partnership in which the latter had a one-third interest, and traded under the name Knight Co. Walter C. Phillips managed the affairs of the Knight Co., which started a new prize contest in the fall of 1936. Respondent Richard E. Williams obtained the funds with which to operate this company from respondents Lester R. Sandahl, Lucius W. Fitch, Gail W. Fitch, and Richard H. Young. The Knight Co. operated under this arrangement from the fall of 1936 to the spring of 1937. During the summer of 1937 the partnership between respondents Richard E. Williams and Walter C. Phillips was dissolved, and from the fall of 1937 till the spring of 1938, a similar prize contest was operated under the trade name Marena Co., which said trade name was filed of record in the name of respondent Richard E. Williams. During this period, Walter C. Phillips was employed by Richard E. Williams as general manager of said Marena Company and received a salary and a percentage of the profits.

Respondent Richard E. Williams obtained the money for the operation of the Marena Co. during this period by loans from the following respondents: Gail W. Fitch, Lucius W. Fitch, Fred W. Fitch and Richard H. Young; and from Lawrence DeGraff, Grace DeGraff, George Shaw, C. E. Sandahl, Gertrude W. Fitch, and Letitia Fitch (it not appearing that the six last named are respondents), and also

received loans from the "Committee for General Investments," a partnership, as set out in paragraph 1 hereof.

About August 1938, respondent Richard E. Williams sold and conveyed the principal physical assets of the Knight Co. to respondent A. Leonard Anderson, who thereafter employed Warren Lee Eastman as general manager of the Lorna Gay Co., a trade name recorded in the company records of Polk County, Iowa, in the name of said A. Leonard Anderson. In addition to his own investment, the money used for the Lorna Gay Co. in conducting prize contests was obtained by respondent Anderson from respondents Paul Manning, Gerald G. Grant, and Warren Lee Eastman, and from W. W. Young, Amy Williams, R. M. Phillips, Kenneth May, Catherine McComb, C. E. Sandahl, C. L. Sandahl, Fred Gordon, Letitia Fitch and James Child (it not appearing that the 10 last named are respondents), and also from the "Committee for General Investments," the membership of which has been hereinbefore set out. The persons named who loaned money to respondents Richard E. Williams or A. Leonard Anderson received, in addition to 6 percent interest on the amounts so loaned, a percentage of the net profits resulting from the operation of the Knight, Marena, and Lorna Gay companies.

A large number of persons who had been employed by the Century, Sterling, Knight, and Marena companies were employed by the Lorna Gay Co. Respondent Don W. Parmelee was employed by the Lorna Gay Co. to write advertising copy; respondent Ernie A. Storesund, whose name was used as the prize manager for the Lorna Gay Co. was actually shipping and receiving clerk, and worked in that capacity, for the Century, Sterling, Knight, Marena and Lorna Gay companies. Respondent George Schaffer, whose name was used as prize manager of the Sterling Co. prize contests, was head of the printing department of that company, and was also employed in the same capacity by the Knight, Marena, and Lorna Gay companies. Respondent Evelyn Henderson was employed by the Sterling Co. as its secretary, and thereafter was also employed by the Knight and Lorna Gay companies.

The contest conducted under the trade name Lorna Gay Co. ended on May 30, 1939. On June 25, 1939, the Federal Trade Commission issued its complaint (Docket 3833) and named as respondents some of the operators and some of the other individuals who had loaned money to the operators of the Knight, Marena and Lorna Gay companies. This complaint is still pending before the Commission.

Respondent Winship Corporation was organized in the fall of 1939, after complaint had been issued in Docket 3833, and listed as

its officers respondent Don W. Parmelee, president; respondent George Schaffer, vice-president; respondent Evelyn Henderson, secretary and treasurer.

After the dissolution of Paramount Products Co. of Des Moines, Iowa, respondent G. Fred Stayton organized Paramount Products, Inc., in which his sister, Leta M. Clanton (now Frazier) and respondent Albert L. Bisson were financially interested, as were also other persons resident in Des Moines.

A hearing on an application for complaint against Paramount Products, Inc., was held on July 25, 1935, after a stipulation (No. 0844) was signed by G. Fred Stayton as president of said company on the 7th day of March 1935, and had been accepted by the Commission on March 25, 1935. On counsel's statement that this company was being dissolved, no action was taken, and on or about October 26, 1935, the company was dissolved. In the meantime, on August 30, 1935, G. Fred Stayton, as the sole incorporator, organized the Betty White Corporation, of Des Moines, Iowa. Respondents Albert L. Bisson and Leta M. Clanton (now Frazier) owned stock in this corporation, which continued to operate said prize contests.

On the 29th day of June 1936, a complaint was issued by the Federal Trade Commission, and on October 20, 1936, an order was issued, against the Betty White Corporation and G. Fred Stayton, Leta M. Clanton (Frazier) was the cashier and owner of $1,000 worth of stock of Paramount Products, Inc., and the cashier, and owner of 7½ shares of stock, in the Betty White Corporation. After the entry of the order against the Betty White Corporation and respondent G. Fred Stayton, on October 20, 1936, respondent Albert L. Bisson organized the Paradise Co. and caused same to be incorporated under the laws of the State of Illinois on or about August 25, 1936. Respondent Leta M. Clanton (Frazier) was cashier of this corporation and owner of $5,000 of its stock; respondent Albert L. Bisson was president of said corporation, and respondent Gerald G. Grant was one of its stockholders. Beginning about August 25, 1936, respondents Bisson, Clanton (Frazier), and others continued the same scheme of prize contests under the name Paradise Co., operating from Chicago, Ill.

On August 25, 1937, a complaint was issued by the Federal Trade Commission naming the Paradise Co., and respondents Albert L. Bisson, Leta M. Clanton (Frazier), Gerald G. Grant, and also Sylvan B. Heininger, and Bertha E. Boeing. This case (Docket 3213) is still pending before the Commission, as are the cases against Nannette Co., Inc. (Docket 3223), Super-Franklin Co. (Docket 3613) and Richard E. Williams, et al. (Docket 3833).

Respondent Jesse L. Stewart became a partner in the firm of Woodman-Stewart on January 1, 1931, which company was incorporated August 6, 1931, under the laws of the State of Illinois, with respondent James M. Woodman as president. On February 10, 1934, respondent Jesse L. Stewart purchased all of the stock of the two respondents James M. Woodman and John E. Woodman, and became president of said corporation. On November 19, 1937, the name of the corporation was changed to J. L. Stewart & Co.

Respondent Jesse L. Stewart owned 20 shares of stock in Helen Dawn Co., which he sold to respondent Sibley F. Everitt in March 1932, and aided in writing and causing the writing of advertising for Helen Dawn Co., Paramount Products, Inc., Betty White Corporation, E. M. Davis Co., Nannette, Inc., Paradise Co. and Super-Franklin Co.

Respondent Jesse L. Stewart, as president of the J. L. Stewart Co., employed G. Fred Stayton from September 11, 1937, to March 31, 1939; respondent Merrold Johnson from December 6, 1937, to July 17, 1939, and respondent Joseph Furth from May 19, 1935, to May 3, 1940.

Respondent John E. Woodman was associated with his father, respondent James M. Woodman, and with respondent Sibley F. Everitt and others, in the control and management of the Helen Dawn Co. On March 3, 1932, respondent John E. Woodman sold his stock interest in the Helen Dawn Co. to respondent Sibley F. Everitt, and became a minority stockholder in the Woodman-Stewart Co., an advertising agency, which stock he sold to respondent Jesse L. Stewart on February 10, 1934.

Vanderbie & Rubens, Inc., advertising agency of which corporation respondent Walter Rubens is an officer and director, placed the advertising of respondent Thomsen-King & Co., Inc., and financed through ordinary credit firms the advertising placed for said company.

Respondent Warren Lee Eastman was employed by the Knight Co. as manager of their prize contests from August 1936, to August 1937, and by Lorna Gay Co. as general manager from August 1938–39; he was also employed as office manager and buyer by the Marena Co. Respondent Steve W. Phillips was employed by the Marena Co. as manager of prize contests from August 1937 to August 1938.

Respondent Prentice W. Shaw acted as counsel for the Lorna Gay Co. and respondent Winship Corporation, and on the 20th day of December 1939, was appointed attorney in fact for the Winship Corporation, for the purpose of dissolving and winding up its affairs. Respondent Prentice W. Shaw also acted as attorney in the incorporation of the Winship Corporation in the fall of 1939, and opened on behalf of the corporation its "prize account" in a Des Moines bank.

Respondent George Schaffer was employed by the Sterling Co. as the manager of its prize contests from June 1935 to May 1936, and was employed by the Knight Co., Marena Co., and Lorna Gay Co. and the Winship Corporation as head of their printing departments, and was, from October 22, 1939, to December 20, 1939, a member of the board of directors of the Winship Corporation.

Some time subsequent to June 1936, respondents Richard E. Williams and Walter C. Phillips entered into a limited partnership to engage in operating and conducting a prize contest under the trade name Knight Co. Richard E. Williams received two-thirds of the profits of the Knight Co., all of which except about 5 percent he distributed to the investors under his contract with them during the first prize contest, and he so distributed the remainder of the profit from the second prize contest with the exception of 10 percent, which he retained. The first of these contests was run under the trade name Knight Co., and the second under the trade name Marena Co.

During October 1938, after the physical assets of the Knight Co. had been transferred by respondent Richard E. Williams to respondent A. Leonard Anderson, respondents A. Leonard Anderson, Lester R. Sandahl, Lucius W. Fitch, R. H. Young and Warren Lee Eastman opened up a checking account for the Lorna Gay Co. at the Valley Savings Bank of Des Moines, Iowa. Respondent Lucius W. Fitch was an officer of the respondent F. W. Fitch Co. and a director in said bank. Shortly thereafter the said bank, without investigating the credit standing of either the Lorna Gay Co. or its officers, loaned this company the sum of $10,000. The loan was secured by a chattel mortgage on the equipment of said company, and was not guaranteed by any of the respondents herein.

In the course and conduct of said business the individual respondents herein, individually and in cooperation with one or more of said respondents named herein, have engaged in the aforesaid acts and practices in furtherance of a common plan to disseminate the advertisements set out in paragraph 4 hereof, and in order to continue said business in interstate commerce.

PAR. 4. In the conduct and operation of the various prize contests hereinbefore mentioned, said respondents, to the extent and in the manner set out in paragraph 3 hereof, and through the Helen Dawn Co., Co-Ed Co., Inc., Paramount Products Co., Betty White Corporation, Paradise Co., Century Co., Sterling Co., Knight Co., Marena Co., Lorna Gay Co., Van Dear Products, Ltd., E. M. Davis Co., Nannette, Inc., Super-Franklin Co., Winship Corporation and Thomsen-King & Co., Inc., have disseminated and have caused the dissemination of false advertisements by means of the United States Mails,

by insertions in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which 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 are likely to induce, directly or indirectly, the purchase of their said cosmetic 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. That the simple act of sending in a correct solution to a puzzle or contest will entitle the contestant to one of the grand prize awards, and that such prize will be given free without the expenditure of either money or work on the part of such contestant.

2. That said respondents are conducting a prize contest and giving free substantial sums of money or other awards as a means of advertising their products.

3. That the recipient of a so-called "Grand Prize Promptness Certificate" has gained an advantage for himself by virtue of skill in solving a puzzle and that an award is guaranteed or assured by simply mailing in such certificate to said respondents.

4. That the purchasers of small quantities of cosmetics stand in as favorable a position as large quantity purchasers of said cosmetics, offering them a favorable or reasonable chance of winning the grand prize or any other of the cash prizes offered.

5. That the telegrams, requests for contestants' photographs and other forms of encouragement received by contestants indicates that said contestant is about to, or is certain or likely to, win a cash prize in said contest.

6. That said cosmetics are of national reputation and are of such quality that resale to the general public is not difficult.

7. That a money prize or reward is guaranteed to that person who becomes a member of one of the so-called "Prize Clubs," and that such members are among the leading contestants.

8. That by the simple act of responding to the advertising of respondents and to literature received from respondents, and to the requests therein made by respondents, such contestants will receive or win a specified grand prize, or various other prizes.

9. That hundreds have already won big cash prizes in similar friendship campaigns conducted by the same prize company which is conducting the current contest.

10. That the preparations and products sold to persons who enter said contest are sold at reduced prices and at less than an established retail price and value.

11. That the recipient of points or votes in the form of a certificate of award is the subject of a special favor or advantage not generally extended to other individual contestants, and that the said points or votes substantially enhance the chance of said recipient toward the winning of one or more of the prizes offered by respondents.

12. That respondents under each of the trade names used by them have been in business for a long period of years and have an established reputation with respect to their products and for business success.

13. That the giving of a certain order for goods and the payment of a specified amount therefor, will assure the contestant addressed of securing a money prize.

14. That so-called advice and suggestions given in letters to contestants are due to a personal interest in the contestant addressed and that such advice and suggestions are given exclusively to the one addressed.

15. That such contestant or person addressed stands in a position equal to or superior to that of other contestants, and has a favorable or reasonable chance of winning the grand prize or various other of the prizes offered.

16. That the prize company conducting the contest is a manufacturing concern and that such company originates, compounds, and prepares the preparations and products sold by it.

17. That there is no element of lottery in connection with the content or sale of the merchandise.

18. That by answering promptly, or before a given date, the contestant will qualify for his share of the prize money that must be given away for advertising purposes.

19. That the sending of one or more initial payments completely qualifies the participant for the promptness prize, or other awards.

20. That the certificate of award, diploma, or other forms supplied to the participant are good for an emolument or advantage not held by other contestants.

21. That in the preliminary stages the contestant has already made such progress that his choice of prize is requested, and that his score is so high that a request for his photograph is warranted.

22. That the receipt of a facsimile check for various sums of money indicates that the recipient is in a favorable or reasonable position to win the amount indicated on said check.

PAR. 5. Said advertisements are false and misleading in the following material respects:

The puzzle or picture contest and offer of awards or prizes in connection therewith, is used solely as a means of obtaining the names of people who will later be encouraged to enter a competitive selling contest, and this puzzle contest is but the initial step in a system of effecting sales.

In truth and in fact, respondents do not conduct any contest involving competition among contestants in promptness or skill as a means of advertising their products and of gaining publicity for the aforesaid cosmetics. The picture puzzle advertised by respondents is so simple of solution as to remove it from the category of a competitive contest or contest of skill, and is such that a substantial number, or the majority if not all, of the persons responding thereto would submit correct solutions. The said advertised puzzle contest and offer of awards or prizes in connection therewith, is but a deceptive form of "bait" or "decoy," attractive to the innocent, unwary, and unsuspecting members of the buying public, and has been and is used by respondents as the initial step in a system of effecting sales.

The various contests conducted by respondents are buying contests requiring quantity purchases of respondents' cosmetic products by the contestants or persons entered therein. The winning of a prize is dependent upon the quantities of respondents' products which are purchased by the individual contestants and has no material connection with the promptness or solution of any picture puzzle or other form of contest. In fact, in order to win any such contest the contestant must necessarily purchase quantities of respondents' cosmetics equal to, or in excess of, the awards or prizes granted. The sums of money or other awards given by said respondents as prizes are not, in fact, prizes, but instead, each constitutes a bonus for the sales made by the individual contestant.

The conditions and requirements for winning a prize offered by said respondents are neither easy nor simple. Respondents do not generally disclose these facts, but otherwise so obscure them that for the most part they are not ascertained by contestants or persons responding to such sales promotional literature until after said persons have made one or more purchases of assortments of the cosmetics distributed by said respondents.

The aforesaid false and misleading representations are joined together as integral parts of the system employed by respondents in selling their products to persons responding to the puzzle or other form of contest. Having first created the general impression in the

minds of persons responding thereto that each has a certain or reasonable chance of winning one or more of the prizes offered, the plan moves to a system of awarding points or votes to contestants in the form of printed certificates which, by their form and substance, grossly exaggerate the value or significance of said award in relation to the recipient's chance or chances of winning any prize. Such practice also serves to, and does in fact, create and enliven the impression that the recipient does, in fact, have a certain or reasonable chance of winning a prize.

By means of such certificates and accompanying circulars and letters, said respondents create the impression in the mind of the recipient that such recipient is the subject of a special favor or advantage as a contestant, and that the award of points or votes is, in itself, sufficient to entitle the recipient to consideration as a contestant at the time of the final award of prizes. The award of points or votes following the initial award is conditioned solely upon, and made incident to, purchase orders for products of said respondents.

The interest and zeal of each respondent to acquire additional points, or votes, through purchases, are repeatedly heightened by way of false and materially misleading assurances, requests for photographs, statements implying personal interest in the particular contestant, and other means implying that such contestant is sure or certain to be a winner of one of the prizes offered by these companies. By these means repeated orders are thus induced, in the course of which, sales resistance is further decreased by means of false and misleading statements and representations with reference to the reputed quality and value, and the prices of the products offered. It is not made clear to each contestant that these contests are selling contests until after one or more purchases have been made, and these companies also misrepresent the standing of individual contestants, as a means of stimulating additional purchases.

In the course and conduct of their various prize contests, said respondents do not grant any special favor or interest to any particular contestant, as represented and implied, and the representations made by the respondents to the effect that any particular contestant has an advantage toward the winning of any prize offered is without basis of fact, and serves only as a stimulation for the purchase of additional cosmetics. The awards of points or votes in the early stages of the contest, and incident to the first purchase order, have no material or substantial value, and, as among the great majority of recipients, the same do not give rise to, or materially or substantially enhance, the chance or chances of winning any money or prize. The majority of persons addressed by respondents at no time stand

in any position affording them a favorable chance of winning the grand prize, or any other of the money prizes offered. The products offered are not of established reputation, in use among usual retail outlets, are not offered at a reduction in established retail prices, and are not introductory, or for advertising purposes.

PAR. 6. By the aforesaid means, respondents accomplish the maximum number of sales in the course of the system's operation, and as a result, have sold, entirely through and by means of each contest, to between 10,000 and 234,000 individual contestants, each of whom was induced to spend sums of money ranging from a few dollars up to and including, in one instance, $11,000. By this practice respondents have sold as much as $1,643,000 in cosmetics to contestants in one of said contests.

At various stages of progress of the contest, respondents furnished to contestants, and urged the use by them of certain punch or pull cards, or other devices involving a lottery or game of chance in the resale of the products purchased by contestants from respondents. The sale of cosmetics to the purchasing public in this manner involves a game of chance, or the sale of a chance to procure said cosmetics through a lottery in which the article to be purchased and the price to be paid for such article are determined entirely by chance. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their cosmetics. The sale of said cosmetics by and through the use of such 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 of America, and in violation of the criminal laws of many of the States of the United States.

Many persons, firms, and corporations who sell or distribute cosmetics in competition with respondents, as hereinabove alleged, are unwilling to adopt or use said plans or methods, or any method involving a lottery, game of chance or the sale of a chance to select and pay for said cosmetics by chance, or any other methods that are contrary to public policy or in violation of criminal statutes, and such competitors refrain therefrom. Many persons have been attracted by said sales plans or methods employed by respondents in the sale and distribution of their cosmetics and the element of chance involved therein, and have been thereby induced to buy and sell respondents' cosmetics in preference to cosmetics offered for sale and sold by competitors of respondents who are likewise 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, and who do not use the same or equivalent methods. The

use of said methods by respondents, because of such lottery or game of chance, has the 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 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. 7. In addition to the acts and practices hereinabove set forth, said respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements, in the same manner as hereinabove set forth, with reference to the effectiveness of the use of their various cosmetics, to the effect that said cosmetics will restore a youthful condition of the skin, produce a youthful appearance, make skin younger, remove wrinkles and worry lines, tone and strengthen the muscles, help make gums healthy, and also that the retail value or worth of said cosmetics is greatly in excess of the prices at which they are offered.

In truth and in fact, the aforesaid statements, representations, and advertisements hereinabove set forth, and others similar thereto not specifically set-out herein, are false, misleading and deceptive, for the reason that none of said preparations will restore a youthful condition of the skin, produce a youthful appearance, make the skin younger, remove wrinkles and worry lines, tone and strengthen the muscles, or help make the gums healthy, nor are the said cosmetics of the regular or customary retail value or worth as represented by the respondents.

PAR. 8. The use by said respondents of the aforesaid acts and practices, and methods, and the aforesaid false, misleading and deceptive representations, statements and advertisements, disseminated as aforesaid, in soliciting and offering for sale and selling various cosmetics by means of so-called prize contests, has had and now has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive representations and statements are true, and induce a substantial portion of the purchasing public to purchase quantities of respondents' cosmetics on account of such erroneous and mistaken belief, and as a result thereof, trade has been unfairly diverted to respondents from their said competitors.

CONCLUSION

The acts and practices of the respondents—except J. G. Hamer, B. Brown, H. Rosenstein, Claude T. Burnett, Ross J. Miller, Joseph

Kane, and F. W. Fitch Co.—and Walter Rubens—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.

For more than 10 years last past, respondents—except J. G. Hamer, B. Brown, H. Rosenstein, Claude T. Burnett, Ross J. Miller, Joseph Kane, Walter Rubens, and the F. W. Fitch Co.—have entered into and engaged in wrongful and unlawful understandings and agreements with each other, and with others, to do and continue to do, directly or indirectly, the unlawful acts and practices as herein set forth, in furtherance of a common plan, in order to continue said business in interstate commerce and to avoid and render ineffectual the orders and other processes of the Federal Trade Commission; and such acts and practices are all to the prejudice and injury of the public and of their competitors, and constitute unfair methods 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 all the respondents except Thomsen-King & Co., Inc., evidence introduced before Randolph Preston, a duly appointed trial examiner of the Commission theretofore designated by it, in support of the allegations of the complaint, the report of the trial examiner thereon, a stipulation as to the facts, and briefs filed on behalf of the Commission and of respondents; and the Commission having made its findings as to the facts and its conclusion that all of the respondents except J. G. Hamer, B. Brown, H. Rosenstein, Claude T. Burnett, Ross J. Miller, Joseph Kane, Walter Rubens, and the F. W. Fitch Co., a corporation, have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Thomsen-King & Co., Inc., The Winship Corporation (corporations), and their respective officers, directors, agents, representatives, and employees, and respondents James M. Woodman, Jesse L. Stewart, Merrold Johnson, G. Fred Stayton, Joseph Furth, Albert L. Bisson, Leta M. Frazier (formerly Leta M. Clanton), Glenn Tate, George Thomsen, Amber M. McCluskey, James L. Decker, Sibley F. Everitt, Walter G. Phillips, Paul H. Williams, Don M. Parmelee (named in complaint as Don W. Parmelee), George Schaffer, Evelyn Henderson, Richard E. Wil-

liams, Prentice W. Shaw, John E. Woodman, Steve W. Phillips, Warren Lee Eastman, Ernie A. Storesund, A. Leonard Anderson, Gerald G. Grant, W. W. Young, Paul Manning, Fred W. Fitch, Mrs. Fred W. Fitch, Lucius W. Fitch, Mrs. Lucius W. Fitch, Gail W. Fitch, Mrs. Gail W. Fitch, Lester R. Sandahl, Mrs. Lester R. Sandahl, Richard H. Young, and Mrs. Richard H. Young, individuals, and their respective representatives, agents, and employees, either individually or by any concerted or cooperative action, agreement, or understanding between any two or more of the respondents, or between any one or more of said respondents and others, directly or indirectly, or through any corporate or other device, in connection with the offering for sale, sale and distribution of cosmetics, toilet preparations or other items of merchandise, 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, in connection with a contest wherein the purchase or sale of cosmetics or other articles of merchandise is essential to participation in any awards given, which advertisement—

(*a*) Represents directly or by implication that the respondents are conducting a contest confined to the solution of a picture puzzle or any similar device which involves only competition in skill in submitting solutions thereof, without the expenditure of either money or work on the part of contestants in order to win a prize, or that the respondents are conducting a contest of any character other than one wherein the purchase or sale by the contestants of cosmetics or other articles of merchandise is essential to participation in any grand prize, cash prize or other award to be given.

(*b*) Represents directly or by implication that the respondents are giving away a substantial sum of money or merchandise in the form of prizes to a certain limited number of persons as an introductory or advertising offer through a contest, when the conduct of such so-called contest in fact constitutes the ordinary and usual course of business followed by the respondents.

(*c*) Represents, directly or by implication, that the awards or prizes offered will be determined or augmented by promptness in answering the advertisement of respondents or in complying with similar conditions named therein.

(*d*) Represents, directly or by implication, that the winning of the grand prize or any other prize offered by the respondents depends in whole or in part upon lot or chance.

(*e*) Represents, directly or by implication, that the preparations and products sold to persons who enter said contest are sold at wholesale prices, or at special prices not available to the general public.

(*f*) Represents, directly or by implication, that respondents' various products are of national reputation, or that said products are of such quality that resale to the general public is not difficult.

(*g*) Represents, directly or by implication, that any of the respondents are manufacturing concerns, or that they originate, prepare or compound the preparations and products sold by them.

(*h*) Represents, directly or by implication, that respondents' cosmetic preparations, or any of them, will restore a youthful condition to the skin, produce a youthful appearance, make the skin younger, remove wrinkles or worry lines, tone or strengthen the muscles, or that respondents' dental preparations help to make gums healthy; or

(*i*) Fails to reveal to prospective contestants that participation in the awards given depends in whole or in part, as the case may be, upon the purchase or sale of cosmetics or other articles of merchandise.

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 their said preparations, which advertisements contain any of the representations prohibited in paragraph 1 hereof.

3. Representing, directly or indirectly, in connection with the offering for sale, sale, and distribution of cosmetics, toilet preparations, and other items of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, by means of a contest wherein the purchase or sale of cosmetics or other articles of merchandise is essential to participation in any of the awards given.

(*a*) That offers made to individual contestants are exclusive to the individual addressed, and that such individual has been selected for special individual favor, or has been granted an exclusive advantage in a contest, or that credits given or offered give the recipient thereof substantial, advanced standing in a contest over that of others entered therein, or that such credits are given or offered to the individual addressed, exclusively.

(*b*) That letters written to contestants and prospective contestants are personal to the one addressed, or that the person addressed is about to be the recipient of the grand prize or other prize offered, or that there is nothing to buy or sell in order to participate in the grand prize contest.

(*c*) That the giving of a certain order for goods and the payment of a specified amount therefor will assure the contestant addressed of securing a money prize or other award.

(*d*) That the respondents, or any one connected with them has a personal interest in any particular contestant, by means of letters giving so-called advice or suggestions to such contestant, or that such letters of advice are given exclusively to the contestant addressed.

4. The use, in connection with the offering for sale, sale, and distribution of cosmetics, toilet preparations, or other items of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, by means of a contest wherein the purchase or sale of cosmetics or other articles of merchandise is essential to participation in any awards given, of—

(*a*) Congratulatory letters, requests for photographs, purported membership certificates in so-called prize clubs, certificates of award, diplomas, facsimile checks, or other similar means, during the course of any so-called contest, which imply that the recipient is about to win a cash prize, grand prize, or other award in such contest, or that said contestant is within a class which is certain to win some award to be given during the course of the contest.

(*b*) Advertising matter in any contest in which are set-out a portion of the terms and conditions the contestant will be required to meet, without stating that said terms and conditions so specified and set-out are, in fact, only a portion of the requirements which must be met by contestants in order to enter into or win the contest advertised by the respondents.

(*c*) Advertising matter in any contest which does not disclose all of the terms and conditions which must be performed by the contestant in order to be successful in winning any prize in said contest.

5. Selling or distributing in commerce as "commerce" is defined in the Federal Trade Commission Act, cosmetics or 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.

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

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

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondents J. G. Hamer, B. Brown, H. Rosenstein, Claude T. Burnett, Ross J. Miller, Joseph Kane, and Walter Rubens, individuals, and F. W. Fitch Co., a corporation.

It is further ordered, That Thomsen-King & Co., Inc., and The Winship Corporation, corporations, James M. Woodman, Jesse L. Stewart, Merrold Johnson, G. Fred Stayton, Joseph Furth, Albert L. Bisson, Leta M. Frazier, Glenn Tate, George Thomsen, Amber M. McCluskey, James L. Decker, Sibley F. Everitt, Walter C. Phillips, Paul H. Williams, Don M. Parmelee, George Schaffer, Evelyn Henderson, Richard E. Williams, Prentice W. Shaw, John E. Woodman, Steve W. Phillips, Warren Lee Eastman, Ernie A. Storesund, A. Leonard Anderson, Gerald G. Grant, W. W. Young, Paul Manning, Fred W. Fitch, Mrs. Fred W. Fitch, Lucius W. Fitch, Mrs. Lucius W. Fitch, Gail W. Fitch, Mrs. Gail W. Fitch, Lester R. Sandahl, Mrs. Lester R. Sandahl, Richard H. Young, and Mrs. Richard H. Young, 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

OMEGA MANUFACTURING COMPANY, INC., TRADING AS OMEGA ELECTROLYSIS INSTITUTE, AND MILTON L. BROWNSHIELD, INDIVIDUALLY AND AS AN OFFICER THEREOF

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

Docket 4146. Complaint, May 31, 1940—Decision, June 12, 1941

Where a corporation, and an individual who was an officer thereof and formulated, controlled, and directed its policies, acts and practices, engaged in interstate sale and distribution of a device or apparatus designated as the "Omega Home Use Portable Machine" and as "Omega Method," for removal of unwanted hair; by advertisements disseminated through the mails, in magazines, circulars, leaflets, pamphlets, and other advertising literature—

(*a*) Represented that said device was an effective, efficient, safe and scientific apparatus for the electrolytic removal of superfluous hair by individual self-application at home, that such removal of hair was permanent, and that said device was foolproof, painless, pleasant, quick, simple, and easy to use, and would have no ill effects upon the body;

Facts being its operation required the services of a skilled operator acquainted with anatomy and physiology, particularly of the areas to be covered, and also with bacteriology and sepsis, as well as with the properties of the machine used; proper use by lay person was extremely difficult, while improper use might cause scarring, pitting, or infection, with particular danger where used on pigmented or cancerous moles or syphilitic lesions and possibility of infection leading to abscess of the brain; use thereof was not painless or pleasant, since insertion of the needle and the electric current might be very painful, depending upon the toleration of the individual skin; and it would not remove superfluous hair quickly, but process required a long time, since hairs must be removed individually and care taken not to remove those adjacent because of danger to the tissue; and

(*b*) Failed to reveal facts material in the light of aforesaid representations and that use of said device under prescribed or usual conditions might result in permanent disfigurement or cause infections or other irreparable injury to health, and that said device should not be used to remove hair from cancerous or syphilitic lesions, pigmented moles, or other areas showing pathological conditions;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, and of inducing it, because of such 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.

Before *Mr. Robert S. Hall*, trial examiner.
Mr. William L. Taggart for the Commission.
Mr. Samuel Z. Cohen, 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 Omega Manufacturing Co., Inc., a corporation, trading as Omega Electrolysis Institute, and Milton L. Brownshield, individually and as an officer of said 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. Omega Manufacturing Co., 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 516 Fifth Avenue, New York, N. Y., from which address said corporate respondent also transacts business as Omega Electrolysis Institute. Milton L. Brownshield is an individual, and is also president and treasurer of Omega Manufacturing Co., Inc., with his office and principal place of business at the same address as said corporate respondent.

Respondent, Milton L. Brownshield, 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 one year last past have been, engaged in the sale and distribution of a certain device or apparatus, designated as the Omega Home Use Portable Machine, 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 United States mails, by advertisements in magazines, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Unsightly Hair Removed

Don't suffer another minute from the mental agony and embarrassment of superfluous hair. You can remove it quickly, easily, painlessly in the privacy of your own home—never to grow again. Omega Method kills the hair root. It is a thoroughly tested safe way to be rid of unwanted hair. Successfully used by thousands of women and the profession. Write for free information today.

Omega Electrolysis,
19 W. 44th St., N. Y. C.

Unsightly Hair Removed In Your Own Home. New simple modern method will rid you safely and permanently of unpleasant superfluous hair. No longer need you feel self-conscious! See how simple and effective is this new professionally proven successful way. Use it in your own home.

Our experts have designed an instrument that is perfect for self treatment. As manufacturers of electrolysis equipment we recommend it without reservation. Removal of unwanted hair. Permanent, pleasant.

Omega is the Modern Way. Remove unwanted hair—once—never to return!

Omega Method is Foolproof—Pleasant—Permanent.

You can use it alone without assistance. It's foolproof.

There is nothing to cause pain—no burn—it is safe—efficient performance.

Designed for perfection. Safe as a flashlight. Can be used on any part of the face or body—remove hair on eyebrows—face—bridge of nose.

Omega is the only scientific electrolysis needle—it is a modern marvel.

Electrolysis has the endorsement of the medical profession.

Respectful of the Codes of Ethics of the Medical Societies.

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 Omego Home Use Portable Machine, is an effective, efficient, safe and scientific apparatus for the electrolytic removel of superfluous hair from the human body by individual self-application in the home, that the removal of said hair is permanent; that it is foolproof, painless, pleasant, quick, simple and easy to use, 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 Omega Home Use Portable Machine, 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 results claimed by the respondents and is not safe, foolproof and painless 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 irreparable 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.

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 sub-

stantial 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. 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 31, 1940, issued and subsequently served its complaint upon the respondents, Omega Manufacturing Co., Inc., a corporation, trading as Omega Electrolysis Institute, and Milton L. Brownshield, individually and as officer 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. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Taggart, attorney for the Commission, and in opposition to the allegations of the complaint by Samuel Z. Cohen, attorney for the respondents, before Robert S. Hall, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this 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, 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. Omega Manufacturing Co., 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 516 Fifth Avenue, New York, N. Y., from which address said corporate respondent also transacts business as Omega Electrolysis Institute. Milton L. Brownshield is an individual, and is also president and treasurer of Omega Manufacturing Co., Inc., with his office

and principal place of business at the same address as said corporate respondent.

Respondent, Milton L. Brownshield, 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 found.

PAR. 2. The respondents are now, and for more than one year last past have been, engaged in the sale and distribution of a certain device or apparatus, designated as the "Omega Home Use Portable Machine" and as "Omega Method," 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 United States mails, by advertisements in magazines. and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Unsightly Hair Removed

Don't suffer another minute from the mental agony and embarrassment of superfluous hair. You can remove it quickly, easily, painlessly in the privacy

of your own home—never to grow again. Omega Method kills the hair root. It is a thoroughly tested safe way to be rid of unwanted hair. Successfully used by thousands of women and the profession. Write for free information today.

Omega Electrolysis,
19 W. 44th St., N. Y. C.

Unsightly Hair Removed In Your Own Home. New simple modern method will rid you safely and permanently of unpleasant superfluous hair. No longer need you feel self-conscious! See how simply and effective is this new professionally proven successful way. Use it in your own home

Our experts have designed an instrument that is perfect for self treatment. As manufacturers of electrolysis equipment we recommend it without reservation. Removal of unwanted hair. Permanent, pleasant.

Omega is the Modern Way. Remove unwanted hair—once—never to return!

Omega Method is Foolproof—Pleasant—Permanent.

You can use it alone without assistance. It's foolproof.

There is nothing to cause pain—no burn—it is safe—efficient performance.

Designed for perfection. Safe as a flashlight. Can be used on any part of the face or body—remove hair on eyebrows—face—bridge of nose.

Omega is the only scientific electrolysis needle—it is a modern marvel.

Electrolysis has the endorsement of the medical profession.

Respectful of the Codes of Ethics of the Medical Societies.

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 Omega Home Use Portable Machine or Omega Method, 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 it is foolproof, painless, pleasant, quick, simple and easy to use, and will have no ill effects upon the human body.

PAR. 5. The device or apparatus sold and distributed by the respondents as aforesaid designated as Omega Home Use Portable Machine or Omega Method is composed principally of an electric battery to which is attached a cord terminated by a needle. The needle is inserted into the hair follicle, usually from 1/16 to 3/16 of an inch beneath the surface of the skin. The current produced by the device brings about a chemical action which destroys the root of the hair.

The operation of this device requires the services of a skilled operator who must be acquainted with anatomy and physiology, particularly of the areas to be covered, and also with bacteriology and sepsis, as well as the properties of the machine used. The skin must be properly examined and prepared before the use of electrolysis and the operator must be able to determine when enough current has been

used, as the amount of current necessary depends upon differences in response of the hair follicle treated.

It is extremely difficult for a lay person to properly use this device and to insert the needle naturally so as to reach the hair follicle without injury to the surrounding tissue. Improper use of this device might cause scarring, pitting, or infection. There is particular danger in the use of this device on the areas of the upper lip or around the nose by reason of the nature of the blood supply and the lymphatic system in that area, enabling an infection to easily spread up through the nose to the sinuses or the brain, causing abscess of the brain, with very serious results.

The use of this device to remove hairs from some pigmented moles may have very serious consequences, as it might stimulate the pigmented cells to growth terminating in cancer which ordinarily would remain in the quiescent state, and the insertion of this needle into a cancerous mole might cause dissemination of the cancer cells all over the body. The use of this device to remove hairs from syphilitic lesions or other areas showing local pathological conditions might produce serious injury.

Respondents' device is not painless or pleasant to use, as the insertion of the needle as provided in the use of this device, together with the electric current, is very painful, depending upon the toleration of the individual skin upon which the device is used. It will not remove superfluous hair quickly, but is a process requiring a long period of time, as the hairs must be removed individually and care must be taken not to remove adjacent hairs during one operation, because of the danger to the tissue.

PAR. 6. In addition to the representations hereinabove set forth, respondents are also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal facts material in the light of such representations and fail to reveal that the use of said device or apparatus under conditions prescribed in said advertisements or under such conditions as are customary or usual may result in permanent disfigurement or cause infections or other irreparable injury to health and that said device should not be used to remove hair from cancerous or syphilitic lesions, pigmented moles, or other areas showing local pathological conditions.

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 induces 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, answer of the respondents, testimony and other evidence taken before Robert S. Hall, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner 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, Omega Manufacturing Co., Inc., a corporation, trading as Omega Electrolysis Institute or trading under any other trade name, and its officers, and respondent Milton L. Brownshield, 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 or distribution of their device or apparatus designated as "Omega Home Use Portable Machine," or "Omega Method," 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 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' device "Omega Home Use Portable Machine," or "Omega Method," is a safe device for the electrolytic removal of superfluous hair from the human body by individual self-application in the home; that said device is painless, pleasant, quick or simple and easy to use; that said device will have no ill effects upon the human body, or which advertisement fails 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, cause infections or other irreparable injury to health, and that said device should not be used to remove hair from cancerous or syphilitic lesions, pigmented moles or other areas showing local pathological 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 or apparatus designated "Omega Home Use Portable Machine," or "Omega Method," which advertisement contains any of the representations prohibited in paragraph 1 hereof or which fails 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, cause infections or other irreparable injury to health, and that said device should not be used to remove hair from cancerous or syphilitic lesions, pigmented moles or other areas showing local pathological conditions.

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

MAX COHEN, TRADING AS UNITED SALES COMPANY, UNITED ART DISPLAY AND SALES 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 4161. Complaint, June 13, 1940—Decision, June 12, 1941

Where an individual engaged in interstate sale and distribution of photographic enlargements and frames therefor by house to house canvassing in various states; soliciting orders for enlargements through his "initial salesmen" or "grabbers" who traveled in crews of varying size under crew managers, and whose general plan was to call upon the prospect, usually the woman of the house, making a $2 charge for an enlargement, with one-half payable as a deposit and retained as the "grabber's" commission, while the balance was payable on delivery of the picture by the second agent or "proof passer" and frame salesman—

(*a*) Falsely represented that his business was operated under the sanction of the United States Supreme Court through a statement on the "Authorization and Identification Certificate," supplied its salesmen, reading "The Bearer of This Document is Operating Under the Sanction of THE UNITED STATES SUPREME COURT * * * The bearer of this document is engaged in Interstate Commerce, a field over which only the Federal Government has jurisdiction";

(*b*) Falsely represented on order blanks or "Certificates" and orally through his salesmen, directly or by implication, that its colored or tinted photographic enlargements were paintings;

(*c*) Represented to prospects that said individual, doing business under different trade names, was engaged in procuring pictures for use in art displays and magazine advertisements, that a contest was being conducted at which a number of pictures were to be exhibited and that the customer whose picture was selected would receive from $100 to $2,000, dependent upon the revenue obtained from the agency which might use it; advising prospect, after looking over various photographs and selecting one or more, that the picture would certainly win a prize, but that in order to enter it it would be necessary to have an enlargement made at a cost of $2; and

(*d*) Represented through the second representative or "passer" calling with customer's enlargement, that the picture had been selected in a preliminary contest to compete for first prize or to be put on exhibition at Chicago, Kansas City, or other large city, but that in order to enter it in such final contest or exhibit it would be necessary that the picture be tinted or framed in a certain way, and that said representative or "passer" was in a position to supply the necessary frame, and that individual referred to would pay half the cost thereof, varying from $6.90 to $14.90 to the customer, and from 70 cents to $2 to individual aforesaid;

Facts being said individual was not engaged in securing photographs for advertising, or in conducting contests or displaying exhibits of them,

but primarily in the sale of enlargements and frames therefor, to accomplishment of which there were directed said elaborate sales methods; representation that a particular picture had won a prize was false and fraudulent and made solely to induce purchase of a frame, of which he did not pay one-half the cost, being on the contrary, engaged in sale of frames costing him from 70 cents to $2 at aforesaid exorbitant prices, and his initial offer of 10 by 16 photographic enlargement for $2 was not a special advertising offer, as set forth on salesman's order blank, but his regular method of securing orders;

With the result of placing in the hands of salesmen a means of misleading and deceiving the purchasing public and with the effect of misleading and deceiving a substantial portion thereof into the erroneous belief that the said representations were true, and of thereby inducing the purchase of substantial quantities of said enlargements and frames:

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. Merle P. Lyon for the Commission.
Minton & Minton, 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 Max Cohen, an individual, trading variously as United Sales Co., United Art Display and Sales Co., Art Display Co., United Art Display Co., and United Display Co., hereinafter referred to as the respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Max Cohen is an individual trading variously as United Sales Co., United Art Display and Sales Co., Art Display Co., United Art Display Co., and United Display Co., with his principal office and place of business located at 4042 South Broadway Place, Los Angeles, Calif. Respondent is now, and for several years last past has been, engaged in the sale and distribution of photographic enlargements and of frames therefor. Respondent, through the medium of salesmen or representatives appointed by him as agents in his behalf, sells his products to customers located in States other than the State of California. In consummating such sales and in distributing such products, respondent causes the photographic enlargements and frames, when sold by him, to be transported from his place of business in 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. In the course and conduct of his said business, respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, respondent causes agents and representatives employed by him to visit the homes of prospective customers in the cities, towns, and rural communities of the various States of the United States. The sales plan employed by respondent involves the use of two types of agents. The first type of agent, known in the trade as a "grabber" or "initial solicitor," makes the initial contact with the prospective purchaser by means of a house-to-house canvass ostensibly for the purpose of obtaining photographs, usually of children, for enlargement. The second type of agent used is the "proof passer" or frame salesman who delivers the enlargement and endeavors to sell a frame therefor.

PAR. 3. Respondent supplies to both the initial salesmen and frame salesmen an "Authorization and Identification Certificate" for use in connection with sales made on behalf of his various trade name companies, by means of which the respondent represents that the salesman is a duly authorized agent of the respondent and is acting under the sanction of the Supreme Court of the United States, which certificate reads in part as follows:

This is to certify that the bearer _____ whose signature appears below, is authorized to take orders for our portraits, miniatures and oil paintings providing that such orders are taken on our contracts and in accordance with the printed stipulations * * *.

The Bearer of This Document is Operating Under the Sanction of The United States Supreme Court. The bearer of this document is engaged in Interstate Commerce, a field over which only the Federal Government has jurisdiction.

PAR. 4. The initial salesmen travel in crews of varying size who are under the immediate supervision of crew managers employed, controlled, and directed by the respondent. The orders for enlargements, together with the original pictures, are transmitted to respondent at his home office in Los Angeles, Calif., and the enlargement work is done by a photographer employed by respondent on a contract basis of 25 cents per enlargement. Respondent charges $2 for making a 10- by 16-inch enlargement of a photograph or snapshot, one-half of which sum is required as a deposit at the time the order is taken. The balance is payable at the time the enlargement is delivered. The initial solicitor keeps the deposit paid by the customer and receives one-fourth of the remainder, if and when paid by the customer. He also

participates in the receipts from the sales of frames to those customers whose orders for enlargements are taken by him.

PAR. 5. The initial salesmen carry order blanks, supplied to them by respondent. These order blanks, designated as "certificates" read, in part, as follows:

Special Advertising Offer

One Beautiful Duo Tone Reproduction For $2.00. In order to select pictures for our home exhibit we will make you one of our beautiful Duo Tone Reproductions, size 10 by 16, black and white, unframed for only $2.00.

Valuable Prizes Will Be Awarded To All Portraits Framed and Accepted For Art Exhibit.

These salesmen represent to the prospective customer that the respondent is engaged in securing photographs of children to be sold for advertising purposes to manufacturers of children's products; that there is a large demand for such pictures, and that substantial sums of money are paid therefor. Specific references are then made to a picture supposedly sold by the respondent to some large nationally recognized manufacturer of children's products, or to amounts customarily paid by such concerns for pictures of children. These salesmen then represent that, in order to obtain acceptable pictures, the respondent is conducting a contest in which valuable prizes are awarded, such as large cash prizes, wrist watches, radios, silverware, vacuum cleaners, cameras, pearls, and jewelry. In addition to the prizes given, it is further represented that the winning pictures are to be placed on display in exhibits conducted by the respondent in leading cities throughout the United States.

After thus securing the attention and interest of the prospective customer, the salesman requests permission to examine pictures of the children of the prospective customer, and after an apparent careful scrutiny of available pictures the salesman selects one which he declares to be an outstanding picture, one that is practically certain of winning a prize in the contest.

The salesman then represents to the prospective customer that all pictures entered into the contest must be of a uniform size, 10 by 16 inches, and that the respondent will make an enlargement of the picture for $2. During the sales talk the initial solicitor carefully refrains from any reference to frames, and if any question relative thereto is raised by the customer, the salesman assures the customer that she will not be required to purchase a frame in order to enter the contest, and that the only cost to the customer will be the $2 paid for the enlargement. After the customer is induced by the aforesaid representations to sign the order for the enlargement, she pays the $1 deposit to the salesman, who thereupon forwards the

original picture and order to the respondent as hereinbefore set-out.

Respondent's salesman and representatives conceal and have concealed from purchasers at the time the photographic enlargement is ordered that it will be delivered in such a peculiar form, shape, and size that it will be impossible for the customer thereafter to obtain a frame to fit it except from the respondent and at prices exacted by respondent therefor.

Respondent through and by means of salesmen variously represents that the tinted enlargements of photographs are oil paintings, paintings or hand-painted portraits.

PAR. 6. After the enlargements have been made, the original pictures and enlargements thereof are sent by respondent to other salesmen employed by respondent, who are known in the trade as "proof passers." The sale of enlargements is merely incidental to respondent's plan of operation, the entire sales plan and each of its integral and component parts having been studiously devised for the purpose of inducing and procuring the sale of frames. The "proof passer" or frame salesman delivers the enlargement to the customer, collects the unpaid balance on the photographic enlargement and seeks to sell the customer a frame for the picture.

In furtherance of this plan and for the purpose of inducing the sale of a frame, the frame salesman informs the customer that such customer's photograph has been selected in the preliminary judging as one of four pictures to receive prizes, and that a final judging will subsequently be held to determine the rating of these four pictures. He explains that in order to enter the picture in the final judging it is necessary to have it framed, and calls the customer's attention to the provision of the written order previously taken by the initial salesman providing that "valuable prizes will be awarded to all portraits framed and accepted for art exhibits." He further represents that the respondent will pay half the cost of the frame, and will, in addition, make an oil painting of the picture free of charge. He further represents that the customer cannot possibly lose, since the value of even the fourth prize is in excess of the amount required to be paid for the frame.

By means of the aforesaid representation or variations thereof, the customer in many cases is induced and persuaded to sign an order for a frame. The frame salesman collects a deposit on said order, and the transaction is consummated in the manner more particularly hereinafter set forth.

Frame salesmen receive their entire remuneration from commissions on the sale of frames, ranging from 35 to 45 percent, depending on the cost of the frame selected by the customer. If the

frame salesman is successful in receiving an order for the frame, he forwards the original picture and enlargement back to the respondent in Los Angeles, for tinting and framing of the enlaregement.

The frame and tinted enlargement is then sent by respondent direct, to the customer by parcel post c. o. d. for the balance remaining due on the frame. Frames are sold by respondent at three prices, to wit, $7.90, $9.90 and $14.90, depending on the frame selected. The cost of said frames to the respondent is respectively $1.25, $1.35 and $2.30, plus 60 cents for the glass therefor.

If the customer refuses to purchase a frame or to pay for a frame after same has been ordered, respondent in many instances refuses to deliver the original treasured family photograph borrowed from the customer until a frame is ordered or a balance claimed on a frame is paid in full.

PAR. 7. In truth and in fact, all of the representations hereinabove set forth are false, fraudulent, and misleading. Respondent is not engaged in securing photographs of children to be sold for advertising purposes to manufacturers of children's products, or in selling such photographs, or in conducting contests or displaying exhibits of such photographs. Respondent is engaged primarily and actually in the sale of enlargements and frames therefor, and all of the elaborate and deceptive sales methods employed by him are directed to that end. The purported prize contests are not bona fide, and no radios, watches, cash awards, silverware, or other substantial prizes have been given for selected pictures. In some cases respondent purports to exhibit framed pictures in his place of business and he and his photographic assistant act as judges in "awarding" prizes therefor. In all instances, however, the "prizes" given consist either of a strand of imitation pearls, a cheap billfold, or an autograph book, which cost the respondent from 30 to 60 cents each. No prizes of value are awarded. In no instance is there any judging of pictures which have not been returned for tinting and framing. The representations of respondent's salesmen to the effect that a particular picture has won a prize are wholly false and fraudulent, and are made solely to induce the purchase of a frame. The respondent does not pay half the cost of the frame, but in fact is engaged in the sale at exhorbitant prices of frames purchased by him at wholesale for resale to the public through the methods hereinbefore set out. Respondent does not produce or sell an "oil painting" or "hand-painted portrait" but merely a tinted or colored photographic enlargement. Respondent has never sold any pictures to manufacturers of children's products or to others, and has never made arrangements with any individual or concern to supply pic-

tures for advertising or other purposes. Respondent's initial offer of $2 for a photographic 10- by 16-inch enlargement is not a "special advertising offer," but is his regular, usual, and ordinary method of securing orders for enlargements. Respondent's business is not operated under the sanction of the United States Supreme Court or any other court or tribunal.

PAR. 8. The acts and practices of the respondent and his method of operation as hereinbefore described further place in the hands of salesmen a means and instrumentality for misleading and deceiving the purchasing public.

PAR. 9. The acts and practices of the 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 such representations are true, and induce the purchase of substantial quantities of respondent's said photographic enlargements and of frames therefor because of such erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 13, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Max Cohen, an individual trading variously as United Sales Co., United Art Display and Sales Co., Art Display Co., United Art Display Co., and United Display Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Floyd O. Collins, attorney for the Commission, and in opposition to the allegations of the complaint by Albert N. Minton, attorney for the respondent, before Randolph Preston, 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, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, and brief in support of the complaint (the 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, Max Cohen, is an individual trading variously as United Sales Co., United Art Display and Sales Co., Art Display Co., United Art Display Co., and United Display Co., with his principal office and place of business located at 4042 South Broadway Place, Los Angeles, Calif. Respondent is now, and for several years last past has been, engaged in the sale and distribution of photographic enlargement and of frames therefor. Respondent, through the medium of salesmen or representatives appointed by him, as agents in his behalf, sells his products to customers located in States of the United States other than the State of California. In consummating such sales and in distributing such products, respondent causes the photographic enlargements and frames, when sold by him, to be transported from his place of business in Los Angeles, State of California, to purchasers thereof located in various other States of the United States. In the course and conduct of his business the respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of his said business, respondent causes agents and representatives employed by him to visit the homes of prospective customers in cities, towns, and rural communities of various States of the United States. The sales plan employed by respondent involved the use of two types of agents. The first type of agent, known to the trade as a "grabber" or "initial solicitor," makes the initial contact with the prospective purchaser by means of a house-to-house canvass, ostensibly for the purpose of obtaining photographs, usually of children, for enlargement. The second type of agent used is the "Proof passer" or frame salesman, who delivers the enlargement and endeavors to sell a frame therefor.

PAR. 3. Respondent supplies to both the initial salesmen and frame salesmen an "Authorization and Identification Certificate" for use in connection with sales made on behalf of his various trade name companies, by means of which the respondent represents that the salesman is a duly authorized agent of the respondent and is acting under

the sanction of the Supreme Court of the United States, which certificate reads in part as follows:

This is to certify that the bearer,

Whose signature appears below, is authorized to take orders for our portraits, miniatures, and oil paintings providing that such orders are taken on our contracts and in accordance with the printed stipulations.

He is further authorized to collect deposits which are to be credited to the purchase price. THE CUSTOMER IS TO RECEIVE A PRINTED RECEIPT FOR DEPOSIT PAID.

The authority herein invested is to expire----------19----

Date----------

The above authorization bears the signature of the trade name company under which respondent is operating at the time such certificate is issued. In addition to this certificate, the respondent also issues a purported certificate reading in part as follows:

The Bearer of This Document is Operating Under the Sanction of

THE UNITED STATES SUPREME COURT

* * *

The bearer of this document is engaged in Interstate Commerce, a field over which only the Federal Government has jurisdiction.

PAR. 4. The initial salesmen or "grabbers" travel in crews of varying size, who are under the immediate supervision of crew managers employed by the respondent. The orders for enlargements, together with the original pictures, are transmitted to the respondent at his home office in Los Angeles, Calif., and the enlargement work is done by a photographer employed by the respondent on a contract basis. A charge of $2 for enlarging a photograph 10 by 16 inches in black and white is quoted to the customer, one-half of which sum is required as a deposit at the time the order is taken, which the "grabber" retains as his commission. The balance is payable at the time the enlargement is delivered, of which the crew manager retains 50 cents, the "proof passer" 15 cents, leaving a balance of 35 cents for the respondent to cover cost of enlargement. This amount is not sufficient to cover cost of enlargement and the profit in respondent's plan is dependent upon the ability of the "proof passer" to sell the customer a frame.

PAR. 5. The initial salesmen carry order blanks supplied to them by the respondent. These order blanks, designated as "Certificates," read in part as follows:

Special Advertising Offer

One Beautiful Duo Tone Reproduction for $2.00. In order to select pictures for our home exhibit we will make you one of our beautiful Duo Tone Re-

productions, size 10 by 16, black and white, unframed for only $2.00. Valuable Prizes will be awarded to all portraits framed and accepted for art exhibit.

Our awards are final.

The general plan followed by such initial salesman was to call upon a prospect, usually the woman of the house, and state that he had heard from some neighbor or other person that the prospective customer had a very beautiful young child and that the respondent, under one of his several trade names, was looking for a picture to be used in art display and magazine advertisements. He further represented that a contest was being conducted at which a number of pictures were to be displayed and that certain pictures would be selected for advertising purposes; and that the prospective customer, if her picture should be selected, would receive from $100 to $2,000, dependent upon the revenue obtained from the magazine or advertising agency which might use such picture.

After looking over various photographs, the representative would select one or more, with the assurance that the picture would certainly win a prize but that the owner would hear from the company later. It was then explained that in order to enter a picture in such contest or exhibit it would be necessary to have an enlargement made at a cost of $2, of which the representative usually collected $1 at the time. A week or more later another representative of the respondent technically known as a "passer" would appear with the enlarged photograph and usually assure the customer that the picture had been selected in a preliminary contest as one of a limited number to compete for first prize or to be put upon exhibition at Chicago, Kansas City, or some of the larger cities of the country. The customer was then advised by the "passer" that, in order the enter such picture in the final contest or exhibit, it would be necessary that the picture be tinted or painted and framed in a certain way and that he was in a position to supply the necessary frame, and that the respondent would pay half the cost of the frame. The prices of the frames to the customer varied from $6.90 to $14.90, which frames cost the respondent 70 cents, 85 cents, $1.50, and $2, respectively. If the customer paid for the frame in full, the picture and frame were usually delivered to such customer, but if the customer refused to buy a frame the enlargement was usually delivered upon payment of $2 as stated.

PAR. 6. The aforesaid statements and representations comprising respondent's sales plan are false, deceptive, and misleading. Respondent is not engaged in securing photographs to be sold for advertising purposes or in selling such photographs or in conducting contests or displaying exhibits of such photographs. Respondent is engaged primarily and actually in the sale of enlargements and frames

therefor, and all of the elaborate and deceptive sales methods employed by him are directed to that end. The respondent has never sold or attempted to sell any pictures to advertisers and has never made arrangements with any individual or concern to supply pictures for advertising or other purposes. The respondent displays pictures in his place of business from time to time, not as a competitive contest but solely for the purpose of inducing persons who may come into his place of business to purchase photographic enlargements. The representations of respondent's salesmen to the effect that a particular picture has won a prize are wholly false and fraudulent and are made solely to induce the purchase of a frame. The respondent does not pay half the cost of the frame but, in fact, is engaged in the sale at exorbitant prices of frames purchased by him at wholesale for resale to the public through the methods hereinbefore set out.

Respondent does not produce or sell oil paintings, as represented by salesmen and in his certificate described in paragraph 3 hereof, but merely sells tinted or colored photographic enlargements. Respondent's initial offer of $2 for a photographic 10- by 16-inch enlargement is not a special advertising offer but is the regular, usual, and ordinary method of securing orders for enlargements.

Respondent's business is not operated under sanction of the United States Supreme Court or any other court or tribunal.

PAR. 7. The acts and practices of the respondent and his method of operation as hereinabove described further place in the hands of salesmen a means and instrumentality for misleading and deceiving the purchasing public.

PAR. 8. The acts and practices of the respondent as herein set forth have had, and now have, capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true and induce the purchase of substantial quantitites of respondent's said photographic enlargements and frames therefor because of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the re-

spondent, testimony and other evidence before Randolph Preston, a trial examiner 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 examiner upon the evidence 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 the respondent, Max Cohen, an individual, trading as United Sales Co., United Art Display and Sales Co., Art Display Co., United Art Display Co., and United Display Co., or under any other trade name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with offering for sale, sale, and distribution of photographic enlargements and of frames therefor in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by inference, that colored or tinted pictures, photographs, or photographic enlargements are paintings.

2. Representing that the respondent is engaged in the business of procuring pictures for use in advertising of various products or that any picture so procured by him will be sold or offered for sale to any advertiser, or otherwise misrepresenting the nature of respondent's business or the purposes for which pictures are procured.

3. Representing that pictures submitted to respondent or photographic enlargements made therefrom will be entered in any picture contest unless such contest is then, in fact, being conducted and such pictures or photographic enlargements are eligible for entry therein, or otherwise misrepresenting the existence of any picture contest or the eligibility of customers' pictures or photographic enlargements therein.

4. Representing that any photograph or colored enlargement of a photograph has been entered in any competitive competition or that any award has been made to such photograph or enlargement in such competitive competition.

5. Representing that respondent is conducting any special campaign or advertising campaign in any particular place or locality unless such campaign is, in fact, then being conducted in such locality for such purpose.

6. Representing as customary or regular prices or values for pictures or frames, prices and values which are, in fact, fictitious and greatly in excess of the prices at which said pictures or frames are regularly and customarily offered for sale and sold in the normal and usual course of business.

7. Representing that the respondent will pay half the cost of the frame of any picture when, in fact, the frame is sold to the purchaser at prices in excess of the price at which such frames are regularly and customarily offered for sale and sold in the normal and usual course of business.

8. Representing that respondent's business is operated under the sanction of the United States Supreme Court or any other court or tribunal.

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

IN THE MATTER OF

C. T. CLAYTON TRADING AS CLAYTON 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 4395. Complaint, Dec. 3, 1940—Decision, June 12, 1941

Where an individual engaged in the manufacture and the competitive interstate sale and distribution of candy, including certain assortments of candy 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 typical, 60 bars of candy of uniform size and shape, together with a push card for use in sale thereof under a plan by which a purchaser paid for a bar of candy nothing or 1, 2, or 3 cents, depending on the number disclosed when a disk was pushed from the card;

Sold such assortments to wholesalers, jobbers, salesmen, and 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 to procure candy bars without cost and at prices much less than usual, and thus supplied to and placed in the hands of others means of conducting lotteries in the sale of his products, contrary to established public policy of the United States Government and in violation of criminal laws, and in competition with many, who, unwilling to use such or any method contrary to public policy, refrain therefrom;

With result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell his candy in preference to that of his said competitors, whereby trade was unfairly diverted to him from them and substantial injury was done to competition:

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

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Roy L. Smith, of Phenix City, Ala., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that C. T. Clayton, an individual trading under the name of Clayton 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, C. T. Clayton, is trading as the Clayton Candy Co. with his office and principal place of business located in

Phenix City, Ala. Respondent is now and for more than 6 months last past has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, salesmen, and retail dealers located in the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be transported from his principal place of business in the city of Phenix City, Ala., to purchasers thereof at their respective points of location in various States of the United States other than Alabama and in the District of Columbia. There is now and has been for more than 6 months last past a course of trade by respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business respondent is and has been in competition with other individuals and with corporations 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 his business as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, salesmen, and retail dealers, certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment is composed of 60 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 60 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 0 to 3, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, and 3 pay 1, 2, and 3 cents, respectively. Purchasers punching number 0 pay nothing. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

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

PAR. 3. Retail dealers who purchase respondent's said candy, directly or indirectly, expose and sell the same to the purchasing public in

accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his candy and the sale of said candy by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candy to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure bars of candy without cost or 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 the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 3, 1940 issued and on December 5, 1940, served its complaint in this proceeding upon

respondent, C. T. Clayton, an individual trading as Clayton 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 23, 1940, the respondent, through his attorney, filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint but requested the right to file a brief and be heard in oral argument on the question whether the facts so admitted constitute the violation of law charged in the complaint. Thereafter a brief in support of the complaint was filed by the attorney for the Commission and served on the respondent, and subsequently the respondent, through his attorney, waived the filing of a brief and oral argument. Thereafter the proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, and the brief in support of the complaint, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, C. T. Clayton, is an individual trading as the Clayton Candy Co., with his office and principal place of business located in Phenix City, Ala. Respondent is now and for more than 6 months last past has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, salesmen, and retail dealers located in the various States of the United States and in the District of Columbia. Respondent causes and has caused said candy, when sold, to be transported from his principal place of business in the city of Phenix City, Ala., to purchasers thereof at their respective points of location in various States of the United States other than Alabama, and in the District of Columbia. There is now and has been for more than 6 months last past a course of trade by respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business respondent is and has been in competition with other individuals and with corporations 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 his business as described in paragraph 1 hereof, respondent sells and has sold to wholesale

dealers, jobbers, salesmen, and retail dealers, certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment is composed of 60 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 60 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 0 to 3, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching number 1, 2, and 3 pay 1, 2, and 3 cents, respectively. Purchasers punching number 0 pay nothing. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

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

PAR. 3. Retail dealers who purchase respondent's said candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his candy and the sale of said candy by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candy to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure bars of candy without cost or 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 the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and brief in support of the complaint, respondent having waived the right to file a brief and argue the matter orally, 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, C. T. Clayton, individually, and trading as Clayton Candy Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy or any 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

THE BRIARWOOD CORPORATION

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

Docket 4401. Complaint, Dec. 5, 1940—Decision, June 12, 1941

Where a corporation engaged in the manufacture and the competitive interstate sale and distribution of pipes—

Sold to wholesalers, jobbers, and retailers certain assortments of smoking pipes which were so packed and assembled as to involve the use of game of chance, gift enterprise, or lottery schemes when sold and distributed to consumers, and included, as typical, three "Bryson" pipes and a punchboard for use, as there explained, in sale of said articles under a plan by which certain specified numbers entitled purchaser to one of said pipes or a package of cigarettes, the last sale in each of the first nine sections completely sold entitled him to a package of cigarettes, and the last punch on the board entitled him to receive a $3.50 "Bryson" pipe, other customers receiving nothing for their money other than the privilege of a punch; and thus

Supplied to and placed in the hands of retail purchasers, who exposed and sold its pipes in accordance with said plan, involving game of chance to procure pipes at prices much less than usual, means of conducting lotteries in the sale of its pipes, contrary to established public policy of the United States Government, and in competition with many who are unwilling to sell their products by such or any method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan and the element of chance involved therein and were thereby induced to buy and sell its pipes in preference to those of its said competitors, and with effect of thus unfairly diverting trade in commerce to it from them; to the substantial injury of competition:

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

Mr. J. W. Brookfield, Jr., for the Commission.

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

PARAGRAPH 1. Respondent, The Briarwood Corporation, is a corporation organized and doing business under the laws of the State of Ohio with its office and principal place of business located at 2810 Superior Avenue, Cleveland, Ohio. Respondent is now, and for more than 6 months last past has been, engaged in the manufacture and in the sale and distribution of smoking pipes 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 Cleveland, Ohio, to purchasers thereof at their respective points of location in various States of the United States other than Ohio and in the District of Columbia. There is now, and has been for more than 6 months last past, a course of trade by respondent in such smoking pipes 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 smoking pipes 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 smoking pipes 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 includes three "Bryson" pipes and a punchboard. Appearing on the face of the punchboard is the following inscription:

THE *Bryson* PIPE
(illustration of pipe)
WITH DURALUMINUM "COOLING ZONE"
NUMBERS 100–200
AND LAST SALE ON BOARD RECEIVES
$3.50 BRYSON PIPE ENSEMBLE
$3.50 with EXTRA BOWL
NUMBERS 10—20—110—120—210—220—310—320—330—340
Each receive 1 Pkg. (20) Cigarettes

LAST SALE IN EACH OF 1st 9 sections completed
REC. 1 PKG. (20) CIGARETTES
5¢ PER SALE

Said pipes are distributed to the purchasing public by means of said punchboard in the following manner:

Sales are 5 cents each, and when a punch is made 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, and said numbers are arranged in 10 sections. The board bears a statement informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a "Bryson" pipe, and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes, and the last sale in each of the first 9 sections completely sold entitles the purchaser to receive a package of cigarettes, and the last punch on the board entitles the purchaser to receive a $3.50 "Bryson" pipe. A customer who does not qualify by obtaining 1 of the specified numbers or the last punch on the board or in a section 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 the cigarettes are worth more than 5 cents per package, and the purchaser who obtains a number calling for a pipe or pack of cigarettes receives the same for 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The smoking pipes are thus distributed to the purchasers of punches from the board wholly by chance.

The respondent furnishes, and has furnished, various punchboards and pipe assortment for use in the sale and distribution of its smoking pipes by means of a game of chance, gift enterprise, or lottery scheme; such punchboards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's smoking pipes, 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 smoking pipes and the sale of said smoking pipes 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 smoking pipes 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 smoking pipes at prices much less than the

normal retail price thereof. Many persons, firms, and corporations who sell and distribute smoking pipes 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 smoking pipes and in the element of chance involved therein and are thereby induced to buy and sell respondent's smoking pipes in preference to smoking pipes 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 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 December, 5, 1940, issued and on December 6, 1940, served its complaint in this proceeding upon the respondent, The Briarwood Corporation, a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondent, on December 26, 1940, filed its answer which answer admitted all the material allegations of fact set forth in said complaint and respondent's attorney later waived the right to file brief or argue the matter orally before the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Briarwood Corporation, is a corporation organized and doing business under the laws of the State of Ohio with its office and principal place of business located at 2810 Superior Avenue, Cleveland, Ohio. Respondent is now, and for more than 6 months last past has been, engaged in the manufacture and in the sale and distribution of smoking pipes 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 Cleveland, Ohio, to purchasers thereof at their respective points of location in various States of the United States other than Ohio and in the District of Columbia. There is now, and has been for more than 6 months last past, a course of trade by respondent in such smoking pipes 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 smoking pipes 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 smoking pipes 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 includes three "Bryson" pipes and a punchboard. Appearing on the face of the punchboard is the following inscription:

THE *Bryson* PIPE

(illustration of pipe)

WITH DURALUMINUM 'COOLING ZONE'

NUMBERS 100—200
AND LAST SALE ON BOARD RECEIVES
$3.50 BRYSON PIPE ENSEMBLE

$3.50 with EXTRA BOWL

NUMBERS 10—20—110—120—210—220—310—320—330—340
Each Receive 1 PKG. (20) Cigarettes

LAST SALE IN EACH OF 1st 9 sections completed
REC. 1 PKG. (20) CIGARETTES

5¢ PER SALE

Said pipes are distributed to the purchasing public by means of said punchboard in the following manner:

Sales are 5 cents each, and when a punch is made 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, and said numbers are arranged in 10 sections. The board bears a statement informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a "Bryson" pipe, and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes, and the last sale in each of the first 9 sections completely sold entitles the purchaser to receive a package of cigarettes, and the last punch on the board entitles the purchaser to receive a $3.50 "Bryson" pipe. A customer who does not qualify by obtaining 1 of the specified numbers or the last punch on the board or in a section 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 the cigarettes are worth more than 5 cents per package, and the purchaser who obtains a number calling for a pipe or pack of cigarettes receives the same for 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The smoking pipes are thus distributed to the purchasers of punches from the board wholly by chance.

The respondent furnishes, and has furnished, various punchboards and pipe assortment for use in the sale and distribution of its smoking pipes by means of a game of chance, gift enterprise, or lottery scheme; such punchboards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's smoking pipes, 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 smoking pipes and the sale of said smoking pipes 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. The sale of smoking pipes 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 smoking pipes at prices much less than the normal retail price thereof. Many persons, firms, and corpora-

tions who sell and distribute smoking pipes 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 smoking pipes and in the element of chance involved therein and are thereby induced to buy and sell respondent's smoking pipes in preference to smoking pipes 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 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.

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and respondent having waived filing of brief and oral argument and agreed to the submission of the case to the Commission on the complaint and answer and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission.

It is ordered, That the respondent, The Briarwood Corporation, a corporation, its 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 punchboards, push or pull cards, pull tabs, or other lottery devices either with assortments of merchandise or separately, which said punchboards, push or pull cards, pull tabs, 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 respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

J. C. HELMS, INDIVIDUALLY AND TRADING AS H. & L. 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 4455. Complaint, Jan. 30, 1941—Decision, June 12, 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 the use of a lottery scheme when sold and distributed to consumers, a typical assortment including a number of candy bars, together with a push card for use in sale and distribution thereof under a plan by which purchaser, depending upon the particular number secured by chance in accordance with disk pushed, paid nothing or 1, 2 or 3 cents, for a bar, retail value of each of which was greater than 1 cent—

Sold such assortments to dealers and retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plans or methods, involving game of chance or sale of a chance to procure bars of candy without cost or 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 product, contrary to an established public policy of the United States Government, and in violation of the criminal laws, and in competition with many who, unwilling to offer or sell their products so packed and assembled as to involve a game of chance or any other method contrary to public policy, refrain therefrom;

With tendency and capacity to induce purchasers to buy his said product in preference to that of his competitors, and with result that many dealers in and ultimate consumers were attracted by said manner of packing candy and by the element of chance involved in sale thereof, and were thereby induced to purchase his said candy in preference to that of his said competitors who do not use such methods; and with tendency and capacity to divert unfairly to him trade from his competitors aforesaid and exclude them from candy trade; lessen competition therein; create monopoly thereof in him and such other distributors as do use such methods; deprive the purchasing public of benefit of competition; and eliminate from said trade all actual, and exclude therefrom all potential, competitors, who do not adopt and use such methods:

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

Mr. J. W. Brookfield, Jr., for the Commission.

COMPLAINT

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

Trade Commission, having reason to believe that J. C. Helms, individually and trading under the name of H. & L. 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, J. C. Helms, is an individual doing business under the trade name of H. & L. Candy Co., with his principal office and place of business located at 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 the said candy, when sold, to be shipped or transported from his aforesaid place of business in the State of North Carolina to purchasers thereof at their respective points of location in various States of the United States other than the State of North Carolina and in the District of Columbia. 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 thereon, and printed within each of said disks is either "0¢," "1¢," "2¢," or "3¢." 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, or the purchaser of a disk indicating the amount "0¢" pays nothing for the bar of candy received. All of said bars have a retail value greater than 1 cent. The said amounts to be paid for the candy 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 without cost or at prices much less than the normal retail prices thereof. The use by respondent of said methods in the sale of his candy and the sale of such candy by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws. The use by respondent of said methods has a tendency unduly to hinder competition or to create a monopoly in that the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not use and adopt the same or equivalent methods involving the same or equivalent elements of chance or lottery. Many persons, firms, and corporations who make and sell candy in competition with respondent as above alleged are unwilling to offer for sale or to sell their products so packed and assembled as above described or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or any other method which is contrary to public policy and such competitors refrain therefrom.

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

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 30, 1941, issued and on February 3, 1941, served its complaint in this proceeding upon J. C. Helms, individually and trading under the name of H. & L. 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 February 14, 1941, respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint. No brief having been filed by respondent and oral argument not having been requested, 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, J. C. Helms, is an individual doing business under the trade name of H. & L. Candy Co., with his principal office and place of business located at 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 the said candy, when sold, to be shipped or transported from his aforesaid place of business in the State of North Carolina to purchasers thereof at their respective points of location in various States of the United States other than the State of North Carolina and in the District of Co-

lumbia. 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 Unite 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 thereon, and printed within each of said disks is either "0¢," "1¢," "2¢," or "3¢." 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, or the purchaser of a disk indicating the amount "0¢" pays nothing for the bar of candy received. All of said bars have a retail value greater than 1 cent. The said amounts to be paid for the candy 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 without cost or 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 respondent has the tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same or equivalent methods.

CONCLUSION

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

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, respondent having filed no brief and oral argument not having been requested, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

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

1. Selling or distributing candy or any 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

ACTINO LABORATORIES, INC., AND CARL LOEB

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

Docket 3813. Complaint, June 8, 1939—Decision, June 13, 1941

Where a corporation and an individual, who was its president and principal stockholder and in charge of its operations, engaged in competitive interstate sale and distribution of certain orthoptic instruments for use in treatment and correction of visual defects, accepting as trade-ins, from purchasers of its "Chrome-Orthoptoscope" certain orthoptic instruments known as "Syntonizers" made by competitors, and resold by it; in advertisements in journals or magazines circulating generally among optometrists—

(*a*) Represented that certain of such "Syntonizers" were new and unused, through such statements as "FOR SALE—Three Syntonizers, Latest type. Hundred dollars each. One slightly used, seventy-five dollars. * * *," and "FOR SALE.—Three Syntonizers, late type. Price $125.00 each. * * *"; facts being all were used or second hand machines accepted by it as trade-in allowances on new purchases; and

(*b*) Failed to disclose in its advertising, offer and sale thereof that such instruments were used or second-hand;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature and character of their products, and to cause it to purchase them as a result of the mistaken belief so engendered, and with effect of diverting trade unfairly to them from their competitors who do not misrepresent their 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* and *Mr. William C. Reeves*, trial examiners.

Mr. R. P. Bellinger for the Commission.

Mr. E. Sydney Feinstein, 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 Actino Laboratories, Inc., a corporation, and Carl Loeb, an individual, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Actino Laboratories, 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 429 West Superior Street, Chicago, Ill. Respondent, Carl Loeb, is an individual and is president of respondent, Actino Laboratories, Inc., and as such manages, dominates, and controls its corporate affairs and activities.

PAR. 2. Respondents are now, and have been for more than 1 year last past, engaged in the business of selling and distributing orthoptic equipment. Respondents cause said products, when sold, to be transported from their place of business in Illinois to the purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said orthoptic equipment among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents are in substantial competition with other corporations and individuals, and with firms and partnerships engaged in the sale and distribution of orthoptic equipment in commerce between and among the various States of the United States and in the District of Columbia, and who truthfully represent their equipment.

PAR. 4. The orthoptic machines which respondents sell and distribute, as aforesaid, are of three different types and are designated as "Synchro-Orthoptoscopes," "Chrome-Orthoptoscopes," and "Syntonizers." Said Synchro-Orthoptoscopes and Chrome-Orthoptoscopes are products of respondents' own manufacture. The orthoptic machine designated Syntonizer is not manufactured by respondents, but is manufactured by one of respondents' competitors. Respondents, in order to induce the purchase of the machines of their own manufacture, that is, the Synchro-Orthoptoscopes and Chrome-Orthoptoscopes, by purchasers and prospective purchasers, have adopted the practice of accepting used Syntonizers from customers as part payment for their own products. Respondents thereupon sell said Syntonizers at prices substantially lower than prices charged by the manufacturers of said Syntonizers, for new unused Syntonizers.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase of said Syntonizers, respondents place advertisements in newspapers and periodicals having a general circulation throughout the United States. Said advertisements are as follows:

FOR SALE

THREE SYNTONIZERS

AT

$125.00 EACH.

FOR SALE

THREE SYNTONIZERS

Latest type $100.00 each

One slightly used, $70.00.

ACTINO LABORATORIES, INC.

429 West Superior Street,

Chicago, Illinois.

In the manner and by the means aforesaid, respondents represent, directly and by implication, that the Syntonizers which respondents offer for sale are new Syntonizers which have never been used. In truth and in fact, said Syntonizers are not new Syntonizers but are, as above set forth, used Syntonizers which respondents have accepted from purchases of respondents' Synchro-Orthoptoscopes and Chrome-Orthoptoscopes as part payment of the purchase price of said instruments.

PAR. 6. In the course of the operation of his business as aforesaid, respondent, Carl Loeb, uses the name Dr. Carl Loeb with which to carry on his business. Said abbreviation "Dr." is used by respondent Carl Loeb in all of his advertising literature and on letterheads, invoices, and all office stationery. Over a period of many years the universally used professional designations for a medical doctor or a doctor of medicine have been, and now are, either the abbreviation "Dr." or the abbreviation "M. D.," or both. The use by the respondent, Carl Loeb, of the abbreviation "Dr." in close proximity to his name, in the manner and by the means aforesaid, serves as a representation by respondent, Carl Loeb, to prospective purchasers of respondents' orthoptic equipment that respondent, Carl Loeb, is a medical doctor or a doctor of medicine. In truth and in fact, respondent, Carl Loeb, is not a medical doctor or doctor of medicine.

PAR. 7. Each and all of the false and misleading statements and representations made by respondents in offering for sale and selling their orthoptic products, as hereinabove set forth, had, and now has, the capacity to, and does, mislead a substantial number of members

of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true. As a direct result of this erroneous and mistaken belief members of the purchasing public have purchased a substantial number of respondents' orthoptic products, with the result that trade in commerce, as commerce is defined in the Federal Trade Commission Act, has been diverted unfairly to respondents from their said competitors who truthfully represent their products. As a result thereof injury has been done, and is being done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents as herein above alleged are all to the prejudice and injury 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 June 8, 1939, issued and subsequently served its complaint in this proceeding upon the respondents, Actino Laboratories, Inc., a corporation, and Carl Loeb, an individual, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the 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 E. Sydney Feinstein, attorney for the respondents, before trial examiners of the Commission theretofore duly designated by it, and such 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, report of the trial examiners upon the evidence, and the exceptions thereto, and briefs in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Actino Laboratories, Inc., is a corporation organized and doing business under the laws of the State of Illinois, with its office and principal place of business located at 429 West Superior Street, Chicago, Ill. Respondent, Carl Loeb, an individual, is president of the corporate respondent and is the principal stockholder therein. He is in general charge of the operations of the corporation and formulates and controls its policies and practices.

PAR. 2. The respondents are now, and for more than 5 years last past have been, engaged in the sale and distribution of certain orthoptic instruments or machines intended for use in the treatment and correction of certain visual defects. Respondents cause their products, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and for more than 5 years last past have maintained, a course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, the respondents are, and at all times mentioned herein have been, in substantial competition with other corporations and individuals, and with firms and partnerships, engaged in the sale and distribution, in commerce among and between the various States of the United States and in the District of Columbia, of orthoptic instruments intended for the same purposes as those for which respondents' products are intended.

PAR. 4. Among the instruments sold and distributed by the respondents is a certain instrument designated by them as "Chrome-Orthoptoscope," which instrument is manufactured by the respondents. In connection with the sale of this instrument the respondents accept from purchasers certain orthoptic instruments manufactured by respondents' competitors and which have been used by such purchasers, such instruments being accepted by respondents as a "trade-in" allowance on the purchase price of respondents' instrument. These used or second-hand instruments are then resold by respondents. Among the used instruments which have been obtained by respondents in this manner and resold are certain instruments known as "Syntonizers."

PAR. 5. In the course and conduct of their business and for the purpose of promoting the sale of such used instruments, the respondents have placed advertisements in certain journals or magazines

having a general circulation among optometrists. Among these advertisements were the following:

FOR SALE—Three Syntonizers, Latest type. Hundred dollars each. One slightly used, seventy-five dollars. Actino Laboratories, Inc., 429 West Superior St., Chicago.

FOR SALE—Three Syntonizers, late type. Price $125.00 each. Actino Laboratories, Inc., 429 W. Superior St., Chicago, Ill.

PAR. 6. The Commission finds that through the use of these advertisements, and through the failure of respondents to disclose that such instruments are used or second-hand instruments, the respondents have represented that certain of the instruments are new and unused. The Commission further finds that none of such instruments are new or unused, but all of them are used or second-hand instruments, having been accepted by the respondents as trade-in allowances on new instruments.

PAR. 7. The Commission further finds that these acts and practices on the part of respondents, including the failure of respondents to disclose the true nature and character of certain of their products, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature and character of respondents' products, and to cause such portion of the purchasing public to purchase respondents' products as a result of the erroneous and mistaken belief so engendered. In consequence, trade has been diverted unfairly to the respondents from their competitors, who do not misrepresent their products.

CONCLUSION

The 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 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 and the exceptions thereto, and briefs filed by R. P. Bellinger, attorney for the Commission, and E. Sydney Feinstein, attorney for the respondents (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respond-

ents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Actino Laboratories, Inc., a corporation, its officers, and Carl Loeb, individually and as an officer of said corporation, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their orthoptic instruments and machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forwith cease and desist from:

1. Representing, directly or by implication, that used or second-hand products are new or unused.

2. Advertising, offering for sale or selling used or second-hand products without disclosing that such products are in fact used or second-hand.

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

IN THE MATTER OF

JOHN J. FULTON COMPANY

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

Docket 3819. Complaint, June 14, 1939—Decision, June 13, 1941

Where a corporation engaged in compounding its "Uvursin" medicinal preparation for diabetes, and in competitive interstate sale and distribution thereof to members of the medical profession, together with a suggested diet which it recommended for use therewith; by means of advertisements disseminated through the mails, in periodicals and other publications, and in circulars and other printed or written matter—

Represented that its said "Uvursin" had substantial therapeutic value in the treatment of diabetes mellitus and constituted a competent and effective treatment therefor, and that, when used with the recommended diet, it substantially increased the efficacy and therapeutic value of such diet as a treatment for aforesaid condition;

Facts being there is no accepted treatment for diabetes other than diet and insulin adjusted properly to meet the needs of each patient; said product was essentially a combination of crude plant materials which have enjoyed long reputation, particularly in folklore medicine, for treatment of urinary conditions, and general action of which is mildly diuretic; and use thereof, by increasing the flow of urine, would accomplish no more than possible reduction of amount of sugar therein without affecting the blood sugar level; the diet, recommended by said corporation, conformed closely to type physicians would recommend in diabetic cases and any presumed effectiveness of said product would be due to the spontaneous remissions characteristic of the disease and to dietary control of symptoms rather than to any therapeutic value in and of itself; and use thereof might be definitely harmful and even fatal to patient in giving a false sense of security and delaying inauguration of effective treatment, including, as required, administration of insulin, for which no substitute is known to modern medicine;

With the effect of misleading purchasers and prospective purchasers into the erroneous and mistaken belief that aforesaid false and misleading representations were true, and into the purchase of substantial quantities of its said medicinal preparation, thereby diverting trade unfairly to it from competitors:

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

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

Mr. William L. Pencke and *Mr. Donovan Divet* for the Commission.

Mr. Zach Lamar Cobb, 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 John J. Fulton Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, John J. Fulton Co., is a corporation organized and existing under and by virtue of the laws of the State of South Dakota and having its office and principal place of business at 88 First Street, in the city of San Francisco, State of California.

Respondent is now, and has been for several years last past, engaged in the business of compounding, selling, and distributing a medicinal preparation designated "Uvursin." The respondent causes the said preparation, when sold, to be transported from its aforesaid place of business in the State of California, 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 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 is now, and has been during all the times mentioned herein, in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations, and with persons, firms, and partnerships engaged in the sale and distribution of preparations designed and used for the treatment of the conditions of the human body for which respondent recommends the use of its said preparation. Among said competitors are many who do not misrepresent the therapeutic value or the effectiveness in use of their respective preparations.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said preparation, by United States mails, by insertion in periodicals and other publications having a general circulation throughout the United States and in other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparation; and has disseminated and is now disseminat-

ing, 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 the said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

UVURSIN (Capsules, 5 gr.) is a mild and inocuous oral treatment for Diabetes Mellitus. UVURSIN combines the desirable principles of Chimaphila, Eupatorium, Pareira, Taraxacum, Uva Ursi, Juglans, Lappa, Inula, Eriodictyon and Zea Mais. To overcome any tendency to bowel astringency a little senna is added. With the above are incorporated potassi nitras and sodii boras, one grain of each to the dose. * * *

Physicians have been using UVURSIN and sending us favorable reports on its efficiency in Diabetes Mellitus for more than a decade.

These reports show the normal period of symptomatic improvement as being 10 to 14 days from time treatment is started, and clinical improvement, as disclosed by reduced urinary sugar, from 14 to 21 days.

* * *

UVURSIN an efficacious, innocuous, oral treatment for diabetes.

Diabetes gangrene yields to UVURSIN as do other symptoms, the line of demarcation usually beginning to show definitely by about the 20th day of treatment, followed by complete recovery where patient persists in diet and treatment.

UVURSIN is being recognized as the preferred treatment in diabetes mellitus.

Respondent distributes to purchasers of such preparation a suggested diet and recommends that such diet be followed in connection with the use of such preparation.

Through the use of the aforesaid statements and representations, and others of similar import or meaning not herein set out, the respondent represents that "Uvursin" is a competent and effective cure or remedy for, and has substantial therapeutic value in the treatment of, diabetes mellitus and that such preparation, when used with the diet recommended by respondent, substantially adds to and increases the efficacy and therapeutic value of such diet as a treatment for diabetes mellitus.

PAR. 4. The aforesaid statements and representations by the respondent are misleading and untrue and constitute false advertisements. Said preparation is not a competent or effective cure or remedy for diabetes mellitus. Said preparation has no therapeutic value in the treatment of diabetes mellitus. Said preparation, when used with the diet recommended by respondent, or with any other diet, does not add to or increase the efficacy or the therapeutic value of the diet as a treatment for diabetes mellitus.

PAR. 5. The use by the respondent of the aforesaid false advertisements and misleading representations has the capacity and tendency to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of substantial quantities of respondent's said preparation containing drugs. As a direct result thereof, trade in commerce among and between various States of the United States has been diverted unfairly to the respondent from its said competitors who truthfully represent the effectiveness in use of their respective preparations. In consequence thereof injury is being, and has been, done by respondent to competition in commerce among and between 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 June 14, 1939, issued and subsequently served its complaint upon the respondent, John J. Fulton 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 thereto, testimony, and other evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allegations of the complaint by Zach Lamar Cobb, attorney for the respondent, before Miles J. Furnas, 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, this 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 upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral arguments by Donovan Divet, attorney for the Commission, and Zach Lamar Cobb, attorney for the respondent, and the Com-

mission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest 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. Fulton Co., is a corporation organized and existing under and by virtue of the laws of the State of South Dakota and having its office and principal place of business at 88 First Street in the city of San Francisco, State of California.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of compounding a medicinal preparation designated "Uvursin" which is recommended by the respondent as a treatment for diabetes, and in the sale and distribution of this medicinal preparation to members of the medical profession located in various States of the United States. Respondent causes said preparation, when sold, to be transported from its place of business in the State of California, or from the State of origin of such shipment, to purchasers located in various States of the United States other than the State of origin of such shipments. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent is now, and during all the times mentioned herein has been, engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other corporations and with persons, firms, and partnerships engaged in the sale and distribution of preparations designed and used for the treatment of conditions of the human body for which respondent recommends the use of its said preparation.

PAR. 4. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation, by United States mails 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 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 periodicals and other publications, and by circulars and other printed or written matter are the following:

Year after year, doctors report favorable results with Uvursin.

Physicians have been using Uvursin and sending us favorable reports on its efficacy in diabetes mellitus for more than a decade.

Is not that reason enough for you to give it a thorough clinical test in one of your cases?

These reports show normal period of symptomatic improvement as being ten to fourteen days from time treatment is started, and clinical improvement, as disclosed by reduced urinary sugar, from fourteen to twenty-one days. * * * Oral—Innocuous—Efficacious.

In diabetes mellitus a successful oral treatment.

Uvursin (capsules, 5 gr.) is a mild and innocuous oral treatment for diabetes mellitus. Uvursin combines the desirable principles of chimaphila, eupatorium, pareira, taraxacum, uva ursi, juglans, lappa, inula, eriodictyon, and zea mais. To overcome any tendency to bowel astringency a little senna is added. With the above are incorporated potassi nitras and sodii boras, one grain of each to the dose. * * * Other than the fact that the combined infusions are innocuous, the ingredients as explained will mean practically nothing, even to the experienced therapist, for the reason that few of the items are used for the cataloged characteristics of the alcohol extracts as outlined in the Pharmacopeia.

Diabetic Gangrene. Diabetic gangrene yields to Uvursin as do other symptoms, the line of demarcation usually beginning to show definitely by about the twentieth day of treatment, followed by complete recovery where the patient persists in diet and treatment.

Respondent distributes to purchasers of such preparation a suggested diet and recommends that such diet be followed in connection with the use of such preparation.

PAR. 5. Through the use of the aforesaid statements and others of similar import or meaning not specifically set out herein, the respondent represents that its medicinal preparation "Uvursin" has substantial therapeutic value in the treatment of diabetes mellitus and constitutes a competent and effective treatment for such condition and that when said preparation is used with the diet recommended by the respondent, it substantially adds to and increases the efficacy and therapeutic value of such diet as a treatment for diabetes mellitus.

PAR. 6. On the subject of the therapeutic value of respondent's preparation Uvursin, three expert witnesses were called at the instance of the Commission. Two of these witnesses were professors of pharmacology in outstanding medical schools and had devoted

much study to the subject of diabetes. The third witness was a practicing physician of many years' experience specializing in diabetes and who was, at the time of the hearing, in charge of one of the diabetic services at the Los Angeles County General Hospital. All of these witnesses occupy eminent places in their professions. The testimony of these experts shows, and the Commission finds, that respondent's preparation Uvursin is not a competent or effective treatment of diabetes mellitus and has no therapeutic value in the treatment of this condition and will not add to or increase the efficacy or therapeutic value of any diet used in the treatment of diabetes mellitus.

PAR. 7. Diabetes mellitus is a disturbance of carbohydrate metabolism in which the blood sugar is elevated to abnormally high levels, due to a decrease in the internal secretion of the pancreas, among the most serious complications of which are acidosis and ketosis, often leading to diabetic coma and sometimes death.

Diabetes mellitus is diagnosed by proper tests made to determine the blood sugar level under appropriate conditions and also by the appearance of sugar in the urine. The treatment consists of administration of proper diet. If that is insufficient to reduce the blood sugar level to normal, insulin is given, which is an extract of the pancreas administered by hypodermic injection. There is no accepted treatment for diabetes other than diet and insulin adjusted properly to meet the needs of each patient.

Respondent's preparation Uvursin consists of the following ingredients: chimaphila, a variety of wintergreen; cupatorium, a plant known as thoroughwort; pareira, the root of chondrodendron; taraxacum, commonly known as dandelion; uva ursi, commonly known as bearberry; juglans, popularly known as butternut bark; lappa, popularly known as burdock; inula, botanically known as elecampane; eriodictyon, popularly known as mountain-balm; and zea mais, which is commonly known as corn. To these materials have been added senna and also some potassium nitrate and sodium borate. However, this preparation is essentialy a combination of crude plant materials.

The formula or statement of the ingredients of this preparation means little or nothing to the average practitioner, for, as stated in respondent's circular,

> Other than the fact that the combined infusions are innocuous, the ingredients as explained will mean practically nothing, even to the experienced therapist, for the reason that few of the items are used for the cataloged characteristics of the alcohol extracts as outlined in the Pharmacopeia.

Furthermore the respondent does not supply a quantitative formula for the information of physicians who are solicited to use its preparation.

The plant materials listed in respondent's preparation have enjoyed a very long reputation, particularly in folklore medicine, for the treatment of urinary conditions, and some of these plant materials were formerly used in the form of tea for bladder and kidney diseases. Their action in general is mildly diuretic and promotes an increased flow of urine, and the senna is added to produce a mild laxative effect. The potassium nitrate and sodium borate contained in this preparation have little or no effect, other than possibly to add to diuretic action. Some of these crude drugs contain insulin and other carbohydrates, which the body may utilize in lieu of ordinary sugars if there is proper metabolic condition prevailing in the body. However, the amount of these crude drugs which is recommended to be administered daily, namely, 30 grains, has no significant effect other than to add very slightly to the amount of carbohydrates which the body is already unable to properly handle when the condition of diabetes exists.

Respondent's product has no effect on the essential diabetic disturbance. By increasing the flow of the urine it will dilute the amount of sugar which has been discovered, and by increasing the amount of urine the percentage of sugar would necessarily drop, but this would not affect the blood sugar level. The use of respondent's preparation without diet would not accomplish any more than the possible reduction of the amount of sugar in the urine, due to its diuretic properties. The existence of diabetes or improvement in diabetic cases cannot be determined by examination of the urine alone, but blood sugar examination is also necessary.

Diabetic gangrene may be precipitated by arteriosclerosis, injury, or infection. The most frequent thing, however, is a combination of these factors, arteriosclerosis plus infection or injury. Gangrene is not necessarily an indication of extreme severity of diabetes but depends upon the blood supply, or potency of the arteries, as well as the adverse effects of abnormally high sugar levels.

Diabetes is a disease in which there may be spontaneous or temporary remissions from time to time, depending partly on the character of the diet. The diet recommended with Uvursin by the respondent conforms closely to the type of diet that physicians would recommend in diabetic cases to reduce the sugar intake, increase the alkaline reserve, and reduce generally the conditions under which symptoms of diabetes mellitus may be manifest.

The preparation Uvursin is not an efficacious treatment for diabetes mellitus, as it does not in any way deal with the causes of the disease. In view of the fact that diabetes is a disease in which spontaneous remission occurs and in view of the fact that the character of the symptoms can, in most instances, be controlled by an appropriate diet, the presumed effectiveness of Uvursin would be due to a combination of these circumstances in individual cases and not to any therapeutic value of the preparation itself. The use of this preparation may be definitely harmful to a patient suffering from diabetes mellitus, in that it would give a false sense of security and delay the inauguration of effective treatment.

The pancreas is a secreting gland which secretes certain enzymes into the digestive tract for the digestion of fat and protein and secretes chemical insulin into the blood stream for handling carbohydrates through all the body. Failure of the pancreas to secrete a sufficient amount of insulin for the purposes of the body, results in the condition known as diabetes, and where there has been a deterioration in the pancreas, it is necessary that needed insulin be supplied artificially.

Insulin was discovered in 1922 and is an extract of the pancreatic gland of animals, such as cattle, sheep, and pigs. Its action, when administered hypodermically, is to supplement the insulin of the pancreas. In some cases it helps to revive the pancreas where no deterioration has taken place. In those cases where diet alone is not effective in restoring action of the pancreas, the failure to give insulin increases the severity of the diabetic condition and may result in diabetic coma and death. In such conditions there is nothing known to modern medicine which will supplant or replace the use of insulin.

PAR. 8. The respondent offered as expert witnesses four practicing physicians, who testified as to experience in the use of respondent's preparation Uvursin in individual cases. Three of these testified to the use of urinalysis test only, to determine sugar, no blood test having been made. The fourth physician did use the blood test but testified that he usually began his treatment with the use of insulin, going to respondent's product in those cases where the patient refused to use the hypodermic needle for the administration of insulin. All four of these physicians testified to the use of the diet in connection with respondent's product, and where serious recurrence of sugar in the urine appeared after discontinuance of respondent's product, it was also admitted that a discontinuance or failure to follow the diet prescribed had occurred.

After giving full consideration to the testimony of these physicians, their method of diagnosis, and also the characteristics of diabetes, in that spontaneous remissions may occur and also the possibility of control of the symptoms by diet, the Commission is of the opinion, and finds, that the testimony in the record based upon experience in individual cases is of little probative value, as compared to the expert testimony in the record based upon general knowledge.

PAR. 9. The use by the respondent of the aforesaid false advertisements and misleading representations has the capacity and tendency to, and does, mislead purchasers and prospective purchasers into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of substantial quantities of respondent's said medicinal preparation. As a direct result thereof, trade has been diverted unfairly to the respondent from its competitors who are likewise engaged in the sale and distribution in commerce among and between the various States of the United States, of medicinal preparations designed and used for the treatment of the conditions of the human body for which respondent recommends the use of its 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 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, testimony and other evidence taken before Miles J. Furnas, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed herein, and oral arguments by Donovan Divet, counsel for the Commission, and by Zach Lamar Cobb, 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, John J. Fulton Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offer-

ing for sale, sale, or distribution of its medicinal preparation "Uvursin," or any other 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 that respondent's preparation "Uvursin" constitutes a competent or effective treatment for diabetes or has any therapeutic value in the treatment of diabetes.

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 medicinal preparation "Uvursin," 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

B. T. CLIFTON TRADING AS ASSOCIATED SALES AGENCY

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

Docket 4201. Complaint, July 26, 1940—Decision, June 18, 1941

Where an individual engaged in the competitive interstate sale and distribution of clocks, knives, fountain pens, pipes, watches, cigarette cases, cigarette lighters, and other articles of merchandise—

Furnished to purchasers various devices and plans which involved the operation of games of chance, gift enterprises, or lottery schemes in the sale and distribution of said merchandise to the ultimate consumer wholly by lot or chance, and included, as typical, assortment consisting of a number of aforesaid articles, together with a 300-cell, 12-section punchboard, for use in sale of said articles under a plan by which purchaser of a punch, at 5 cents, punching a designated number, and the purchaser punching the last remaining cell in each of the 12 sections, receive a specified article, value of which was in excess of 5 cents, others receiving nothing for their money other than the privilege of punching;

With result of thereby placing in the hands of others lottery devices for use in distributing said merchandise to the ultimate consumer wholly by lot or chance, contrary to the established public policy of the United States Government; and whereby trade was unfairly diverted to him from his competitors who did not, in the distribution of their merchandise, use such methods:

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

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

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou*, for the Commission.

Mr. Robert Morel Montgomery, of Birmingham, Ala., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that B. T. Clifton, individually, and trading as Associated Sales Agency, 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, B. T. Clifton, is an individual trading as Associated Sales Agency, with his office and principal place of business located at 108 North Seventeenth Street, Birmingham, Ala. Respondent is now, and for more than 10 years last past has been, engaged in the sale and distribution of clocks, knives, fountain pens, pipes, watches, tie sets, cigarette cases, cigarette lighters, and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from his aforesaid place of business in Birmingham, Ala., to purchasers thereof at their respective points of location in the various States of the United States other than Alabama and in the District of Columbia. There is now, and has been for more than 10 years last past, a course of trade by respondent in such 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 merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers, certain assortments of merchandise so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment consists of 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 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 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 5 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 5 cents. The numbers are effectively con-

cealed 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.

Respondent sells and distributes, and has sold and distributed, various assortments of merchandise along with punchboards involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase, directly or indirectly, respondent's said 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 method in the sale of his merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said method, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 26th day of July A. D. 1940, issued and thereafter served its complaint in this proceeding upon the respondent, B. T. Clifton, individually and trading as Associated Sales Agency, charging him 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., attorney for the Commission, before W. W. Sheppard, 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, the trial examiner's 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. Respondent, B. T. Clifton, is an individual trading as Associated Sales Agency, and having his office and principal place of business in the city of Birmingham, in the State of Alabama.

PAR. 2. Respondent, for some time last past has been, and now is, engaged in the sale and distribution of clocks, knives, fountain pens, pipes, watches, cigarette cases, cigarette lighters, and other articles of merchandise, and causes said articles of merchandise, when sold, to be shipped from his principal place of business in the State of Alabama, to purchasers thereof located in various States of the United States.

PAR. 3. Respondent, in the conduct of his business as set forth in paragraph 2 hereof, has been, and now is, in competition with various other individuals, partnerships and corporations engaged in the sale

and distribution of similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 4. Respondent, in the sale and distribution of his said merchandise, has furnished and furnishes to the purchasers thereof various devices and plans for merchandising same which involve the operation of games of chance, gift enterprises, and 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 is the following:

(*a*) One of respondent's assortments consist of a number of the articles herein listed, together with a device commonly called a punchboard, which has 300 tubes or cells, divided into 12 sections of 25 cells each; a slip of paper is contained in each cell, bearing a number which is not disclosed until the cover of the cell has been punched. The punches are sold at 5 cents each, and the purchaser punching a designated number, and the purchaser punching the last remaining cell in each of the 12 sections, receives a specified article of merchandise; the purchaser of a right to punch who does not punch one of the winning numbers or the last remaining cell in each section, receives nothing for his money other than the privilege of punching. The articles of merchandise thus distributed are worth more than 5 cents each, but the persons punching the winning numbers or the last punch in each section, are not required to pay anything in addition to the price of the punch.

Other items of merchandise were and are sold by the respondent by like or similar methods, and such punchboards, push cards and similar devices differ only in detail.

PAR. 5. Respondent, by his sales methods hereinbefore described, places in the hands of others various devices to be used in the distribution of his merchandise by means of games of chance, gift enterprises, or lottery schemes, and by the use of such devices, such merchandise is distributed to the ultimate consumer wholly by lot or chance; respondent's said sales methods are contrary to the established public policy of the Government of the United States.

PAR. 6. During all of the times herein mentioned, respondent has been in competition with other individuals, partnerships, and corporations who sell and distribute merchandise similar to that sold and distributed by respondent, and are engaged in commerce between and among various States of the United States, and 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 acts and practices in commerce, within the intent and meaning of the Federal 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, the testimony and other evidence taken before W. W. Sheppard, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, the report of the trial examiner thereon, and brief filed by attorney for the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent, B. T. Clifton, individually and trading as Associated Sales Agency, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, B. T. Clifton, individually and trading as Associated Sales Agency, or by any other trade name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of clocks, knives, fountain pens, watches, cigarette cases, cigarette lighters or, any other article of merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

(*a*) 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.

(*b*) Supplying to, or placing in the hands of others, push or pull cards, punchboards, or other lottery device, either with assortments of merchandise or separately, which said push or pull cards, punchboards or other lottery device, are to be used or may be used in selling or distributing such merchandise to the public.

(*c*) Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise or other lottery device or 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

GEORGE C. BOUNDS AND WILLIAM H. PHILLIPS, DOING BUSINESS AS GEORGE A. BOUNDS & 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 4303. Complaint, Sept. 5, 1940—Decision, June 13, 1941

Where two partners engaged in packing, processing, and canning tomatoes and sweetpotatoes, and in interstate sale and distribution thereof (1) through brokers to whom they usually granted brokerage amounting to 4 percent from their invoice or prevailing market price, and (2) directly to purchasers for resale—

(*a*) Granted to purchasers, the sales to whom were effected by brokers who did not accept brokerage from said partners on such sales, discounts, and allowances in lieu of brokerage, by selling and invoicing said commodities at a net price which was lower than their prevailing market price by an amount approximately equal to the customary brokerage usually granted and allowed by them and accepted by their brokers on similar sales to purchasers;

(*b*) Granted to purchasers, sales to whom were effected by brokers controlled by such purchasers, discounts and allowances in lieu of brokerage, by selling said commodities to them at a net price which was lower than their prevailing market price by an amount equal to the customary brokerage usually granted and allowed by them to such brokers on similar sales to other purchasers; and

(*c*) Granted to brokers on sales for such brokers' own account, discounts and allowances in lieu of brokerage, by selling to such brokers at a net price which was lower than their prevailing market price by an amount equal to the customary brokerage usually granted and allowed by them to such brokers on similar sales to other purchasers:

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, as above set forth, said partners violated subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John T. Haslett for the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19,

1936 (U. S. C. title 15, sec. 13), issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents, George C. Bounds and William H. Phillips, partners doing business under the name and style of George A. Bounds & Co., have their principal office and place of business located at Salisbury, Md. Respondents own, and for the purpose of packing, processing, and canning tomatoes and sweetpotatoes, operate a factory located at Hebron, Md.

PAR. 2. Respondents since June 19, 1936, have been and are now engaged in the business of selling, shipping, and distributing such commodities, by means and through the use of brokers, directly to purchasers of the same for resale. The customary brokerage granted and allowed by respondents to brokers on such sales has been and usually is 4 percent from invoice price, said invoice price being respondents' prevailing market price.

PAR. 3. Respondents are now and have been since June 19, 1936, selling, shipping, and distributing such commodities in commerce between and among the various States of the United States and the District of Columbia, and as a result of such sales have caused such commodities to be shipped and transported from the State of Maryland to the purchasers thereof located in the various States of the United States other than the State of Maryland. There is now and has been at all times mentioned herein a continuous current of trade in commerce in such commodities between respondents and the purchasers of such commodities.

PAR. 4. In the course and conduct of their business in commerce as hereinbefore alleged and described.

1. Respondents have granted to purchasers, the sales to whom have been effected by brokers not accepting brokerage from respondents on such sales, discounts, and allowances in lieu of brokerage, by selling and invoicing said commodities to such purchasers at a net price which is lower than respondents' prevailing market price by an amount which approximately equals the customary brokerage usually granted and allowed by respondents and accepted by respondent's brokers on similar sales to purchasers.

2. Respondents have granted to purchasers, the sales to whom have been effected by brokers controlled by such purchasers, discounts and allowances in lieu of or as brokerage, by selling said commodities to such purchasers at a net price which is lower than respondents prevailing market price by an amount which equals the customary brokerage usually granted and allowed by respondents to such brokers on similar sales to other purchasers effected by such brokers.

3. Respondents have granted to brokers, the sales to whom have been for such brokers own account, discounts and allowances in lieu of or as brokerage, by selling said commodities to such brokers at a net price which is lower than respondents prevailing market price by an amount which is equal to the customary brokerage usually granted and allowed by respondents to such brokers on similar sales to other purchasers when effected by such brokers.

PAR. 5. The aforesaid acts of the respondents constitute a violation of the provisions of subsection (c) of section 2 of the above-mentioned Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, 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 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 5th day of September, 1940, issued and thereafter served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging the respondents with violation of the provisions of subsection (c) of section 2 of said act, as amended.

After the issuance of said complaint, the respondents filed their 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 matter 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, George C. Bounds and William H. Phillips, partners doing business under the name and style of George A. Bounds & Co., have their principal office and place of business located at Salisbury, Md. Respondents own, and for the purpose of packing, processing, and canning tomatoes and sweetpotatoes, operate a factory located at Hebron, Md.

PAR. 2. Respondents since June 19, 1936, have been and are now engaged in the business of selling, shipping, and distributing such commodities, through the use of brokers and directly to purchasers of the same for resale. The customary brokerage granted and allowed

by respondents to brokers on such sales has been and usually is 4 percent from the invoice price, said invoice price being respondents' prevailing market price.

PAR. 3. Respondents are now and have been since June 19, 1936, selling, shipping, and distributing such commodities in commerce between and among the various States of the United States and the District of Columbia, and as a result of such sales have caused such commodities to be shipped and transported from the State of Maryland to the purchasers thereof located in the various States of the United States other than the State of Maryland. There is now and has been at all times mentioned herein a continuous current of trade in commerce in such commodities between respondents and the purchasers of such commodities.

PAR. 4. In the course and conduct of their business in commerce as hereinbefore described,

1. Respondents have granted to purchasers, the sales to whom have been effected by brokers not accepting brokerage from respondents on such sales, discounts, and allowances in lieu of brokerage, by selling and invoicing said commodities to such purchasers at a net price which is lower than respondents' prevailing market price by an amount which approximately equals the customary brokerage usually granted and allowed by respondents and accepted by respondents' brokers on similar sales to purchasers.

2. Respondents have granted to purchasers, the sales to whom have been effected by brokers controlled by such purchasers, discounts and allowances in lieu of brokerage, by selling said commodities to such purchasers at a net price which is lower than respondents' prevailing market price by an amount which equals the customary brokerage usually granted and allowed by respondents to such brokers on similar sales to other purchasers effected by such brokers.

3. Respondents have granted to brokers, the sales to whom have been for such brokers' own account, discounts and allowances in lieu of brokerage, by selling said commodities to such brokers at a net price which is lower than respondents' prevailing market price by an amount which is equal to the customary brokerage usually granted and allowed by respondents to such brokers on similar sales to other purchasers when effected by such brokers.

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 canned tomatoes and canned sweetpotatoes from the respondents, as set forth in paragraph 4 hereof, the

respondents, George C. Bounds and William H. Phillips, partners doing business under the name and style of George A. Bounds & Co., have violated and are 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 of the respondents named in the caption hereof, in which answer said respondents admit all the material allegations of fact set forth in said complaint to be true, and state that they waive all intervening procedure and further hearing as to said facts, and expressly waive the filing of briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That the respondents, George C. Bounds and William H. Phillips, partners doing business under the name and style of George A. Bounds & Co., their representatives, agents, and employees, in connection with the sale and distribution of canned tomatoes and canned sweetpotatoes in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

1. Granting or making any allowances or discounts in lieu of brokerage to any purchaser by selling commodities at a price reflecting a reduction from the prices at which sales of such commodities are currently being effected by respondents to other customers of an amount representing, in whole or in part, brokerage currently being paid by respondents to brokers for brokerage services rendered to respondents in effecting sales of such commodities to such purchasers thereof; and

2. Granting or allowing in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance or discount in lieu thereof to any purchaser in such transactions.

It is further ordered, That the respondents named in the caption hereof shall, within 30 days after service upon them of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

GLAND ESTEMETER CORPORATION, AND WILLIAM ESTEP

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

Docket 4328. Complaint, Oct. 3, 1940—Decision, June 13, 1941

Where a corporation and its president and general manager, who formulated, directed, and controlled its practices and policies, engaged in interstate sale and distribution of their "Gland Estemeter" device for diagnosing various ailments and conditions; by means of advertisements disseminated through the mails, circulars, leaflets, and other advertising literature—

Represented, directly or by implication, that all ailments and diseases of the human body are caused by improper or abnormal functioning of the glands, and that their said device detected and disclosed any such improper or abnormal functioning, revealed any vitamin deficiency in the body and whether condition thereof was acid or alkaline, disclosed the condition of the blood with respect to energy and activity, and analyzed and disclosed any impairment of the mental processes;

Facts being there are many ailments and diseases which are not caused by any improper or abnormal functioning of the glands, and even where there might be such dysfunctioning, their said device was wholly incapable of detecting or disclosing such condition; and it possessed no value whatsoever in the diagnosis of any ailment, disease, or condition of the body;

With tendency and capacity to induce a substantial portion of the purchasing public to believe that such representations were true, and to cause it to purchase substantial quantities of their product as a result of such erroneous and mistaken belief:

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

Mr. Randolph W. Branch for the Commission.

Darrow, Smith & Carlin, 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 the Gland Estemeter Corporation, a corporation, and William Estep, 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 Gland Estemeter Corporation is a corporation organized under the laws of the State of Missouri. Respondent William Estep is president and general manager of the corporate

respondent and formulates, directs, and controls the practices and policies of said corporation. Both of the respondents formerly maintained their offices and principal places of business at 201 East Twelfth Street, Kansas City, Mo. Their present mailing address is in care of American Health Food Association, 30 North LaSalle Street, Chicago, Ill.

PAR. 2. For more than 1 year next preceding October 31, 1939, the respondents were engaged in the business of selling and distributing a certain device referred to by respondents as a "Gland Estemeter" and intended for use in the diagnosis of various ailments and conditions of the human body.

PAR. 3. In the course and conduct of their aforesaid business the respondents have disseminated and have caused the dissemination of false advertisements concerning their said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said product; and respondents have also disseminated and have caused the dissemination of false advertisements concerning their said product by various means for the purpose of inducing and which were 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 circulars, leaflets and other advertising literature are the following:

THE GLAND ESTEMETER

This wonderful invention reveals the Vitamin Deficiency and Gland Deficiency of the body. SHOWING THE CAUSE AND PROPER WAY TO ELIMINATE DISEASE.

If Your Glands are Normal, They Register:

Pineal Gland, 580	Spleen Gland, 600
Pituitary Gland, 600	Adrenal Glands, 500
Para Thyroid Gland, 600	Pancreas Gland, 550
Thymus Gland, 550	Gonads, 600
Thyroid Gland, 380	

* * * the gland deficiency is the only cause of disease.

IF YOUR HEALTH IS CAUSING YOU TROUBLE, HAVE A GLAND TEST ON THE ESTEMETER AT ONCE. LEARN HOW TO CORRECT YOUR VITAMIN DEFICIENCY, TAKE THE ESTEMETER GLAND TECHNIQUE AND SEE FOR YOURSELF THAT AS FAST AS YOUR GLANDS BECOME NORMAL YOU WILL RECOVER FROM YOUR TROUBLE.

The Gland Estemeter Registers the Power of the Glands, Reveals what vitamins are deficient, shows if the body is acid or alkaline, reveals the blood energy and its power, analyzes the positive or negative mental condition of the brain centers.

The Estemeter also shows the energy in the blood as to its activity and reveals the extent of mineral deficiency, when the mineral is taken the Estemeter reveals the progress toward recovery and the deficiency disease if there is one vanishes as the blood approaches normal on the Estemeter.

THE GREAT BENEFIT HUMANITY WILL DERIVE FROM KNOWING THE CONDITION OF THEIR GLANDS AND HAVING A DEFINITE KNOWLEDGE OF VITAMIN DEFICIENCY IN THE BLOOD, AS WELL AS KNOWING THE EXACT CONDITION OF THEIR MENTAL PROCESS IS BEYOND ESTIMATE.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents directly and by implication, among other things, have represented that all ailments and diseases of the human body are caused by the improper or abnormal functioning of the glands of the body; that respondents' device detects and discloses any improper or abnormal functioning of the glands; that said device reveals any vitamin deficiency in the body, reveals whether the condition of the body is acid or alkaline, discloses the condition of the blood with respect to energy and activity, and analyzes and discloses any impairment of the mental processes.

PAR. 5. The foregoing representations are false and misleading. In truth and in fact, there are many ailments and diseases of the human body which are not caused by any improper or abnormal functioning of the glands. Even in those cases where there may be an improper or abnormal functioning of the glands, respondents' device is wholly incapable of detecting or disclosing such condition. Said device does not reveal vitamin deficiencies in the body, nor does it disclose whether the condition of the body is acid or alkaline. It does not disclose the condition of the blood with respect to energy or activity, nor does it disclose any other condition of the blood. It does not analyze or disclose impairments of the mental processes.

Respondents' device is in fact only an ordinary electric battery device, and the registrations shown thereon when said device is in use indicate merely the resistance of the body tissues to the electric current set in motion by the device. Such registrations are in no way related to nor are they indicative of the condition of the glands or any other part of the human body. In truth and in fact, respondents' device possesses no value whatsoever in the diagnosis of any ailment, disease, or condition of the human body.

PAR. 6. The use by the respondents of the foregoing false and misleading representations with respect to their said product has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such

false and misleading representations are true, and into the purchase of substantial quantities of respondents' 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 the 3d day of October 1940, issued, and thereafter served, its complaint in this proceeding upon said respondents Gland Estemeter Corporation and William Estep, charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 18, 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 proceedings without the presentation of argument, the filing of briefs or the filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Gland Estemeter Corporation, is a corporation organized under the laws of the State of Missouri. Respondent William Estep is president and general manager of the corporate respondent and formulates, directs, and controls the practices and policies of said corporation. Both of the respondents formerly maintained their offices and principal places of business at 201 East Twelfth Street, Kansas City, Mo. Their present mailing address is care of American Health Food Association, 30 North LaSalle Street, Chicago, Ill.

PAR. 2. For more than 1 year next preceding October 31, 1939, the respondents were engaged in the business of selling and distributing a certain device referred to by respondents as a "Gland Estemeter" and intended for use in the diagnosis of various ailments and conditions of the human body.

PAR. 3. In the course and conduct of their aforesaid business the respondents have disseminated and have caused 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 were likely to induce, directly or indirectly, the purchase of their said product; and respondents have also disseminated and have caused the dissemination of advertisements concerning their said product by various means for the purpose of inducing, and which were 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 statements and representations contained in said advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by circulars, leaflets, and other advertising literature, are the following:

THE GLAND ESTEMETER

This wonderful invention reveals the Vitamin Deficiency and Gland Deficiency of the body, SHOWING THE CAUSE AND PROPER WAY TO ELIMINATE DISEASE.

If your Glands are Normal, They Register:

Pineal Gland, 580
Pituitary Gland, 600
Para Thyroid Gland, 600
Thymus Gland, 550
Thyroid Gland, 380
Spleen Gland, 600
Adrenal Glands, 500
Pancreas Gland, 550
Gonads, 600

* * * the gland deficiency is the only cause of disease.

IF YOUR HEALTH IS CAUSING YOU TROUBLE, HAVE A GLAND TEST ON THE ESTEMETER AT ONCE. LEARN HOW TO CORRECT YOUR VITAMIN DEFICIENCY, TAKE THE ESTEMETER GLAND TECHNIQUE AND SEE FOR YOURSELF THAT AS FAST AS YOUR GLANDS BECOME NORMAL YOU WILL RECOVER FROM YOUR TROUBLE.

The Gland Estemeter Registers the Power of the Glands, Reveals what vitamins are deficient, shows if the body is acid or alkaline, reveals the blood energy and its power, analyzes the positive or negative mental condition of the brain centers.

The Estemeter also shows the energy in the blood as to its activity and reveals the extent of mineral deficiency, when the mineral is taken the Estemeter reveals the progress toward recovery and the deficiency disease if there is one vanishes as the blood approaches normal on the Estemeter.

THE GREAT BENEFIT HUMANITY WILL DERIVE FROM KNOWING THE CONDITION OF THEIR GLANDS AND HAVING A DEFINITE KNOWLEDGE OF VITAMIN DEFICIENCY IN THE BLOOD, AS WELL AS KNOWING THE EXACT CONDITION OF THEIR MENTAL PROCESS IS BEYOND ESTIMATE.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents directly and by implication, among other things, have represented that all ailments and diseases of the human body are caused by the improper or abnormal functioning of the glands of the body; that respondents' device detects and discloses any improper or abnormal functioning of the glands; that said device reveals any vitamin deficiency in the body, reveals whether the condition of the body is acid or alkaline, discloses the condition of the blood with respect to energy and activity, and analyzes and discloses any impairment of the mental processes.

PAR. 5. The Commission finds that the representations referred to in paragraphs 3 and 4 are false and misleading, and constitute false advertisements. There are many ailments and diseases of the human body which are not caused by any improper or abnormal functioning of the glands. Even in those cases where there may be an improper or abnormal functioning of the glands, respondents' device is wholly incapable of detecting or disclosing such condition. Respondents' device does not reveal vitamin deficiencies in the body, nor does it disclose whether the condition of the body is acid or alkaline. Respondents' device does not disclose the condition of the blood with respect to energy or activity, nor does it disclose any other condition of the blood. It does not analyze or disclose impairments of the mental processes. Respondents' device possesses no value whatsoever in the diagnosis of any ailment, disease, or condition of the human body.

PAR. 6. The use by the respondents of the foregoing representations with respect to their product has the tendency and capacity to induce a substantial portion of the purchasing public to believe that such representations are true, and to cause such portion of the public to purchase substantial quantities of respondents' product as a result 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, 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 Commis-

sion, 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, Gland Estemeter Corporation, a corporation, its officers, and William Estep, an individual, and 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 device known as "Gland Estemeter," or any device of substantially similar construction or possessing substantially similar characteristics, 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 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 all ailments or diseases of the human body are caused by the improper or abnormal functioning of the glands;

(*b*) That respondents' device detects or discloses improper or abnormal functioning of the glands;

(*c*) That said device reveals vitamin deficiencies in the body;

(*d*) That said device discloses whether the condition of the body is acid or alkaline;

(*e*) That said device discloses the condition of the blood with respect to energy or activity, or that said device discloses any other condition of the blood;

(*f*) That said device analyzes or discloses impairments of the mental processes;

(*g*) That said device possesses any value in the diagnosis of any ailment, disease or condition of the human 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 device, 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

GORDON FOODS, INC.

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

Docket 4438. Complaint, Dec. 31, 1940—Decision, June 13, 1941

Where a corporation engaged in the competitive interstate sale and distribution of food products including assortments of nuts, which were so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold to the consuming public, and included, as typical, a display card with twenty-seven 5-cent packages of nuts each, three of which, however, concealed within them a printed slip of paper bearing the word "free" and were without cost to purchasers procuring same;

Sold such assortments to jobbers and, directly or indirectly, to retailers, by whom they were exposed and sold in accordance with said plan, involving game of chance to procure without cost, package of nuts, and thus supplied to and placed in the hands of others means of conducting lotteries in the sale of its products, contrary to established public policy of the United States Government, and in competition with many who, unwilling to sell their products by such or any method contrary to public policy, refrain therefrom;

With result that many persons were attracted by its said sales plan and the element of chance involved therein and were thereby induced to buy and sell its products in preference to those of its said competitors, and with tendency and capacity to divert trade unfairly to it from them:

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

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Clarence H. Calhoun, of Atlanta, Ga., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Gordon Foods, 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 Gordon Foods, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Georgia with its principal office and place of business located at 1075 Sylvan Road SW., Atlanta, Ga. Respondent is now

and has been for more than 1 year last past engaged in the sale and distribution of food products to jobbers and retail dealers located in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, its products when sold to be shipped and transported from its aforesaid place of business in the State of Georgia to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by said respondent in such food products in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business, respondent is, and has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, assortments of nuts so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing and consuming public.

One of said assortments consists of 27 packages of nuts mounted on a display card bearing the legend

TRY YOUR LUCK.

You May Get a Free Package.

and distributed in the following manner:

The said packages of nuts retail at the price of 5 cents each, but three of said packages have within the wrapper or package a printed slip of paper bearing the word "Free" and thereby advising the purchaser thereof that the said package of nuts is given to him without cost. The said printed slips of paper are effectively concealed from purchasers and prospective purchasers until said packages have been opened and the said slips removed therefrom. The purchasers who procure said packages containing said printed slips thus procure the same without cost rather than at the regular retail price of 5 cents each. The fact as to whether the purchasers of said packages of nuts in said assortment procure the same without cost or pay the regular price of 5 cents each therefor, is thus determined wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various assortments of food products involving a lot or chance fea-

ture, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said packages of nuts, 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 products and the sale of said products by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of packages of nuts 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 packages of said nuts without cost. Many persons, firms, and corporations who sell and distribute products in competition with respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method which is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or method employed by respondent in the sale and distribution of its products and by the element of chance involved therein and are thereby induced to buy and sell respondent's products in preference to products of said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from 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 31st day of December 1940

issued, and on January 2, 1941, served, its complaint in this proceeding upon respondent, Gordon Foods, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On January 21, 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 counsel, Clarence H. Calhoun, 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. The 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, Gordon Foods, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Georgia with its principal office and place of business located at 1075 Sylvan Road SW., Atlanta, Ga. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of food products to jobbers and retail dealers located in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, its products, when sold, to be shipped and transported from its aforesaid place of business in the State of Georgia to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by said respondent in such food products in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business, respondent is, and has been, in competition with other corporations and with individuals

and partnerships engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, assortments of nuts so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing and consuming public.

One of said assortments consists of 27 packages of nuts mounted on a display card bearing the legend

TRY YOUR LUCK.

You May Get a Free Package.

and distributed in the following manner:

The said packages of nuts retail at the price of 5 cents each, but three of said packages have within the wrapper or package a printed slip of paper bearing the word "Free" and thereby advising the purchaser thereof that the said package of nuts is given to him without cost. The said printed slips of paper are effectively concealed from purchasers and prospective purchasers until said packages have been opened and the said slips removed therefrom. The purchasers who procure said packages containing said printed slips thus procure the same without cost rather than at the regular retail price of 5 cents each. The fact as to whether the purchasers of said packages of nuts in said assortment procure the same without cost or pay the regular price of 5 cents each therefor, is thus determined wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's said packages of nuts, 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 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.

PAR. 4. The sale of packages of nuts 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 packages of said nuts without cost. Many persons, firms, and corporations who sell and distribute prod-

ucts 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 which is 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 its products and by the element of chance involved therein and are thereby induced to buy and sell respondent's products in preference to products of said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent because of said game of chance has a tendency and capacity to 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 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 acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the stipulation as to the facts entered into between the respondent herein and W. T. Kelly, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the 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, Gordon Foods, 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 nuts, nut products, 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 nuts, nut products, or any other merchandise so packed and assembled that sales of such nuts, nut products,

or other merchandise, to the general public are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of dealers, or others, assortments of packages of nuts, nut products, or other 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 such nuts, nut products, or other merchandise to the public.

3. Packing or assembling in the same assortment packages of nuts, nut products or other merchandise for ultimate sale to the public, which individual packages of nuts, nut products or other merchandise are of uniform appearance, but some of which contain coupons or slips entitling the purchaser to receive such packages without cost.

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

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

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IN THE MATTER OF

NEO-VIM COMPANY, AND W. C. POLLARD, A. L. RIAFF, L. M. JENSEN, CARL G. ROSSEL, EDWIN L. MILLER, AND L. R. DILLOW

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

Docket 3969. Complaint, Oct. 10, 1940 [1]*—Decision, June 14, 1941*

Where a corporation and several individuals, who were at various times officers and managing directors thereof and formulated, directed and controlled its policies and practices or participated therein, engaged in interstate sale and distribution of their "Neo-Vim" or "Neo-Vem" medicinal preparation as a tonic, and of their "Hi-Ho Tooth Paste" for use on teeth and gums; by means of advertisements disseminated through the mails, in newspapers and periodicals, radio continuities, and circulars, leaflets, pamphlets, and other advertising literature—

(*a*) Represented, directly or through implication that their said "Neo-Vim" or "Neo-Vem" was a competent and effective tonic which supplied the user with increased energy and vitality and increased the appetite, that it served to increase the quantity, and improve the quality, of the blood, and would increase the flow of gastric juices and otherwise aid digestion, and that it was a competent and effective treatment for indigestion;

Facts being, said product was not a competent or effective tonic, and had no such beneficial effects or therapeutic value except as an ordinary laxative; and

(*b*) Represented that their "Hi-Ho Tooth Paste" possessed unusual and superior qualities for brightening the teeth, kept the gums healthy and firm, would remove all stain, film, and discoloration from the teeth irrespective of cause, alter the natural or original color of the tooth enamel and make any teeth white and sparkling, and that it prevented impure breath and offensive breath odors;

Facts being said preparation was not a competent or effective agency for brightening the teeth except as an ordinary cleanser, and served no other purpose than as an ordinary dentifrice;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such advertisements were true, and of causing it, as a result of such belief, to purchase substantial quantities of their 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. Lewis C. Russell*, trial examiner.

Mr. R. A. McOuat for the Commission.

Mr. Owen B. Sherwood, of Columbus, Ohio, for respondents.

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[1] Amended and supplemental.

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Neo-Vim Co., a corporation, and W. C. Pollard, A. L. Riaff, L. M. Jensen, Carl G. Rossel, Edwin L. Miller, and L. R. Dillow, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Neo-Vim Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio and having its office and principal place of business at 400 North High Street, Columbus, Ohio.

Respondents, Riaff and Jensen, were until May 1939 officers and managing directors of the corporate respondent and formulated, directed, and controlled the policies and practices of the corporate respondent. The mailing address of each of said respondents is 400 North High Street, Columbus, Ohio.

Respondents, Pollard, Rossel, Miller, and Dillow, are now and for varying periods of time since March 1938 have been officers and managing directors of said corporate respondent and formulate, direct, and control the policies and practices of said corporate respondent. The mailing address of each of said respondents is 400 North High Street, Columbus, Ohio.

The respondents are now, or since March 1938 have been, engaged in the business of selling and distributing a medicinal preparation designated "Neo-Vim" or "Neo-Vem," recommended for use as a tonic, and a cosmetic designated Hi-Ho Tooth Paste, recommended for use on the teeth and gums. Respondents cause and have caused their said preparations, when sold, to be transported from their aforesaid 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 have maintained a course of trade in their 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 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 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 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, 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:

A good tonic, to keep the system in good condition, may be just the thing to keep you well. Now, Neo-Vim is a tonic that is designed to aid in increasing appetite, to relieve that stuffiness after meals, to help digestion and also to help build red blood.

Are you feeling well right now—full of that pep and energy that is needed around these busy holidays? Perhaps you need a good tonic like Neo-Vim. This tonic is designed to relieve stomach distress, stuffiness after eating, increases appetite, and helps to build good red blood.

Maybe you are not feeling well right now—perhaps you are troubled with indigestion, have no appetite, and feel generally run down. Then—we'd say Neo-Vim will probably be a fine tonic for you because Neo-Vim will tone up your system by helping to restore appetite, will increase the flow of gastric juices, and will aid digestion and relieve that stuffy feeling after eating. It is mildly laxative and will help to make red blood, so necessary for good health.

Hi-Ho Tooth Paste * * * is so invigorating, keeps the gums healthy. Don't let dingy, discolored teeth or bad breath chase away your friends. Have a smile that your friends will envy by using Hi-Ho Tooth Paste regularly.

You might just add a little more to your brush and massage your gums too, it is certainly healthy and helps the gums stay firm, and once you have firm gums, your teeth are going to shine out like studded diamonds.

Hi-Ho toothpaste * * * has such a refreshing flavor that it sweetens the breath, so that you never need worry about offending.

PAR. 3. Through the use of the foregoing representations, and other representations similar thereto not specifically set forth herein, the respondents represent and have represented, directly or through inference that their medicinal preparation Neo-Vim or Neo-Vem is a competent and effective tonic which supplies the user with increased energy and vitality and increases the appetite; that it serves to increase the quantity of blood in the body and improves the quality of the blood; that it will increase the flow of gastric juices and otherwise aid digestion; that it is a competent and effective treatment for indigestion.

Respondents also represent in the manner aforesaid that their product Hi-Ho Tooth Paste possessed unusual and superior qualities for brightening the teeth; that it keeps the gums healthy and adds firmness to the gums; that said tooth paste will remove all stain, film, and discoloration from the teeth irrespective of the cause thereof, and will alter the natural or original color of tooth enamel and make any teeth white and sparkling; that it prevents impure breath and offensive breath odors.

PAR. 4. The aforesaid representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading, deceptive, and untrue and constitute false advertisements. In truth and in fact respondents' product Neo-Vim or Neo-Vem is not a competent or effective tonic. It is wholly incapable of supplying the user with increased energy or vitality. It will not serve to increase the appetite. It will not increase the quantity of blood in the body nor will it improve the quality of the blood. It will not increase the flow of the gastric juices nor will it otherwise aid digestion. It is not a competent or effective treatment for indigestion. In truth and in fact respondents' preparation has no therapeutic value except as an ordinary laxative.

Respondents' product, Hi-Ho Tooth Paste, is not a competent or effective agency for brightening the teeth except insofar as its use as an ordinary cleanser of the teeth will effect such result. Said tooth paste will not remove stain, film, or discoloration, except those of a surface character, from the teeth. It will not serve to keep the gums healthy or add firmness to the gums. It will not prevent impure breath or offensive odors. In truth and in fact, said product serves no purpose other than as an ordinary dentifrice for the cleaning of the teeth.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading advertisements with respect to their preparations, disseminated as aforesaid, has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said advertisements are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' preparations.

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 10, 1940, issued and subsequently served its amended complaint in this proceeding upon the respondents, Neo-Vim Co., a corporation, and W. C. Pollard, A. L. Riaff, L. M. Jensen, Carl G. Rossel, Edwin L. Miller, and L. R. Dillow, individually and as officers 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. After the issuance of said amended complaint and the filing of respondents' answers thereto, in which answers respondents 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, testimony and other evidence were introduced to show the extent to which Carl G. Rossel participated in the acts and practices charged in the amended complaint, 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 said amended complaint, the answers thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the amended complaint, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Neo-Vim Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio and having its office and principal place of business at 400 North High Street, Columbus, Ohio.

Respondents, A. L. Riaff and L. M. Jensen, are individuals having their mailing address at 400 North High Street, Columbus, Ohio, and were, until May 1939, officers and managing directors of the corporate respondent and formulated, directed, and controlled the policies and practices of the corporate respondent.

Respondents, W. C. Pollard, Edwin L. Miller, and L. R. Dillow, are individuals having their mailing address at 400 North High Street, Columbus, Ohio, who are now, and for varying periods of time since May 1938, have been, officers and managing directors of said corporate respondent and formulate, direct, and control the policies and practices of said corporate respondent.

Respondent, Carl G. Rossel, is an individual having his mailing address at 400 North High Street, Columbus, Ohio, and prior to February 1940, was an officer of said corporate respondent, and as such officer participated in the formulation, direction, and control of the policies and practices of the corporate respondent.

The respondents, since March 1938, have been engaged in the business of selling and distributing a medicinal preparation designated "Neo-Vim" or "Neo-Vem" recommended for use as a tonic, and a cosmetic designated "Hi-Ho Tooth Paste" recommended for use on the teeth and gums. Respondents cause, and have caused, their said preparations, when sold, to be transported from their aforesaid 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 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 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 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 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, 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:

A good tonic, to keep the system in good condition, may be just the thing to keep you well. Now, Neo-Vim is a tonic that is designed to aid in increasing appetite, to relieve that stuffiness after meals, to help digestion and also to help build red blood.

Are you feeling well right now—full of that pep and energy that is needed around these busy holidays? Perhaps you need a good tonic like Neo-Vim. This tonic is designed to relieve stomach distress, stuffiness after eating, increases appetite, and helps to build good red blood.

Maybe you are not feeling well right now—perhaps you are troubled with indigestion, have no appetite, and feel generally run down. Then—we'd say Neo-Vim will probably be a fine tonic for you because Neo-Vim will tone up

your system by helping to restore appetite, will increase the flow of gastric juices, and will aid digestion and relieve that stuffy feeling after eating. It is mildly laxative and will help to make red blood, so necessary for good health.

Hi-Ho Tooth Paste * * * is so invigorating, keeps the gums healthy. Don't let dingy, discolored teeth or bad breath chase away your friends. Have a smile that your friends will envy by using Hi-Ho Tooth Paste regularly.

You might just add a little more to your brush and massage your gums too, it is certainly healthy and helps the gums stay firm, and once you have firm gums, your teeth are going to shine out like studded diamonds.

Hi-Ho toothpaste * * * has such a refreshing flavor that it sweetens the breath, so that you never need worry about offending.

PAR. 3. Through the use of the foregoing representations, and other representations similar thereto not specifically set forth herein, the respondents represent and have represented, directly or through inference, that their medicinal preparation Neo-Vim or Neo-Vem is a competent and effective tonic which supplies the user with increased energy and vitality and increases the appetite; that it serves to increase the quantity of blood in the body and improves the quality of the blood; that it will increase the flow of gastric juices and otherwise aid digestion; that it is a competent and effective treatment for indigestion.

Respondents also represent in the manner aforesaid that their product Hi-Ho Tooth Paste possesses unusual and superior qualities for brightening the teeth; that it keeps the gums healthy and adds firmness to the gums; that said tooth paste will remove all stain, film and discoloration from the teeth irrespective of the cause thereof; and will alter the natural or original color of tooth enamel and make any teeth white and sparkling; that it prevents impure breath and offensive breath odors.

PAR. 4. The aforesaid representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading, deceptive, and untrue and constitute false advertisements. In truth and in fact respondents' product Neo-Vim or NeoVem is not a competent or effective tonic. It is wholly incapable of supplying the user with increased energy or vitality. It will not serve to increase the appetite. It will not increase the quantity of blood in the body nor will it improve the quality of the blood. It will not increase the flow of the gastric juices nor will it otherwise aid digestion. It is not a competent or effective treatment for indigestion. In truth and in fact respondents' preparation has no therapeutic value except as an ordinary laxative.

Respondents' product, Hi-Ho Tooth Paste, is not a competent or effective agency for brightening the teeth except insofar as its use as an ordinary cleanser of the teeth will effect such result. Said tooth

paste will not remove stain, film, or discoloration, except those of a surface character, from the teeth. It will not serve to keep the gums healthy or add firmness to the gums. It will not prevent impure breath or offensive odors. In truth and in fact, said product serves no purpose other than as an ordinary dentifrice for the cleaning of the teeth.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading advertisements with respect to their preparations, disseminated as aforesaid, has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said advertisements are true, and induces a portion of the purchasing public because of such erroneous and mistaken belief, to purchase 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 amended complaint of the Commission and the answers of the respondents, in which answers respondents admit all material allegations of fact set forth in said amended complaint and state that they waive all intervening procedure and further hearings as to the said facts, testimony, and other evidence before Lewis C. Russell, a trial examiner of the Commission theretofore duly designated by it, with reference to the extent of participation of the respondent, Carl G. Rossel, in the acts and practices charged in the amended complaint, the report of the trial examiner upon the evidence and brief in support of the amended complaint filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Neo-Vim Co., a corporation, and its officers, agents, representatives, and employees, and W. C. Pollard, A. L. Riaff, L. M. Jensen, Carl G. Rossel, Edwin L. Miller, and L. R. Dillow, individuals, 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 designated "Neo-Vim" or "Neo-Vem," or their cosmetic preparation designated "Hi-Ho Tooth Paste," or any other 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 respondents' preparation Neo-Vim or Neo-Vem is a tonic; that its use will supply increased energy or vitality; that it will increase the appetite or flow of gastric juices; that it will increase the quantity of the blood or improve the quality of the blood; that said preparation constitutes a competent or effective treatment for indigestion; or that said preparation has any therapeutic value other than that possessed by an ordinary laxative;

(*b*) That respondent's preparation Hi-Ho Tooth Paste will remove stain, film, or discoloration from the teeth other than those of a surface character; that said preparation will serve to keep gums healthy or add firmness to the gums; that the use of said preparation will prevent impure breath or offensive odors; or that it is a competent or effective agency for brightening the teeth in excess of the results obtained from the use of any ordinary dentifrice.

(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' preparations Neo-Vim or Neo-Vem or Hi-Ho Tooth Paste, 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.

IN THE MATTER OF

PITTSBURGH PLATE GLASS COMPANY, W. D. SNYDER, KARL HANSEN COMPANY, INC., KARL HANSEN, DAVID BERNHARDT PAINT & GLASS COMPANY, INC., FRED DITTMAN, EDMUND W. ULRICH, JOSEPH B. CRASTO, LLOYD B. CRASTO, JOSEPH B. CRASTO GLASS COMPANY, AND H. FLAUMHAFT

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

Docket 4304. Complaint, Sept. 6, 1940—Decision, June 14, 1941

Where a corporation, with principal place of business in Memphis, and two other corporations, with principal and only offices in New Orleans, engaged in selling and distributing glass and conducting a glazing contract business in the States comprising the New Orleans trade area, and three individuals, who were, respectively in charge of New Orleans branch of said first-named corporation, and officers in control of the affairs of the other two, and who determined, as herein concerned, the pricing policies of their respective companies; in competition with one another and with other distributors located in said area and elsewhere, except to the extent that competition was lessened and potential competition curtailed by acts and practices below described, and representing, in their aggregate participation in the distribution of plate, window, safety, rough rolled, wire, art, and structural glass, periodically and during times herein involved, an actual and potential preponderance of such business—

Agreed upon and carried out, from about 1932 through 1938 and from time to time, a common understanding and undertaking among themselves to establish and maintain the prices at which the various types of glass were to be and were sold by them to dealers, to the retail trade and to consumers in aforesaid area; and, with intent of making such understanding and undertaking effective and attempting to require compliance therewith by themselves and competitors—

(*a*) Held meetings at various times during period in question at which said understanding and undertaking was discussed, adopted and agreed to;

(*b*) From time to time issued and adhered to duplicate and uniform price lists for the sale of the various types of glass above set forth;

(*c*) Simultaneously, at times, changed the prices at which they sold said glass to purchasers; and

(*d*) From time to time took concerted action to maintain the prices agreed upon; and

Where said corporations and individuals, engaged as above set forth, and a fourth individual, with principal and only place of business in New Orleans, likewise engaged in conducting a glazing contracting business, in the New Orleans trade area, a corporation which succeeded to and carried on aforesaid individual's business, and a fifth individual, likewise engaged in glazing contracting, with principal office and only place of business in New Orleans; securing and seeking to secure glazing contracts within area in question, in competition with similar contractors (whose places of business were

located in said area and elsewhere, and including those who purchase glass for jobs in said area from dealers and distributors located in States other than Louisiana), except to the extent that their competition was lessened and potential competition curtailed by acts and practices below described; and representing a potential preponderance, and at times during periods involved herein an actual preponderance, of business concerned—

Agreed upon and carried out, from the year 1933 through 1936, and from time to time, an agreement, understanding, or undertaking among themselves, with intent of lessening competition in glass contracting within said area; and in pursuance of their agreement, understanding, or undertaking—

(*e*) Apportioned the glazing contracting business in said city;

(*f*) Established the amount of the bids to be submitted respectively by them for supplying or installing glass in buildings or structures in area in question; and

(*g*) Exchanged information and held meetings for establishing and maintaining the amount of their respective bids on particular jobs and to allocate among themselves, as aforesaid, glazing contracts in area in question;

With capacity, tendency, and effect of establishing and maintaining prices at which glass was sold by distributors in aforesaid area, and of unreasonably lessening competition in the glass trade and distribution therein, and in the glazing contracting business in said area, of curtailing price competition among glass distributors therein, and of burdening and interfering therein with the normal and natural flow of trade in commerce in glass, and of injuring their competitors:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and had a tendency unduly to hinder and prevent competition in the sale and distribution of glass and the glazing contracting business in commerce, to place in said distributors the power to control prices at which glass was sold in aforesaid area, and to place in said glazing contractors the power to control prices at which glazing contracts were made therein and unduly to restrict and restrain the sale and distribution of glass in said commerce, and constituted unfair methods of competition therein.

Mr. Fletcher G. Cohn and *Mr. Allen C. Phelps* for the Commission.

Mr. Leland Hazard and *Mr. Joseph T. Owens*, of Pittsburgh, Pa., for Pittsburgh Plate Glass Co. and W. D. Snyder.

Mr. Charles J. Rivet, of New Orleans, La., for Karl Hansen Co., Inc. and Karl Hansen.

Legier, McEnerny & Waguespack, of New Orleans, La., for David Bernhardt Paint & Glass Co., Inc., Fred Dittman and Edmund W. Ulrich.

Mr. John D. Nix, Jr., of New Orleans, La., for Joseph B. Crasto, Lloyd B. Crasto, and Joseph B. Crasto Glass Co.

Mr. Herman L. Midlo, of New Orleans, La., for H. Flaumhaft.

COMPLAINT

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

Trade Commission having reason to believe that the respondents herein named have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Charge I

PARAGRAPH 1. The words and terms set out in this paragraph have the following meanings as used in this complaint:

"Glass" means plate window, automobile, safety, art, and structural glass;

"Respondent distributors" refers to respondents Pittsburgh Plate Glass Co., Karl Hansen Co., Inc., and David Bernhardt Paint & Glass Co., Inc.;

"Respondent glazing contractors" refers to respondents Pittsburgh Plate Glass Co., Karl Hansen Co., Inc., David Bernhardt Paint & Glass Co., Inc., Joseph B. Crasto, Joseph B. Crasto Glass Co., and H. Flaumhaft;

"Glazing contracting business" means the business of contracting to sell and install glass in buildings and structures and also of selling glass therefor and installing the same therein;

"New Orleans trade area" means the area including, surrounding and adjacent to the city of New Orleans, La., in which glass is sold or delivered or supplied and installed in buildings or structures by respondent distributors and respondent glazing contractors, and includes many cities and localities in the States of Louisiana, Alabama, Mississippi, and Texas.

PAR. 2. Respondent, Pittsburgh Plate Glass Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 534 Madison Avenue, Memphis, Tenn. This respondent is engaged in the business of selling and distributing glass and of conducting a glazing contracting business in many different States of the United States, including the States in the New Orleans trade area. It maintains and operates warehouses or jobbing branches located in several different States of the United States. Among said warehouses and jobbing branches so maintained and operated by this respondent is the New Orleans jobbing or distributing branch which sells and distributes glass in the New Orleans trade area and conducts its glazing contracting business in said area. Respondent's New Orleans branch is managed by respondent W. D. Snyder, who is an employee and the representative and agent

of respondent Pittsburgh Plate Glass Co., in the New Orleans trade area. The office and principal place of business of said New Orleans jobbing branch is 1500 Poydras Street, New Orleans, La.

PAR. 3. Respondent Karl Hansen Co., Inc., is a corporation organized and existing under the laws of the State of Louisiana with its principal office at 1600 Poydras Street, New Orleans, La.

Respondent Karl Hansen is the principal stockholder and the president of said Karl Hansen Co., Inc. Respondent Karl Hansen Co., Inc., is engaged in selling and distributing glass and in the glazing contracting business in the New Orleans trade area. Said respondent is under the direction and management of respondent Karl Hansen.

PAR. 4. Respondent David Bernhardt Paint & Glass Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Louisiana with its principal office at 317–323 Camp Street, New Orleans, La. This respondent is engaged in selling and distributing glass in the New Orleans trade area and in the glazing contracting business in said area.

Respondent Fred Dittmann is the secretary-treasurer of respondent, David Bernhardt Paint & Glass Co., Inc., and in active management of its business and policies.

Respondent Edmund W. Ulrich is the manager of the Glazing Contracting Division of respondent David Bernhardt Paint & Glass Co., Inc., and in charge of its glazing contracting business.

PAR. 5. Respondent Joseph B. Crasto was until June 7, 1940, in the business of selling glass in the New Orleans trade area and in the glazing contracting business in said area, under the name and style of the Joseph B. Crasto Glass Co., with his office and principal place of business located at 2001 Adams Street, New Orleans, La. On June 7, 1940, the said Joseph B. Crasto was succeeded in the aforementioned business by Joseph B. Crasto Glass Co., a corporation which was organized on that date, and is now existing under the laws of the State of Louisiana, and having its principal place of business also at 2001 Adams Street, New Orleans, La.

Respondent Lloyd B. Crasto is acting manager and architect of the Joseph B. Crasto Glass Co. and participates in its management and in formulating its policies.

PAR. 6. Respondent H. Flaumhaft is engaged in the glass and glazing contracting business in the New Orleans trade area, with his principal office and place of business located at 321 Dryades Street, New Orleans, La.

PAR. 7. Respondent distributors and respondent glazing contractors, in the course and conduct of their respective businesses, purchase

or obtain glass from the various manufacturers thereof, and cause said glass, so purchased or obtained, to be transported from the States of origin thereof, being States of the United States other than the State of Louisiana, to, into and through various States of the United States and into the State of Louisiana. Said respondent distributors resell and distribute said glass to dealers, glazing contractors, processors, and consumers or users thereof located in the various States of the New Orleans trade area; and the respondent glazing contractors contract for the supply and installation of such glass in buildings and structures and supply and install same in said structures in the New Orleans trade area. Said glass is ordinarily purchased or obtained from the manufacturer thereof by said respondent distributors with the intention, and for the purpose, of reselling and distributing the same to purchasers thereof, located in the States comprising the New Orleans trade area. Said respondent distributors, upon sales of glass being made to purchasers, deliver and transport, or cause to be delivered and transported, said glass, so shipped into the State of Louisiana, to the purchasers thereof located in the States comprising the New Orleans trade area. All of said respondent distributors and glazing contractors are, and have been since prior to 1932, engaged in commerce between and among some of the several States of the United States in the manner hereinbefore described.

PAR. 8. Respondent distributors are in competition with one another and with other glass distributors, whose places of business are located in States of the New Orleans trade area and elsewhere, in seeking to sell, and in the sale and distribution of, glass in the New Orleans trade area, except insofar as said competition has been hindered, lessened, restrained or restricted or potential competition among them or with others forestalled, by the unfair practices and methods hereinafter set forth.

PAR. 9. Respondent glazing contractors are in competition with one another and with other glazing contractors whose places of business are located in States of the New Orleans trade area and elsewhere, in the glazing contracting business in the New Orleans trade area, except insofar as said competition has been hindered, lessened, restrained, or restricted or potential competition among them or with others forestalled, by the unfair practices and methods hereinafter set forth.

Those competitors of respondent glazing contractors who do not sell or distribute glass, in the course and conduct of their businesses, in many instances, purchase glass for those jobs in the New Orleans trade area for which they have glazing contracts, from dealers and

distributors who are located outside the State of Louisiana, which dealers and distributors as part of such purchases, ship such glass or cause the same to be shipped, into the State of Louisiana.

PAR. 10. Respondent distributors, together with respondents W. D. Snyder, Karl Hansen, Fred Dittmann, and Edmund W. Ulrich, since about 1932, have agreed and combined together, and have united in and pursued a common and concerted course of action and undertaking, among themselves and with others, to adopt, carry out, enforce and maintain in said New Orleans trade area certain monopolistic policies and trade practices, hereafter described, which said respondents agreed to, and did, adhere to, among themselves, and which they have attempted to and have, by coercion and compulsion, imposed upon other actual or potential glass distributors in said trade area, who were not permitted or did not desire to join such combination and course of action.

PAR. 11. The said monopolistic policies and trade practices referred to in the preceding paragraph, which were so formulated, adopted and put into effect, were the following:

1. A policy and practice of fixing and maintaining the prices at, and conditions under, which glass was sold by distributors to dealers in various types of glass, to the retail trade and to consumers in the New Orleans trade area;

2. A policy and practice of apportioning among said respondent distributors, the business of selling and distributing glass in the New Orleans trade area;

3. A policy and practice of preventing glass distributors and dealers competing with respondent distributors from buying glass at the manufacturers' quoted prices and of compelling them to purchase glass from respondent distributors at prices above such manufacturers' quoted prices;

4. A policy and practice of listing certain dealers purchasers as "Special Buyers" and granting to such purchasers price concessions not granted to competitors of said purchasers;

5. A general policy and practice of reducing or eliminating competition in the glass business in the New Orleans trade area and of tending to create and maintain a monopoly in such business in said area.

PAR. 12. For the purpose of making such prices and practices effective and of requiring compliance therewith by all competing distributors and dealers in glass in the New Orleans trade area and imposing the same on the purchasing public located therein, respondent distributors, acting in furtherance of, and in pursuance to, the general plan and policy above described, have done the following things:

1. Formulated, adopted, followed, carried out, enforced, imposed and made effective the policies, practices and methods described in the preceding paragraph;

2. Held meetings at which said policies, practices and methods were discussed, adopted and agreed to;

3. Sought and obtained promises and assurances of cooperation from one another in establishing and making effective the sales practices, policies and pricing methods hereinabove described;

4. Exchanged information with reference to their respective businesses and activities to be used in furtherance of the policies and methods referred to;

5. Issued and adhered to duplicate and uniform price lists for the sale of various types of glass;

6. Simultaneously changed the prices at which they sold glass to the purchasers thereof;

7. Supervised and investigated the practices and policies of competing distributors, and acted concertedly to maintain said prices agreed upon, to control markets and to coercively require recalcitrant distributors and dealers to recognize and conform to such practices and methods.

PAR. 13. The capacity, tendency, and effect of said agreement, combination, policies, and methods, and the acts and practices of said respondent distributors in pursuance thereof are and have been:

1. To tend to monopolize in the said respondent distributors the business of selling and distributing glass in the New Orleans trade area;

2. To tend to monopolize in respondent distributors the opportunity to purchase or obtain glass from the manufacturers thereof at the manufacturers' list prices;

3. To fix and maintain the prices at, and the conditions under, which glass is sold by distributors in the New Orleans trade area;

4. To prevent glass distributors located in States outside of those included in the New Orleans trade area from selling glass in said trade area;

5. To unreasonably lessen, eliminate, restrict, stifle, hamper, and suppress competition in the glass trade and distribution in the New Orleans trade area, and to deprive the purchasing and consuming public of the advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed and free and fair competition in said trade and industry, and to otherwise operate as a restraint upon, obstruction to, and detriment to the freedom of fair and legitimate competition in such trade and industry;

6. To suppress, eliminate, and discriminate against small distributors who are or have been engaged in, or desire to engage in, selling glass in the New Orleans trade area;

7. To obstruct and prevent establishment of new distributors of glass in said area;

8. To suppress and eliminate price competition among distributors in the sale of glass in said trade area;

9. To burden, hamper, and interfere with the normal and natural flow of trade and commerce in glass into, through and from the various States of the United States included in the New Orleans trade area; and to injure the competitors of individual respondent distributors by unfairly diverting business and trade from them, depriving them thereof and otherwise oppressing them;

10. To prejudice and injure glass distributors who do not conform to respondents' program or methods or who do not desire to conform to them, but are compelled to do so by the concerted action of respondents herein alleged.

Charge II

PARAGRAPH 1. The allegations of paragraphs 1 to 9, inclusive, hereinabove set forth in Charge I above, to the extent that they aver matters and things pertinent to the allegations hereafter made in this charge, are hereby incorporated herein as though fully set forth.

PAR. 2. Respondent glazing contractors, together with respondents W. D. Snyder, Karl Hansen, Fred Dittmann, and Edmund W. Ulrich, since about 1935 have agreed and combined together and have united in and pursued a common and concerted course of action and undertaking, among themselves and with others, to adopt, carry out, enforce, and maintain in said New Orleans trade area, certain monopolistic practices hereafter described, which said respondents have agreed to, and did adhere to, among themselves, and which they have attempted to, and have, by coercion and compulsion imposed upon other actual or potential glazing contractors, located both in said New Orleans trade area and elsewhere, who were not permitted to, or did not desire to, join such agreement and combination.

PAR. 3. The said monopolistic policies and trade practices referred to in the preceding paragraph which were so formulated, adopted, and put into effect were the following:

1. A policy and practice of precluding glazing contractors competing with respondent glazing contractors or desiring to compete with them, from bidding on contracts for the supply and installation of glass in buildings and structures being erected or repaired in said trade area;

2. A policy and practice of precluding such competing glazing contractors from supplying and installing glass in buildings and structures being erected or repaired in said trade area;

3. A policy and practice of apportioning among themselves the glazing contracting business in New Orleans;

4. A policy and practice of fixing the amounts of the bids submitted by them for supplying and installing glass in buildings and structures in the New Orleans trade area;

5. A policy and practice of agreeing upon the unit costs of labor, materials and other items to be used in the computation of bids to be submitted for supplying and installing glass in buildings and structures in the New Orleans trade area.

PAR. 4. For the purpose of making such policies and practices effective and of requiring compliance therewith by all glazing contractors, both in and outside the New Orleans trade area, and imposing the same on glass distributors, and contractors and builders of structures in said trade area, respondent glazing contractors, acting in furtherance of, and in pursuance to, the general plan and policy above described, have done the following things:

1. Formulated, adopted, followed, carried out, enforced, imposed and made effective the policies, practices, and methods described in the preceding paragraph;

2. Held meetings at which said policies, practices, and methods were discussed, adopted, and agreed to;

3. Sought, and obtained promises and assurances of cooperation from one another in establishing and making effective the practices, policies, and methods above described;

4. Exchanged information with reference to their respective businesses and activities to be used in furtherance of the policies, practices, and methods referred to;

5. Supervised and investigated the practices and policies of competing glazing contractors and acted concertedly to compel such glazing contractors to recognize and concede to respondent glazing contractors the alleged right to use the unfair policies, practices, and methods above set forth.

PAR. 5. The capacity, tendency, and effect of said agreement, combination, policies, and methods with respect to glazing contractors and the glazing contracting business, are, and have been, similar to those of the agreement, combination, policies, and methods set forth with reference to respondent distributors and the sale and distribution of glass in paragraph 13 of Charge I hereof, the pertinent allegations of which are hereby incorporated herein by reference, as though fully set forth.

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 September 1940, issued and thereafter 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. All of said respondents have duly filed their answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respective respondents, and W. T. Kelley, Chief Counsel of the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument, the filing of briefs, or the filing of a report upon the evidence by a trial examiner for the Commission. 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 words and terms set out in this paragraph have the following meaning as used in these findings as to the facts:

"Glass" means plate, window, safety, rough rolled, wire, art, and structural glass (but the term "glass" shall not include any service involved in the installation of automobile glass);

"Respondent distributors" refers to respondents, Pittsburgh Plate Glass Co., Karl Hansen Co., Inc., and David Bernhardt Paint & Glass Co., Inc.;

"Respondent glazing contractors" refers to respondents, Pittsburgh Plate Glass Co., Karl Hansen Co., Inc., David Bernhardt Paint & Glass Co., Inc., Joseph B. Crasto, Joseph B. Crasto Glass Co., and H. Flaumhaft;

"Glazing contracting business" means the business of contracting to sell and install glass in building and structures and also of selling glass therefor and installing the same therein;

"New Orleans trade area" means the area including, surrounding, and adjacent to the city of New Orleans, La., in which glass is sold or delivered or supplied and installed in the buildings or structures by respondent distributors and respondent glazing contractors, and includes many cities and localities in the southern sections of the States of Louisiana and Mississippi.

PAR. 2. Respondent Pittsburgh Plate Glass Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 534 Madison Avenue, Memphis, Tenn. This respondent is engaged in the business of selling and distributing glass and of conducting a glazing contract business in the States comprising the New Orleans trade area. Respondent's New Orleans branch is managed by respondent W. D. Snyder who is an employee, representative, and agent of respondent Pittsburgh Plate Glass Co. in the New Orleans trade area, and as such directs the business policies and activities of said respondent in said area. The office and principal place of business of said New Orleans jobbing branch is 1500 Poydras Street, New Orleans, La.

PAR. 3. Respondent Karl Hansen Co., Inc., is a corporation organized and existing under the laws of the State of Louisiana, with its principal and only office being located at 1600 Poydras Street, New Orleans, La.

Respondent Karl Hansen Co., Inc., is engaged in selling and distributing glass and in the glazing contracting business in the New Orleans trade area, and is under the direction and management of respondent Karl Hansen.

Respondent Karl Hansen is the principal stockholder and president of said Karl Hansen Co., Inc., and as such, directs the management and business policies of said respondent company.

PAR. 4. Respondent David Bernhardt Paint & Glass Co., Inc., is a corporation organized and existing under the laws of the State of Louisiana with its principal and only office being located at 317–323 Camp Street, New Orleans, La. It is engaged in selling and distributing glass in the New Orleans trade area and in the glazing contracting business in said area.

Respondent Fred Dittman is the secretary-treasurer of respondent David Bernhardt Paint & Glass Co., Inc., and directs the management and business policies of said respondent David Bernhardt Paint & Glass Co., Inc.

Respondent Edmund W. Ulrich is the manager of the Glazing Contracting Division of respondent David Bernhardt Paint & Glass Co.,

Inc., and has active charge of the glazing contracting business of said respondent.

PAR. 5. Respondent Joseph B. Crasto was, until June 7, 1940, engaged in the business of selling glass in the New Orleans trade area and in conducting the glazing contracting business in said area under the name and style of the Joseph B. Crasto Co., with his principal and only office being located at 2001 Adams Street, New Orleans, La. On June 7, 1940, said respondent Joseph B. Crasto was succeeded in the aforementioned business by Joseph B. Crasto Glass Co., a corporation, organized on that date, under the laws of the State of Louisiana, and having its principal and only place of business also at 2001 Adams Street, New Orleans, La.

Said respondent Joseph B. Crasto Glass Co., a corporation took over the business and assets of said Joseph B. Crasto and adopted, approved, and ratified the acts and practices, as hereinafter found, of said respondent Joseph B. Crasto.

Respondent Lloyd Crasto, who is referred to in the complaint as Lloyd B. Crasto, is the active manager of respondent Joseph B. Crasto Glass Co., a corporation, and participates in its management and in the formulating of its business policies.

PAR. 6. Respondent H. Flaumhaft, an individual, is engaged in the glass and glazing contracting businesses in the New Orleans trade area with his principal and only office and place of business being located at 321 Dryades Street, New Orleans, La.

PAR. 7. Respondent distributors and respondent glazing contractors, in the course and conduct of their respective businesses, purchase or obtain glass from the various manufacturers thereof, and cause said glass, so purchased or obtained, to be transported from the States of origin thereof, being States of the United States other than the State of Louisiana, to, into and through various States of the United States and into the State of Louisiana.

Said respondent distributors resell and distribute said glass to dealers, glazing contractors, processors, and consumers or users thereof located in the States of the New Orleans trade area; and the respondent glazing contractors contract for the supply and installation of such glass in buildings and structures in the said New Orleans trade area. Such glass is ordinarily purchased or obtained from a manufacturer thereof by said respondent distributors with the intention, and for the purpose, of reselling and distributing the same to purchasers thereof located in the States comprising the New Orleans trade area. Said respondent distributors, upon sales of glass being made to such purchasers, deliver, and transport, or cause to be

delivered and transported to said purchasers, said glass so shipped into the State of Louisiana.

All of said respondent distributors and glazing contractors are, and have been, with the exception of respondent Joseph B. Crasto Glass Co., a corporation, since prior to 1932, engaged in commerce between and among the States of the New Orleans trade area in the manner hereinbefore described. Respondent, Joseph B. Crasto Glass Co., a corporation, has been engaged in such commerce since its organization in June 1940.

PAR. 8. Respondent distributors all sell and seek to sell glass within the New Orleans trade area to the purchasers thereof as do other glass distributors whose places of business are situated in States of the New Orleans trade area and elsewhere.

PAR. 9. Respondent distributors have been, and are, in competition with one another and with other glass distributors whose places of business are located in the States of the New Orleans trade area and elsewhere, in seeking to sell, and in the sale and distribution of glass in said area, except, to the extent as hereinafter found, said competition has been lessened and potential competition among them or with others has been curtailed, by the acts and practices hereinafter found.

PAR. 10. Respondent glazing contractors all secure, and seek to secure, glazing contracts within the New Orleans trade area as do other glazing contractors whose places of business are located in the States of the New Orleans trade area and elsewhere.

PAR. 11. Those competitors of respondent glazing contractors who do not sell or distribute glass in the course and conduct of their respective businesses, in many instances, purchase glass for those jobs in the New Orleans trade area for which they have glazing contracts, from dealers and distributors who are located in States outside of the State of Louisiana, which dealers and distributors as part of such purchases, ship such glass, or cause same to be shipped, from those other States of the United States, into the State of Louisiana.

PAR. 12. Respondent glazing contractors are in competition with one another and with other glazing contractors whose places of business are located in the States of the New Orleans trade area and elsewhere, in seeking to secure, and in securing, glazing contracts in said area, except, to the extent as hereinafter found, said competition has been lessened and potential competition among them or with others has been curtailed, by the acts and practices hereinafter found.

PAR. 13. The aggregate of the participation of the respondent distributors in the distribution of plate, window, safety, rough, rolled, wire, art, and structural glass, respectively, and, of the respondent

glazing contractors in the glazing contracting business, in the New Orleans trade area, represents periodically a potential preponderance of such businesses respectively in said area; and said respondents did, in fact, at times during the periods hereafter mentioned enjoy such preponderance of such businesses respectively.

PAR. 14. From 1932 to August or September 1938, the respondent distributors held meetings among themselves, at which respondent Pittsburgh Plate Glass Co. was represented by respondent W. D. Snyder, respondent Karl Hansen Co., Inc., by respondent Karl Hansen, and respondent David Bernhardt Paint & Glass Co. by respondent Fred Dittmann, at which the said respondent distributors discussed the prices at which each would sell glass in the New Orleans trade area, and the discounts each would offer for the sale of glass in the various States in the New Orleans trade area. Following certain of their meetings, respondent distributors in 1938 sent letters at approximately the same time to the various purchasers of glass in the New Orleans trade area announcing identical prices and the same discounts. During the year 1938, respondent Pittsburgh Plate Glass Co. mailed schedules of price changes to other respondents and to the trade in general in advance of the date that such schedules of prices of respondent Pittsburgh Plate Glass Co. were to become effective. During said period, each respondent, in many instances, adopted as its or his individual price schedule, the new prices on the date same were to become effective, with the belief that the other respondents would do likewise. Each respondent distributor made efforts to ascertain whether the other respondents had followed such prices.

PAR. 15. The pricing policies of respondent Pittsburgh Plate Glass Co. are determined by respondent W. D. Snyder, its manager, those of respondent Karl Hansen Co., Inc., by respondent Karl Hansen and those of David Bernhardt Paint & Glass Co., Inc., by respondent Fred Dittmann.

PAR. 16. Respondent distributors, together with respondents, W. D. Snyder, Karl Hansen, and Fred Dittmann, from about the year 1932 through 1938, have, from time to time, agreed upon, and carried out, a common understanding and undertaking among themselves to establish and maintain the prices at which glass was to be sold, and was sold, by the said respondent distributors to dealers of the various types of glass, to the retail trade and to the consumers of glass in the New Orleans trade area.

PAR. 17. For the purpose, during the aforementioned period, of making such understanding and undertaking effective and of attempting to require compliance therewith by respondent distribu-

tors and competitive distributors and dealers of glass in the said New Orleans trade area, respondent distributors and respondents, W. D. Snyder, Karl Hansen, and Fred Dittmann, acting in furtherance thereof and in pursuance thereto, at various times during said period, held meetings at which said understanding and undertaking were discussed, adopted and agreed to; from time to time issued, and adhered to, duplicate and uniform price lists for the sale of the various types of glass hereinbefore defined; simultaneously, at times, changed the prices at which said respondent distributors sold such glass to the purchasers thereof; and, from time to time took concerted action to maintain the prices agreed upon.

PAR. 18. Respondent glazing contractors, held prearranged meetings from 1933 through 1936. Respondent Pittsburgh Plate Glass Co. was represented at such meetings by respondent W. D. Snyder; respondent Karl Hansen Co., Inc., by respondent Karl Hansen; respondent David Bernhardt Paint & Glass Co., Inc., by respondent Edmund W. Ulrich; respondent Joseph B. Crasto by himself or by respondent Lloyd Crasto, and respondent H. Flaumhaft by himself. These meetings were held intermittently. At such meetings held during the years 1935 and 1936, glazing contracts for work to be done in the New Orleans trade area were allocated among respondent glazing contractors, by said respondent glazing contractors. Meetings were also held by said respondent glazing contractors, represented by the aforementioned individual respondents during the year 1938 and the early part of 1939. The meetings were held for the purpose of discussing and comparing the bids to be submitted by the respective respondent glazing contractors on particular jobs in the New Orleans trade area. The meetings were discontinued during the year 1939 and have not been resumed.

PAR. 19. Respondent glazing contractors, together with respondents, W. D. Snyder, Karl Hansen, Edmund W. Ulrich, Joseph B. Crasto, and Lloyd Crasto, from the year 1933 through 1936, agreed upon and carried out from time to time a common understanding to apportion among respondent glazing contractors the glazing contracting business in New Orleans, and to establish the amount of the bids to be submitted respectively by said respondents on glazing contracting jobs in the New Orleans trade area.

PAR. 20. For the purpose, during the aforementioned period, of making the understanding or undertaking, hereinbefore found in paragraph 19, effective, of attempting to require compliance therewith by respondent glazing contractors, respondent glazing contractors and respondents, W. D. Snyder, Karl Hansen, Edmund W. Ulrich, Joseph B. Crasto, and Lloyd Crasto, acting in furtherance of, and in

pursuance to, said understanding and undertaking did, at various times during said period, formulate, adopt, follow and carry out, said understanding and undertaking; held meetings at which said understanding and undertaking were discussed, adopted and agreed to; and exchanged information with reference to the amounts of their respective bids to be submitted by them respectively on particular jobs in the New Orleans trade area.

PAR. 21. The capacity, tendency, and effect of the acts and practices of all the respondents, as hereinbefore described, were to establish and maintain prices at which glass was sold by distributors in the New Orleans trade area, to unreasonably lessen competition in the glass trade and distribution in the New Orleans trade area, to unreasonably lessen competition in the glazing contracting business in said area, to curtail price competition among distributors in the sale of glass in said area, to burden and interfere with the normal and natural flow of trade in commerce in glass in said area, and to injure the competitors of respondent distributors and respondent glazing contractors in said area.

CONCLUSION

The acts and practices of the respondents as hereinabove found are all to the prejudice of the public; have a tendency to unduly hinder and prevent competition, in the sale and distribution of glass and the glazing contracting business in commerce as "commerce" is defined by the Federal Trade Commission Act; to place in respondent distributors the power to control the prices at which glass is sold in the New Orleans trade area; to place in respondent glazing contractors the power to control the prices at which glazing contracts are made in said area; to unduly restrict and restrain the sale and distribution of glass in said commerce; and constitute unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon 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 con-

clusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Pittsburgh Plate Glass Co., a Tennessee corporation, Karl Hansen Co., Inc., a corporation, and David Bernhardt Paint & Glass Co., Inc., a corporation, and their respective officers, directors, respresentatives, agents, and employees, together with the successors or assigns of each of said respondents, and the respondents, W. D. Snyder, individually and as manager of the New Orleans branch of the respondent Pittsburgh Plate Glass Co., Karl Hansen, individually and as president of the Karl Hansen Co., Inc., and Fred Dittmann, individually and as secretary-treasurer of the respondent, David Bernhardt Paint & Glass Co., Inc., directly, indirectly, or through any corporate or other device, in connection with the sale or distribution in commerce, as "commerce" is defined by the Federal Trade Commission Act, of plate, window, safety, rough rolled, wire, art, and structural glass, do forthwith cease and desist from entering into or carrying out any agreement, understanding or undertaking among themselves or between or among any two or more of them, or between or among any one or more of them and any competing corporation, corporations, person or persons, for the purpose, or with the effect, of restricting or restraining competition in the sale or distribution of such glass in said commerce and also;

1. From establishing or maintaining, or attempting to establish or maintain, pursuant to such an agreement, understanding or undertaking, the prices at which such glass is offered for sale, or sold, to dealers of the various types of glass, to the retail trade or to consumers, in the New Orleans trade area.

2. From holding meetings, pursuant to such an agreement, understanding, or undertaking, for the purpose, intent, or which have the effect, of establishing or maintaining, or attempting to establish or maintain, the prices at which such glass is sold or offered for sale in said area.

3. From exchanging information, pursuant to such an agreement, understanding or undertaking, with reference to their respective businesses and activities, where the purpose, intent, or effect of same is to establish or maintain the prices at which glass is sold, or offered for sale in said area.

4. From adhering to, or attempting to adhere to, pursuant to such an agreement, understanding, or undertaking, duplicate or uniform price lists for the sale of any of such types of glass within the said area.

5. From changing simultaneously, pursuant to such an agreement, understanding, or undertaking, the prices at which they sell, or offer to sell, such glass to purchasers thereof within the said area.

It is further ordered, That respondents Pittsburgh Plate Glass Co., a Tennessee corporation, Karl Hansen Co., Inc., a corporation, David Bernhardt Paint & Glass Co., Inc., a corporation, Joseph B. Crasto Glass Co., a corporation, and their respective officers, directors, representatives, agents, and employees, together with the successors or assigns of each of said respondents and respondents, W. D. Snyder, individually and as manager of the New Orleans branch of the Pittsburgh Plate Glass Co., Karl Hansen, individually and as president of the Karl Hansen Co., Inc., Edward W. Ulrich, individually and as manager of the Glazing Contracting Division of the respondent, David Bernhardt Paint & Glass Co., Inc., Joseph B. Crasto, individually or trading as Joseph B. Crasto Glass Co., Lloyd Crasto, individually and as architect of Joseph B. Crasto Glass Co., a corporation, and H. Flaumhaft, directly, indirectly or through any corporate or any other device in connection with the sale or distribution in commerce as "commerce" is defined by the Federal Trade Commission Act, of plate, window, safety, rough rolled, wire, art, and structural glass, or in connection with the entering into or the making of any glazing contracts within the New Orleans trade area, do forthwith cease and desist, from entering into, or carrying out, any agreement, understanding, or undertaking among themselves, or between or among any two or more of them, or between or among any one or more of them, and any other corporation or corporations which compete with respondents, Pittsburgh Plate Glass Co., Karl Hansen Co., Inc., David Bernhardt Paint & Glass Co., Inc., Joseph B. Crasto Glass Co., or with any competing person or persons, for the purpose, or with the effect, of lessening or curtailing competition in the entering into, or the making, of such contracts, within said area, and also:

1. From apportioning, or attempting to apportion, among themselves, pursuant to such an agreement, understanding or undertaking, the glazing contracting business in New Orleans, La.;

2. From establishing, or attempting to establish, pursuant to such an agreement, understanding or undertaking, the amount of the bids to be submitted respectively by them for supplying, installing or for supplying and installing, glass in buildings or structures in the New Orleans trade area;

3. From holding meetings, pursuant to such an agreement, understanding, or undertaking, for the purpose, intent, or which have the effect, of establishing, or maintaining, the amount of the respec-

tive bids which respondent glazing contractors are to submit, or have submitted, on particular jobs in said area;

4. From holding meetings, pursuant to such an agreement, understanding, or undertaking for the purpose, intent, or which have the effect, of allocating among respondent glazing contractors, glazing contracts for jobs within the said area;

5. From exchanging information, pursuant to such an agreement, understanding or undertaking, with reference to their respective businesses and activities, where the purpose, intent, or effect, of same is to establish or attempt to establish the amount of the bids to be submitted respectively by respondent glazing contractors for jobs within said area.

It is further ordered, That the respondents, Pittsburgh Plate Glass Co., W. D. Snyder, Karl Hansen Co., Inc., Karl Hansen, David Bernhardt Paint & Glass Co., Fred Dittmann, Edmund W. Ulrich, Joseph E. Crasto, Lloyd Crasto, Joseph B. Crasto Glass Co., H. Flaumhaft, and each of them, shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

THE FIRESTONE TIRE & RUBBER COMPANY, AND FIRESTONE TIRE & RUBBER COMPANY

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

Docket 3983. Complaint, Jan. 2, 1940—Decision, June 18, 1941

Where a corporation long engaged in the manufacture, among other things, of automobile tires, and in interstate sale and distribution thereof through its own stores and through independent dealers, both of whom it supplied with price lists respectively designating and suggesting retail selling prices, and both of whom sold a substantial quantity of its tires at such prices, and also a substantial number at lesser prices to meet competition and by special sales;

In advertising its "Champion," "High Speed," "Convoy," and "Sentinel" tire (replaced in May 1939, by its "Standard" tire)—relatively priced in that order, the latter three at approximately 90 percent, 75 percent, and 65 percent of the "Champion" price subsequent to November 1, 1938—by advertising copy which it prepared and disseminated to its dealers, and by advertisements during nation-wide sales periods in a large number of newspapers, which were also inserted in whole or in part in numerous newspapers throughout the United States by a large number of independent dealers and company-owned stores—

(*a*) Represented, as typical, that its "Convoy" tire was offered at savings of 25 percent off the regular current retail selling price, through advertising "SAVE 25% with the New FIRESTONE CONVOY TIRE New High Quality at a New Low Price *Priced* to Save you Money," followed by list of sizes with prices, including as example, "6.00–16 $11.80";

Facts being that while said tires were being offered at a saving of 25 percent off the current retail list price of the higher-priced "High Speed" tire, list price of said 6.00–16 "Convoy" tire was itself $11.80, so that no saving whatsoever was involved by advertised sales price;

(*b*) Represented that it was offering its "Standard" tire for sale at savings of up to 50 percent, and that the designated savings in dollars were based upon the regular current selling prices thereof, through advertisement "BUY DURING Firestone BARGAIN DAYS For July 4th Save Up to 50% On Famous Firestone Standard Tires Amazing Savings," followed by list of sizes and prices including, as example, "*Size* 6.00–16 *Former Price* $14.35 *Sale Price* $7.98 *You Save* $6.37 Including Your Old Tire";

Facts being that while, at time in question, such tires were being offered at 50 percent off the retail list prices of "Standard" tires in effect prior to November 1, 1938, when production ceased until June 1939, and at 50 percent off the current list price of the higher-priced "High Speed" tire, they provided a dollar saving of only $2.37 and a percentage saving of only 22.89 percent off current list price of "Standard" tire; the advertised price did not take into account the customary trade-in allowance of 10 percent, allowing for which, dollar saving was only $1.34 per tire, and percentage saving only 14.38 percent, and savings, if computed upon the regular current retail selling price, rather than list, were even less;

(c) Represented that it was offering its "High Speed" tire at 25 percent off the current retail selling price, to a purchaser turning in his used tire, through advertisement "SMASHING TIRE SALE *Think of it*—Your first opportunity to buy the famous FIRESTONE High Speed Tire at these unheard of LOW PRICES 25% extra DISCOUNT with your old tire";

Facts being that, whereas prior to time of publication said tires were being offered at current list prices and customer was credited in part payment, with 10 percent trade-in allowance for his used tire, at time of publication he was required to turn in his used tire with no credit allowance therefor, making the reduction, in fact, not 25 percent, but only 16.8 percent; and

(d) Represented that by buying one "Standard" tire at list price and second at 50 percent off list price, various cash savings would be afforded the purchaser, by advertisement "SENSATIONAL LABOR DAY SALE On the Famous FIRESTONE STANDARD TIRES. The Thrift Sensation of 1939. How You Can Get *One* of these Amazing Tires at ½ PRICE. Buy One at List Price and Get the Next One at 50% Discount," followed by list of sizes and prices, including, as example, "FIRESTONE STANDARD Size 6.00 x 16 Price for The First Tire $10.35 Next Tire 50% Discount $5.18 Price For Two Tires $15.53 You Save $5.17. Above prices include your old tire * * *";

Facts being that the savings so set out were computed upon current list prices and not upon current retail selling prices; taking the 6.00 x 16 size as example and giving credit for the customary trade-in allowance, the regular selling price of two tires was $18.63, making the saving at the sale price of $15.53, $3.10 and not $5.17, as claimed;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, which understood and believed that represented savings or discounts from list prices were reductions from regular retail selling prices of the same tires in effect immediately prior to such advertised sale, into an erroneous belief with respect to savings actually offered, and with effect of inducing it, because of such belief, to purchase said tires:

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 M. King for the Commission.

Mr. B. M. Robinson and *Mr. Thomas S. Markey*, of Akron, Ohio, for respondents.

COMPLAINT [1]

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Firestone Tire & Rubber Co., an Ohio corporation, and Firestone Tire & Rubber Co., a West Virginia corporation, herein 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

[1] Published as amended pursuant to stipulation dated June 10, 1941 to include par. 8 (a).

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

PARAGRAPH 1. The respondent, The Firestone Tire & Rubber Co., is a corporation organized under the laws of the State of Ohio and has its principal office and place of business in the city of Akron, State of Ohio.

The respondent, Firestone Tire & Rubber Co., is a corporation organized under the laws of the State of West Virginia with its office and principal place of business located in the city of Akron, State of Ohio. It is a wholly owned subsidiary of the said The Firestone Tire & Rubber Co. and acts as selling agent for said company.

PAR. 2. The respondent, The Firestone Tire & Rubber Co., an Ohio corporation, is now, and for many years last past has been, engaged in the manufacture, sale, and distribution, among other products, of automobile tires and tubes and the respondent, Firestone Tire & Rubber Co., a West Virginia corporation, has at all times mentioned herein been the selling agency for said products. Said automobile tires and tubes are manufactured by the respondent The Firestone Tire & Rubber Co. in factories owned and operated by it in the cities of Akron, Ohio, Los Angeles, Calif., and Memphis, Tenn.

The respondents act in cooperation and in conjunction with each other in performing the acts and practices hereinafter alleged.

In the course and conduct of their business, the respondents sell the said automobile tires and tubes by means of dealers located in the various States of the United States, and in the District of Columbia. Respondents cause their automobile tires and tubes to be shipped from said factories, located in the several States as above described, to their dealers 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 automobile tires and tubes in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 3. The respondent The Firestone Tire & Rubber Co. manufactures several grades of automobile tires and tubes, its tires being distinguished as follows:

1. "Champion Tire," which is said respondent's best grade or first line tire and is sold at retail at what is usually referred to in the industry as 100 level prices;

2. "High Speed Tire," which is sold at 90 level prices, or 90 percent of the retail price of the "Champion Tire";

3. The "Convoy" Tire, which is sold at 75 level prices, or 75 percent of the retail price of the "Champion Tire";

4. The "Standard" Tire, which is sold at 65 level prices, or 65 percent of the retail price of the "Champion Tire."

Prior to November 1, 1938, said respondent's "High Speed" was its first line tire, "Standard" its second line, "Convoy" its third line and "Sentinel" its fourth line.

In the sale of these various grades of tires, it is customary and usual for respondents' dealers to make an allowance of 10 percent of the purchase price of the various grades of tires for old or used tires turned in by the customer. Said respondents from time to time issue price lists designating the retail price or list price of their various grades of tires.

PAR. 4. For the purpose of inducing and stimulating the sale of their tires and tubes, the respondents from time to time conduct Nation-wide tire sales through their various dealers, during which sales they advertise and cause their various dealers to advertise in various newspapers and other periodicals having a general circulation, by means of which advertisements it is falsely represented that the respondents' tires are being sold at various purported discounts from the regular and usual price of such tires. Such sales are usually conducted immediately prior to Memorial Day, July 4, Labor Day, and at other periods during the year. The advertising copy used by various dealers of the respondents, in connection with such sales, is prepared by the respondents and submitted to such dealers for insertion in local newspapers and other advertising media.

PAR. 5. Among and typical of the false, misleading, and deceptive representations contained in the various advertisements, disseminated by respondents as aforesaid, is the following:

SAVE 25% With the New
FIRESTONE CONVOY TIRE
New High Quality at a
New Low Price
Priced to Save you Money

Then follows a list of sizes with prices, of which the following is an example:

6.00–16 $11.80

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, the respondents represent that their "Convoy" tire is sold at a discount of 25 percent of the usual and customary price of said tire. In truth and in fact, said "Convoy" tire is not sold at a discount of 25 percent. For example, the standard list price of the 6.00–16 "Convoy" tire in

effect at the time of such advertisement was $11.80 and consequently the advertised price of $11.80 represents no saving whatsoever.

PAR. 6. Another and typical example of the false, misleading, and deceptive representations contained in the various advertisements, disseminated as aforesaid, is the following:

BUY DURING
Firestone BARGAIN DAYS
For July 4th
Save Up to 50%
On Famous
Firestone Standard Tires
Amazing Savings

Then follows list of sizes with prices, of which the following is an example:

Size	Former Price	Sale Price	You Save
6.00–16	$14.35	$7.98	$6.37

Including Your Old Tire

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, the respondents represent that their "Standard" tire is sold at a discount up to 50 percent and at certain specified savings in dollars. In truth and in fact, said "Standard" tire is not sold at a discount up to 50 percent or at dollar savings as stated in said advertisement, for the reason that the "former price" was not the list price in effect at time of said advertisement. For example, the list price of respondents' 6.00–16 "Standard" tire at time of advertisement was $10.35; the sale price in said advertisement is $7.98, thus affording a saving of $2.37 rather than $6.37 as advertised. Furthermore, none of the savings advertised amount to 50 percent when based upon the current list price. The alleged savings are further exaggerated in that they make no allowance for the customary and usual trade-in value of the customer's old tires.

PAR. 7. Another and typical example of the false, misleading, and deceptive representations contained in the various advertisements, disseminated as aforesaid, is the following:

Special Sale
Firestone Convoy
Tubes
50% Off Regular
First Line Tube
List Price

By means of the statements and representations hereinabove set forth, and other similar thereto not specifically set out herein, the

respondents represent that their "Convoy" tube is a first line tube and is being sold at 50 percent off. In truth, and in fact, said "Convoy" tube is not respondents' first line tube and is not sold at 50 percent off the list price of the "Convoy" tube, but instead the alleged savings are based wholly upon the list price of respondents' higher priced first line tube. The advertised savings are, therefore, entirely false and fictitious.

PAR. 8. Another and typical example of the false, misleading, and deceptive representations contained in the various advertisements, disseminated as aforesaid, is the following:

SMASHING TIRE SALE
Think of It—Your first opportunity
to buy the famous FIRESTONE High Speed
Tire at these unheard of LOW PRICES
25% extra DISCOUNT with your old tire.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondents represent that their "High Speed" tire is sold at a 25 percent discount from the usual and customary price of said tire. In truth and in fact, the saving or discount to the purchaser on this sale is not 25 percent for the reason that no allowance is given for the used tire as is customary and usual. Giving effect to the 10 percent discount ordinarily and regularly allowed for used tires, the saving to the purchaser would amount to only 16.8 percent rather than 25 percent as advertised.

PAR. 8 (*a*). Another and typical example of the false, misleading, and deceptive representations contained in the various advertisements disseminated as aforesaid is the following:

SENSATIONAL LABOR DAY SALE
On The Famous
FIRESTONE STANDARD TIRES.
The Thrift Sensation of 1939.
How You Can Get *One* of these Amazing
Tires at ½ PRICE
Buy One at List Price and Get the Next
One at 50% Discount.

Then follows list of sizes and prices, of which the following is an example:

	FIRESTONE STANDARD			
Size	Price for The First Tire	Next Tire 50% Discount	Price for Two Tires	You Save
6.00 x 16	$10.35	$5.18	$15.53	$5.17

Above prices include your old tire * * *.

By means of the statements and representations hereinabove set forth and others similar thereto not specifically set forth herein, the respondent represents that by buying one of its "Standard" tires at list price and a second tire at one-half the list price, a discount of 50 percent is afforded on the second tire and certain savings in dollars are provided upon the purchase of two tires, for example, "$5.17 for size 6.00 x 16." Such purported discount and savings are exaggerated for the reason that they are based entirely upon the list price of said tires and not upon the regular retail selling prices. The regular retail selling prices of said tires are customarily substantially lower than the list prices due to part payment trade-in allowances for purchasers' old tires and other discounts and reductions brought about by competition. The actual savings afforded a purchaser upon the second tire is therefore substantially less than 50 percent and the dollar savings on two tires is substantially lower than the amounts designated in said advertisement.

PAR. 9. In the course and conduct of their business and in the same manner as hereinbefore described and set forth, respondents cause their said dealers to publish certain false advertisements respecting certain particular qualities and use of their tires. Among and typical of said advertisements is the following:

The only tires made that are safety proved on the Speedway for your protection on the Highway.

By means of the statements and representations hereinabove set forth, the respondents represent that their tires offered to the purchasing public for use as regular equipment on passenger cars are "safety proved on the Speedway." By "Speedway" is meant the annual Memorial Day automobile race held at Indianapolis, Ind. In truth and in fact, the only tires manufactured and sold by respondents and used, tested or proved on the "Speedway" are specially constructed racing tires which are never sold for ordinary use, and the tires manufactured and sold by respondents to the general public for use on passenger cars are not "safety proved on the Speedway."

PAR. 10. Another example of the false, misleading and deceptive representations contained in said advertisements, disseminated as aforesaid, is the following:

They have a scientifically designed tread which stops your car up to 25% quicker.

By means of said representations hereinabove set forth, the respondents represent that the nonskid features of their tires make it possible to stop a car equipped with their tires "up to 25% quicker,"

which is not the fact under all conditions and as compared to all other tires. In truth and in fact, no nonskid tire can be made to stop an automobile 25 percent quicker than any other nonskid tire, under all conditions.

PAR. 11. Another example of the false, misleading, and deceptive representations contained in said advertisements, disseminated as aforesaid, is the following:

Because life depends on tire safety they choose Firestone Champion Tires—Firestone wins 20th consecutive victory in Indianapolis 500 mile race. A merciless sun beat down upon the Speedway as Wilbur Shaw drove to victory on Firestone Champion Tires. Never before in all the history of the motor car have tires been put to such a torturous test and never before has any tire so firmly established itself as a Champion in construction and performance as well as in name.

Wilbur Shaw, the 1939 winner. On May 30 Wilbur Shaw drove to his second victory in the 500 Indianapolis race on Firestone Champion Tires at an average speed of 115.03 miles per hour.

Appearing in said advertisement is a pictorial representation of a Firestone passenger car tire bearing the name "Champion" and imposed thereon a picture of a man in racing regalia designated as Wilbur Shaw, and a representation of racing cars and grandstand designed to represent an automobile race in progress.

By means of the statements and representations hereinabove set forth, the respondents represent that Wilbur Shaw and other drivers used their "Champion" tires in the 1939 Indianapolis Memorial Day race. In truth and in fact, none of the drivers in said race used Firestone "Champion Tires," but instead used specially built Firestone racing tires, which tires are never offered for sale to the general public for use on passenger cars.

PAR. 12. The use by the respondents of the foregoing false, misleading, and deceptive statements, representations and advertisements, disseminated as aforesaid, with respect to the sales prices of their automobile tires and tubes and the use and particular quality of their tires, 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 false statements, representations, and advertisements are true, and that respondents' tires and tubes are sold at the saving or discount advertised, and have the particular qualities and are used for the particular purposes as stated in said advertisements, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' automobile tires and tubes.

PAR. 13. 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 2d day of January 1940, issued and thereafter served its complaint in this proceeding upon the respondents, The Firestone Tire & Rubber Co., a corporation, and Firestone Tire & Rubber Co., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 29, 1940, the respondents filed their answer in this proceeding. Thereafter, pursuant to a stipulation entered into between the parties, it was agreed that, subject to the approval of the Commission, certain amendments might be made to the complaint, the respondent, The Firestone Tire & Rubber Co., agreeing to said amendments but not admitting the charges as stated therein, and waiving the issuance and service upon it of an amended and supplemental complaint as well as the right to file an answer to the complaint so amended and supplemented, which stipulation has been approved, accepted, and filed. 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 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 as amended, answer and stipulation as to the facts, such 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The Firestone Tire & Rubber Co., is a corporation organized under the laws of the State of Ohio and

has its principal office and place of business in the city of Akron, State of Ohio.

The respondent, Firestone Tire & Rubber Co., was a corporation organized under the laws of the State of West Virginia, with its office and principal place of business located in the city of Akron, State of Ohio. It was a wholly owned sales subsidiary of the said The Firestone Tire & Rubber Co., but since June 30, 1938, has carried on no business whatsoever and was formally dissolved as a corporate entity by the Secretary of State of West Virginia on February 20, 1940.

PAR. 2. The respondent, The Firestone Tire & Rubber Co., an Ohio corporation, is now, and for many years last past has been, engaged in the manufacture, sale, and distribution, among other products, of automobile tires and tubes. Said automobile tires and tubes are manufactured by the respondent, The Firestone Tire & Rubber Co., in factories owned and operated by it in Akron, Ohio, and in factories of its wholly owned subsidiaries in Los Angeles, Calif., and Memphis, Tenn.

In the course and conduct of its business, the respondent, The Firestone Tire & Rubber Co., sells said automobile tires and tubes to the purchasing public, through a large number of company-owned stores and to independent dealers, for resale, both company-owned stores and independent dealers being located in the various States of the United States and in the District of Columbia. Said respondent causes its automobile tires and tubes to be shipped from said factories, located in the several States as above described, to its dealers and company-owned stores located in various other States of the United States, and in the District of Columbia. Said respondent maintains, and at all times mentioned herein has maintained, a course of trade in said automobile tires and tubes in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 3. The respondent, The Firestone Tire & Rubber Co., manufactures automobile tires which, insofar as the following group is concerned, and during respondent's fiscal year beginning November 1, 1938, were distinguished as follows:

1. "Champion" tire, listed and recommended to be sold at retail at list prices established from time to time by said respondent;

2. "High Speed" tire, listed and recommended to be sold at retail at approximately 90 percent of the price of the "Champion" tire;

3. The "Convoy" tire, listed and recommended to be sold at retail at approximately 75 percent of the price of the "Champion" tire;

4. The "Sentinel" tire, listed and recommended to be sold at retail at approximately 65 percent of the price of the "Champion" tire. In May 1939, the "Sentinel" tire was replaced by the "Standard" tire.

Prior to November 1, 1938, the four tires in the same relative price positions as above, were respectively "High Speed," "Standard," "Convoy," and "Sentinel."

The respondent, The Firestone Tire & Rubber Co., issued price lists to its various retail stores, designating the retail selling prices of its tires, and also furnished price lists to its dealers containing suggested retail selling prices. The retail stores and dealers sell a substantial quantity of respondent's tires at the prices so designated in the price lists, and also sell a substantial number at lesser prices, such prices being brought about by reason of discounts to meet competition and by special sales. It was the practice of respondent to accept the purchasers' used tires in part payment on the purchase price of new tires; this practice, known in the industry as trade-in allowance, amounted to approximately 10 percent of the list price of new tires, during the periods respondent's advertisements as hereinafter set forth were published. The allowances for old tires turned in by the purchasers were based upon the value of said old tires. Except as offered at any particular time, said respondent's stores are not obligated to give a trade-in allowance for purchasers' used tires.

PAR. 4. During the year 1939, the respondent, The Firestone Tire & Rubber Co., prepared and disseminated suggested advertising copy to its various dealers, and during Nation-wide sales periods, it advertised and recommended that its various dealers advertise, in a large number of newspapers having a general circulation, by means of which advertisements it was represented that the said automobile tires were offered for sale at various savings and discounts from the regular or list prices of such tires and at various savings from former prices. Such sales were held immediately prior to July Fourth, Labor Day, and at other periods during the year. Some such sales were also conducted in 1938.

A large number of independent dealers and company-owned stores inserted such advertising, in whole or in part, in numerous newspapers throughout the United States and in the District of Columbia.

PAR. 5. Among and typical of the representations contained in the various advertisements disseminated by respondent as aforesaid, is the following:.

SAVE 25% With the New
FIRESTONE CONVOY TIRE
New High Quality at a
New Low Price
Priced to Save you Money

Then follows a list of sizes with prices, of which the following is an example:

6.00–16 $11.80

The Commission finds that said respondent represented, through the use of the above statements and representations that its "Convoy" tire was offered for sale at savings of 25 percent off the regular current retail selling price of said tire.

At the time of publication of said advertisement in April 1938, "Convoy" tires were being offered for sale at a savings of 25 percent off the current retail list price of the higher priced "High Speed" tire, but not at a savings of 25 percent off the current retail list price of the "Convoy" tire. For example, the list price of the 6.00 x 16 "High Speed" tire in effect at the time of publication of the advertisement was $15.70; the advertised sale price of $11.80 represented a savings of 25 percent off the list price of the "High Speed" tire; however, the list price of the 6.00 x 16 "Convoy" tire at said time was $11.80 and therefore the advertised sales price represented no saving whatsoever off the list price of the said "Convoy" tire.

PAR. 6. Another and typical example of the representations contained in the various advertisements disseminated by respondent as aforesaid is the following:

BUYING DURING
Firestone BARGAIN DAYS
For July 4th
Save Up to 50%
On Famous
Firestone Standard Tires
Amazing Savings

Then follows list of sizes with prices, of which the following is an example:

Size	Former Price	Sale Price	You Save
6.00–16	$14.35	$7.98	$6.37
	Including Your Old Tire		

The Commission finds that said respondent represented, through the use of the above statements and representations that it was offering its "Standard" tire for sale at savings of up to 50 percent from the regular current retail selling price of said tire and that the designated savings in dollars were based upon the regular current selling prices of said tire.

At the time of publication of said advertisement in June 1939, "Standard" tires were being offered for sale at up to 50 percent off the retail list prices of "Standard" tires in effect prior to November

1, 1938, on which date "Standard" tires were removed from respondent's line of products and not thereafter nationally advertised until June 1939, after respondent resumed production of "Standard" tires; "Standard" tires were in June 1939, being offered for sale at a savings of up to 50 percent off the current retail list price of the higher-priced "High Speed" tire, but not at a savings of up to 50 percent off the current retail list price of the "Standard" tire.

Prior to November 1, 1938, the "Standard" tire was listed and recommended to be sold at $14.35 for size 6.00 x 16; but at the time of publication of said advertisement the list price was $10.35. The advertised sale price of $7.98 provided the advertised saving of $6.37 off the list price of the "Standard" tire in effect prior to November 1, 1938, but provided a dollar saving of only $2.37 and a percentage saving of only 22.89 percent off the list price of said "Standard" tire in effect at the time of the publication of said advertisement. The advertised price did not take into account the usual and customary part-payment trade-in allowance of 10 percent credited to purchasers in the sale of new tires. Therefore, the dollar saving was only $1.34 per tire and the percentage saving was only 14.38 percent. None of the advertised sales prices afforded a discount of up to 50 percent based upon the list price of "Standard" tires in effect at the time of the publication of said advertisement. Should the savings be computed upon the regular current retail selling prices of such tires rather than upon list prices, the savings would be even less since the retail selling prices are often substantially less than the list prices.

PAR. 7. Another typical example of the representations contained in the various advertisements disseminated by respondent as aforesaid is the following:

SMASHING TIRE SALE
Think of it—Your first opportunity
to buy the famous FIRESTONE High Speed
Tire at these unheard of LOW Prices
25% extra DISCOUNT with your old tire.

The Commission finds that said respondent represented, through the use of the above statements and representations that it was offering its "High Speed" tires at 25 percent off the regular current retail selling price of said tire and that a purchaser by buying said "High Speed" tire and turning in his used tire would receive a discount of 25 percent from the regular current retail selling price.

Prior to the time of publication of said advertisement, "High Speed" tires were being offered for sale at the current list price of said "High Speed" tires, and in part payment therefor the customer was credited with a 10-percent trade-in allowance for his used tire;

at the time of publication of said advertisement the customer was required to turn in his used tire and was not credited with any allowance for said used tire. Since the purchaser was not credited with the usual 10 percent trade-in allowance for his used tire during the advertised sale, reduction in cash payment was only 16.8 percent.

PAR. 8. Another typical example of the representations contained in the various advertisements disseminated by respondent as aforesaid is the following:

SENSATIONAL LABOR DAY SALE

On the Famous

FIRESTONE STANDARD TIRES

The Thrift Sensation of 1939.

How You Can Get *One* of these Amazing

Tires at 1/2 PRICE

Buy One at List Price and Get the Next

One at 50% Discount.

Then follows list of sizes and prices, of which the following is an example:

FIRESTONE STANDARD

Size	Price for The First Tire.	Next Tire 50% Discount	Price for Two Tires	You Save
6.00 x 16	$10.35	$5.18	$15.53	$5.17

Above prices include your old tire * * *.

The Commission finds that said respondent represented, through the use of the above statements and representations that by buying one "Standard" tire at list price and second at 50 percent off list price that the savings designated in said advertisement would be afforded the purchaser.

By said advertisement, respondent offered its "Standard" tire for sale in pairs, the first tire at list price and the second tire at half of the list price. Such a combination sale did not, however, provide the savings set out in the advertisement for the reason that the designated savings were computed upon current list prices and not upon regular current retail selling prices. A substantial quantity of respondent's "Standard" tires were sold at prices lower than list prices, such lower prices being due to discounts to meet competition, special sales, and part payment trade-in allowances for purchasers' old tires. Taking size 6.00 x 16 as an example and giving credit for the customary 10 percent trade-in allowance for purchasers' old tires, the regular selling price of two tires, without taking into consideration reductions that might be brought about by competitive

situations would be $18.63. The sale price of $15.53 would result in a saving of $3.10 rather than $5.17 as advertised.

PAR. 9. The Commission finds that substantial number of the purchasing public understand and believe that advertised savings or discounts are reductions from the regular retail selling prices charged for the same merchandise in the ordinary course of business immediately prior in point of time to such advertised sale; that they understand that "list prices," as used in tire advertising, referred to and meant the regular retail selling prices of the tires advertised for sale, and that any represented savings or discounts from such list prices were reductions from the regular retail selling prices of the same tires in effect immediately prior in point of time to such advertised sale.

PAR. 10. The use by the respondent, the Firestone Tire & Rubber Co., of the foregoing statements, representations and advertisements, disseminated as aforesaid, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into an erroneous and mistaken belief with respect to the savings and discounts actually offered, and induced a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said respondent's automobile tires.

CONCLUSION

The aforesaid acts and practices of the respondent, The Firestone Tire & Rubber Co., a corporation, as herein found, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal 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 The Firestone Tire & Rubber Co. 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 on the respondent The Firestone Tire & Rubber Co. findings as to the facts and conclusion based thereon and an order disposing of this proceeding, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent The Firestone Tire & Rubber Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in advertising in newspapers or other recognized advertising media, in connection with the offering for sale, sale and distribution of its automobile tires and tubes to the general public, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "List Price" or any other term of similar import or meaning to designate, describe, or refer to prices which are not, in fact, the bona fide regular established selling prices of the tires or tubes advertised and offered for sale, as established by the usual and customary sales in the normal course of business.

2. Representing, directly or indirectly, that any specified amount is the customary, regular, or usual price of any tire or tube advertised and offered for sale when such amount is not, in fact, the bona fide actual selling price of such tire or tube as established by the usual and customary sales in the normal course of business.

3. Representing, directly or indirectly any specified amounts or percentages as savings or discounts which are not actual savings or discounts computed on the bona fide, usual, and customary selling price for such tires or such tubes in effect immediately prior in point of time to such representation.

4. Representing, directly or indirectly, that any specified savings or discounts are offered a purchaser upon the purchase of certain of its tires or tubes when such savings or discounts are computed upon the regular selling or list prices of its higher priced tires or tubes.

5. Representing, directly or indirectly, that a specified tire or tube is offered for sale when such tire or such tube is not so offered but instead another tire or tube of different kind or brand.

6. Representing, directly or indirectly, that specific savings or discounts are afforded a purchaser upon the purchase of tires or tubes when such savings or discounts do not take into account the trade-in allowances usually and customarily made to purchasers in the sale of such tires or such tubes in the ordinary 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.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the respondent Firestone Tire & Rubber Co., and that the charges as stated in paragraphs 7, 9, 10, and 11 of the complaint be, and they hereby are, dismissed without prejudice to the right of the Commission to proceed thereon in the future in any appropriate manner.

IN THE MATTER OF

THE GOODYEAR TIRE AND RUBBER COMPANY, AND THE GOODYEAR TIRE AND RUBBER 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 3984. Complaint, Feb. 27, 1940[1]*—Decision, June 18, 1941*

Where a corporation, the wholly owned subsidiary and selling and distributing agent for a second corporation, manufacturer, with its subsidiaries, of several grades of automobile tires, engaged in the interstate sale and distribution thereof through a number of company-owned stores and to independent dealers located in various states, both of whom it supplied with price lists respectively designating and suggesting retail selling prices and both of whom sold a substantial quantity of its tires at such prices and also a substantial number at lesser prices to meet competition and by special sales, its sales program contemplating a trade-in allowance of approximately 10 percent of list prices for old tires; and said second corporation;

In advertising their "G–100 All-Weather," "G–3 All-Weather," "Marathon," and "Pathfinder" tires—Relatively priced in that order, the latter three at approximately 90 percent, 75 percent, and 65 percent of said "G–100 All-Weather" tire price—by means of suggested advertising copy prepared and disseminated by former to their dealers and by advertisements during Nation-wide sale periods immediately prior to July 4, Labor Day, and at other periods, and which were inserted by a large number of independent dealers and company-owned stores, in whole or in part, in numerous newspapers—

(*a*) Represented, as typical, that their "Pathfinder" tire was offered for sale at a discount of 50 percent from the regular current retail selling price thereof, with old tire, through advertising "Save on tires June 20th to July 4th 50% SAVING * * * Think of it. For ½ the cost of little known 'Standard Tires' you get the PATHFINDER * * *" followed by list of sizes with prices, including, as example, "6.00 x 16—$7.98 Net Prices Including Your Old Tire";

Facts being that while said tires were being offered for sale at 50 percent off the retail list price of the higher-priced "G–100 All-Weather" tire, retail list price of the 6.00–16 size of which, at time of said advertisement, was $15.95, it was not offering them at a discount of 50 percent off the retail list price of "Pathfinder" tire, which was $10.35; the advertised sales price of $7.98 consequently represented a saving of only 22.89 percent, and if effect were given to the customary part payment trade-in allowance, the saving would be only 14.38 percent;

(*b*) Represented that they were offering their "G–100" tire for sale at a discount of 50 percent, and that the list price of their "Pathfinder" tire was $15.95, through advertisements "Save On Tires June 27 to July 4 50% off G–100 list * * * You get the PATHFINDER * * *," followed by list of tire sizes with prices, including, as example, "6.00 x 16 Standard Equipment List Price $15.95. Pathfinder Sale Price $7.98. Net prices including your old tire";

[1] Amended and supplemental.

Facts being that their "G–100" tire, which was their standard equipment tire, and listed at $15.95, was not offered for sale, but instead the "Pathfinder" tire, listed at 65 percent of the price of the "G–100," was offered at 50 percent of the list price of the "G–100"; with result that the advertised sales price of $7.98 represented a saving of only 22.89 percent off the list price of $10.35 for the Pathfinder 6.00 x 16, and after taking into account the usual part payment trade-in allowance of 10 percent the actual saving was only 14.38 per cent;

(c) Represented that their "Marathon" tire was offered for sale at 40 percent off its regular current sale price through advertisements "40% OFF our Standard List * * * these Big Famous MARATHON Goodyear Tires at the Lowest Prices in History," followed by list of tire sizes with prices, including, for example, "6.00 x 16—$9.56. Net prices including your old tires";

Facts being that at the time of publication of said advertisement the standard list price of their 6.00 x 16 "Marathon" was $11.95, so that the advertised sales price of $9.56 represented a saving of only 20 percent and, with the usual trade-in allowance would be reduced to 11.15 percent;

(d) Represented that their "G–3 All-Weather" tire was offered for sale at a discount of 25 percent off their regular current retail selling price by advertisements readng "25% Discount On The Famous Goodyear 'G–3' All-Weather Tires * * * for 10 days and 10 DAYS ONLY, you can buy the world's most popular tire—the Goodyear 'G–3' All-Weather—at 25% OFF the regular list price" followed by list of tire sizes with prices, including as example "Sale Price 6.00 x 16—$10.75 Including your old tire";

Facts being while said advertised price of $10.75 was 25 percent off the list price of respondent's 6.00 x 16 "G–3 All-Weather" tire, it was not a discount of 25 percent since the purchaser was required to turn in his used tire for which no credit was given: and customary part payment trade-in allowance of 10 percent would provide an actual cash discount of 16.8 percent;

With the tendency and capacity to mislead and deceive a substantial portion of the purchasing public, which understood and believed that represented savings or discounts from list prices were reductions from regular retail selling prices of the same tires in effect immediately prior to such advertised sale, into an erroneous belief with respect to savings actually offered, and with effect, because of such belief, of causing it to purchase said automobile tires:

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

Mr. William M. King for the Commission.

Mr. Lynn W. Baker, of Akron, Ohio, 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 The Goodyear Tire and Rubber Co., a corporation, and The Goodyear Tire and Rubber Co., Inc., a corporation, hereinafter referred to as respondents, have

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

PARAGRAPH 1. The respondent, The Goodyear Tire and Rubber Co., is a corporation organized under the laws of the State of Ohio and has its principal office and place of business in the city of Akron, State of Ohio.

The respondent, The Goodyear Tire and Rubber Co., Inc., is a corporation organized under the laws of the State of Delaware and has its principal office and place of business in the city of Akron, State of Ohio. It is a wholly owned subsidiary of the said The Goodyear Tire and Rubber Co. and acts as selling agent for said company.

PAR. 2. The respondent, The Goodyear Tire and Rubber Co., an Ohio corporation, is now and for many years last past, has been engaged in the manufacture, sale and distribution, among other products, of automobile tires. Said automobile tires are manufactured by respondent in factories owned and operated by it in the cities of Akron, Ohio; Los Angeles, Calif.; Cumberland, Md.; Jackson, Mich. and Gadsden, Ala. The respondent, The Goodyear Tire and Rubber Co., Inc., at all times mentioned herein has been the selling agency for said product.

The respondents act in cooperation and in conjunction with each other in performing the acts and practices hereinafter alleged.

In the course and conduct of their business, the respondents sell the said automobile tires by means of dealers located in the various States of the United States and in the District of Columbia. Respondents cause their automobile tires to be shipped from said factories located in the several States as above described, to their dealers 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 automobile tires in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, The Goodyear Tire and Rubber Co., an Ohio corporation, manufactures several grades of automobile tires which are distinguished as follows:

1. "G-100 All Weather Tire," which is the respondent's best grade or first-line tire and is sold at retail at what is usually referred to in the industry as 100 level prices;

2. "G-3 All Weather Tire," which is sold at 90 level prices, or 90 percent of the retail price of the "G-100 All Weather Tire";

3. The "Marathon" tire, which is sold at 75 level prices or 75 percent of the retail price of the "G–100 All Weather Tire";

4. The "Pathfinder" tire, which is sold at 65 level prices, or 65 percent of the retail price of the "G–100 All Weather Tire."

In the sale of these various grades of tires, it is customary and usual for respondents' dealers to make an allowance of 10 percent of the purchase price of the various grades of tires for old or used tires turned in by the customer. The respondents from time to time issue price lists designating the retail price or list price of its various grades of tires.

PAR. 4. For the purpose of inducing and stimulating the sale of their tires the respondents from time to time conduct Nation-wide tire sales through their various dealers, during which sale period they advertise and cause their various dealers to advertise in various newspapers and other periodicals having a general circulation, by means of which advertisements it is falsely represented that the respondents' tires are being sold at various purported discounts from the regular and usual price of such tires. Such sales are usually conducted immediately prior to Memorial Day, July Fourth, Labor Day, and at other periods during the year. The advertising copy used by the various dealers of the respondents, in connection with such sales, is prepared by the respondents and submitted to such dealers for insertion in local newspapers and other advertising media.

PAR. 5. Among and typical of the false, misleading and deceptive representations contained in the various advertisements disseminated by respondents as aforesaid is the following:

Save on Tires
June 20th to July 4th
50% SAVING
From Standard list on
Big Husky Genuine
New Goodyear Tires
Think of it. For one half the cost of little known "standard tires" you get the PATHFINDER, made and guaranteed for life by GOODYEAR.

Then follows list of the sizes with prices, of which the following is an example:

6.00 x 16 $7.98
Net prices including your old tire.

By means of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents represent that their tire known as the "Pathfinder" is sold at a discount of 50 percent of the usual and customary price of

said tire. In truth and in fact, said "Pathfinder" tire is not sold at a discount of 50 percent. For example, the standard list price of the 6.00 x 16 "Pathfinder" tire in effect at the time of such advertisement was $10.35, and consequently the advertised sale price of $7.98 represented a saving of 22.89 percent rather than 50 percent. Furthermore, the advertised saving makes no allowance for the trade-in value of the customer's old tire. Giving effect to the 10 percent trade-in value of old tires as is the usual and customary practice, this would further reduce the actual saving on said "Pathfinder" tire to 14.38 percent instead of 50 percent.

PAR. 6. Another and typical example of the false, misleading, and deceptive representations contained in the various advertisements, disseminated as aforesaid, is the following:

Save on Tires
June 27th to July 4th
50% off G–100 List
on Big Husky Genuine
New Goodyear Tires.
You get the PATHFINDER made
and guaranteed for life by
GOODYEAR.

Then follows list of tire sizes with prices, of which the following is an example:

Size	Standard Equipment List Price	Pathfinder sale price
6.00 x 16	$15.95	$7.98

Net prices including your old tire.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondents represent that their best grade tires, known as "G–100," are being sold at a discount of 50 percent, and also that the list price of its fourth grade 65 level tire known as "Pathfinder" is $15.95. In truth and in fact, respondents' first-line tire known as "G–100" or "G–100 All Weather Tire" is not sold at such discount on said sale as advertised, but instead respondents' fourth-grade, or 65 level tire is sold for the advertised price. As an example, the advertisement lists tire size 6.00 x 16 as standard equipment list price of $15.95, and sale price of Pathfinder at $7.98. The price of $15.95 listed in said advertisement as the standard equipment list price is the list price for the "G–100 All Weather Tire," and the Pathfinder tire has never sold at said price but instead at the list price of $10.35. In effect, by said advertisement, the respondents sell the 65 level tire known as "Pathfinder," after taking into consideration the usual

and customary discount of 10 percent for used tires, at a discount on said "Pathfinder" tire of only 14.38 percent, instead of the alleged 50 percent discount represented in said advertisement.

PAR. 7. Another and typical example of the false, misleading, and deceptive representations contained in the various advertisements disseminated by the respondents as aforesaid is the following:

40% OFF
our Standard List
Now you can get these Big
Husky Famous MARATHON Goodyear
Tires at the Lowest Prices
in History.
June 22nd to July 4th.

Then follows list of tire sizes with prices, of which the following is an example:

6.00 x 16 $9.56
Net Prices including your old tires.

By means of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents represent that their tire known as the "Marathon" is sold at a discount of 40 percent off standard list price. In truth and in fact, said "Marathon" tire is not sold at a discount of 40 percent off list price. For example, the list price of the 6.00 x 16 "Marathon" tire in effect at the time of the sale was $11.95. The advertised sales price was $9.56, or a saving of only 20 percent. Moreover, the advertised price made no allowance for the usual and customary trade-in value of old tires. Giving effect to the customary allowance of 10 percent for used tires, the actual saving to the purchaser on such sale would be 11.15 percent, rather than 40 percent as advertised.

PAR. 8. Another and typical example of the false, misleading, and deceptive representations contained in the various advertisements disseminated by the respondents as aforesaid is the following:

25% Discount on the Famous Goodyear "G-3" All Weather Tires—Here's grand news for vacation budgets! For ten days and TEN DAYS ONLY, you can buy the world's most popular tire—the Goodyear "G3" All Weather—at 25% OFF the regular list price.

Then follows list of tire sizes with prices, of which the following is an example:

Sale Price 6.00 x 16 $10.75
Including your old tire.

By means of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the

respondents represent that their "G-3 All Weather Tire" is sold at a discount of 25 percent. In truth and in fact, the saving or discount to the purchaser on this sale is not 25 percent for the reason that no allowance is given for the used tire as is customary and usual, and after taking into consideration the 10-percent discount ordinarily and regularly allowed for used tires, the saving to the purchaser would amount to only 16.8 percent, rather than 25 percent as advertised.

PAR. 9. The use by the respondent of the foregoing false, misleading, and deceptive statements, representations and advertisements disseminated as aforesaid with respect to the sales prices of its automobile tires 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 false statements, representations, and advertisements are true, and that the respondent's tires are sold at the saving or discount advertised and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's automobile tires.

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 the 27th day of February, A. D. 1940, issued and thereafter served its amended and supplemental complaint in this proceeding upon the respondents The Goodyear Tire & Rubber Co., Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 1, 1940, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by 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 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 as amended, answer and stipulation as to the facts, such 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, The Goodyear Tire & Rubber Co., properly designated, identified and described as The Goodyear Tire & Rubber Co., is a corporation organized under the laws of the State of Ohio and has its principal office and place of business in the city of Akron, State of Ohio. Said respondent, together with wholly-owned subsidiary companies, to wit: Goodyear Tire & Rubber Co. of California; Goodyear Tire & Rubber Co. of Michigan; and Goodyear Tire & Rubber Co. of Alabama, are now, and for many years last past have been, engaged in the manufacture, sale, and distribution of automobile tires and tubes. Said automobile tires and tubes are manufactured by said respondent and by its subsidiary companies above named in factories owned and operated by them in the cities of Akron, Ohio; Los Angeles, Calif.; Jackson, Mich.; and Gadsden, Ala.

PAR. 2. The respondent, The Goodyear Tire & Rubber Co., Inc., properly designated, identified, and described as The Goodyear Tire & Rubber Co., Inc., is a corporation organized under the laws of the State of Delaware and has its principal office and place of business in the city of Akron, State of Ohio. It is the wholly-owned subsidiary of the said The Goodyear Tire & Rubber Co., and is, and at all times herein mentioned was, the selling and distributing agent for said parent corporation and the other manufacturing subsidiary companies above enumerated. The said The Goodyear Tire & Rubber Co. at all times mentioned herein, by means of stock control, dominated and controlled the policies of said The Goodyear Tire & Rubber Co., Inc., in the acts and practices hereafter set forth.

PAR. 3. In the course and conduct of its business the respondent, The Goodyear Tire & Rubber Co., Inc., sells said automobile tires and tubes to the purchasing public by and through a number of company owned stores and to independent dealers located in the various States of the United States and in the District of Columbia. Said respondent cause said automobile tires and tubes to be shipped from the factories, above enumerated, to such dealers and company owned

stores located in various other States of the United States and in the District of Columbia. These respondents maintain, and at all times mentioned herein have maintained, a course of trade in said automobile tires and tubes in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The respondent, The Goodyear Tire & Rubber Co., together with its wholly owned subsidiaries manufacture several grades of automobile tires, which insofar as the following group is concerned and during the times mentioned herein, were distinguished as follows:

1. "G–100 All Weather" tires, listed and recommended to be sold at retail at list prices issued from time to time by the respondent, The Goodyear Tire & Rubber Co., Inc.

2. "G–3 All Weather" tire, listed and recommended to be sold at retail at approximately 90 percent of the price of "G–100 All Weather" tire.

3. The "Marathon" tire, listed and recommended to be sold at retail at approximately 75 percent of the price of "G–100 All Weather" tire.

4. The "Pathfinder" tire, listed and recommended to be sold at retail at approximately 65 percent of the price of the "G–100 All Weather" tire.

The respondent, The Goodyear Tire & Rubber Co., Inc., issued price lists for the use of its various retail stores designating the retail selling prices of its various grades of tires. Such price lists are commonly referred to in the industry as "list prices." List prices were also furnished to said respondent's dealers as a suggested selling price of said tires. At the time mentioned herein the sales program of said respondent contemplated an allowance, referred to generally as a trade-in allowance, of approximately 10 percent of the list prices of new tires when the customers turned in their old tires to said stores or dealers. A substantial portion of said respondent's tires are sold at said list prices. A substantial portion of said tires are sold at prices less than said list prices, such lesser prices being brought about by reason of discounts to meet competition and by special sales. The allowances for old tires turned in by the purchasers were based upon the value of said old tires. Except as offered at any particular time, said respondent's stores are not obligated to give a trade-in allowance for purchasers' used tires.

PAR. 5. During the year 1939, the respondent, The Goodyear Tire & Rubber Co., Inc., prepared and disseminated suggested advertising copy to its various dealers, and during nationwide sales periods, it advertised and recommended that its various dealers advertise in a

large number of newspapers having a general circulation, by means of which advertisements it was represented that the said automobile tires were being sold at various savings and discounts from the regular or list prices of such tires. Such sales were held immediately prior to July Fourth, Labor Day, and at other periods during the year.

A large number of independent dealers and company owned stores inserted such advertising, in whole or in part, in numerous newspapers throughout the United States and the District of Columbia.

PAR. 6. Among and typical of the representations contained in the various advertisements disseminated by respondents as aforesaid is the following:

Save on Tires
June 20th to July 4th
50% SAVING
From Standard list on
Big Husky Genuine
New Goodyear Tires
Think of it. For one half the cost of
little known "standard tires" you get
the PATHFINDER, made and guaranteed
for life by GOODYEAR.

Then follows list of the sizes with prices, of which the following is an example:

6.00 x 16 $7.98
Net prices including your old tire.

The Commission finds that said respondents represented, through the use of the above statements and representations, that their "Pathfinder" tire was offered for sale at a discount of 50 percent from the regular current retail selling prices of said tire with old tire.

At the time of the publication of said advertisement "Pathfinder" tires were being offered for sale at 50 percent off the retail list price of the "G–100 All Weather" tire, but not at a discount of 50 percent off the retail list price of said "Pathfinder" tire. As an example, the retail list price of the 6.00 x 16 "G–100 All Weather" tire in effect at the time of said advertisement was $15.95, and the retail list price of the "Pathfinder" tire of the same size was $10.35. The advertised sales price of $7.98 represented a saving of only 22.89 percent on the "Pathfinder" tire. If effect be given to the usual and customary part payment trade-in allowance credited to purchasers in the sale of new tires, the actual saving on said Pathfinder tire would be 14.38 percent.

PAR. 7. Among and typical of the representations contained in the various advertisements disseminated by respondents as aforesaid is the following:

Save on Tires
June 27th to July 4th
50% off G–100 List
On Big Husky Genuine
New Goodyear Tires.
You get the PATHFINDER made
and guaranteed for life by
GOODYEAR

Then follows list of tire sizes with prices, of which the following is an example:

Size	Standard Equipment List Price	Pathfinder Sale Price
6.00 x 16	$15.95	$7.98

Net prices including your old tire.

The Commission finds that said respondent represented, through the use of the above statements and representations, that they were offering their "G–100" tire for sale at a discount of 50 percent; and that the list price of their "Pathfinder" tire was $15.95.

Respondents' "G–100 All Weather" tire was its standard equipment tire at the time of the publication of this advertisement and was listed at $15.95. This tire was not offered for sale but instead the "Pathfinder" tire listed at 65 percent of the price of the "G–100" was offered at 50 percent of the list price of the "G–100." This did not result in a saving of 50 percent in the sale of the Pathfinder tire. As an example, the list price of the Pathfinder at said time was $10.35 for size 6.00 x 16. The advertised sales price of $7.98 represented a saving of only 22.89 percent. After taking into account the usual and customary part payment trade-in allowance of 10 percent the actual saving would be 14.38 percent.

PAR. 8. Among and typical of the representations contained in the various advertisements disseminated by respondents as aforesaid is the following:

40% OFF
our Standard List
Now you can get these Big
Husky Famous MARATHON Goodyear
Tires at the Lowest Prices
In History.
June 22nd to July 4th.

Then follows list of tire sizes with prices, of which the following is an example:

6.00 x 16 $9.56
Net prices including your old tires.

The Commission finds that the respondents represented, through the use of the above statements and representations, that their "Marathon" tire was offered for sale at 40 percent off the regular current sale price of said tire.

At the time of the publication of said advertisement the standard list price of respondents' "Marathon" tire, taking size 6.00 x 16 as an example, was $11.95. The advertised sales price of $9.56 represented a saving of only 20 percent. Giving effect to the usual and customary part payment trade-in allowance would reduce the saving to 11.15 percent.

PAR. 9. Among and typical of the representations contained in the various advertisements by respondents as aforesaid is the following:

25% Discount on the Famous Goodyear "G-3" All Weather Tires—Here's grand news for vacation budgets! For ten days and TEN DAYS ONLY, you can buy the world's most popular tire—the Goodyear "G3" All Weather—at 25% OFF the regular list price.

Then follows list of tire sizes with prices, of which the following is an example:

Sale Price 6.00 x 16 $10.75
Including your old tire.

The Commission finds that the respondents represented, through the above statements and representations that their "G-3 All Weather" tire was offered for sale at a discount of 25 percent of the regular current retail selling price of said tire.

At the time of the publication of said advertisement the regular list price of respondents' "G-3 All Weather" tire for 6.00 x 16 was $14.35. While the advertised price of $10.75 was 25 percent off this price it was not a discount of 25 percent since the purchaser was required to turn in his used tire but no credit was given. Giving credit for the usual and customary part payment trade-in allowance of 10 percent would provide an actual cash discount of 16.8 percent.

PAR. 10. The Commission finds that substantial numbers of the purchasing public understand and believe that advertised savings or discounts are reductions from the regular retail selling prices charged for the same merchandise in the ordinary course of business, immediately prior in point of time to such advertised sales; that they

understand and believe that "list prices," as used in tire advertising, referred to and meant the regular retail selling prices of the tires advertised for sale and that any represented savings or discounts from such "list prices" were reductions from the regular retail selling prices of the same tires, in effect immediately prior in point of time to such advertised sale.

PAR. 11. The use by the respondents of the foregoing statements, representations, and advertisements disseminated as aforesaid has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public as to the savings and discounts actually offered and the kind and brand of tires offered for sale, and induced a portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondents' automobile tires.

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 a stipulation as to the facts entered into between the respondents and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve on the respondents, findings as to the facts and conclusion based thereon and an order disposing of this proceeding, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents The Goodyear Tire & Rubber Co., a corporation, and The Goodyear Tire & Rubber Co., Inc., a corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device, in advertising in newspapers or other recognized advertising media, in connection with the offering for sale, sale and distribution of their automobile tires and tubes to the general public, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "List Price" or any other term of similar import or meaning to designate, describe or refer to prices which are not, in fact, the bona fide regular established selling prices of the tires or tubes advertised and offered for sale, as established by the usual and customary sales in the normal course of business.

2. Representing, directly or indirectly, that any specified amount is the customary, regular or usual price of any tire or tube advertised and offered for sale when such amount is not, in fact, the bona fide actual selling price of such tire or such tube as established by the usual and customary sales in the normal course of business.

3. Representing, directly or indirectly, any specified amounts or percentages as savings or discounts which are not actual savings or discounts computed on the bona fide, usual and customary selling price for such tires or such tubes in effect immediately prior in point of time to such representation.

4. Representing, directly or indirectly, that any specified savings or discounts are offered a purchaser upon the purchase of certain of its tires or tubes when such savings or discounts are computed upon the regular selling or list prices of its higher priced tires or tubes.

5. Representing, directly or indirectly, that a specified tire or tube is offered for sale when such tire or such tube is not so offered but instead another tire or tube of different kind or brand.

6. Representing, directly or indirectly, that specific savings or discounts are afforded a purchaser upon the purchase of tires or tubes when such savings or discounts do not take into account the trade-in allowances usually and customarily made to purchasers in the sale of such tires or such tubes in the ordinary course of business.

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

IN THE MATTER OF

THE B. F. GOODRICH COMPANY

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

Docket 3985. Complaint, Jan. 2, 1940—Decision, June 18, 1941

Where a corporation long engaged in the manufacture of automobile tires and tubes and in their sale and distribution through its company-owned stores and independent dealers, both of whom it supplied with price lists respectively designating and suggesting retail selling prices, including in its sales program a statement to the effect that an allowance up to 10 percent on the list price of any tire might be made when the consumer turned in old tires, its tires being sold variously at list prices, at prices less than list brought about by discounts to meet competition and by special sales, and at budget prices which, when service charge was taken into consideration, were higher than list prices—

In advertising its "Life Saver Silvertown Tire," "Silver-town R–4 Tire," its "Standard" tire and its "Commander" tire—relatively priced in that order at 90, 75, and 65 percent of first named tire—during nation-wide sales conducted immediately prior to July Fourth and Labor Day and at other periods, by means of advertising copy which it prepared and submitted to dealers and which was inserted by them in a large number of newspapers of general circulation—

(*a*) Represented that its "Commander" tire was offered for sale at 50 percent off, and at savings designated, from the regular current retail selling prices, and that said "Commander" was its first quality tire, through advertising "GOODRICH COMMANDERS 50% OFF REGULAR TIRE PRICES," followed by list of sizes, with prices, including as example "6.00 x 16 Regular First Line Tire, Price $15.95 Special Goodrich Commander Price $7.97, You Save $7.98. These prices include your old tires. * * *";

Facts being that at the time of publication of such advertisement "Commander" tires, while they were offered for sale at 50 percent off the list price of the higher-priced first-line "Life Saver Silvertown Tire," were not at 50 percent off the list price of the "Commander," the list price of the 6.00 x 16 "Life Saver Silvertown" being $15.95, and that of the comparable "Commander" only $10.35, and the advertised saving consequently being 22.89 percent off the "Commander" price, which saving gave no credit for the customary trade-in allowance of 10 percent which would further reduce the actual saving on "Commander" tires to 14.25 percent; and the "Commander" was not, as claimed, its first-line tire;

(*b*) Represented that it was offering all grades of its tires at the price of two for one; that its "Commander" tires were being sold at half their regular current retail selling price; and that the "Commander" was its first-line or first-grade tire, by advertisements reading "Two for One—Yes, 2 Goodrich Tires for the price of 1 First Line Tire * * *" including "Regular First Line Tires Prices" for various sizes and the statement "These prices include your old tires";

Facts being that at the time of publication of said advertisement two "Commander" tires were offered for the current list price of one "Life-Saver Silvertown Tire" but not two for the regular price of one "Commander" tire, the current list price of which in the 6.00 x 16 size was $10.35 and not $15.95 as indicated; all grades or brands of its tires were not sold "2 for 1" and the advertised prices did not take into account the usual 10 percent trade-in allowance, giving effect to which would save 14.38 percent from the "Commander" list price upon the purchase of two "Commander" tires; and said "Commander" was not a first-line or first-grade tire, as claimed;

(c) Represented that all grades of its tires were being offered at 50 percent off current retail selling prices, and that by purchasing one tire at the advertised sale price and a second tire at half such price, a saving of 50 percent and designated dollar savings would be afforded from current retail prices, by the statement "50% OFF ON BRAND NEW GOODRICH TIRES Buy One Tire At Regular Price And You Get Second Tire at HALF PRICE!! * * *" followed by list of sizes with prices including, as example "6.00–16 Regular Goodrich Commander price $10.35, Second Tire for $5.18 You Save $5.17;"

Facts being that at the time of publication of such advertisement it was offering one "Commander" tire at current list price and a second tire at one-half the list price, which did not provide 50 percent off for the reason that it was necessary to pay the full list price for the first tire in order to secure the second tire for half the list price, thus making the saving on two tires only 25 percent; the dollar savings of $5.17 for size 6.00 x 16 were also based upon the sale of two tires rather than one and were computed upon the list price rather than on the regular retail price; the advertised saving did not take into account the usual 10 percent trade-in allowance, which would reduce the actual saving to $3.10 on two tires or $1.55 per tire, or a percentage saving of 16.64 percent; and all grades of its tires were not sold at one tire for the regular price and the second tire at one-half price;

(d) Represented that all grades of its tires were offered for sale at 40 percent off current retail selling prices, and that by purchasing one tire at the advertised price and a second tire at 40 percent less, a saving of 40 percent and a designated dollar savings would be afforded from the regular retail selling price, through advertising "40% OFF ON GOODRICH STANDARD TIRES * * * BUY ONE TIRE AT REGULAR PRICE AND YOU GET SECOND TIRE AT 40% DISCOUNT," followed by list of sizes with prices including, as example, "6.00-16 Regular Goodrich Standard Price $11.95, Second Tire For $7.17, You Save $4.78";

When, with said 50 percent claimed saving, the saving from list price applied only on the second tire so that the saving on two was only 20 percent instead of 40 percent; the dollar saving of $4.78 quoted was also based upon two tires rather than one and was computed upon the list price rather than the current retail selling price; and giving effect to the usual trade-in allowance of 10 percent would reduce the actual saving to $2.39 for two tires and $1.19 for one tire;

(e) Represented similarly that it was offering its "Silvertown Tires" at a discount of 25 percent and that by purchasing them during said sale a 25 percent saving and a designated dollar saving would be afforded from regular current retail selling prices;

Facts being that while the advertised saving of $3.59 for size 6.00 x 16 "Silvertown" tires was 25 percent off the list price of $14.35, the purchaser was required to turn in his used tire without any allowance therefor, allowance for which would result in a saving of 16.8 percent rather than 25 percent and a dollar saving of $2.16 rather than $3.59; and

(*f*) Represented that by paying a designated sales price for three "Commander" tires the fourth tire would cost only 1 cent, and that by buying four tires at the advertised sales price, the designated amounts would be saved from their current retail selling prices;

Facts being that while it was offering three "Commander" tires at list price and a fourth tire at 1 cent, the prices charged were list prices and not current retail sales prices, which are customarily substantially lower than list prices due to part payment trade-in allowances for old tires and other discounts and reductions due to competition, with the result that the cost of the fourth tire would be substantially more than 1 cent and the savings on the combination sale substantially less than designated in the advertisement;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, which understands and believes that any represented savings or discounts from list prices were reductions from regular retail selling prices of the same tires in effect immediately prior to such advertised sale, with respect to the savings and discounts actually offered and the kind and grade of tires offered for sale, and effect of inducing a portion of such public, because of its erroneous belief, to purchase its automobile tires:

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

Mr. William M. King for the Commission.

Mr. J. L. McKnight and *Mr. F. C. Leslie*, of Akron, Ohio, for respondent.

COMPLAINT[1]

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that The B. F. Goodrich Co., a corporation, herein referred to as respondent, has violated the provision 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, The B. F. Goodrich Co., is a corporation organized under the laws of the State of New York and has its principal office and place of business in the city of Akron in the State of Ohio.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the manufacture, sale, and distribution, among other

[1] Published as amended pursuant to stipulation dated June 10, 1941 to include par. 9(*a*).

products, of automobile tires. Said automobile tires are manufactured by respondent in factories owned and operated by it in the cities of Akron, Ohio; Los Angeles, Calif.; and Oaks, Pa.

In the course and conduct of its business the respondent sells the automobile tires manufactured by it by means of dealers located in the various States of the United States, and in the District of Columbia. Respondent causes its automobile tires to be shipped from its factories located in the several States as above described to its dealers 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 tires in commerce among and between various States of the United States, and in the District of Columbia.

PAR. 3. The respondent manufactures several grades of automobile tires which are distinguished as follows:

1. "Life-Saver Silvertown Tire," which is the respondent's best grade of first-line tire and is sold at retail at what is usually referred to in the industry as 100 level prices;

2. "Silvertown R–4 Tire," which is sold at 90 level prices, or 90 percent of the retail price of the "Life-Saver Silvertown Tire";

3. The "Standard" tire, which is sold at 75 level prices, or 75 percent of the retail price of the "Life-Saver Silvertown Tire";

4. The "Commander" tire, which is sold at 65 level prices, or 65 percent of the retail price of the "Life-Saver Silvertown Tire."

In the sale of these various grades of tires, it is customary and usual for respondent's dealers to make an allowance of 10 percent of the purchase price of the various grades of tires for old or used tires turned in by the customer. The respondent from time to time issues price lists designating the retail price or list price of its various grades of tires.

PAR. 4. For the purpose of inducing and stimulating the sales of its tires the respondent from time to time conducts nation-wide tire sales through its various dealers, during which sale period it advertises and causes its various dealers to advertise in various newspapers and other periodicals having a general circulation, by means of which advertisements it is falsely represented that the respondent's tires are being sold at various purported discounts from the regular and usual price of such tires. Such sales are usually conducted immediately prior to Memorial Day, July Fourth, Labor Day, and at other periods during the year. The advertising copy used by the various dealers of the respondent, in connection with such sales is prepared by the respondent and submitted to such dealers for insertion in local newspapers and other advertising media.

PAR. 5. Among and typical of the false, misleading, and deceptive representations contained in the various advertisements disseminated by respondent as aforesaid is the following:

GOODRICH
Fully Guaranteed COMMANDERS
50% OFF Regular Tire Prices

Then follows list of various sizes with prices, of which the following is an example:

Size	Regular First Line Price	Special Goodrich Commander Price	You Save
6.00 x 16	$15.95	$7.97	$7.98

These prices include your old tires.

By means of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondent represents that its "Commander" tires are first-line tires in that the alleged savings of 50 percent are based upon the price of its first-line tires, when in truth and in fact its "Commander" tire is its fourth-line tire. For example, the respondent represents that the list price of its fourth grade 65 level tire known as "Commander," size 6.00 x 16, is $15.95 and that this tire is sold at a discount of 50 percent of the usual and customary price of said tire. In truth and in fact, the list price of said "Commander" tire is not $15.95 and it is not sold at a discount of 50 percent. The regular list price of the 6.00 x 16 "Commander" tire in effect at the time of said advertisement was $10.35 and consequently the advertised sale price of $7.97 represented 22.89 percent off rather than 50 percent off. Furthermore, the advertised saving makes no allowance for the trade-in value of the customer's old tire. Giving effect to the 10 percent trade-in value of the old tire, as is the usual and customary practice, this would further reduce the actual saving on said "Commander" tire to 14.38 percent instead of 50 percent.

PAR. 6. Another and typical example of the false, misleading and deceptive representations contained in the various advertisements disseminated as aforesaid is the following:

2 FOR 1
Yes, 2 Goodrich Tires for the
Price of 1 First Line Tire

Then follows list of the various sizes with prices, of which the following is an example:

Size	Regular First Line Tire Price	Special Price Two Commander Tires
6.00 x 16	$15.95	$15.95

These prices include your old tires.

By means of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondent represents that all grades of its tires are sold upon the basis of two for the price of one. Respondent further represents that its "Commander" tires are first-line tires usually sold at the list price of its first-line 100 level tires. For example, respondent represents that the list price of its fourth grade 65 level tires known as "Commander," size 6.00 x 16, is $15.95.

In truth and in fact, all grades of respondent's tires are not sold at two for the price of one. Its "Commander" tire is not a first-line 100 level tire and the regular list price of this tire in size 6.00 x 16 is not $15.95, but instead at the time of such advertisement said list price on such size "Commander" tire was $10.35. Furthermore, the sale price of two tires for the price of one does not give the purchaser the usual and customary discount of 10 percent of the purchase price as trade-in value of old tires turned in. The savings to the customer after taking into consideration the customary trade-in value of used tires is only 14.38 percent instead of 50 percent, as would appear in the sale of two tires for the price of one.

PAR. 7. Another and typical example of the false, misleading and deceptive representations contained in the various advertisements disseminated as aforesaid is the following:

50% OFF
On Brand New GOODRICH TIRES
Buy One Tire at Regular Price
And You Get Second Tire At
HALF PRICE.

Then follows list of the various sizes with prices, of which the following is an example:

Size	Regular Goodrich Commander Price	Second Tire for	You Save
6.00 x 16	$10.35	$5.18	$5.17

These prices include your old tires.

By means of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondent represents that all grades of its tires are sold at 50 percent off or a second tire at half price, when in truth and in fact only its "Commander" tires are so sold. Furthermore, its "Commander" tires are not sold at 50 percent off since it is necessary to buy one tire at the full price in order to purchase the second tire at half price, resulting in a percentage saving of only 25 percent rather than 50 percent, and a dollar saving on the size 6.00 x 16 as set out above of $5.17 on the purchase price of two tires rather than on one.

Furthermore, the advertised saving makes no allowance for the trade-in value of the customer's old tire. Giving effect to the 10 percent trade-in value of old tires, as is the usual and customary practice, further reduces the actual saving to the purchaser to $3.10 on two tires or $1.55 on each tire, or a percentage saving of 16.64 percent.

PAR. 8. Another and typical example of the false, misleading and deceptive representations contained in the various advertisements disseminated as aforesaid is the following:

40% OFF
on
GOODRICH STANDARD TIRES
Buy One Tire at Regular Price
And You Get Second Tire At
40% Discount.

Then follows list of the various sizes with prices, of which the following is an example:

Size	Regular Goodrich Standard Price	Second Tire for	You save
6.00 x 16	$11.95	$7.17	$4.78

Prices include your old tires.

By means of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondent represents that all grades of its tires are sold at 40 percent off, when in truth and in fact only its third-line 75 level tires known as "Standard" are so sold. Furthermore, its "Standard" tires are not sold at 40 percent off since it is necessary to buy one tire at the full price in order to purchase the second tire at 40 percent off, thus resulting in a percentage saving of 20 percent on the total purchase price rather than 40 percent and a dollar saving on the size 6.00 x 16 as set out above of $4.78 on two tires rather than one tire. Further, the advertised saving makes no allowances for the trade-in value of the customer's old tire. Giving effect to the 10 percent trade-in value of the old tires, as is the usual and customary practice, further reduces the actual saving to the purchaser to $2.39 for two tires or $1.19 on each tire.

PAR. 9. Another and typical false, misleading, and deceptive representation contained in the various advertisements disseminated as aforesaid is the following:

25% OFF
on
Brand New Famous
GOODRICH SILVERTOWN TIRES

Then follows list of the various sizes with prices, of which the following is an example:

Size	Regular Goodrich Silvertown Price	You Save
6.00 x 16	$14.35	$3.59

These prices include your old tires.

By means of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondent represents that its "Goodrich Silvertown Tires" are sold at a discount of 25 percent. In truth and in fact, the saving or discount to a purchaser on this sale is not 25 percent for the reason that no allowance is given for the used tire, as is customary and usual, and after taking into consideration the 10 percent discount ordinarily allowed for used tires, the saving to the purchaser would amount to only 16.8 percent rather than 25 percent as advertised.

PAR. 9 (*a*). Another and typical example of the false, misleading, and deceptive statements and representations contained in the various advertisements disseminated by the respondent, is the following:

1¢ TIRE SALE Buy Three
GOODRICH COMMANDERS
at Published List Price and
Receive the 4th for 1¢ * * *
25% savings if you need only
one or two tires * * *.

How to get a Tire for 1¢.

Then follows a list of sizes and prices, of which the following is an example:

Size	Published List Price of 3 Tires.	Price of 4th Tire.	You save on 4 Tires.
6.00 x 16	$35.85	1¢	$11.94

Above price for cash and include your old tires. * * *

By means of the statements and representations hereinabove set forth and others similar thereto not specifically set forth herein, respondent represents that by buying three "Commander" tires at the published list price, a fourth tire will cost the purchaser only one cent, and that certain designated savings are afforded the purchaser upon the purchase of four tires, for example, $11.94 for size 6.00 x 16. Such purported savings are exaggerated and untrue for the reason that they are based entirely upon the list prices and not upon the regular retail selling prices. Respondent's regular retail selling prices of such tires are customarily substantially lower than the list

prices due to part payment trade-in allowances and other discounts and reductions brought about by competition. The actual cost of the fourth tire would, therefore, be substantially more than one cent and the savings substantially less than those designated in the advertisement.

PAR. 10. The use by the respondent of the foregoing false, misleading, and deceptive statements, representations and advertisements disseminated as aforesaid with respect to the sales prices of its automobile tires 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 false statements, representations, and advertisements are true, and that the respondent's tires are sold at the saving or discount advertised, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's automobile tires.

PAR. 11. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 2d day of January 1940, issued and thereafter served its complaint in this proceeding upon the respondent, The B. F. Goodrich Co., a corporation, charging, it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 4, 1940, the respondent filed its answer in this proceeding. Thereafter, pursuant to a stipulation entered into between the parties, it was agreed that, subject to the approval of the Commission, certain amendments might be made to the complaint, the respondent agreeing to said amendments but denying the charges as stated therein and waiving the issuance and service upon it of an amended and supplement complaint as well as the right to file an answer to the complaint so amended and supplemented, which stipulation has been approved, accepted, and filed. 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. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint as amended, answer and stipulation, such stipulation as to the facts having been approved, accepted and filed, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The B. F. Goodrich Co., is a corporation organized under the laws of the State of New York and has its principal office and place of business in the city of Akron in the State of Ohio.

PAR. 2. Said respondent is now, and for many years last past has been, engaged in the manufacture, sale, and distribution, among other products, of automobile tires and tubes. Said automobile tires and tubes are manufactured by respondent in factories owned and operated by it in the cities of Akron, Ohio; Los Angeles, Calif.; and Oaks, Pa.

In the course and conduct of its business the respondent sells said automobile tires and tubes to the purchasing public through its company-owned stores and to independent dealers, for resale, both company-owned stores and independent dealers being located in the various States of the United States and in the District of Columbia. Said respondent causes its automobile tires and tubes to be shipped from said factories, located in the several States as above described, to its dealers located in various other States of the United States and in the District of Columbia. Said respondent maintains, and at all times mentioned herein has maintained, a course of trade in said automobile tires and tubes in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent manufactures automobile tires which, insofar as the following group is concerned and at the time mentioned herein, were distinguished as follows:

1. "Life-Saver Silvertown Tire" was respondent's highest priced tire and was listed and recommended to be sold at retail at published list prices by respondent;

2. "Silvertown R–4 Tire" was listed and recommended to be sold at retail at a price which price was approximately 90 percent of the list price of the "Life-Saver Silvertown Tire";

3. "Standard" tire was listed and recommended to be sold at retail at a price, which price was approximately 75 percent of the list price of the "Life-Saver Silvertown Tire";

4. "Commander" tire was listed and recommended to be sold at retail at a price, which price was approximately 65 percent of the list price of the "Life-Saver Silvertown Tire."

The respondent issued price lists for the use of its various retail stores which designate the retail selling price of its various grades and sizes of tires. Such price lists are commonly referred to in the industry as "list prices." List prices are also furnished to respondent's dealers as a suggested retail selling price of its products. Respondent's sales program contains a statement that an allowance up to 10 percent of the list price of new tires may be made when the customer turns in his old tires to said stores or dealers. A substantial portion of respondent's tires are sold at said list price. A substantial portion of said tires are sold at prices less than said list, such lesser prices being brought about by reason of discounts to meet competition and by special sales. The allowance for old tires turned in by the customer is based upon the value of said old tires. A substantial portion of respondent's tires are sold at budget prices, which, when service charge is taken into consideration, are higher than said list prices. Except in compliance with an advertisement, respondent's stores are not obligated to give a trade-in allowance for customers' used tires.

PAR. 4. During the year 1939, for the purpose of inducing and stimulating the sale of its tires, the respondent conducted nationwide sales through its various stores and recommended such sales to its dealers, during which sales periods it advertised and recommended that its various dealers advertise in a large number of newspapers having a general circulation by means of which advertisements it was represented that the said automobile tires were offered for sale at various discounts and savings from the regular and list prices of said tires. Such sales were held and conducted immediately prior to July Fourth, and Labor Day, and at other periods during the year.

Advertising copy used by its various dealers in connection with such sales, was prepared by the respondent and submitted to such dealers for insertion in local newspapers and other advertising media. A large number of company-owned stores and independent dealers inserted such advertising, in whole or in part, in numerous newspapers throughout the United States and in the District of Columbia.

PAR. 5. The following photostatic copy is typical of the advertisements prepared and promulgated by the respondent during said period:

GOODRICH

(FULLY GUARANTEED)

COMMANDERS

50% OFF!

REGULAR TIRE PRICES

SIZE	Regular First Line Tire Price	Special Goodrich Commander Price	YOU SAVE
4.50-20	$10.70	$5.35	$5.35
4.40-4.50-21	11.10	5.55	5.55
4.75-5.00-19	11.45	5.72	5.73
5.25-5.50-18	13.35	6.67	6.68
6.00-16	15.95	7.97	7.98

These prices include your old tires.

● These are brand new, fully guaranteed Goodrich Tires. Every one carries a lifetime guarantee by America's oldest tire maker. They are full dimension tires and built with an extra deep, extra wide tread. Act now. Take advantage of the greatest tire buy of the year! · This offer expires midnight July 4.

The Commission finds that said respondent represented, through the use of the above statements and representations, that its "Commander" tire was offered for sale at 50 percent off and at the savings designated in said advertisement, from the regular current retail selling prices of said tires; and that said "Commander" tire was respondent's first-line or first-quality tire.

At the time of the publication of this advertisement "Commander" tires were being offered for sale at 50 percent off the list price of the higher-priced first-line "Life-Saver Silvertown Tire" but not at 50 percent off the list price of the "Commander" tire. For example, the list price of the 6.00 x 16 "Life-Saver Silvertown Tire" was $15.95 and the list price of the "Commander" of the same size was $10.35. The advertised saving of $7.98, while 50 percent of the "Life-Saver Silvertown" price, was only 22.89 percent off the "Commander" price. The advertised saving gives no credit for the usual and customary part payment trade-in allowance of 10 percent credited to purchasers of new tires. Giving effect to such allowance would reduce the actual saving on "Commander" tires to 14.38 percent. Respondent's "Commander" tire was not its first-line tire.

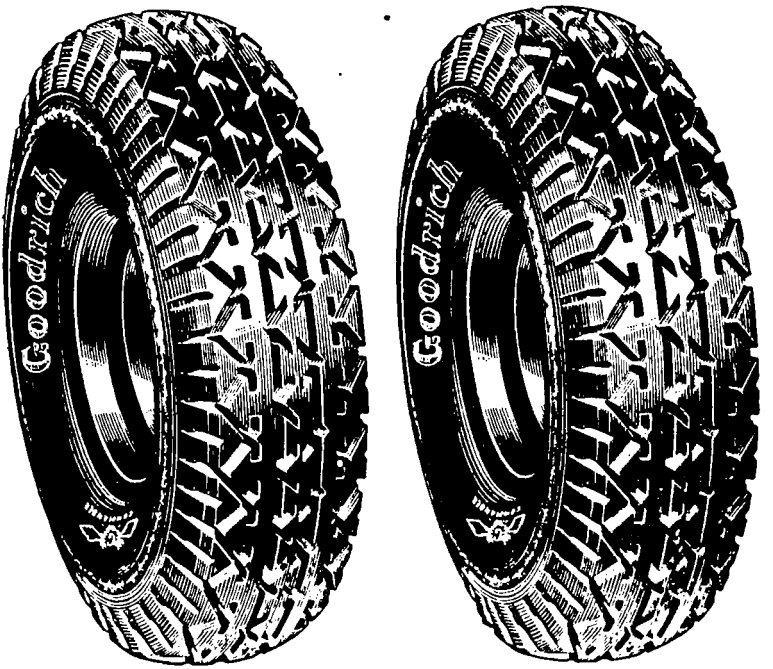
PAR. 6. The following photostatic copy, page 325, is typical of the advertisements prepared and promulgated by the respondent during said period:

The Commission finds that said respondent represented, through the use of the above statements and representations, that it was offering all grades of its tires at the price of two for one; that its "Commander" tires were being sold at half the price of the regular current retail selling price of said tires; and that the "Commander" tire was respondent's first-line or first-grade tires.

At the time of the publication of this advertisement two "Commander" tires were offered for sale for the current list price of one "Life-Saver Silvertown Tire" but not two "Commander" tires for the regular price of one "Commander" tire. The current list price of the "Commander" tire for size 6.00 x 16 was $10.35, and for the same size "Life-Saver Silvertown Tire" it was $15.95. Two "Commander" tires were sold for $15.95 but not for $10.35. All grades or brands of respondent's tires were not sold upon the basis of two for one. The advertised sales prices did not take into account the usual and customary part payment trade-in allowance. Giving effect to a 10 percent trade-in allowance would afford a saving of 14.38 percent from the "Commander" list price upon the purchase of two "Commander" tires. The "Commander" tire was not a first-line or first-grade tire.

2 FOR 1

Yes, 2 Goodrich Tires for the price of 1 First Line Tire



LIFETIME GUARANTEE!

These are brand new, fully guaranteed Goodrich Commander Tires. Every one carries a lifetime guarantee by America's oldest tire maker. They are full dimension tires and built with an extra deep, extra wide tread. Act quick. Take advantage of the greatest tire buy of the year. This offer expires midnight, July 4.

SIZE	Regular First Line Tire Price	Special Sale Price 2 Commander Tires
4.50-20	$10.70	$10.70
4.40-4.50-21	11.10	11.10
4.75-5.00-19	11.45	11.45
5.25-5.50-18	13.35	13.35
6.00-16	15.95	15.95

These prices include your old tires.

PAR. 7. The following photostatic copy is typical of the advertisements prepared and promulgated by the respondent during said period:

50% OFF ON BRAND NEW GOODRICH TIRES

Buy One Tire at Regular Price and You Get Second Tire at

HALF PRICE!!

THIS OFFER EXPIRES AT MIDNIGHT JULY 4th, 1939

SIZE	Regular Goodrich Commander Price	Second Tire For	YOU SAVE
4.50-20	$6.95	$3.48	$3.47
4.40-4.50-21	7.20	3.60	3.60
4.75-5.00-19	7.45	3.73	3.72
5.25-5.50-18	8.65	4.33	4.32
6.00-16	10.35	5.18	5.
6.25-6.50-16	12.60	6.30	6.30

These Prices Include Your Old Tires

The Commission finds that said respondent represented, through the use of the above statements and representations, that all grades of its tires are being offered for sale at 50 percent off the regular current retail selling prices of said tires and that by purchasing one tire at the advertised sales price and a second tire at half such price

a saving of 50 percent and the dollar savings designated in said advertisements would be afforded, from the regular current retail selling prices of said tires.

At the time of the publication of this advertisement respondent was offering one "Commander" tire at current list price and a second tire at one-half the list price. This did not provide 50 percent off, for the reason that it was necessary to pay the full list price for the first tire in order to secure the second tire for one half the list price. While the saving from the list price was 50 percent for the second tire, the saving on two tires was only 25 percent. The dollar savings of $5.17 for size 6.00 x 16 were also based on the sale of two tires rather than one and were computed upon the list price rather than the regular current retail selling price. The advertised saving does not take into account the usual and customary part payment trade-in allowance for used tires. Giving effect to the customary allowance of 10 percent would reduce the actual saving to $3.10 on two tires or $1.55 per tire, or a percentage saving of $16.64 percent. All grades of respondent's tires were not sold at one tire for the regular price and the second tire at half price.

PAR. 8. The following photostatic copy, page 328, is typical of the advertisements prepared and promulgated by the respondent during said period:

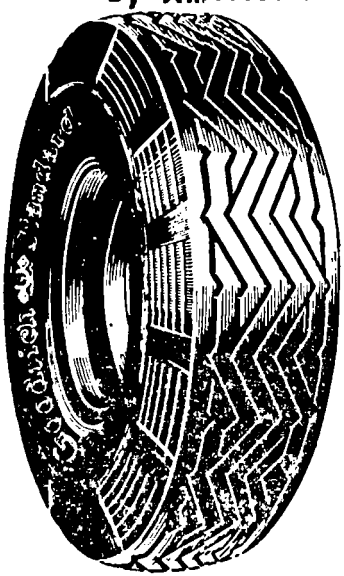
The Commission finds that said respondent represented, through the use of the above statements and representations, that all grades of its tires were offered for sale at 40 percent off the regular current retail selling price and that by purchasing one tire at the advertised price and a second tire at 40 percent off said price a saving of 40 percent and the dollar savings designated in said advertisement would be afforded, from the regular current retail selling prices on said tires.

At the time of the publication of this advertisement respondent was offering one "Standard" tire at current list price and a second tire at 40 percent off list price. This did not provide 40 percent off for the reason that it was necessary to pay the full list price for the first tire in order to secure the second tire at 40 percent off the list price. While the saving from list price was 40 percent for the second tire, the saving on two tires was only 20 percent. The dollar saving of $4.78 for size 6.00 x 16 was also based upon two tires rather than one and was computed upon the list price rather than the current retail selling price. The advertised saving also does not take into account the usual and customary part payment trade-in allowance for used tires. Giving effect to the usual allowance of 10 percent would reduce the actual savings to $2.39 for the two tires and $1.19 for each tire.

40% OFF ON GOODRICH STANDARD TIRES

NO SECONDS·ALL FIRST CLASS·FULLY GUARANTEED

By America's Oldest Tire Manufacturer



This Offer Expires At Midnight, July 4, 1939

BUY ONE TIRE AT REGULAR PRICE AND YOU GET SECOND TIRE AT 40% DISCOUNT

SIZE	Regular Goodrich Standard Price	Second Tire For	YOU SAVE
4.40-4.50-21	$8.35	$5.01	$3.34
4.75-5.00-19	8.60	5.16	3.44
5.25-5.50-18	10.00	6.00	4.00
5.25-5.50-17	11.00	6.60	4.40
6.00-16	11.95	7.17	4.78
6.25-6.50-16	14.50	8.70	5.80

Prices Include Your Old Tires

PAR. 9. The following photostatic copy is typical of the advertisements prepared and promulgated by the respondent during said period:

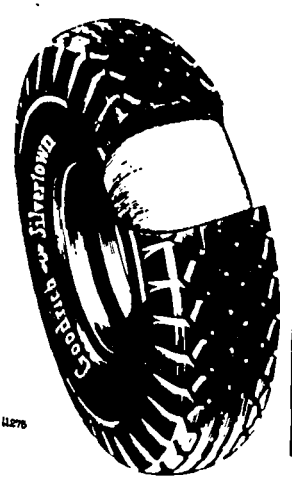
25% OFF

ON BRAND NEW FAMOUS

GOODRICH SILVERTOWN TIRES

Now is your chance to get Golden Ply Blow-out Protection. Don't miss it! See us while prices are so low!

THIS OFFER EXPIRES MIDNIGHT, JULY 29, 1939



SIZE	Regular Goodrich Silvertown Price	YOU SAVE	NET COST
4.40-4.50-21	$10.00	$2.50	$7.50
4.75-5.00-19	10.30	2.58	7.72
5.25-5.50-18	12.00	3.00	9.00
5.25-5.50-17	13.20	3.30	9.90
6.00-16	14.35	3.59	10.76
6.25-6.50-16	17.40	4.35	13.05

These Prices Include Your Old Tires

The Commission finds that said respondent represented, through the above statements and representations, that it was offering its "Silvertown Tires" at a discount of 25 percent and that by pur-

chasing said tires during said sale a 25 percent saving and the designated dollar savings would be afforded, from the regular current retail selling prices of said tires.

At the time of the publication of this advertisement the list price of respondent's "Silvertown Tires" was $14.35 for size 6.00 x 16. The advertised saving of $3.59 is 25 percent off this price but is not a discount of 25 percent or a saving of $3.59, since the purchaser was required to turn in his used tire but no allowance was given. Giving credit for the usual and customary allowance of 10 percent would provide a saving of 16.8 percent rather than 25 percent and a dollar saving of $2.16 rather than $3.59.

PAR. 10. The following photostatic copy, page 331, is typical of the advertisements prepared and promulgated by the respondent during said period:

The Commission finds that said respondent represented, through the use of the above statements and representations, that by paying the designated sales price for three "Commander" tires, the fourth tire would cost only 1 cent and that by buying four tires at the advertised sales price the amounts designated would be saved from the regular current retail selling prices of said merchandise.

At the time the publication of this advertisement, the respondent was offering three "Commander" tires at list price and the fourth tire at 1 cent. Such a combination sale would not provide a price of 1 cent for the fourth tire and afford the designated savings set out in this advertisement, for the reason that the prices charged for the three tires are list prices and not the regular current retail sales prices. The regular current retail sales prices are customarily substantially lower than list prices due to part payment trade-in allowances for purchasers' old tires and other discounts and reductions brought about by competition. The cost price of the fourth tire would therefore be substantially more than 1 cent and the savings on the combination sale would be substantially less than those disignated in the advertisement.

PAR. 11. The Commission finds that substantial numbers of the purchasing public understand and believe that advertised savings or discounts are reductions from the regular retail selling prices charged for the same merchandise in the ordinary course of business immediately prior in point of time to such advertised sale; that they understand that "list prices" as used in tire advertising, referred to and meant the regular retail selling prices of the tires advertised for sale and that any represented savings or discounts from such list prices were reductions from the regular retail selling prices of the same tires in effect immediately prior in point of time to such advertised sale.

PAR. 12. The use by the respondent of the foregoing statements, representations and advertisements, disseminated as aforesaid, with respect to the sales prices of its automobile tires and with respect to the kind and quality of the tires offered for sale has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the savings and discounts actually offered and the kind and grade of tires offered for sale and induced a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's automobile tires.

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 a stipulation as to the facts entered into between the respondent and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve on the respondent findings as to the facts and conclusion based thereon and an order disposing of this proceeding, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The B. F. Goodrich Company, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in advertising in newspapers or other recognized advertising media, in connection with the offering for sale, sale and distribution of its automobile tires and tubes to the general public, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "List Price" or any other term of similar import or meaning to designate, describe or refer to prices which are not, in fact, the bona fide regular established selling prices of the tires or tubes advertised and offered for sale, as established by the usual and customary sales in the normal course of business.

2. Representing, directly or indirectly, that any specified amount is the customary, regular or usual price of any tire or tube advertised and offered for sale when such amount is not, in fact, the bona fide

actual selling price of such tire or such tube as established by the usual and customary sales in the normal course of business.

3. Representing, directly or indirectly, any specified amounts or percentages as savings or discounts which are not actual savings or discounts computed on the bona fide, usual, and customary selling price for such tires or such tubes in effect immediately prior in point of time to such representation.

4. Representing, directly or indirectly, that any specified savings or discounts are offered a purchaser upon the purchase of certain of its tires or tubes when such savings or discounts are computed upon the regular selling or list prices of its higher priced tires or tubes.

5. Representing, directly or indirectly, that a specified tire or tube is offered for sale when such tire or tube is not so offered but instead another tire or tube of different kind or brand.

6. Representing, directly or indirectly, that specific savings or discounts are afforded a purchaser upon the purchase of tires or tubes when such savings or discounts do not take into account the trade-in allowances usually and customarily made to purchasers in the sale of such tires or such tubes in the ordinary 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

SEARS, ROEBUCK & COMPANY

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

Docket 4033. Complaint, Feb. 15, 1940—Decision, June 18, 1941

Where a corporation long engaged in the manufacture, among other products, of automobile tires and tubes, and in interstate sale and distribution thereof through its retail stores located in various states; issuing list prices for the use of such stores which, while usually offering such products at certain savings and discounts from said list prices, did not usually sell its tires at prices so designated but varied prices at their discretion, under its authority, on the basis of such price lists, and which customarily made allowances of up to 25 percent of list prices of new tires as a trade-in allowance for purchasers' old tires;

In advertisements of its best grade "Allstate Safety Tread Tire," its "Allstate Non-Skid or Rib-Tread Tire"—also listed by it as a first line tire but sold for less than the former—its second grade "Allstate Standard Tire," and its third line "Allstate Crusader Tire" in connection with Nation-wide tire sales, prepared and published in various newspapers and other periodicals of general circulation by said retail stores under authority granted by it—in which advertisements, as more fully set out below, it made representations with respect to various discounts and savings from regular retail selling prices, from the list prices, and from competitors' list prices, and with respect to grade and quality of a certain tire—

(*a*) Represented, as illustrative, that insofar as the purported discounts might be interpreted as meaning a discount from the regular retail price, its "Crusader" tires were being sold at a discount or saving of 30 percent to 35 percent, by the statement "Save 30 percent to 35 percent on 'Fleet Tested' Allstate CRUSADER TIRES * * *," followed by list of sizes with prices;

Facts being that such purported savings were exaggerated and untrue for the reason they were not computed on the regular retail price or on any other current price of said tire and the advertised sale prices for the respective sizes of tires provided percentage savings based upon the list prices of 10.8 percent, 10.1 percent, 9.45 percent, 9.8 percent, 10.7 percent, and 10.1 percent, rather than the advertised saving of 30 percent to 35 percent, and if based upon the regular retail selling prices the percentage savings would be even less;

(*b*) Represented that a 25-percent trade-in allowance for old tires was an extra trade-in allowance and resulted in a 25 percent discount from the regular retail prices; when in fact such a trade-in allowance for old tires was always made, and by most of its stores, and therefore did not provide 25 percent discount from the regular retail selling price;

(*c*) Represented "HALF PRICE TIRE SALE Buy One All-State At Its Regular Price! Get another at HALF PRICE * * * these prices include the old tires," facts being it was not in effect offering to sell its tires on the basis of two for one and one-half the regular price of one, since a trade-in allowance for old tires was always made, and generally up to 25 percent of list price of new tires, and, computed upon such basis, the sales price of two

tires, as designated in said advertisement, might be exactly the same as that charged in the usual course of business and constituted no savings or discounts from the regular price;

(*d*) Represented "Today and Tomorrow * * * a tube for 10¢ IN ADDITION to the lowest price of all time for Allstate Standards," followed by list of sizes with prices; facts being that the designated sales price required the purchaser to pay practically the full price for the tube in each instance, for the reasons that the prices shown were higher than the correct list prices currently in effect, and that the purchaser received no credit for his old tires although he was required to turn them in; the sales price of $9.59 advertised for tire and tube, taking, as illustrative, the 6.00 x 16, and using the correct list price and giving credit for a 25 percent trade-in allowance for old tires, required the purchaser to pay $1.30 for the tube rather than 10 cents;

(*e*) Representing certain designated prices as customary and usual retail selling prices of its "Non-Skid Allstate Tires" and that by paying such designated amounts and $3 for a second tire, certain stated savings would be provided on the purchase of two tires; when in fact the prices designated as regular prices were actually list prices, and in the locality in which such advertisement was published the regular retail selling prices of the particular tire were substantially lower than the prices designated in said advertisement, so that the actual savings were substantially less than those set out;

(*f*) Represented that certain savings were provided a purchaser of its tires computed upon the list price of competitors' tires, by advertising "YOU SAVE WHEN YOU BUY ALLSTATES! * * * Size 4-Ply 6.00-16 Comparative list price $14.05 Sears net price with old tire $8.95, You Save $5.10"; when, in truth and in fact, such purported savings were exaggerated in that they were based wholly upon list prices and not upon selling prices of competitors' tires; the regular retail selling prices of the major tire companies being customarily substantially lower than their list prices due to trade-in allowances and to other discounts and reductions brought about by competitive situations;

(*g*) Represented that by buying, for example, its 4.75 x 16 Allstate Rib Tread and Non-Skid Tires for $6.63, a saving of $3.77 was made from the "big tire companies" list price of $10.40; when in fact the comparison was made between the competitors' list price and its retail selling price, the major tire companies' retail prices being customarily substantially lower than their list prices, as above noted;

(*h*) Represented that a purchaser of tires of a major tire company at prices represented as "National List" would be required to pay 40 to 60 percent more for tires of comparable quality than its designated sales prices; facts being said competitor's "National List" were not regular and usual retail selling prices, but, as aforesaid, customarily higher than the latter;

(*i*) Represented that it was offering "ALLSTATE Safety Treads" at 50 percent off and at a saving of $7.97 for the 6.00 x 16 size; when in fact, the amount $15.95, designated as "List Price," was not the usual retail selling price which was substantially less, and the selling price was therefore not 50 percent off nor the saving as much as $7.97 when computed upon the regular selling price with old tires;

(*j*) Represented "40% off List Price Sears Fleet Tested CRUSADERS * * * 6.00 x 16 size $7.40 and your old tire"; facts being that the list price of the 6.00 x 16 "Crusader" at the time of publication of said advertisement was $9.35, and the stated sale price of $7.40 provided 20 percent off rather than 40 percent off as claimed; and

(*k*) Represented by such statements, among others, as "UP TO 35% TRADE-IN ALLOWANCE! Actually you save up to—45 percent—compared with other first-line tires present list prices! 3-Day Special 'Crusader' Sale Prices!" that the "Crusader" tire was a first-line or first-grade tire, facts being it was, as aforesaid, its third line or grade product;

(*l*) Represented further that certain specified savings were provided, based upon the list price of higher priced tires of its competitors; which would not, in fact, provide the represented saving since the list price of competitors' tires is not the usual or customary selling price;

With tendency and capacity to mislead a substantial portion of the purchasing public, which understands and believes represented savings and discounts from "list prices" to be reductions from the regular retail selling prices of the same tires in effect immediately prior to advertised sales, into the erroneous belief that aforesaid representations were true and that its tires and tubes were sold at the savings or discounts advertised, with the result that a portion of such public, because of its mistaken belief, purchased its said products:

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

Mr. William M. King for the Commission.

Lederer, Livingston, Kahn & Adsit, of Chicago, Ill., and *Mr. Donald Kane* and *Davies, Richberg, Beebe, Busick & Richardson*, of Washington, D. C., for respondent.

COMPLAINT [1]

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

PARAGRAPH 1. The respondent, Sears, Roebuck & Co., is a corporation, organized, and existing under the laws of the State of Delaware, with its principal office and place of business located in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and for many years last past has been,

[1] Published as amended pursuant to stipulation dated June 10, 1941, to include par. 9 (*a*) to par. 9 (*g*), inclusive.

engaged in the sale and distribution, among other products, of automobile tires and tubes.

In the course and conduct of its business, the respondent sells and distributes said automobile tires and tubes to the purchasing public through and by means of various retail stores owned and operated by it and located in various States of the United States and in the District of Columbia, and causes said tires and tubes to be shipped and transported to said retail stores from States other than the States in which such stores are located. Respondent causes said tires and tubes when sold to be transported from its various local stores and other points of origin of shipment to the purchasers thereof located in various States of the United States other than the State from which such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said tires and tubes in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent sells several grades of automobile tires and tubes through its retail stores, its tires being distinguished generally as follows:

1. "Allstate Safety Tread Tires," which is respondent's best grade or first line tire;

2. "Allstate Non-Skid or Rib-Tread Tire," which is respondent's second grade or second line tire;

3. "Allstate Standard Tire," which is respondent's third grade or third line tire;

4. "Allstate Crusader Tire," which is respondent's fourth grade or fourth line tire.

In the sale and distribution of its said tires, through its retail stores, it is the established custom of respondent to make an allowance to a purchaser of new tires of not less than 25 percent of the purchase price of the new tires as a trade-in allowance for old tires. Respondent, from time to time, issues price lists designating the retail price of its various grades of tires. Respondent, however, does not sell its tires, at retail, in accordance with such list price but rather in accordance with a confidential list price furnished to all its retail stores.

PAR. 4. For the purpose of inducing and stimulating the sale of its tires and tubes, the respondent, from time to time, conducts nationwide tire sales through its various retail stores. In connection with such sales the respondent advertises in various newspapers and other periodicals having a general circulation, by means of which advertisements the respondent falsely represents that respondent's tires

and tubes are being sold at various purported discounts and savings from the regular and usual price of such tires and tubes. Advertising copy to be used in connection with such sales is prepared by respondent at its main office in Chicago, Ill., and is forwarded by respondent to its retail stores and is used by said stores in whole or in part by insertion in local newspaper and other advertising media.

PAR. 5. Among and typical of the false, misleading, and deceptive representations contained in the various advertisements, disseminated as aforesaid, is the following:

Save 30% to 35% on "Fleet Tested" Allstate CRUSADER TIRES. Prices as low as $4.95 for a 4.40 x 21 size

4.50 x 21 size	$5.35
4.75 x 19 size	5.75
5.25 x 17 size	6.45
5.50 x 17 size	7.10
6.00 x 16 size	8.05

By means of the statements and representations hereinabove set forth and others similar thereto not specifically set forth herein, the respondent represents that its "Crusader" tires are being sold at a saving or discount of 30 percent to 35 percent. In truth and in fact such purported savings are greatly exaggerated and untrue for the reason that such savings are not computed on the regular list price of said tires in effect at the time of such advertisement. Such list prices for said tires in the order in which they appear in said advertisement were as follows: $5.55, $5.95, $6.35, $7.15, $7.95, and $8.59. The advertised sale prices for said tires provide the following percentage saving based upon the regular list price: 10.8 percent, 10.1 percent, 9.45 percent, 9.8 percent, 10.7 percent, and 10.1 percent rather than the advertised saving of 30 percent to 35 percent.

PAR. 6. Another and typical example of the false, misleading, and deceptive representations contained in the various advertisements, disseminated as aforesaid, is the following:

SEARS—
25% OFF
3-Day Tire Sale—
Thursday, Friday and Saturday
25% Trade in allowance for your old, smooth, dangerous tires on new, safe
Guaranteed "Fleet Tested" ALLSTATE
Tires—Extra Trade in Allowance.

By means of the statements and representations hereinabove set forth and others similar thereto, not specifically set forth herein, respondent represents that a 25 percent trade-in allowance for old tires is a 25 percent discount from usual price and is an extra trade-in allowance. In truth and in fact a 25 percent trade-in allowance

for old tires is always allowed and therefore does not provide 25 percent discount from the usual price but represents only the regular selling price for respondent's tires, and does not constitute an extra trade-in allowance.

PAR. 7. Another and typical example of the false, misleading, and deceptive representations contained in the various advertisements disseminated as aforesaid, is the following:

AT SEARS—Another Smashing Tire Sale—HALF PRICE TIRE SALE. Buy One Allstate at its Regular Price! Get another at HALF PRICE. Rib-Tread or Non-Skid.

Then follows list of sizes and prices of which the following is an example:

Size	Reg. Price	2nd Tire	Two Tires
6.00 x 16	$13.50	$6.75	$20.25

These Prices Include Your Old Tires.

By means of the statements and representations hereinabove set forth and others similar thereto, not specifically set forth herein, respondent represents that its Allstate tires are being offered at half price. In truth and in fact respondent does not sell its said tires at half price for the reason that it is necessary to purchase one tire at the full price in order to obtain one at half price. Morever, the advertised price represents no savings whatsoever to a purchaser, since no allowance is made for the customer's old tires. Taking the 6.00 x 16 tire as an example, the advertised sale price for two tires is $20.25. The regular list price for two tires of this size as shown by said advertisement is $27. Giving effect to the customary old tire allowance of 25 percent, the usual and customary selling price is $20.25 for two tires, or exactly the advertised sale price for two tires.

PAR. 8. Another and typical example of the false and misleading representations contained in the various advertisements disseminated as aforesaid is the following:

Today and tomorrow 10¢ BUYS A TUBE with Allstate Standard Tires at These Sensational Savings. We're set to sell a million dollars worth of tires in 1939. We've made commitments obligating us to hit that figure or take a huge loss. This is Sale Sensation No. 3—We can offer it for only 2 more days—a tube for 10¢ IN ADDITION to the lowest price of all time for Allstate Standards

Size	List Price	Reg. Price Tube	You Pay For Tire & Tube With Old Tire
5.25 x 17	$9.35	$1.15	$7.59
5.50 x 17	10.55	1.45	8.59
6.00 x 16	11.80	1.50	9.59
6.25 x 16	13.20	1.50	10.59
6.50 x 16	14.50	1.50	11.59

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that the list price designated in said advertisement is the regular list price for Allstate Standard Tires and is the lowest price of all time for said tires; that by paying the designated price, with old tire, the purchaser is paying only 10 cents for a tube. In truth and in fact, the designated sales price requires the purchaser to pay practically the full price for the tube in each instance, for the reason that the various prices shown in said advertisement are higher than the correct list price in effect at the time of said advertisement and for the further reason that the purchaser receives no credit for his old tires, although he is required to turn them in at the time of the sale. The correct list prices for said tires in the order in which they appear in said advertisement are as follows: $8.65, $9.80, $11.05, $12.40, and $13.70. Giving credit for the customary allowance of 25 percent for old tires, the usual selling prices are as follows: $6.49, $7.35, $8.29, $9.30, and $10.28. Based on the advertised sales prices, the purchaser is, therefore, required to pay the following amounts for the various sized tubes: $1.10, $1.24, $1.30, $1.25, and $1.31, rather than 10 cents as stated in said advertisements.

PAR. 9. Another, and typical, example of the false and misleading representations contained in the various advertisements disseminated as aforesaid is the following:

ALLSTATE TIRES

REGULAR NON-SKID TREAD

Buy First Regular "Allstate" Tire at Regular Low Price Get Another Regular ALLSTATE TIRE FOR ONLY $3.

Size	First Tire At Reg. Price	Another Tire For Only	With Old Tires	
			You Pay For 2 Tires	Save on Each Pair
5.50–16	$12.75	$3.00	$15.75	$9.75
5.50–17	13.20	3.00	16.20	10.20
6.00–16	14.35	3.00	17.35	11.35
6.25–16	16.15	3.00	19.15	13.15
6.50–16	17.40	3.00	20.40	14.40
7.00–16	19.75	3.00	22.75	16.75

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, the respondent for example, represents that the regular price of its size 6.00 x 16 regular Allstate Non-Skid tire is $14.35. In truth and in fact, the regular price of this particular size tire at the time of such sale and in the locality where such sale was advertised, was $9.57 with

old tire. Based upon such regular price, two tires would cost $19.14, whereas at the sale price advertised, two tires would cost $17.35, representing a saving of $1.79 instead of $11.35, as represented by the respondent in said advertisement.

PAR. 9 (*a*). For the purpose of inducing and stimulating the sale of its tires the respondent has conducted sales through its various retail stores. In connection with such sales various retail stores of the respondent, since March 21, 1938, have caused to be inserted in newspapers and other periodicals having a general circulation, certain advertisements, by means of which, representations have been made that respondent's tires were being offered for sale at certain discounts and savings from the list prices of its tires and at certain savings and discounts from the list prices of competitors' tires, and certain representations have been made with respect to the grade and quality of a certain tire. Such advertising matter was prepared and published by said retail stores under general authority granted by the respondent herein.

PAR. 9 (*b*). A typical example of the representations contained in the various advertisements disseminated as aforesaid is the following:

YOU SAVE WHEN YOU BUY ALLSTATES!

Sear's direct from factory plan of distribution, eliminating the profit and expenses of jobbers and dealers, enables SEARS to give you more tire value for Your money! * * *

Then follows list of sizes and prices of which the following is an example:

Size	Comparative	Sears net price	You
4-Ply	list price	with old tire	Save
6.00–16	14.05	8.95	5.10

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that certain savings are provided a purchaser of its tires computed upon the list price of competitors' tires. In truth and in fact, such purported savings are exaggerated for the reason that they are based wholly upon the list prices and not upon the selling prices of competitors' tires. The regular retail selling prices of the major tire companies are generally and customarily substantially lower than their list prices due to trade-in allowances for purchasers' old tires and also due to other discounts or allowances as well as other reductions brought about by competitive situations.

PAR. 9. (*c*). Another and typical example of the representations contained in the various advertisements disseminated as aforesaid is the following:

TIRE PRICES DOWN.

* * *

Make your price comparisons by using the STANDARD list: the same list the big tire companies use as a basis of comparison! * * * Compare them with any First Line tires of reputable make.

Size 4.75 x 19	
Standard List	
10.40	6.63

Price includes your old tire.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that by buying, for example, its 4.75 x 16 Allstate Rib Tread and Non-Skid Tire for $6.63 a saving of $3.77 is made from the "Big tire companies" list price of $10.40. This is not the fact since the comparison is made between competitors' list price and respondent's retail selling price. The regular retail selling prices of the major tire companies are generally and customarily substantially lower than their list prices due to trade-in allowances for purchasers' old tires and also due to other discounts or allowances as well as other reductions brought about by competitive situations.

PAR. 9 (*d*). Another and typical example of the representations contained in the various advertisements disseminated as aforesaid is the following:

* * * Why pay 40% to 60% more when you can get guaranteed equal quality, guaranteed equal safety and guaranteed equal or longer wear—Have ALLSTATES put on your car now and be safe. * * *

Then follows a list of sizes and prices of which the following is an example:

Size	National List	Sears Net Prices
6.00 x 16	14.05	8.95

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that a purchaser of tires of a major tire company at prices represented as "National List" would be required to pay 40 percent to 60 percent more for tires of comparable quality than respondent's designated sales prices. This is not the fact as the prices of said competitors' tires set out under "National List" are list prices and not regular and usual retail selling prices. The regular retail selling prices of the major tire companies are generally and customarily substantially lower than their list prices due to

trade-in allowances for purchasers' old tires and also due to other discounts or allowances as well as other reductions brought about by competitive situations.

PAR. 9 (*e*). Another and typical example of the representations contained in the various advertisements disseminated as aforesaid is the following:

50% OFF!
As trade-in allowances for your old tires on Sears famous
ALLSTATE SAFETY TREAD TIRES

Then follows list of sizes and prices of which the following is an example:

Examples of how you save on 4-Ply ALLSTATE Safety Treads

Size	List Price	You Pay	You Save
6.00 x 16	15.95	7.98	7.97

With your old tires

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that it is offering said tires at 50 percent off and at a saving of $7.97 for the size 6.00 x 16 tire. This is not the fact since the amount $15.95, designated as "List Price," is not the usual retail selling price of said tire, such selling price being substantially less than the listed price. The selling price is, therefore, not 50 percent off nor is the saving as much as $7.97 when computed upon the regular selling price with old tires.

PAR. 9 (*f*). Another and typical example of the representations contained in the various advertisements disseminated as aforesaid, is the following:

40% Off List Price Sears Fleet Tested CRUSADERS * * * 6.00 x 16 size—7.40 and your old tire.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that its "Crusader" tire is offered for sale at 40 percent off list price. This is not the fact. For example, the list price of the 6.00 x 16 "Crusader" tire at the time of the publication of said advertisement was $9.25. The sale price of $7.40 provided 20 percent off rather than 40 percent off as represented.

PAR. 9 (*g*). Another and typical example of the representations contained in the various advertisements disseminated as aforesaid is the following:

UP TO 35% TRADE-IN ALLOWANCE!

Actually you save up to—45%—compared with other first-line tires present list prices! 3-Day Special "Crusader" Sale Prices!

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that the "Crusader" tire is a first-line or first-grade tire. This is not the fact. At the time of the publication of said advertisement respondent's "Crusader" tire was its third-line or third-grade tire and not its first-line or first-grade tire.

PAR. 10. The use by the respondent of the foregoing false, misleading, and deceptive statements, representations, and advertisements disseminated as aforesaid with respect to the sales prices of its automobile tires and tubes 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 false statements, representations, and advertisements are true, and that the respondent's tires and tubes are sold at the saving or discount advertised and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's automobile tires and tubes.

PAR. 11. The aforesaid acts and practices of the respondent as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 15th day of February 1940, issued and thereafter served its complaint in this proceeding upon said respondent, Sears, Roebuck & Co., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 15, 1940, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into between the Chief Counsel for the Commission and respondent whereby it was agreed that, subject to the approval of the Commission, the complaint might be amended, the respondent waiving the issuance and service of an amended and supplemental complaint, the filing of a supplemental answer to such amended complaint and admitting as true the additional allegations incorporated in the complaint by amendment and that they constituted deceptive and misleading representations. 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, Lederer, Livingston, Kahn, and Adsit, and Davies, Richberg, Beebe, Busick, and Richardson, 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 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, the filing of briefs, or the filing of a report on the evidence by the trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint as amended, answer 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

PARAGRAPH 1. The respondent, Sears, Roebuck & Co., is a corporation, organized and existing under the laws of the State of New York, with its principal office and place of business located in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the sale and distribution, among other products, of automobile tires and tubes.

In the course and conduct of its business, the respondent sells and distributes said automobile tires and tubes to the purchasing public through and by means of various retail stores owned and operated by it and located in various States of the United States and in the District of Columbia, and causes said tires and tubes to be shipped and transported to said retail stores from States other than the States in which such stores are located. Respondent causes said tires and tubes when sold to be transported from its various local stores and other points of origin of shipment to the purchasers thereof located in various States of the United States other than the State from which such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said tires and tubes in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent has been selling several grades of automobile tires and tubes through its retail stores, its tires being generally distinguished as follows:

1. "Allstate Safety Tread Tires," which is respondent's best grade or first line tire;

2. "Allstate Non-Skid or Rib-Tread Tire," which respondent also represents as a first line tire but which is listed and sold for a less price than the "Allstate Safety Tread Tires;"

3. "Allstate Standard Tire," which is respondent's second grade, or second line tire;

4. "Allstate Crusader Tire," which is respondent's third grade, or third line tire.

The respondent issues price lists for the use of its various retail stores which price lists, without additional explanation, might be understood as designating the retail selling price of its various grades of tires. The retail stores do not usually sell respondent's tires at the prices so designated but vary the prices at their discretion under authority granted by the respondent, using such price lists as a basis for determining the sale prices at each particular store. In advertising to the purchasing public, however, it is generally represented by respondent's retail stores that such tires are being offered for sale at certain discounts and savings from the list price so issued by the respondent.

The Commission finds that a substantial portion of the purchasing public understands and believes that advertised savings or discounts are reductions from the regular retail sale prices charged for the same merchandise in the ordinary course of business immediately prior in point of time to such advertised sale; that they understand and believe that "list prices" as used by respondent's retail stores in advertising respondent's tires referred to and meant the regular retail sale prices of the tires advertised for sale and that any represented savings or discounts from such "list prices" were reductions from the regular retail sale prices of the same tires in effect immediately prior in point of time to such advertised sale.

PAR. 4. For the purpose of inducing and stimulating the sale of its tires and tubes, it is the established custom of respondent's retail stores to make allowances of up to 25 percent of the list price of the new tires as a trade-in allowance for the purchasers' old tires. For the same purpose, respondent conducts Nation-wide tire sales through its various retail stores. In connection with such sales the various retail stores of the respondent, since March 21, 1938, have caused to be inserted in various newspapers and other periodicals having a general circulation, as well as in local newspapers, advertisements, by means of which representations have been made that respondent's tires and tubes were being sold at various discounts and savings from the regular retail selling price of such tires and tubes, at certain discounts and savings from the list prices of its tires and at certain savings and discounts from the list prices of

competitors' tires and certain representations with respect to the grade and quality of a certain tire. Such advertising was prepared and published by said retail stores under authority granted by the respondent herein.

PAR. 5. As illustrative of the representations employed by the retail stores of respondent in advertising certain stated discounts and savings from the regular retail selling prices, is the following:

Save 30% to 35% on "Fleet Tested" Allstate CRUSADER TIRES. Prices as low as $4.95 for a 4.40 x 21 size

4.50 x 21 size	$5.35
4.75 x 19 size	5.75
5.25 x 17 size	6.45
5.50 x 17 size	7.10
6.00 x 16 size	8.05

By means of the statements and representations hereinabove set forth, the respondent through one of its retail stores has represented, insofar as the purported discount may be interpreted as meaning a discount from the regular retail price, that its "Crusader" tires were being sold at a saving or discount of 30 percent to 35 percent. Such purported savings were exaggerated and untrue for the reason that such savings were not computed on the regular retail price or on any other price of said tires in effect at the time of such advertisement. The list prices for said tires in the order in which they appeared in said advertisements were as follows: $5.55, $5.95, $6.35, $7.15, $7.95, and $8.59. The advertised sale prices for said tires provided the following percentage saving based upon the list prices: 10.8 percent, 10.1 percent, 9.45 percent, 9.8 percent, 10.7 percent, and 10.1 percent rather than the advertised saving of 30 percent to 35 percent. If based upon the regular retail selling prices the percentage savings would be even less.

PAR. 6. As illustrative of the representations employed by the retail stores of respondent in advertising discounts or savings from list prices, when such advertised discounts or savings represented only the usual trade-in value of customers' old tires, is the following:

SEARS—
25% OFF

3-Day Tire Sale—
Thursday, Friday and Saturday
25% Trade in allowance for your old, smooth, dangerous tires on new, safe
Guaranteed "Fleet Tested" ALLSTATE
Tires—Extra Trade in Allowance.

By means of the statements and representations hereinabove set forth, respondent, through some of its retail stores, represented that

a 25 percent trade-in allowance for old tires is an extra trade-in allowance and results in a 25 percent discount from the regular retail price. A trade-in allowance for old tires is always made, and by most of respondent's stores, of up to 25 percent and therefore does not provide 25 percent discount from the regular retail selling price. Since a trade-in allowance up to 25 percent is usually given, it does not constitute an extra trade-in allowance.

PAR. 7. As illustrative of the representations employed by the retail stores of respondent in advertising savings and discounts from regular prices when the usual allowance for old tires was not taken into consideration, is the following:

At SEARS—Another Smashing Tire Sale—HALF PRICE TIRE SALE. Buy One Allstate at its Regular Price! Get Another at HALF PRICE. Rib-Tread or Non-Skid.

Then follows list of sizes and prices of which the following is an example:

Size	Reg. Price	2nd Tire	Two Tires
6.00 x 16	$13.50	$6.75	$20.25

These Prices Include Your Old Tires.

By means of the statements and representations hereinabove set forth, respondent through some of its retail stores has represented that it was offering two Allstate Tires for one and one-half times the regular price of one such tire. The respondent was not offering to sell its tires on the basis of two tires for one and one-half the regular price of one such tire, since, a trade-in allowance for old tires is always made, and by most of the respondent's stores of up to 25 percent of the list price of the new tires. Computed upon this basis the sales price of two tires as designated in said advertisement may be exactly the same as that charged in the usual course of business and constitutes no saving or discount from the regular price of said tires.

PAR. 8. As illustrative of the representations employed by the retail stores of respondent in advertising various savings and discounts in sales of its tires and tubes, based upon the list price of its tires offered for sale, when such advertised list prices were not the true list prices in effect at the time of such sales, is the following:

Today and Tomorrow 10¢ BUYS A TUBE with Allstate Standard Tires at These Sensational Savings. We're set to sell a million dollars' worth of tires in 1939. We've made commitments obligating us to hit that figure or take a huge loss. This is Sale Sensation No. 3—We can offer it for only 2 more days—a tube for 10¢ IN ADDITION to the lowest price of all time for Allstate Standards.

Size	List Price	Reg. Price Tube	You Pay For Tire & Tube With Old Tire
5.25 x 17	$ 9.35	$1.15	$ 7.59
5.50 x 17	10.55	1.45	8.59
6.00 x 16	11.80	1.50	9.59
6.25 x 16	13.20	1.50	10.59
6.50 x 16	14.50	1.50	11.59

By means of the statements and representations hereinabove set forth, respondent through one of its retail stores represented that the list price designated in said advertisement was the regular list price for Allstate Standard Tires and was the lowest price of all time for said tires; that by paying the designated price, with old tire, the purchaser was paying only 10 cents for a tube. The designated sales price required the purchaser to pay practically the full price for the tube in each instance, for the reason that the various prices shown in said advertisement are higher than the correct list price in effect at the time of said advertisement and for the further reason that the purchaser received no credit for his old tires, although he was required to turn them in at the time of the sale. The correct list prices for said tires in the order in which they appeared in said advertisement were as follows: $8.65, $9.80, $11.05, $12.40, and $13.70. Taking size 6.00 x 16 as an example and using the correct list price of $11.05, the customary selling price, after giving credit for a 25 percent trade-in allowance for old tires, would be $8.29. The sales price of $9.59 for tire and tube would require the purchaser to pay $1.30 for the tube rather than 10 cents as advertised.

PAR. 9. As illustrative of the representations employed by the retail stores of respondent in advertising various discounts and savings in sales of its tires based on an advertised regular price, when such stated regular price was not the usual regular price because no allowance was made for customers' old tires, is the following:

ALLSTATE TIRES

REGULAR Non-Skid TREAD

Buy First Regular "Allstate" Tire at Regular Low Price Get Another Regular ALLSTATE TIRE FOR ONLY $3.

Size	First Tire at Reg. Price	Another Tire For Only	You Pay for 2 Tires	Save on Each Pair
5.50-16	$12.75	$3.00	$15.75	$ 9.75
5.50-17	13.20	3.00	16.20	10.20
6.00-16	14.35	3.00	17.35	11.35
6.25-16	16.15	3.00	19.15	13.15
6.50-16	17.40	3.00	20.40	14.40
7.00-16	19.75	3.00	22.75	16.75

By means of the statements and representations hereinabove set forth, the respondent represented that the prices designated in said advertisement as regular prices were the customary and usual retail selling prices of its "Non-Skid Allstate Tires" and that by paying the amounts designated in said advertisement and $3 for a second tire, the stated savings would be provided on the purchase of two tires. These stated savings are exaggerated and untrue since the prices designated as regular prices are actually list prices and not the regular retail selling prices. The regular retail selling prices of this particular tire in the locality in which this advertisement was published were substantially lower than the prices designated in said advertisement. The actual savings, therefore, were substantially less than those set out in said advertisement.

PAR. 10. As illustrative of the representations employed by the retail stores of respondent in advertising certain savings based upon the list price of competitors' tires is the following:

YOU SAVE WHEN YOU BUY ALLSTATES!

Sear's direct from factory plan of distribution, eliminating the profit and expenses of jobbers and dealers, enables SEARS to give you more tire value for Your money! * * *

Then follows list of sizes and prices of which the following is an example:

Size	Comparative	Sears net price	You
4-Ply	list price	with old tire	Save
6.00-16	14.05	8.95	5.10

By means of the statements and representations hereinabove set forth, and other similar thereto not specifically set forth herein, respondent represents that certain savings are provided a purchaser of its tires computed upon the list price of competitors' tires. In truth and in fact, such purported savings are exaggerated for the reason that they are based wholly upon the list prices and not upon the selling prices of competitors' tires. The regular retail selling prices of the major tire companies are generally and customarily substantially lower than their list prices due to trade-in allowances for purchasers' old tires and also due to other discounts or allowances as well as other reductions brought about by competitive situations.

PAR. 11. As illustrative of the representations employed by the retail stores of respondent in advertising savings based upon the list prices of competitors' tires designated as "Standard List" is the following:

TIRE PRICES DOWN

* * *

Make your price comparisons by using the STANDARD list: the same list the big tire companies use as a basis of comparison! * * * Compare them with any First Line tires of reputable make.

Size 4.75 x 19

Standard List 10.40 6.63

Price includes your old tire.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that by buying, for example, its 4.75 x 16 All-state Rib Tread and Non-Skid Tire for $6.63 a saving of $3.77 is made from the "big tire companies" list price of $10.40. This is not the fact since the comparison is made between competitors' list price and respondent's retail selling price. The regular retail selling prices of the major tire companies are generally and customarily substantially lower than their list prices due to trade-in allowances for purchasers' old tires and also due to other discounts or allowances as well as other reductions brought about by competitive situations.

PAR. 12. As illustrative of the representations employed by the retail stores of respondent in advertising discounts based upon the list prices of competitors' tires designated as "National List" is the following:

* * * Why pay 40% to 60% more when you can get guaranteed equal quality, guaranteed equal safety and guaranteed equal or longer wear—Have ALLSTATES put on your car now and be safe. * * *

Then follows list of sizes and prices of which the following is an example:

Size	National List	Sears Net Prices
6.00 x 16	14.05	8.95

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that a purchaser of tires of a major tire company at prices represented as "National List" would be required to pay 40 percent to 60 percent more for tires of comparable quality than respondent's designated sales prices. This is not the fact as the prices of said competitors' tires set out under "National List" are list prices and not regular and usual retail selling prices. The regular retail selling prices of the major tire companies are generally and customarily substantially lower than their list prices due to trade-in allowances for purchasers' old tires and also due to other discounts or allowances as well as other reductions brought about by competitive situations.

PAR. 13. As illustrative of the representations employed by the retail stores of respondent in advertising a certain discount based upon the list price of its own tires is the following:

50% OFF!
As trade-in allowances for your old tires on Sears famous
ALLSTATE SAFETY TREAD TIRES

Then follows list of sizes and prices of which the following is an example:

Examples of how you save on 4-Ply ALLSTATE Safety Treads

Size	List Price	You Pay	You Save
6.00 x 16	15.95	7.98	7.97

With your old tires

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that it is offering said tires at 50 percent off and at a saving of $7.97 for the size 6.00 x 16 tire. This is not the fact since the amount $15.95, designated as "List Price," is not the usual retail selling price of said tire, such selling price being substantially less than the listed price. The selling price is, therefore not 50 percent off nor is the saving as much as $7.97 when computed upon the regular selling price with old tires.

PAR. 14. As illustrative of the representations employed by the retail stores of respondent in advertising a certain discount from the list price of its own tires when the prices designated as list price were not the correct list prices at the time of the publication of said advertisement is the following:

40% Off List Price Sears Fleet Tested CRUSADERS * * * 6.00 x 16 size—7.40 and your old tire.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that its "Crusader" tire is offered for sale at 40 percent off list price. This is not the fact. For example, the list price of the 6.00 x 16 "Crusader" tire at the time of the publication of said advertisement was $9.25. The sale price of $7.40 provided 20 percent off rather than 40 percent off as represented.

PAR. 15. As illustrative of the representations employed by the retail stores of respondent in describing the quality of a certain tire is the following:

UP TO 35% TRADE-IN ALLOWANCE!

Actually you save up to—45%—compared with other first-line tires present list prices! 3-Day Special "Crusader" Sale Prices!

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, respondent represents that the "Crusader" tire is a first-line or first-grade tire. This is not the fact. At the time of the publication of said advertisement respondent's "Crusader" tire was its third-line or third-grade tire, and not its first-line or first-grade tire. Respondent further represents that certain specified savings are provided based upon the list price of higher priced tires of its competitors. This would not provide the represented saving since the list price of competitors' tires is not the usual or customary selling price, such selling price being ordinarily substantially lower than the list price.

PAR. 16. The use by the respondent of the foregoing misleading and deceptive statements, representations and advertisements, disseminated, as aforesaid, with respect to the sales prices of its automobile tires and tubes; the grade, kind or line of its tires and the prices of its competitors' tires has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements were true, and that the respondent's tires and tubes were sold at the savings or discounts advertised; that the grade, kind or line of its tires was as represented and the prices of its competitors' tires were as represented and induced a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's automobile tires and tubes.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of the respondent and a stipulation as to the facts entered into between the respondent and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent 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, Sears, Roebuck & 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 automobile tires and tubes to the general public in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "List Price" or any other term of similar import or meaning to designate, describe, or refer to prices which are not, in fact, the bona fide regular established selling prices of the tires or tubes advertised and offered for sale, as established by the usual and customary sales in the normal course of business.

2. Representing, directly or indirectly, that any specified amount is the customary, regular, or usual price of any tire or tube advertised and offered for sale when such amount is not, in fact the bona fide actual selling price of such tire or such tube as established by the usual and customary sales in the normal course of business.

3. Representing, directly or indirectly, any specified amounts or percentages as savings or discounts which are not actual savings or discounts computed on the bona fide, usual, and customary selling price for such tires or such tubes in effect immediately prior in point of time to such representation.

4. Representing, directly or indirectly, that any specified savings or discounts are offered a purchaser upon the purchase of certain of its tires or tubes when such savings or discounts are computed upon the regular selling or list prices of higher priced tires or tubes.

5. Representing, directly or indirectly, that a specified tire or tube is offered for sale when such tire or such tube is not so offered but instead another tire or tube of different kind or brand.

6. Representing, directly or indirectly, that any savings or discounts are afforded a purchaser upon the purchase of its tires or tubes when such savings or discounts are computed upon prices of competitors' tires or tubes unless the prices of respondent's tires or tubes and also those of its competitors are the regular current retail selling prices.

7. Representing, directly or indirectly, that a specified tire or tube is of a certain grade, kind, or line when such tire or tube is of a different grade, kind, or line.

8. Representing, directly or indirectly, that its tubes can be bought for a designated amount, or at a designated savings or discount, in combination with a tire or tires when the designated amounts, sav-

ings, or discounts in such combination offer are not computed upon the regular retail selling prices of each item in the combination.

9. Representing, directly or indirectly, that certain amounts are the prices of respondent's competitors' tires or tubes unless such amounts are the prices at which such competitors sell their tires or tubes in the ordinary and usual course of business.

10. Representing, directly or indirectly, that specific savings or discounts are afforded a purchaser upon the purchase of tires or tubes when such savings or discounts do not take into account the trade-in allowances usually and customarily made to purchasers in the sale of such tires or such tubes in the ordinary 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

WESTERN AUTO SUPPLY COMPANY

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

Docket 4054. Complaint, Mar. 11, 1940—Decision, June 18, 1941

Where a corporation long engaged in the interstate sale and distribution, among other products, of automobile tires and tubes through its own retail stores located in various States; issuing price lists for its various grades of tires to its said stores, which did not, however, usually sell at the prices so designated but sold at lesser prices brought about by discounts from list prices and by trade-in allowances of 10 percent or more of the list price of new tires purchased for old tires;

In advertisements in connection with sales conducted through its said stores, in various newspapers and other periodicals of general circulation and by catalogs distributed by the stores, copy for which was prepared by it at its main office and forwarded to its retail stores and by them inserted in local newspapers and other advertising media, and in which, as indicated below, it represented that its products were being sold at purported discounts and savings from the regular retail prices—

(*a*) Represented by such statements as "20 PER CENT DISCOUNT Off Our Regular Low Prices! Davis DeLuxe Tires" followed by a list of sizes with prices, that by paying the sales price indicated for any particular size tire a saving or discount of 20 percent was provided, based upon the regular sales price; when in fact, such represented discount was untrue for the reason that the listed "Regular Price" made no allowance for the trade-in value of purchaser's old tires, which by the terms of said advertisement were required to be turned in; giving effect to the minimum trade-in allowance of 10 percent for used tires, the saving or discount was approximately 11 percent rather than 20 percent as advertised; and the savings were further exaggerated by reason of the fact that the prices designated as "regular prices" were actually the list prices, and therefore not the prices customarily charged;

(*b*) Represented that in the purchase of a Davis DeLuxe Tire during a particular sale, the purchaser received a Davis tube free and saved the difference between the advertised sales price of tire and tube and the listed price for nationally advertised tire and tube; the facts being that such savings were exaggerated and untrue in that the advertised price for its tire and tube made an allowance of 10 percent for purchaser's old tires, while the listed price for nationally advertised tire and tube made no such allowance, although it was customary for dealers to make a trade-in allowance of at least 10 percent; and the quoted prices of nationally advertised tires were the list prices rather than the selling prices, which latter are usually less than list prices without regard to the trade-in value of old tires;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, which understands and believes that represented savings or discounts from "list prices" are reductions from the regular

retail sales price of the same tires in effect immediately prior to such advertised sale, into the erroneous belief that such representations were true, and that its tires and tubes were sold at the saving or discount advertised, and with result of inducing a portion of such public, because of its mistaken belief, to purchase its said products:

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

Mr. William M. King for the Commission.

Mr. E. A. TenBrook, of Kansas City, Mo., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Western Auto Supply Co., a corporation herein 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, Western Auto Supply Co., is a corporation organized and existing under the laws of the State of Missouri, with its principal office and place of business located at 2107 Grand Avenue in the city of Kansas City, State of Missouri.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the sale and distribution, among other products, of automobile tires and tubes.

In the course and conduct of its business, the respondent sells and distributes said automobile tires and tubes to the purchasing public through and by means of various retail stores owned and operated by it and located in various States of the United States and in the District of Columbia, and causes said tires and tubes to be shipped and transported to said retail stores from States other than the States in which such stores are located. Respondent causes said tires and tubes when sold to be transported from its various local stores and the points of origin of shipment, to the purchasers thereof located in various States of the United States other than the State from which such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said automobile tires and tubes in commerce among and between the States of the United States and in the District of Columbia.

PAR. 3. Respondent sells three grades of automobile tires and tubes through its retail stores, its tires being distinguished generally as follows:

1. "Davis DeLuxe Safety Grip Tire," which respondent designates as its premium and best grade tire;

2. "Davis DeLuxe Tire," which respondent designates as its first line tire;

3. "Davis Wearwell Tire," which is respondent's cheapest tire.

In the sale and distribution of its said tires, through its retail stores, it is the established custom of respondent to make an allowance to a purchaser of new tires of 10 percent or more of the purchase price of the new tires as a trade-in allowance for old tires. Respondent, from time to time, fixed the sales prices for its various grades of tires for the use of its retail stores.

PAR. 4. For the purpose of inducing and stimulating the sale of its tires and tubes, the respondent, from time to time, conducts sales through its various retail stores. In connection with such sales, the respondent advertises in various newspapers and other periodicals having a general circulation and by catalogues distributed by its retail stores. By means of such advertisements, the respondent falsely represents that its tires and tubes are being sold at various proported discounts and savings from the regular and usual price of such tires and tubes. Advertising copy to be used in connection with such sales is prepared by respondent at its main office in Kansas City, Mo., and is forwarded by respondent to its retail stores and is used by said stores by insertion in local newspapers and other advertising media.

PAR. 5. Among and typical of the false, misleading, and deceptive representations contained in the various advertisements disseminated as aforesaid, is the following:

20% DISCOUNT
Off Our Regular Low Prices!
Davis DeLuxe Tires.

Tire Size	List Price Most 1st Quality Well Known Tires	Reg. Price 1st Quality Davis DeLuxe	Sale Price 1st Quality Davis DeLuxe
4.50-21	$11.10	$7.55	$6.04*
4.75-19	11.45	7.80	6.24*
5.00-19	12.50	8.40	6.72*
5.25-17	12.90	8.65	6.92*
5.50-17	14.65	9.80	7.84*
6.00-16	15.95	11.05	8.84*
6.50-16	19.35	13.55	10.84*

All Other Sizes—Similar Savings
*Includes trade-in of old tire.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent represents that by paying the sales prices indicated in

said advertisement for any particular sized tire, a saving or discount of 20 percent is provided, based upon the regular sales price of said tire. In truth and in fact, such saving or discount is greatly exaggerated and untrue for the reason that the listed "Regular Price" makes no allowance whatsoever for the trade-in value of purchaser's old tires, which by the terms of said advertisement are required to be turned in at the time of said sale and purchase. Giving effect to the minimum trade-in allowance of 10 percent for used tires, the saving or discount is approximately 11 percent rather than 20 percent as advertised.

PAR. 6. Another and typical example of the false, misleading, and deceptive representations contained in the various advertisements disseminated as aforesaid, is the following:

FREE TUBE with every Davis DeLuxe. Plus: Low, Money-Saving Prices! Plus: Liberal Trade-In for Old Tires! Plus: Genuine First-Line Quality! Strictly FIRST-Line, FIRST Quality—BUILT SOLD and GUARANTEED as such!—yet we not only offer you Davis DeLuxe at about the regular price of most THIRD or FOURTH Line well-known tires—but (during this sale) will give you a fresh, new Davis tube for each new tire—and will make a liberal trade in allowance for your old tires. CHECK SAVINGS YOURSELF.

Then follows list of tire sizes and prices of which the following is an example:

Size	Published List Prices Most Nationally-Advertised First Line Tires (Plus Tubes)		Davis DeLuxe with Free Davis Tube
6.00–16	(15.95 plus 2.85)	18.80	$9.95*

*Includes trade-in of average tires. If yours are worth more, your cost on Davis DeLuxe may be even lower.

By means of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondent represents that in the purchase of a Davis DeLuxe Tire during said sale, the purchaser receives a Davis tube free and saves the difference between the advertised sale price for tire and tube and the listed price for nationally advertised tire and tube. In truth and in fact such savings are exaggerated and untrue for the reason that the advertised price for respondent's tire and tube makes an allowance of 10 percent for purchaser's old tires, while the listed price for nationally advertised tire and tube makes no such allowance, although it is customary and usual for dealers selling nationally advertised tires to make an allowance of at least 10 percent as the trade-in value for purchaser's old tires. Taking tire size 6.00–16 as an example, the listed price of nationally advertised, first-line tire plus tube is $18.80, and the advertised selling price of respondent's Davis DeLuxe Tire and free tube is $9.95, indicating a saving of $8.85 to the purchaser.

However, giving effect to the minimum allowance of 10 percent for trade-in value of old tires allowed to purchasers of nationally advertised tires, which in size 6.00–16 would be $1.59, the actual saving would be $7.26, rather than $8.85 as advertised. The advertised savings are further exaggerated in that the quoted prices of nationally advertised tires are the list prices rather than the actual selling prices, such selling prices being usually less than the list prices without regard to the trade-in value of old tires.

PAR. 7. In addition to the acts and practices hereinabove described, the respondent falsely represents the discount or saving at which its tires are sold by the use of fictitious list prices. As an example of this practice, the respondent, in connection with special sales of its tires, causes advertisements to be inserted in various newspapers, by which advertisements respondent represents that certain prices set out in such advertisements are the list prices of its tires in effect at the time of such sales, and further represents that certain definite savings are afforded purchasers of said tires at such sales, based upon the difference between the represented list prices and the special sales prices. In truth and in fact, such alleged savings are exaggerated and untrue for the reason that the stated list prices are fictitious, and are not the list prices usually and customarily charged by the respondent at or about the time of such sales.

PAR. 8. The use by the respondent of the foregoing false, misleading, and deceptive statements, representations and advertisements disseminated as aforesaid with respect to the sales prices of its automobile tires and tubes, 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 false statements, representations, and advertisements are true, and that respondent's tires and tubes are sold at the saving or discount advertised, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's automobile tires and tubes.

PAR. 9. 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 March 1940, issued and thereafter served its complaint in this proceeding upon said respondent, Western Auto Supply Co., charging it 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 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, the filing of briefs or 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 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. The respondent, Western Auto Supply Co., is a corporation organized and existing under the laws of the State of Missouri, with its principal office and place of business located at 2107 Grand Avenue in the city of Kansas City, State of Missouri.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the sale and distribution, among other products, of automobile tires and tubes.

In the course and conduct of its business, the respondent sells and distributes said automobile tires and tubes to the purchasing public through and by means of various retail stores owned and operated by it and located in various States of the United States and in the District of Columbia, and causes said tires and tubes to be shipped and transported to said retail stores from States other than the States in which such stores are located. Respondent causes said tires and tubes when sold to be transported from its various local stores and the points of origin of shipment to the purchasers thereof located in various States of the United States other than the State from which such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said automobile tires and tubes in commerce among and between the States of the United States and in the District of Columbia.

PAR. 3. The respondent sells several grades of automobile tires and tubes which, at the time mentioned herein, were distinguished as follows:

1. "Davis DeLuxe Safety Grip Tire," which respondent designates as its premium and best grade tire;

2. "Davis DeLuxe Tire," which respondent designates as its first line tire;

3. "Davis Wearwell Tire," which is respondent's cheapest tire.

The respondent issues price lists for the use of its various retail stores which price lists, without additional explanation, might be understood as designating the retail selling price of its various grades of tires. The retail stores do not usually sell respondent's tires at the prices so designated but at lesser prices, such lesser prices being brought about by means of discounts from list prices and by allowances for old tires turned in by purchasers at the time of purchase of new tires. This trade-in allowance is equal to 10 percent or more of the list price of the new tires purchased. In advertising to the purchasing public since March 21, 1938, respondent has sometimes represented that its tires are being offered for sale at certain discounts and savings from the list prices above referred to.

The Commission finds that substantial portion of the purchasing public understands and believes that advertising savings or discounts are reductions from the regular retail sale prices charged for the same merchandise in the ordinary course of business immediately prior in point of time to such advertised sale; that they understand and believe that "list prices" as used by respondent's retail stores in advertising respondent's tires referred to and meant the regular retail sale prices of the tires advertised for sale, and that any represented savings or discounts from such "list prices" were reductions from the regular retail sale prices of the same tires in effect immediately prior in point of time to such advertised sale.

PAR. 4. For the purpose of inducing and stimulating the sale of its tires and tubes, the respondent, since March 21, 1938, has conducted sales through its various retail stores. In connection with such sales, the respondent advertised in various newspapers and other periodicals having a general circulation and by catalogs distributed by its retail stores. By means of such advertisements, the respondent has represented, since March 21, 1938, that its tires and tubes were being sold at various purported discounts and savings from the regular and usual price of such tires and tubes. Advertising copy to be used in connection with such sales was prepared by respondent at its main office in Kansas City, Mo., and forwarded by the respondent

to its retail stores and was used by said stores by insertion in local newspapers and other advertising media.

PAR. 5. Among and typical of such representations contained in the various advertisements, disseminated as aforesaid, is the following:

20% DISCOUNT
Off Our Regular Low Prices!
Davis DeLuxe Tires.

Tire Size	List Price Most 1st Quality Well Known Tires	Reg. Price 1st Quality Davis DeLuxe	Sale Price 1st Quality Davis DeLuxe
4.50-21	$11.10	$7.55	$6.04*
4.75-19	11.45	7.80	6.24*
5.00-19	12.50	8.40	6.72*
5.25-17	12.90	8.65	6 92*
5.50-17	14.65	9.80	7.84*
6.00-16	15.95	11.05	8.84*
6.50-16	19.35	13.55	10.84*

*Includes trade-in of old tire.
All other sizes—Similar Savings.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent represents that by paying the sales prices indicated in said advertisement for any particular sized tire, a saving or discount of 20 percent is provided, based upon the regular sales price of said tire. In truth and in fact, such represented saving or discount is greatly exaggerated and untrue for the reason that the listed "Regular Price" makes no allowance whatsoever for the trade-in value of purchaser's old tires, which by the terms of said advertisement are required to be turned in at the time of said sale and purchase. Giving effect to the minimum trade-in allowance of 10 percent for used tires, the saving or discount is approximately 11 percent rather than 20 percent as advertised. The savings are further exaggerated by reason of the fact that the prices designated as "Regular Price" are actually the list price in effect at the time of said advertisement, and are therefore not the prices customarily charged for the tires in the usual course of business.

PAR. 6. Another typical example of such representations is the following:

FREE TUBE with every Davis DeLuxe. Plus: Low, Money-Saving Prices! Plus: Liberal Trade-In for Old Tires! Plus: Genuine First-Line Quality! Strictly FIRST-Line, FIRST Quality—BUILT SOLD and GUARANTEED as such!—yet we not only offer you Davis DeLuxe at about the regular price of most THIRD or FOURTH Line well-known tires—but (during this sale) will give you a fresh,

new Davis tube for each new tire—and will make a liberal trade in allowance for your old tires. CHECK SAVINGS YOURSELF.

Then follows list of tire sizes and prices, of which the following is an example:

Size	Published List Prices Most Nationally-Advertised First Line Tires (Plus Tubes)		Davis DeLuxe with Free Davis Tube
6.00–16	(15.95 plus 2.85)	18.80	$9.95*

*Includes trade-in of average tires. If yours are worth more, your cost on Davis DeLuxe may be even lower.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent represents that in the purchase of a Davis DeLuxe Tire during said sale, the purchaser receives a Davis tube free and saves the difference between the advertised sale price for tire and tube and the listed price for nationally advertised tire and tube. In truth and in fact, such savings are exaggerated and untrue for the reason that the advertised price for respondent's tire and tube makes an allowance of 10 percent for purchaser's old tires, while the listed price for nationally advertised tire and tube makes no such allowance, although it is customary and usual for dealers selling nationally advertised tires to make an allowance of at least 10 percent as the trade-in value for purchaser's old tires. Taking tire size 6.00–16 as an example, the listed price of nationally advertised, first line tire plus tube is $18.80, and the advertised selling price of respondent's Davis DeLuxe Tire and free tube is $9.95, indicating a saving of $8.85 to the purchaser. However, giving effect to the minimum allowance of 10 percent for trade-in value of old tires allowed to purchasers of nationally advertised tires, which in size 6.00–16 would be $1.59, the actual saving would be $7.26, rather than $8.85 as advertised. The advertised savings are further exaggerated in that the quoted prices of nationally advertised tires are the list prices rather than the selling prices, such selling prices being usually less than the list prices without regard to the trade-in value of old tires.

PAR. 7. The use by the respondent of the foregoing misleading and deceptive statements, representations, and advertisements disseminated as aforesaid with respect to the sales prices of its automobile tires and tubes 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 statements, representations and advertisements are true, and that respondent's tires and tubes are sold at the saving or discount advertised, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's automobile tires and tubes.

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 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, Western Auto Supply 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 automobile tires and tubes to the general public in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "List Price" or any other term of similar import or meaning to designate, describe or refer to prices which are not, in fact, bona-fide regularly established selling prices of the tires or tubes advertised and offered for sale, as established by the usual and customary sales in the normal course of business.

2. Representing, directly or indirectly, that any specific amount is the customary, regular or usual price of any tire or tube advertised and offered for sale when such amount is not, in fact, the bona-fide actual selling price of such tire or such tube as established by the usual and customary sales in the normal course of business.

3. Representing, directly or indirectly, any specified amounts or percentages as savings or discounts which are not actual savings or discounts computed upon the bona-fide usual and customary selling prices for such tires or such tubes in effect immediately prior in point of time to such representation.

4. Representing, directly or indirectly, that any savings or discounts are afforded a purchaser upon the purchase of its tires or tubes when such savings or discounts are computed upon prices of

competitors' tires or tubes, unless the prices of respondent's tires or tubes and also those of its competitors' are the regular current retail selling prices.

5. Representing, directly or indirectly, that certain amounts are the prices of respondent's competitors' tires or tubes unless such amounts are the prices at which such competitors sell their tires or tubes in the ordinary and usual course of business.

6. Representing, directly or indirectly, that specific savings or discounts are afforded a purchaser upon the purchase of tires or tubes when such savings or discounts do not take into account the trade-in allowances usually and customarily made to purchasers in the sale of such tires or such tubes in the ordinary 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.

Syllabus

IN THE MATTER OF

PELICAN STATE CANDY COMPANY, AND MAX J. PINSKI, INDIVIDUALLY AND AS OFFICER THEREOF, AND FORMERLY INDIVIDUALLY AND TRADING AS PELICAN STATE CANDY COMPANY AND ROYAL CHOCOLATES

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

Docket. 4210. Complaint, July 31, 1940—Decision, June 18, 1941

Where a corporation and an individual, who was its president and principal stockholder and formulated, controlled, and directed its policies and practices, engaged in the manufacture of candy and the competitive interstate sale and distribution of assortments thereof 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, typical assortments consisting of (1) a number of quarter, half, and one pound bars of pecan candy, value of each of which was in excess of 5 cents, for sale and distribution under a plan, as explained on punchboard supplied, by which purchasers of chances pushing certain numbers received a quarter- or half-pound bar, those pushing the last number in each of the four sections into which the board was divided received a pound of such candy, and others received for nickel paid nothing other than the privilege of making a punch; and (2) a package of candy, together with a push card for use in sale thereof, as thereon explained, under a plan by which the person selecting from 35 feminine names displayed on the card, the one corresponding to that concealed under the master seal received the candy, value of which was in excess of chance amount paid as determined by the particular number disclosed in the disk beneath the name selected—

Sold such assortments to wholesalers, jobbers, and, directly or indirectly, to retailers, by whom they were exposed and sold to the purchasing public, and thereby supplied to and placed in the hands of others a means of conducting lotteries in the sale of their products in accordance with said sales plans, involving game of chance or sale of chance to procure candy at prices much less than normal retail price thereof, contrary to an established public policy of the United States Government, and in competition with many who, unwilling to use such methods of chance or any other method contrary to public policy, refrain therefrom;

With result that many persons were attracted by said sales plans and by the element of chance involved therein, and were thereby induced to buy and sell said candy in preference to that of aforesaid competitors, and with tendency and capacity unfairly to divert trade in commerce from such competitors:

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

Before *Mr. Arthur F. Thomas*, trial examiner.
Mr. L. P. Allen, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Pelican State Candy Co., a corporation, and Max J. Pinski, individually and as an officer of Pelican State Candy Co., and as an individual formerly trading as Pelican State Candy Co. and Royal Chocolates, hereinafter referred to as respondents, 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. The respondent Max J. Pinski, is an individual and for several years prior to July 1, 1939, traded as Pelican State Candy Co. and Royal Chocolates, with his office and principal place of business located at 523 Natchez St., New Orleans, La. Respondent Pelican State Candy Co. is a corporation organized under the laws of the State of Louisiana on or about July 1, 1939, with its office and principal place of business formerly located at 523 Natchez Street, New Orleans, La. The corporate respondent is now located at 1301 North Rampart Street, New Orleans, La. The respondent Max J. Pinski is president and principal stockholder in the corporate respondent Pelican State Candy Co., and formulates, controls and directs the acts, practices, and policies of the said corporation. All of said respondents have participated, within the time hereinabove mentioned, in doing the acts and things hereinafter alleged. Respondents are and have been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers. Respondents cause and have caused said products, when sold, to be transported from their principal place of business in the city of New Orleans, La., to purchasers thereof, at their respective points of location, in the various States of the United States other than Louisiana, and in the District of Columbia. There is and has been a course of trade by respondents in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are and have been in competition with other individuals and corporations and with 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes, when sold and distributed to the consumers thereof. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondents, and are as follows.

(*a*) One assortment consists of a number of one-quarter, one-half and one pound bars of pecan candy, together with a device commonly called a punchboard. Said pecan candy is sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are five cents each and when a punch is made from the board, a number is dislosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing prospective purchasers that certain specified numbers entitled the purchasers thereof to receive without additional cost, a one-quarter or one-half pound bar of pecan candy. The board is also divided into four sections and the person pushing the last number in each of the four sections, receives one pound of said 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 bars of candy are worth more than five cents and the purchaser who obtains one of the numbers calling for one of the bars of pecan candy or the last punch in one of said sections receives the same for the price of five 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.

(*b*) Another of respondents' assortments consists of a package of candy, together with a device commonly called a push card. Said candy is sold and distributed to the consuming public by means of said push card in the following manner:

The push card bears 35 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 35 partially perforated

disks on the face of which is printed the word "push." Each of such disks is set under 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 the aforesaid package of candy. The said package of candy is worth more than any of the prices paid for a chance to receive same. The push card bears a legend or instructions as follows:

NAME UNDER SEAL RECEIVES
THIS PACKAGE OF
DELICIOUS EASTER CANDY
Numbers 1 to 10
Pay Amount Punched
Numbers over 10 Pay only 10c

Sales of respondents' merchandise by means of said push card are made in accordance with the above described legend or instructions. Said candy is allotted to the customers or purchasers in accordance with the above described legend or instructions. The fact as to whether a purchaser receives the aforesaid package of candy or nothing, for the amount of money paid, is thus determined wholly by lot or chance.

Respondents furnish and have furnished various other push cards for use in the same and distribution of their candy 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 candy by means of said other push cards is the same as that hereinabove described, varying 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 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 and plans hereinabove set forth involves a game of chance or the sale of a chance to procure 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 methods 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 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 31, 1940, issued and on August 2, 1940, served its complaint in this proceeding upon respondents Pelican State Candy Co., a corporation, and Max J. Pinski, individually and as an officer of Pelican State Candy Co. and formerly individually and trading as Pelican State Candy Co. and Royal Chocolates, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 14, 1941, 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. The respondent Max J. Pinski, is an individual and for several years prior to July 1, 1939, traded as Pelican State Candy Co. and Royal Chocolates, with his office and principal place of business located at 523 Natchez Street, New Orleans, La. Respondent Pelican State Candy Co. is a corporation organized under the laws of the State of Louisiana on or about July 1, 1939, with its office and principal place of business formerly located at 523 Natchez Street, New Orleans, La. The corporate respondent is now located at 1301 North Rampart Street, New Orleans, La. The respondent Max J. Pinski is president and principal stockholder in the corporate respondent Pelican State Candy Co., and formulates, controls and directs the acts, practices, and policies of the said corporation. All of said respondents have participated, within the time hereinabove mentioned, in doing the acts and things hereinafter found. Respondents are and have been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers. Respondents cause and have caused said products, when sold, to be transported from their principal place of business in the city of New Orleans, La., to purchasers thereof, at their respective points of location, in the various States of the United States other than Louisiana, and in the District of Columbia. There is and has been a course of trade by respondents in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are and have been in competition with other individuals and corporations and with 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes, when sold and distributed to the consumers thereof. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondents, and are as follows:

(*a*) One assortment consists of a number of one-quarter, one-half and one pound bars of pecan candy, together with a device commonly

called a punchboard. Said pecan candy is sold and distributed to the consuming public by means of said punchboard in the following manner: sales are 5 cents each and when a punch is made from the board, a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing prospective purchasers that certain specified numbers entitle the purchasers thereof to receive without additional cost, a one-quarter or one-half pound bar of pecan candy. The board is also divided into four sections and the person pushing the last number in each of the four sections, receives one pound of said 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 bars of candy are worth more than 5 cents and the purchaser who obtains one of the numbers calling for one of the bars of pecan 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.

(*b*) Another of respondents' assortments consists of a package of candy, together with a device commonly called a push card. Said candy is sold and distributed to the consuming public by means of said push card in the following manner:

The push card bears 35 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 35 partially perforated disks on the face of which is printed the word "push." Each of such disks is set under 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 the aforesaid package of candy. The said package of candy is worth more than any of the prices paid for a chance

to receive same. The push card bears a legend or instructions as follows:

NAME UNDER SEAL RECEIVES
THIS PACKAGE OF
DELICIOUS EASTER CANDY
Numbers 1 to 10
Pay Amount Punched
Numbers over 10 Pay only 10¢

Sales of respondents' merchandise by means of said push card are made in accordance with the above described legend or instructions. Said candy is allotted to the customers or purchasers in accordance with the above described legend or instructions. The fact as to whether a purchaser receives the aforesaid package of candy or nothing, for the amount of money paid, is thus determined wholly by lot or chance.

Respondents furnish and have furnished various other push cards for use in the sale and distribution of their candy 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 candy by means of said other push cards is the same as that hereinabove described, varying 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 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.

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 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 methods 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 the said facts, and the Commission, having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Pelican State Candy Co., its officers, and the respondent Max J. Pinski, individually, and trading as Pelican State Candy Co. and Royal Chocolates, or trading under any other name or names, the representatives, agents, and employees of said respondents, 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 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

GENERAL GROCER 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 4281. Complaint, Aug. 28, 1940—Decision, June 27, 1941

Where a corporation engaged in the purchase of food stuffs at wholesale from sellers located in other States, and in the interstate sale and distribution thereof—

Received and accepted allowances and discounts in lieu of brokerage in substantial amounts, through, usually, purchasing commodities at prices lower than those at which such commodities were sold to other purchasers by an amount reflecting all or a portion of the brokerage currently being paid by sellers of such commodities to their respective brokers for effecting sales to other purchasers:

Held, That such receipt and acceptance of allowances and discounts in lieu of brokerage fees or commissions from sellers upon purchases of commodities were in violation of the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

Mr. John T. Haslett for the Commission.

Cobbs, Logan, Roos & Armstrong, of St. Louis, Mo., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent General Grocer Co. is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business located at 301 South Eighth Street, St. Louis, Mo. Respondent is engaged in the purchase, sale, and distribution of food products at wholesale.

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchased commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. Since June 19, 1936, in connection with the purchase of its requirements in interestate commerce, as aforesaid, respondent has

received and accepted allowances and discounts in lieu of brokerage in substantial amounts.

Usually, the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage is accomplished by respondent by purchasing commodities at prices lower than the prices at which such commodities are sold to other purchasers thereof by an amount which reflects all or a portion of the brokerage currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers.

PAR. 4. The receipt and acceptance of allowances and discounts in lieu of brokerage by respondent as set forth in paragraph 3 hereof is in violation of subsection (c) of section 2 of the Clayton Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, the Clayton Act, as amended by an act of Congress approved June 19, 1936, the Robinson-Patman Act (U. S. C. title 15, sec. 13), the Federal Trade Commission on the 28th day of August, 1940, issued and thereafter served its complaint in this proceeding upon respondent General Grocer Co., a corporation, charging the respondent with violation of the provisions of subsection (c) of section 2 of the 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 hearings as to said facts and expressly waiving the filing of briefs and oral argument, which substitute answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, has been violated by the respondent, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent General Grocer Co. is a corporation organized and existing under the laws of the State of Delaware with

its principal office and place of business located at 301 South Eighth Street, St. Louis, Mo. Respondent is engaged in the purchase, sale and distribution of food products at wholesale.

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchased commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. Since June 19, 1936, in connection with the purchase of its requirements in interstate commerce, as aforesaid, respondent has received and accepted allowances and discounts in lieu of brokerage in substantial amounts.

Usually the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage are accomplished by respondent by purchasing commodities at prices lower than the prices at which such commodities are sold to other purchasers thereof by an amount which reflects all or a portion of the brokerage currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers.

CONCLUSION

In receiving and accepting allowances and discounts in lieu of brokerage fees or commissions from sellers upon purchases of commodities as set forth in paragraph 3 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 substitute answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearings as to said facts and expressly waives 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 section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, section 13).

It is ordered, That in purchasing commodities in interstate commerce, the respondent General Grocer Co., a corporation, its agents, employees, and representatives, do forthwith cease and desist from:

1. Accepting from sellers, directly or indirectly, any allowance for discount in lieu of brokerage fees or commissions in whatever manner or form said allowances, discounts, brokerage fees or commissions may be offered, allowed, granted, paid or transmitted; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage fee, or other compensation, or any allowance or discount in lieu thereof, upon purchases of commodities made by the respondent.

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

IN THE MATTER OF

J. H. THORP & 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 4310. Complaint, Sept. 12, 1940—Decision, June 28, 1941

Where a corporation engaged in the interstate sale and distribution of various grades and types of textile fabrics—

Falsely represented in advertisements, price lists, on labels, and otherwise, through designations "sunfast," "tubfast," "washable," and "fadeless," that said fabrics respectively would not change or lose color, or otherwise deviate from their original color when exposed to the light of the sun; would not change color, "bleed," lose color, or otherwise deviate from their original colors and designs when washed or laundered; and would not similarly react when exposed to sunlight or laundering;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said statements were true, as a result of which a number of such public purchased its fabrics in substantial volume:

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

Mr. Robert Mathis, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that J. H. Thorp & Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, J. H. Thorp & 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 250 Park Avenue, in the city of New York, and State of New York, and a branch office and place of business at 10 East Thirty-fourth Street, in the city of New York, and State of New York.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in business of selling and distributing various grades and types of textile fabrics. Respondent sells its products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said

products, when sold, to be transported from its places of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce 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, in connection with the offering for sale, sale and distribution of its products, in commerce, and for the purpose of inducing the purchase thereof by the public, respondent has stated in advertisements, in price lists, on labels, and otherwise, that certain of its fabrics are "sunfast," "tubfast," "fadeless," "washable."

PAR. 4. By the use in advertisements, in price lists, on labels, and otherwise, of the statement or representation that certain of its fabrics are "sunfast," respondent has represented that said fabrics will not change color when exposed to the light of the sun, by the use of statements or representations that certain of its fabrics are "tubfast" or "washable" respondent has represented that said fabrics will not change color, "bleed," lose color or otherwise deviate from their original colors and designs when washed or laundered; by the use of the statement that certain of its fabrics are "fadeless," respondent has represented that said fabrics will not change color, "bleed," lose color, or otherwise deviate from their original color and design when exposed to the light of the sun or washed or laundered.

PAR. 5. Respondent's statements and representations that its fabrics above referred to are "sunfast," "tubfast," "fadeless," or "washable" are false and misleading, for the reason that said fabrics stated to be "sunfast" will change color, lose color, or otherwise deviate from their original color when exposed to the light of the sun; said fabrics stated to be "tubfast" or "washable" will change color, "bleed," lose color, or otherwise deviate from their original colors and designs when washed or laundered; said fabrics stated to be "fadeless" will change color, "bleed," lose color, or otherwise deviate from their original colors and designs when exposed to the light of the sun or washed or laundered.

PAR. 6. The use by the respondent of the aforesaid false and misleading statements has had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements are true. On account of this erroneous and mistaken belief, so induced by respondent, a number of the purchasing and consuming public have purchased a substantial volume of respondent's fabrics.

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 September 12, 1940, issued, and subsequently served its complaint in this proceeding upon respondent J. H. Thorp & 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 October 26, 1940, the respondent filed its answer, in which answer it admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, J. H. Thorp & 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 250 Park Avenue, in the city of New York, and State of New York, and a branch office and place of business at 10 East Thirty-fourth Street, in the city of New York, and State of New York.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the business of selling and distributing various grades and types of textile fabrics. Respondent sells its products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said products, when sold, to be transported from its places of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce 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, in connection with the offering for sale, sale and distribution of its products in commerce, and for the purpose of inducing the purchase thereof by the public, respondent has stated in advertisements, in price lists, on labels, and otherwise, that certain of its fabrics are "sunfast," "tubfast," "fadeless," "washable."

PAR. 4. By the use in advertisements, in price lists, on labels, and otherwise of the statement or representation that certain of its fabrics are "sunfast," respondent has represented that said fabrics will not change color, lose color, or otherwise deviate from their original color when exposed to the light of the sun; by the use of statements or representations that certain of its fabrics are "tubfast" or "washable" respondent has represented that said fabrics will not change color, "bleed," lose color or otherwise deviate from their original colors and designs when washed or laundered; by the use of the statement that certain of its fabrics are "fadeless," respondent has represented that said fabrics will not change color, "bleed," lose color, or otherwise deviate from their original color and design when exposed to the light of the sun or washed or laundered.

PAR. 5. Respondent's statements and representations that its fabrics above referred to are "sunfast," "tubfast," "fadeless," or "washable" are false and misleading, for the reason that said fabrics stated to be "sunfast" will change color, lose color, or otherwise deviate from their original color when exposed to the light of the sun; said fabrics stated to be "tubfast" or "washable" will change color, "bleed," lose color, or otherwise deviate from their original colors and designs when washed or laundered; said fabrics stated to be "fadeless" will change color, "bleed," lose color, or otherwise deviate from their original colors and designs when exposed to the light of the sun or washed or laundered.

PAR. 6. The use by the respondent of the aforesaid false and misleading statements has had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements are true. On account of this erroneous and mistaken belief, so induced by respondent, a number of the purchasing and consuming public have purchased a substantial volume of respondent's fabrics.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint, and states that 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, J. H. Thorp & 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 or distribution of its textile fabric products in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by the use of the word "sunfast" or any other word of similar import or meaning, that the colors of respondent's textile fabric products will not change color, or lose color, or otherwise deviate from their original color when exposed to the light of the sun.

2. Representing by the use of the terms "tubfast", or "washable", or any other term or terms of similar import or meaning, that respondent's textile fabric products will not "bleed" or lose color, or otherwise deviate from their original colors or designs when washed or laundered.

3. Representing by the use of the term "fadeless" or any other term or terms of similar import or meaning, that respondent's textile fabric products will not "bleed" or lose color, or otherwise deviate from their original colors or designs when washed or laundered, or exposed to the light of the sun.

4. Representing in any manner or by any means that the colors of respondent's textile fabric products will not change color, or will not fade, or will not deviate from their original color when exposed to the light of the sun, or when washed or laundered.

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
H. W. LAY & 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 4439. Complaint, Dec. 31, 1940—Decision, June 28, 1941

Where a corporation engaged in the competitive interstate sale and distribution of food products, including assortments of nuts which were so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold to the consuming public, and included, as typical, a display card with twenty-seven 5-cent packages of nuts, three of which, however, had concealed within them slip of paper bearing the word "free," and were without cost to purchasers procuring same;

Sold such assortments to jobbers and, directly or indirectly, to retailers, by whom they were exposed and sold in accordance with said plan, involving game of chance to procure, without cost, package of nuts, and thus supplied to and placed in the hands of others means of conducting lotteries in the sale of its products, contrary to established public policy of the United States Government, and in competition with many who, unwilling to use such or other method contrary to public policy, refrain therefrom;

With result that many persons were attracted by its said sales plans and the element of chance involved therein and were thereby induced to buy and sell its products in preference to those of its said competitors, whereby trade was unfairly diverted to it from them and substantial injury was done to competition:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Hirsch, Smith, Kilpatrick, Clay & Cody, of Atlanta, Ga., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that H. W. Lay & Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent H. W. Lay & Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 444 Marietta Street, Atlanta, Ga. Respondent is now and has been for more than 1 year last past engaged in the sale and

distribution of food products to jobbers and retail dealers located in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, its products when sold to be shipped and transported from its aforesaid place of business in the State of Georgia to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by said respondent in such food products in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business, respondent is, and has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, assortments of nuts so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing and consuming public.

One of said assortments consists of 27 packages of nuts mounted on a display card bearing the legend

ARE YOU LUCKY?
You May Get a Package FREE

and distributed in the following manner:

The said packages of nuts retail at the price of 5 cents each, but three of said packages have within the wrapper or package a printed slip of paper bearing the word "Free" and thereby advising the purchaser thereof that the said package of nuts is given to him without cost. The said printed slips of paper are effectively concealed from purchasers and prospective purchasers until said packages have been opened and the said slips removed therefrom. The purchasers who procure said packages containing said printed slips thus procure the same without cost rather than at the regular retail price of 5 cents each. The fact as to whether the purchasers of said packages of nuts in said assortment procure the same without cost or pay the regular price of 5 cents each therefor, is thus determined wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various assortments of food products 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 packages of nuts, 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 products and the sale of said products by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of packages of nuts 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 packages of said nuts without cost. Many persons, firms, and corporations who sell and distribute products in competition with respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method which is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or method employed by respondent in the sale and distribution of its products and by the element of chance involved therein and are thereby induced to buy and sell respondent's products in preference to products of said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or equivelent 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 constitutes unfair methods 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 31, 1940, issued, and

thereafter served its complaint in this proceeding upon respondent H. W. Lay & Co., Inc., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent H. W. Lay & Co. is a corporation organized and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 444 Marietta Street, Atlanta, Ga. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of food products to jobbers and retail dealers located in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, its products when sold to be shipped and transported from its aforesaid place of business in the State of Georgia to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by said respondent in such food products in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business, respondent is, and has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, assortments of nuts so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing and consuming public.

One of said assortments consists of 27 packages of nuts mounted on a display card bearing the legend

ARE YOU LUCKY?
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and distributed in the following manner:

The said packages of nuts retail at the price of 5 cents each, but three of said packages have within the wrapper or package a printed slip of paper bearing the word "Free" and thereby advising the purchaser thereof that the said package of nuts is given to him without cost. The said printed slips of paper are effectively concealed from purchasers and prospective purchasers until said packages have been opened and the said slips removed therefrom. The purchasers who procure said packages containing said printed slips thus procure the same without cost rather than at the regular retail price of 5 cents each. The fact as to whether the purchasers of said packages of nuts in said assortment procure the same without cost or pay the regular price of 5 cents each therefor, is thus determined wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various assortments of food products 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 packages of nuts, 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 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.

PAR. 4. The sale of packages of nuts 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 packages of said nuts without cost. Many persons, firms, and corporations who sell and distribute products 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 which is 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 its products and by the element of chance involved therein and are

thereby induced to buy and sell respondent's products in preference to products of said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or equivalent methods, and, as a result thereof, substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal 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 H. W. Lay & Co., Inc., a corporation, its officers, representatives, agent, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of nuts or nut products, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Supplying to or placing in the hands of dealers, or others, assortments of packages of nuts or nut products, or other merchandise, which are to be used, or may be used, to conduct a lottery,

game of chance, or gift enterprise in the sale or distribution of such nuts or nut products to the public.

3. Packing or assembling in the same assortment packages of nuts or nut products, or other merchandise, for ultimate sale to the public, which individual packages of nuts or nut products, or other merchandise, are of uniform appearance, but some of which contain coupons or slips notifying the purchaser that said packages are furnished without cost;

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

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

Syllabus

IN THE MATTER OF

NATIONAL INSTITUTE, INC., DOING BUSINESS AS DIESEL ENGINES TRAINING, AND CLAYTON R. HASTINGS, SETH E. ROWDABAUGH AND JOHN C. SMITH

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

Docket 3417. Complaint, May 12, 1938—Decision, June 30, 1941

Where a corporation engaged in competitive interstate sale and distribution of correspondence courses of study and instruction in various subjects, including one on Diesel engines, in sale of which it operated under trade name "Diesel Engines Training"; the president and general manager thereof, who was also a stockholder and director, and formulated, directed, and controlled its policies and practices; and a second individual who was secretary and treasurer thereof and also a stockholder and director and, subject to general supervision of the other, in general charge of its office;

In offering their course of instruction on Diesel engines by distributing circulars through the mails or distributing agencies in various sections of the country, and through 80 or more salesmen, supplied with certificates of identification and sales kit containing promotional and sales literature, who contacted and solicited those sending in the postage prepaid postal cards with which circulars aforesaid were accompanied, bearing the printed request to "Please send me information on how to secure a JOB in the DIESEL MOTOR and ENGINE INDUSTRY in the shortest possible time"; without specifically disclosing, as a rule, that a correspondence course was being offered, but presenting the matter so as to make it appear that the prospect was being afforded opportunity to apply for Diesel engine training, with only a limited number of applicants accepted from the particular vicinity—

(*a*) Represented that because of the great increase in the use of Diesel engines during recent years, unusual and unprecedented opportunities for employment in their operation and maintenance were available to persons completing their said course of study, and that their school was able to and did obtain employment for its students upon completion of said course, and that employment was assured or guaranteed upon such completion;

(*b*) Represented that their salesmen soliciting prospective students were themselves representatives of Diesel engine manufacturers, that their course of study was offered by or in connection or cooperation with such manufacturers, and that employment would be given to prospective students by such manufacturers upon the completion of their said course of study; and

(*c*) Represented that employment would be provided the student while he was pursuing their course of study;

The facts being that, while there had been, during recent years, substantial increase in the use of Diesel engines, such increase did not open up any unusual field for employment in either manufacture or transportation, employees who theretofore operated the form of power displaced by the Diesel engines being made use of to operate the new engine or equipment; it was impossible for said corporation and individuals to obtain employment for

any substantial number or percentage of their graduates, and employment in no event could be insured or guaranteed; none of their agents was a representative of Diesel engine manufacturers, nor was their course offered by or in connection with such manufacturers, and no employment was provided their students while pursuing the course of study;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their course of study and the opportunities for employment afforded thereby, and to cause it to purchase the course as a result of such erroneous belief, with result that trade was diverted unfairly 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.

Before *Mr. Arthur F. Thomas* and *Mr. William C. Reeves*, trial examiners.

Mr. R. A. McOuat for the Commission.

Mr. Seth E. Rowdabaugh, of Warsaw, 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 National Institute, Inc., a corporation, doing business under the name and style of Diesel Engines Training, and Clayton R. Hastings, Seth E. Rowdabaugh and John C. Smith, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Institute, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana with its office and principal place of business at 408 Western Reserve Building in the city of Muncie in said State. Respondent Clayton R. Hastings, is the president of said corporation, respondent Seth E. Rowdabaugh is its vice president, and respondent John C. Smith, is its secretary-treasurer. The address of said Seth E. Rowdabaugh is Warsaw, Ind., while the address of the other officers named is the same as that of respondent corporation.

PAR. 2. Respondent, National Institute, Inc., is now, and has been for more than 1 year last past, engaged under the name and style of Diesel Engines Training, in the sale and distribution in commerce between and among the various States of the United States of a course of study and instruction on the subject of Diesel engines, which said

course of study and instruction is given and pursued through the medium of the United States mail supplemented in some cases by a short period of instruction at Muncie. Said respondent corporation, in the course and conduct of said business under the said trade name and during the time aforesaid, caused and does now cause its said course of study and instruction to be transported from its said place of business in Indiana to, into and through States of the United States other than Indiana to the various purchasers thereof in such other States. The individual respondents are managers and stockholders of the corporate respondent, and direct and control its sales policies and business activities. The individual respondents participated and cooperated in the acts and practices herein charged.

PAR. 3. During the time above mentioned other individuals, firms and corporations in various States of the United States have been and are engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of courses of study and instruction on the subject of Diesel engines as well as in other trade subjects and various other kinds of courses, all of which are pursued by correspondence. Said respondent corporation has been, during the time aforesaid, in substantial competition in commerce between and among the various States of the United States, in the sale of their said course of study and instruction with such other individuals, firms, and corporations.

PAR. 4. Said respondents, directly or through representatives and agents designated and appointed by respondent corporation under and by the supervision and direction of its said officers, have made many misrepresentations to prospective students in soliciting the sale of and in selling said course of study and instruction, among which are the following:

1. That there is a great demand for graduates of the school conducted by respondents as aforesaid and that employment is available and assured upon completion of the course offered.

2. That the school operated by respondents as aforesaid has working arrangements with manufacturers of Diesel engines and other business concerns to place its graduates in employment upon completion of the course.

3. That said school will secure employment for the prospect solicited in the Diesel industry upon completion of the course offered and that it does secure such employment for its graduates as a regular thing.

4. That a job is guaranteed upon completion of the course offered.

5. That the agent soliciting the prospective student is a representative of a Diesel engine manufacturer and that such manufacturer will furnish the course of instruction offered and also employment on completion of the course.

6. That employment will be provided the student while he is pursuing the course offered.

PAR. 5. Respondent corporation and its officers, the individual respondents herein, have contributed to the foregoing misrepresentations made by representatives of said school and to the effect thereof on prospective students by exaggerated and misleading statements and representations in the printed matter and advertising literature of said school. Among such statements have been the following:

A great field is opening up in DIESEL MOTORS AND ENGINES . . .

DIESEL POWER is sweeping the world . . .

Now, due to the fast development of DIESEL POWER, a number of companies in the DIESEL MOTOR INDUSTRY are cooperating with us to prepare and recommend men to install, supervise, and maintain Diesel equipment . . .

Please send me information on how to secure a JOB in the DIESEL MOTOR and ENGINE INDUSTRY in the shortest possible time.

The misleading effects of the representations above quoted and of the misrepresentations made by the agents of said school are further aggravated and enhanced by the use of the name "Diesel Engines Tr." on the printed matter used by said school by means of which the nature of the business conducted by respondents is made ambiguous.

PAR. 6. In truth and in fact there are no unusual demands for men with training such as that offered by respondents in the field for which such training is offered. Such demands as may exist in such field are met in great part by employers by placing men already in their employ in the openings that arise and training them in the work involved. Such opportunities as may exist for men who take respondents' training or training of similar kind and grade are in the field of mechanics, operating engineers, or trades where the pay involved is not in the so-called "big pay" field and in which the pay is comparable to that of mechanics, minor operating engineers, trades and the like. Employment is not generally available, nor is there any unusual number of new employees in the field for which respondents offer training, nor is such employment assured to the graduates of the school conducted by respondents. Respondents have no working arrangements with manufacturers of Diesel engines by which such manufacturers give employment to any appreciable number of the graduates of said school and no employment is furnished as a general thing to the graduates of said school upon completion of their courses. The school conducted by respondents does not guarantee jobs to its

graduates and representations to that effect by the agents of said school are false and unwarranted. The sales agents employed by said school do not represent any manufacturer, nor is the course offered given in connection with any manufacturing establishment engaged in the manufacture of Diesel engines or kindred products. Neither is employment furnished while students are pursuing their courses by correspondence.

PAR. 7. The foregoing representations used by respondents as aforesaid in offering for sale and selling said course of study and instruction have had and now have the tendency and capacity to and do in fact mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations as set out in paragraphs 4 and 5 hereof are true, and to induce them to purchase the said course of study and instruction on account thereof. Thereby trade is diverted unfairly to the school conducted by respondents from competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of correspondence courses intended for preparing students thereof for various trades, positions, professions, and calling, including courses of the same general kind as that offered by the school conducted by respondents.

There are among the competitors of the school conducted by respondents those who in the sale of their respective courses of study and instruction do not similarly or in any manner misrepresent the same or matters pertaining thereto. As a result of respondents' said practices, as herein set forth, substantial injury has been and is now being done by respondents to competition in commerce between and among the various States of the United States.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of the competitors of the school conducted by 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 May 12, 1938, issued and thereafter served its complaint in this proceeding upon the respondents, National Institute, Inc., a corporation doing business under the name and style of Diesel Engines Training, and Clayton R. Hastings, Seth E. Rowdabaugh and John C. Smith, individually and as officers of said corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said

act. After the issuance of the complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by R. A. McOuat, attorney for the Commission, and in opposition to the allegations of the complaint by Seth E. Rowdabaugh, attorney for the respondents, before trial examiners of the Commission theretofore duly designated by it, and the testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions thereto, 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 National Institute, Inc., is a corporation organized and doing business under the laws of the State of Indiana, with its office and principal place of business located at 408 Western Reserve Building, Muncie, Ind. Said respondent is now, and since 1936 has been, engaged in the sale and distribution of correspondence courses of study and instruction in various subjects, including a course on Diesel engines. In selling its course on Diesel engines said respondent operates under the trade name Diesel Engines Training.

In the course and conduct of its business said respondent causes, and since 1936 has caused, its courses of study, when sold, to be transmitted from its place of business in the State of Indiana through the United States mails to the purchasers thereof located in various other States of the United States and in the District of Columbia. Said respondent maintains, and since 1936 has maintained, a course of trade in its courses of study in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Said respondent is now, and since 1936 has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution, in commerce among and between the various States of the United States and in the District of Columbia, of correspondence courses of study and instruction similar to the courses conducted by said respondent.

PAR. 3. Respondent Clayton R. Hastings is president and general manager of the corporate respondent and is also a stockholder and

director in the corporation. He is in general charge of the operation of the business and formulates, directs, and controls the policies and practices of the corporation. The mailing address of said respondent is the same as that of the corporate respondent.

Respondent John C. Smith is secretary and treasurer of the corporation and is a stockholder and director therein. He is also the office manager of the corporation and, subject to the general supervision of respondent Hastings, is in general charge of the corporation's office. He has participated actively in the conduct of the business and in the practices of the corporation. The mailing address of said respondent is the same as that of the corporate respondent.

The corporate respondent and respondents Clayton R. Hastings and John C. Smith have all acted in conjunction and cooperation in carrying out the acts and practices hereinafter described.

Respondent Seth E. Rowdabaugh is vice president of the corporate respondent and is also its attorney. The Commission finds however that said respondent has had no active part in the business activities of the corporate respondent, and has not participated actively in the methods or practices hereinafter described. The postoffice address of said respondent is Warsaw, Ind.

The term "respondents" as hereinafter used will, unless the contrary is indicated, apply only to the corporate respondent and respondents Clayton R. Hastings and John C. Smith.

PAR. 4. Respondents offer primarily two courses of instructions, the first known as Diesel Engines Training and the second as Air Conditioning and Refrigeration Training. Formerly a civil service course of study was also offered but this was discontinued. Ordinarily, about 2,000 students are enrolled in the course in Diesel engines training. Respondents employ approximately 25 salaried employees, including five instructors in Diesel engines training.

PAR. 5. For the purpose of selling their course of instruction on Diesel engines, the respondents have organized numerous sales districts throughout the United States, with a district manager or superintendent in charge of each district. In the home office of respondents there is a general sales manager who has supervision over the district managers. The district managers are primarily charged with the employing of salesmen or solicitors to sell the courses of study, but the employing of all salesmen is subject to the approval and general supervision of the home office in Muncie, Ind., and all salesmen are under the general supervision and control of the respondents from the home office. Respondents presently have in their employ some 80 or more salesmen selling the course in Diesel training. As soon as a salesman is employed he is supplied by the respondents with

a certificate of identification, and is also supplied with a sales kit containing various promotional and sales literature, including articles on Diesel engines, samples of the lessons supplied to students by the respondents, etc.

The course of study in Diesel engines training comprises 33 lessons to be studied by correspondence, together with 2 weeks training in respondents' place of business in Muncie, Ind. Eight to 12 months are usually required for the completion of the course. The cost of the course of instruction is $165.00, of which a small amount, usually $10.00, is paid by the student at the time he subscribes for the course. The remaining amount is paid in monthly installments. All salesmen of the respondents work entirely on a commission basis. They are allowed to retain a percentage of the down payment, and as subsequent payments are made by the students a part of such payments is paid over to the salesman by the respondents or credited to the salesman's account.

PAR. 6. The evidence shows, and the Commission finds, that the plan or method pursued by the respondents in the sale of their course of instruction on Diesel engines is substantially as follows: The first step in the sales campaign is the distribution of a circular among prospective purchasers of the course, this distribution being made by respondents through the mails or by means of distributing agencies located in various sections of the country. The circular bears the signature "Diesel Engines Tr." and originally read as follows:

IT TAKES POWER TO GET AHEAD

If you are dissatisfied with your chances of getting ahead and are anxious to do something about it, here is the solution to your problem. A great field is opening up in DIESEL MOTORS AND ENGINES for ambitious men between the ages of 18 and 50 who are mechanically inclined. DIESEL POWER is sweeping the world, and why shouldn't it? It is the most economical power known to man. Diesel engines will burn the very poorest grade of oil with relatively high efficiency.

For these and many other reasons, Diesel Power is rapidly and surely replacing every other form of power, and it is destined in a few years to be the PRIME motive power for driving generators, automobiles, airplanes, locomotives, trucks, buses, tractors, steamships, hoists, cranes, as well as a great many other kinds of machinery. Now, due to the fast development of Diesel Power, we are cooperating with various corporations to prepare and recommend men to install, supervise, and maintain Diesel equipment. Do you want one of these jobs? We must have men right away, or corporations that are promoting the Diesel industry will be seriously delayed. They cannot hope to make progress unless men are available who understand Diesel engineering. That is why we are making such an effort to fulfill our part in developing competent men for these jobs. Now, don't say you have never had a chance to get a good job if you fail to send in the enclosed card.

Therefore, it is reasonable to believe that those men who enter this great and fast growing industry will ultimately reach a goal that will surpass all others. All that it is necessary for you to do to find out how you may secure one of these positions that are open to you in this field is to fill out the enclosed card and drop it in the mail box. The card doesn't even require a stamp. DON'T DELAY! Send in this card AT ONCE.

After this circular had been in use for a year or more, respondents made certain changes in its language, but the substance remained essentially the same.

The circular is in all instances accompanied by a postal card on which postage is prepaid by respondents, and which is to be filled out and signed by those desiring further information with respect to Diesel Engines Training. The pertinent portion of this card reads as follows:

Please send me information on how to secure a JOB in the DIESEL MOTOR and ENGINE INDUSTRY in the shortest possible time.

When the card is received at the respondents' office in Muncie, Ind., the name of the sender, together with his address and other pertinent information, is forwarded by the respondents to the particular sales district in which the prospect resides, and this information is turned over to one of respondents' salesmen, who proceeds to contact the prospect and undertake to sell him the course of instruction.

PAR. 7. The record contains the testimony of numerous persons residing in various sections of the United States who were solicited by respondents' agents, and many of whom purchased the course of study as a result of such solicitation. The testimony of these witnesses shows, and the Commission finds, that among the statements and representations made by respondents through their agents to prospective purchasers were the following:

1. That because of the great increase in the use of Diesel engines during recent years, unusual and unprecedented opportunities for employment in the operation and maintenance of such engines are available to persons completing respondents' course of study.

2. That respondents' school is able to and does in fact obtain employment for its students upon completion of the course of study, and that employment is in fact assured or guaranteed upon completion of such course.

3. That the agents or salesmen soliciting prospective students are themselves representatives of Diesel engine manufacturers, that respondents' course of study is offered by or in connection or cooperation with such manufacturers, and that employment will be given to prospective students by such manufacturers upon the completion of respondents' course of study.

4. That employment will be provided the student while he is pursuing respondents' course of study.

The Commission further finds that the effect of certain of these oral representations made by the respondents through their agents was increased and accentuated by the circular referred to above. Especially is this true as to the representation with respect to the unusual opportunties for employment existing in the Diesel engine field for persons completing respondents' course of study, and the representation that respondents' course of study is offered by or in connection or cooperation with manufacturers of Diesel engines.

PAR. 8. No specific reference is made by respondents in either their circular or the postal card which accompanies it to a correspondence course of study, nor do respondents' agents usually disclose to the prospective purchaser that they are undertaking to sell such prospect a correspondence course of study. Rather, the matter is presented to the prospect in such manner as to make it appear that the prospect is being afforded an opportunity to "apply" for Diesel engine training. The prospect is frequently told by the agent that only a certain number of applicants for the training can be accepted from that particular vicinity. The document presented to the prospect for execution begins with the sentence, "Please accept my application for your complete Diesel engine training." This document however is, in fact, a contract under which the prospect subscribes for respondents' correspondence course of study and agrees to pay a stipulated amount therefor.

PAR. 9. The evidence shows, and the Commission finds, that while there has been during recent years a substantial increase in the use of Diesel engines, such increase has not resulted in opening up any unusual field for employment. The testimony of competent experts introduced as witnesses at the instance of the Commission discloses that almost invariably a Diesel engine purchased by a manufacturing plant simply takes the place of some other form of power formerly used by the purchaser, and that usually the employees who formerly operated the old equipment are used to operate the Diesel engine. After a limited amount of instruction such employees are fully capable of operating the Diesel engine, and it is usually unnecessary that any new persons be employed.

This is true in the field of transportation as well as in the field of manufacture. When a railroad changes from steam or some other form of motive power to Diesel engines, the same train crews who operated the old equipment are almost invariably used on the Diesel trains. Likewise, concerns substituting Diesel engines for gasoline engines in the operation of motor trucks and buses use their old

employees to operate the new equipment. Usually an employee who has operated a truck or bus propelled by a gasoline motor is equally as competent to operate a truck or bus propelled by a Diesel engine. Shop crews who have maintained old equipment are ordinarily retained to maintain the Diesel equipment.

The Commission therefore finds that there is no factual basis for respondents' representation that great and unusual opportunities for employment in the Diesel engine field are open to graduates of respondents' school. While respondents may have been able, in exceptional cases, to find employment for a few of their graduates, it is impossible for respondents to obtain employment for any substantial number or percentage of their graduates. In no event can employment be assured or guaranteed.

The Commission further finds that none of respondents' agents or salesmen are representatives of Diesel engine manufacturers, nor is respondents' course of study offered by or in connection or cooperation with such manufacturers. No employment is provided respondents' students while they are pursuing the course of study.

PAR. 10. The Commission therefore finds that the representations made by the respondents through their advertising literature and through their agents and salesmen, as aforesaid, are grossly exaggerated, false, deceptive, and misleading.

PAR. 11. The Commission further finds that the use by the respondents of the acts and practices herein described has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' course of study and the opportunities for employment afforded thereby, and to cause such portion of the public to purchase respondents' course of study and instruction as a result of the erroneous and mistaken belief engendered by the respondents. In consequence, trade has been diverted unfairly to the respondents from their competitors.

CONCLUSION

The acts and practices of respondents National Institute, Inc., Clayton R. Hastings and John C. Smith, as herein found, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal 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 the trial examiners upon the evidence and the exceptions thereto, and brief filed by R. A. McOuat, attorney for the Commission (no brief having been filed by respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that certain of the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents National Institute, Inc., a corporation, trading as Diesel Engines Training, or trading under any other name, its officers, and Clayton R. Hastings and John C. Smith, individually and as officers of said corporation, and said respondents' 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 their course of study or instruction on Diesel engines, do fourthwith cease and desist from representing:

1. That unusual or unprecedented opportunities for employment in the Diesel engine field are available to persons completing respondents' course of study.

2. That respondents obtain employment for their students upon the completion of respondents' course of study, or that employment is assured or guaranteed to such students.

3. That respondents' agents or salesmen are representatives of Diesel engine manufacturers.

4. That respondents' course of study is offered by or in connection or cooperation with Diesel engine manufacturers, or that employment will be given to respondents' students by such manufacturers.

5. That employment will be provided respondents' students while they are pursuing said course of study.

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

It is further ordered, That this proceeding be, and it hereby is, dismissed as to respondent Seth E. Rowdabaugh.

Syllabus

IN THE MATTER OF

ISIDORE HALPERIN AND MORRIS ORENSTEIN TRADING AS WELLWORTH 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 3470. Complaint, June 30, 1938—Decision, June 30, 1941

Where two individuals engaged in the competitive interstate sale and distribution of watches, cameras, china and silverware, clocks, cigarette lighters, jewelry, cosmetics, bedding, kitchenware, and other articles of merchandise—

(*a*) Made use of sales plan or method involving distribution of advertising or sales circulars and pull cards to prospective customers or representatives to induce them to sell said merchandise by means of a game of chance, gift enterprise, or lottery scheme, under a plan by which the particular article of merchandise received by customer and price paid therefor were determined and disclosed by pull card tab selected and detached by him, and operator of card, after selling all articles listed thereon and remitting amounts charged therefor to said individuals, who thereupon shipped him the merchandise thus sold, was compensated by an article which they included for him as a premium, or at his option, by deduction of cash premium from amount remitted; and thus, notwithstanding inconsistent and subterfuge "NOTICE TO PURCHASERS" on said pull tab device, advising customer of privilege of buying given article at price shown, or declining it,—

Supplied to and placed in the hands of others means of conducting lotteries in the sale and distribution of their said merchandise in accordance with aforesaid sales plan, involving game of chance to procure an article of merchandise at much less than its normal price, contrary to established public policy of the United States Government and in violation of criminal laws, and in competition with many who, unwilling to use such or other method contrary to public policy, refrain therefrom;

With result that many persons were attracted by their said sales method and by the element of chance involved therein and were thereby induced to buy and sell their merchandise in preference to that of their said competitors, whereby trade was unfairly diverted from such competitors to them;

(*b*) Made such false and misleading representations and statements in aforesaid advertising circulars as "Free gifts—valuable premiums without cost to you" and "Two extra surprise gifts free"; facts being that none of their articles of merchandise designated as premiums or gifts was given away "free," but instead was delivered as compensation for services rendered; the price thereof was included in that of other articles of merchandise which representatives had to sell, or procure the sale of, before receiving such premiums or gifts; and, for a number of premiums, certain sums of money had to be paid in addition to services rendered; and

(*c*) Made such false and misleading representations and statements therein as "42 pce. well-known silver tableware"; when in fact their merchandise designated as "silver tableware" was not made of solid silver, but of metal plated with silver;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and into the purchase of substantial quantities of their products as a result of such erroneous belief, whereby trade was unfairly diverted from their competitors to them:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. D. C. Daniel and *Mr. L. P. Allen, Jr.*, for the Commission.

Nash & Donnelly, of Washington, D. C., and *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 Isidore Halperin and Morris Orenstein, individually and trading as Wellworth Sales Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Isidore Halperin and Morris Orenstein, are copartners trading under the name of Wellworth Sales Co., with their principal office and place of business located at 46 East Broadway, New York, N. Y. Respondents are now, and for some time last past have been, engaged in the sale and distribution of watches, cameras, china and silverware, clocks, cigaret lighters, jewelry, cosmetics, bedding, kitchenware, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products when sold to be shipped or transported from their place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are in competition with other individuals and partnerships and with corporations engaged in the sale and distribution of similar or like articles of merchandise, in commerce between and among the various States of the United States 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 said articles of merchandise 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 distributed to the purchasers thereof 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 the regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondents, the 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 such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish the said pull cards use the same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said 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 which is in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the apparent 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 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 of said method by respondents, because of said game 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.

PAR. 5. In the course and conduct of their business, as hereinabove related, respondents cause and have caused various false, deceptive and misleading statements to appear in their advertising matter as aforesaid, of which the following are examples but are not all-inclusive:

Free Gifts—Valuable Premiums without cost to you

Select any gift from this folder that you desire. It will be yours at absolutely no cost

2 extra surprise gifts free
FREE—Choice of one of these extraordinary values—FREE

Others of said statements and representations appearing in respondents' said advertising matter are as follows:

All shipping charges are paid by us
We prepay all shipping charges right to your door
42 pce. well known silver tableware

PAR. 6. In truth and in fact, none of respondents' so-called premiums or gifts are given away "free" or without cost, but said premiums or gifts, which are represented as being "free" to said representatives, are either purchased with labor by them or the price of said premiums or gifts is included in the price of other articles of merchandise which the representatives must sell or procure the sale of before said premiums or gifts can be procured by them. For a number of premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered. Respondents do not pay all shipping charges on their said products, but said representatives are required to pay certain specified sums of money as shipping charges on a number of respondents' said articles of merchandise.

When the word "silver" is used in describing a product, the purchasing public understands it to mean that the product is made of solid silver. The use of the word "silver" by respondents in describing their said tableware causes, and has caused, the purchasing public to believe that said tableware is made of solid silver. Respondents' said "silver" tableware is not made of solid silver, but, on the contrary, is made of inferior metal plated with silver.

PAR. 7. The use by respondents of the false, deceptive, and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are, among the competitors of respondents as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid, trade is unfairly diverted to respondents from such competitors, and, as a result thereof, substantial injury is being done, and has been done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 30, A. D., 1938, issued and subsequently served its complaint upon the respondents, Isidore Halperin and Morris Orenstein, individually and trading as Wellworth Sales Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint 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 and L. P. Allen, Jr., attorneys for the Commission, and in opposition to the allegations of the complaint by Horace J. Donnelly, attorney for the respondents, before Randolph Preston, 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, this 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 and exceptions filed thereto, 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. Respondents Isidore Halperin and Morris Orenstein are copartners trading under the name Wellworth Sales Co., with their principal office and place of business located at 46 East Broadway, New York, N. Y. Respondents are now, and for some time last past have been, engaged in the sale and distribution of watches, cameras, china and silverware, clocks, cigarette lighters, jewelry, cosmetics, bedding, kitchenware, and other articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia. Respondents cause, and have caused, said products, when sold, to be shipped or transported from their place of business in the State of New York 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 merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business the respondents are engaged in competition with other individuals and partnerships and with corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business the respondents distribute advertising or sales circulars by the United States mails to prospective customers or representatives located in various States of the United States, for the purpose of inducing such customers to sell respondents' merchandise by means of a game of chance, gift enterprise, or lottery scheme commonly known as a pull card device. These circulars contain pictorial representations and descriptive matter with reference to merchandise offered as compensation for the sale of certain of respondents' merchandise, which merchandise is likewise described by pictorial representations, and otherwise, on said circulars. Each of said circulars contains what is commonly known as a pull card device.

Said pull card device consists of a number of tabs, under each of which are 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 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 purchaser will be required to pay in the event he secures one of said articles of merchandise induces 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 specific article which the purchaser receives, the amount of money which is required to be paid, and the obtaining of an article of greater value than the prices designated therefor 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 and has collected the amounts charged therefor, such sum is then remitted to the respondents and the respondents thereupon ship to said representative the merchandise sold by means of said device by said representative, 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 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 purchaser thereof in accordance with the list filled out when the tabs were removed or detached from the device as above described. The advertising circular containing such pull card device contains all of the instructions which are given to the representative for the operation of said pull card device and the obtaining of the merchandise and premiums from the respondents.

Immediately above said pull tab device, there appears the following:

NOTICE TO PURCHASERS—On the back of each slip is printed the price of an article. If after deliberation you decide that you want to buy the article pay the holder of this book the price shown on 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 device in accordance with the sales plan or method hereinabove described. The successful operation of respondents' sales plan is dependent upon the ability of the operator to sell all the articles listed so as to permit remittance of the required amount to the respondents in order to obtain the merchandise purchased. The purchaser knows the articles listed and the price to be paid therefor before he selects and removes the tab from the pull tab device. The element of chance is the amount of money to be expended and the specific article to be purchased. The operation of the plan strictly in accordance with the above "Notice to Purchasers" would not tend to net the operator a return sufficient to warrant completion of the plan and would thereby make the plan inoperative, and to this extent such notice is merely a subterfuge.

Furthermore, all the instructions received by the representative or operator are contained in the advertising circular forwarded by the respondents, and there is no direction as to what should be done in the event all of the articles of merchandise are not sold or information as to the premium or compensation which can be obtained by such representative or operator in the event a purchaser refuses to accept the article listed on the tab removed from the pull tab device. Instead, said circulars contain the following or some similar instruction:

You collect the purchase price from your friend and after you have sold the 23 articles in this manner detach and fill out the order blank and mail it to us with the $7.99 you have collected. Immediately upon receipt of your order we will send you the 23 articles, as well as your reward gift. The prices of the 23 articles range from 9¢ to 39¢—no more.

The order blank usually furnished by the respondents reads in part as follows:

After you have sold the 23 articles of merchandise and collected $7.99 fill out this blank stating the correct number of premiums you have selected * * *. Please ship at once, all charges prepaid, the 23 articles of merchandise I sold amounting to $7.99 and one of the valuable premiums.

PAR. 4. The Commission finds that the persons or representatives to whom respondents have furnished or distributed said sales or advertising circulars, containing said pull card device, 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. Such merchandise has thus been sold or distributed by means of a game of chance, gift enterprise, or lottery scheme, and respondents have reaped the benefits therefrom. The use by the 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. 5. The sale of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondents in commerce among and between the various states of the United States are unwilling to adopt and use said method or any method involving a game of chance or a sale of a chance to win something by chance, or

any method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale of such 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 of said method by respondents, because of said game of chance, has a capacity and tendency to, and does, unfairly divert trade to respondents from their said competitors who do not use the same or an equivalent method.

PAR. 6. In addition to the acts and practices hereinabove described, the respondents also cause, and have caused, various false, deceptive, and misleading statements to appear in their various advertising circulars, of which the following are typical examples:

Free gifts—valuable premiums without cost to you.

Select any gift from this folder that you desire. It will be yours at absolutely no cost.

2 extra surprise gifts free.

FREE—Choice of one of these extraordinary values—FREE.

42 pce. well known silver tableware.

PAR. 7. The statements and representations hereinabove set out are false, deceptive, and misleading. None of respondents' articles of merchandise designated as premiums or gifts are given away "free," but, instead, said articles of merchandise which are represented as being "free" to said representatives are in fact delivered as compensation for services rendered, and the price thereof is included in the price of other articles of merchandise which the representatives must sell, or procure the sale of, before said premiums or gifts can be procured by them. For a number of premiums or gifts certain sums of money must be paid by said representative in addition to the labor performed or services rendered.

Respondents' merchandise designated as "silver tableware" is not made of solid silver but on the contrary is made of metal plated with silver.

PAR. 8. The use by the respondents of the false, deceptive, and misleading statements and representations as set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true and into the purchase of substantial quantities of respondents' products as the result of such erroneous belief, and as a result trade has been unfairly diverted to the respondents from their competitors who are likewise engaged in the sale and distribution of similar or like

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

CONCLUSION

The acts and practices of the 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, answer of the respondents, testimony and other evidence taken before Randolph Preston, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, report of the trial examiner upon the evidence and exceptions filed thereto, 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 respondents, Isidore Halperin and Morris Orenstein, individuals trading as Wellworth Sales Co. or under any other trade name, and their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of watches, cameras, china, silverware, clocks, cigarette lighters, jewelry, cosmetics, bedding, kitchenware and other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others pull cards or 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 distributors or to members of the public, pull cards 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;

4. Using the term "free" or any other term of similar import or meaning to describe or refer to goods, wares, or merchandise which are given as compensation for services rendered;

5. Using the unqualified term "silver" to designate or describe tableware or other articles of merchandise which are only plated with silver.

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. M. TAYLOR CO., INC., AND SAMUEL NITKE, CHARLES MYERS, AND ISADORE STEIN

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

Docket 3567. Complaint, Aug. 31, 1938—Decision, June 30, 1941

Where an individual, acting through a corporate instrumentality engaged in the competitive interstate sale and distribution of electric razors, clocks, electric mixers, traveling bags, pen and pencil sets, Glolite lighters, highball glasses, and other articles of merchandise—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise was sold or distributed to the ultimate consumer wholly by lot or chance, and distribution by mail and other means of certain literature and instructions including, among other things, push cards, for use, as typical, under a sales plan providing that a purchaser paid from 1 cent to 25 cents depending on the number disclosed by disk chosen, and that the person who, by chance, selected that 1 of 30 feminine names on card corresponding to name concealed under card's large master seal received a set of "6 Strip Tease Highball Glasses, valued at $7.50," as did the operator; and thus

Supplied to and placed in the hands of others means of conducting lotteries in the sale of his merchandise, in accordance with aforesaid sales plan, involving game of chance to procure an article at much less than usual price thereof, contrary to established public policy of the United States Government, and in violation of criminal laws, and in competition with many who, unwilling to use such or other method contrary to public policy, refrain therefrom;

With result that many persons were attracted by his said sales plan and the element of chance involved therein and were thereby induced to buy and sell his merchandise in preference to that of his said competitors, and trade was unfairly diverted to it from them:

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

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

Mr. D. C. Daniel and *Mr. L. P. Allen, Jr.* for the Commission.

Nash & Donnelly, of Washington, D. C., for respondents.

COMPLAINT

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

Inc., a corporation, and Samuel Nitke, Charles Myers, and Isadore Stein, individuals, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, J. M. Taylor Co., Inc., is a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business located at 358 Fifth Avenue, New York, N. Y. Respondent, Samuel Nitke, an individual, is sole owner of J. M. Taylor Co., Inc. Respondent, Charles Myers, is an individual, and an employee of the corporate respondent. Respondent, Isadore Stein, is an individual, and is in charge of the actual operation of the business of the corporate respondent as an employee of said corporation. Respondents, Samuel Nitke and Charles Myers, formulate, control, and direct the practices and policies of J. M. Taylor Co., Inc. All of individual respondents have their offices at the same address as corporate respondent. Said respondents act together with and in cooperation with each other in doing the acts and things hereinabove alleged. Respondents are now, and for some time last past have been, engaged in the sale and distribution of electric razors, clocks, electric mixers, traveling bags, pen and pencil sets, Glolite lighters, highball glasses, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia at their respective points of location. There is now and has been for some time last past a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are and have been in competition with other corporations and individuals, and with partnerships engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof respondents, in soliciting the sale of and in selling and distributing their merchandise in commerce, furnish and have furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate con-

sumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondents was and is substantially as follows:

Respondents distribute and have distributed to the purchasing public in commerce certain literature and instructions including, among other things, push cards, order blanks, illustrations of their said products, and circulars explaining respondents plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondents' push cards bear 30 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 30 small, partially perforated disks on the face of which is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

Name Under Seal Receives

6 STRIP TEASE HIGHBALL GLASSES

EACH GLASS DIFFERENT — $7.50 Value

(Cut) — This is what you see on the outside of the glass.

This is what happens when you turn the glass around or take a peep inside. — (Cut)

BE FIRST IN YOUR CROWD

A Floor Show In Every Drink

Numbers Under 25 Pay What You Draw
Numbers Over 25 Pay Only 25¢—No Higher

Respondents furnish said representatives with additional instructions to be used in connection with said push cards, some of which are as follows:

HOW TO OBTAIN YOUR STRIP TEASE GLASSES

This card consists of girls' names—beneath each name is a concealed number which shows the amount the person selecting that particular name is to pay for participating in this opportunity.

These concealed numbers range from 1 to 25. All numbers over 25 pay 25¢ only. For instance, if you punch number 1 you pay 1¢. If you punch number 10 you pay 10¢. If you punch number 25 you pay only 25¢. Remember, you pay nothing higher than 25¢—25¢ is the maximum cost (total $6.45).

When all names have been punched, you then remove the large seal and disclose the winner—the person who punched the corresponding name is awarded One (1) set of 6 Strip Tease Highball Glasses, valued at $7.50.

And, for your efforts, you also receive one set of 6 Strip Tease Highball Glasses, valued at $7.50.

Upon receipt of your order (see other side) with the $6.45, remittance (or we will ship C. O. D., F. O. B., New York), we will immediately ship you TWO (2) sets of 6 glasses in each (total 12 glasses), One (1) set or 6 glasses of which may be given the holder of the name under the large seal—the other set of 6 may be retained by you.

* * * * *

Sales of respondents' products by means of said push cards are made in accordance with the above-described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The said articles of merchandise are thus distributed to the purchasing public wholly by lottery or chance.

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

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

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute merchandise in competition with the respondents as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy and such competitors refrain therefrom. Many

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 31, A. D. 1938, issued and subsequently served its complaint upon the respondents, J. M. Taylor Co., Inc., a corporation, and Samuel Nitke, Charles Myers, and Isadore Stein, individuals, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by D. C. Daniel and L. P. Allen, Jr., attorneys for the Commission, and in opposition to the allegations of the complaint by H. J. Donnelly, Jr., attorney for the respondents J. M. Taylor Co., Inc., and Samuel Nitke, 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, this proceeding regularly came on for final hearing before the Commission on said complaint, answers thereto, testimony and other evidence, report of the trial examiners upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto and oral argument before the Commission, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Samuel Nitke is an individual having a place of business at 345 West Eighty-sixth Street, New York City, N. Y. On or about December 15, 1937, said respondent caused a corporation to be organized under the laws of the State of New Jersey known as J. M. Taylor Co., Inc., with its principal place of business at 358 Fifth Avenue, New York, N. Y., all the capital stock of which corporation being owned and controlled by said respondent Samuel Nitke. No meetings of stockholders were ever held or officers or directors elected for said corporation. Subsequent thereto, on October 7, 1938, said corporation was formally dissolved.

During the period of December 15, 1937, to October 7, 1938, said respondent, acting by and through said corporation J. M. Taylor Co., Inc., was engaged in the sale and distribution of electric razors, clocks, electric mixers, traveling bags, pen and pencil sets, Glolite lighters, highball glasses, and other articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia. Said respondent caused said products, 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. During the times mentioned herein, respondent has maintained a course of trade in said articles of merchandise in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of his said business respondent has been in competition with other individuals and corporations and with partnerships engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of his said business in soliciting the sale of and selling and distributing said merchandise in commerce, respondent furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise was sold or distributed to the ultimate consumer thereof wholly by lot or chance. The method or sales plan adopted and used by said respondent was and is substantially as follows:

During the times mentioned herein said respondent distributed by United States mails and by other means in commerce, certain literature and instructions, including, among other things, push cards, order blanks, illustrations of his said products, and circulars explaining respondent's plan of selling merchandise and allotting it as premiums or prizes to the operators of said push cards. One of respondent's

push cards contained 30 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 had 30 small partially perforated disks, on the face of which was printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each disk was a number, which was disclosed when the disk was pushed or separated from the card. The push card also had a large master seal, and concealed within the master seal was one of the feminine names appearing on the reverse side of said card. The push card bore legends or instructions as follows:

Name Under Seal Receives
6 STRIP TEASE HIGHBALL GLASSES
EACH GLASS DIFFERENT

$7.50 Value

(Cut) This is what you see on the outside of the glass.

This is what happens when you turn the glass around or take a peep inside. (Cut)

BE FIRST IN YOUR CROWD
A Floor Show In Every Drink

Numbers Under 25 Pay What you Draw
Numbers Over 25 Pay Only 25¢—No Higher

Respondent furnished said representatives with additional instructions to be used in connection with said push cards, some of which were as follows:

HOW TO OBTAIN YOUR STRIP TEASE GLASSES

This card consists of girls' names—beneath each name is a concealed number which shows the amount the person selecting that particular name is to pay for participating in this opportunity.

These concealed numbers range from 1 to 25. All numbers over 25 pay 25¢ only. For instance, if you punch number 1 you pay 1¢. If you punch number 10 you pay 10¢. If you punch number 25 you pay only 25¢. Remember, you pay nothing higher than 25¢—25¢ is the maximum cost (total $6.45).

When all names have been punched, you then remove the large seal and disclose the winner—the person who punched the corresponding name is awarded One (1) set of 6 Strip Tease Highball Glasses, valued at $7.50.

And, for your efforts, you also receive one set of 6 Strip Tease Highball Glasses, valued at $7.50.

Upon receipt of your order (see other side) with the $6.45, remittance (or we will ship C. O. D., F. O. B., New York), we will immediately ship you

TWO (2) sets of 6 glasses in each (total 12 glasses), One (1) set or 6 glasses of which may be given the holder of the name under the large seal—the other set of 6 may be retained by you.

* * * * * * *

Sales of respondent's products by means of said push cards were made in accordance with the above described legends and instructions. Said prizes or premiums were allotted to the customers or purchasers in accordance with the above legends and instructions. The said articles of merchandise were thus distributed to the purchasing public wholly by lottery or chance.

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

PAR. 4. The persons to whom respondent furnished the said push cards used the same in purchasing, selling, and distributing respondent's merchandise, in accordance with the aforesaid sales plan. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of 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. 5. 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.

PAR. 6. The Commission further finds that there is no evidence that the respondents Charles Myers and Isadora Stein actively participated in the acts and practices charged in the complaint.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence 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 and exceptions filed thereto, briefs filed herein 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 Samuel Nitke, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of electric razors, clocks, electric mixers, traveling bags, pen and pencil sets, Glolite lighters, highball glasses, and other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, push cards 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 members of the purchasing public push cards 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 complaint be dismissed as to the respondents J. M. Taylor Co., Inc., a corporation, and Charles Myers and Isadore Stein, individuals.

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

PINE HILL LIME & STONE COMPANY, ET AL., AND HAL S. COVERT

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

Docket 3591. Complaint, July 29, 1939 [1]*—Decision, June 30, 1941*

Where some 19 corporations and an individual, which produced a majority of the lime of all kinds and grades produced in the southeastern part of the United States, and somewhat less than a majority of the lime there sold, and, to the extent that they acted collusively, dominated the market for lime in the section in question; acting in concert with one another and through their paid secretary, who had represented them and others as district secretary under the National Recovery Administration, and, following the invalidation of the National Industrial Recovery Act, sought to carry on for them the system of non-competitive prices embodied in the Code for the industry;

Engaged in an unlawful combination and conspiracy among themselves with intent and effect of substantially suppressing and frustrating competition as to price and otherwise in the sale of lime in commerce among the various States in which they did business, and in furtherance of said end—

(1) Continued in effect among themselves aforesaid system of non-competitive delivered prices which was designed to, and in many instances did, prevent differences in the cost of freight delivery between various producers' plants and the respective places of delivery from creating any advantage to purchasers in delivered cost, irrespective of the producer involved, and which system was predicated upon the use of a number of basing points whereby all delivered prices were calculated as though shipments were made by rail from a single basing point, or points having the same freight rate, to respective destinations;

(2) Employed and operated a cooperative system of filing and exchanging, through said secretary, the base prices applicable to the respective basing points, it being understood and agreed among them that quotations and sales would be made only on a delivered price basis by adding to such common mill base price the rail freight on lime so shipped from the applicable basing point to destination, and thereby in effect carried over and continued in operation practices which had been carried on under the said N. R. A. Code, said secretary undertaking to carry out, so far as he was able, the services which he had rendered as district secretary under the N. R. A., and said various producers agreeing to send to his office their published quotations f. o. b. their respective plants, which he distributed along with other information to the other subscribers to such service or association;

(3) Employed and operated a cooperative system of calculating and circulating among themselves through said individual a compilation of freight rates from the respective basing points to various destinations in order to insure that differences in actual freight and in interpretation and application thereof

[1] Second amended.

would not create differences in the delivered price at any given destination as quoted and charged by said producers;

(4) Fixed, established, and maintained uniform prices, terms, and conditions of sale at which they would sell lime to the purchasing public, and increased and fixed the price for delivery in carload lots of less than 15 tons, as compared with the price for larger carloads, by adding thereto a uniform premium;

(5) Agreed in many instances, among themselves or with said individual, that the prices, terms and conditions of sale, calculated as above and filed with him and distributed by him among the producers should be adhered to without deviation until other prices, terms and conditions were likewise filed and thus distributed, said individual endeavoring to induce, and inducing, producers seeking his advice as to whether they should meet lower prices quoted by non-member producers, not to meet said lower prices, or such prices filed with him by other producers herein involved;

(6) Collaborated and exchanged price information with trade associations of producers in other sections, said individual furnishing information relative to published base prices of competitors, freight rates, lime market conditions, and other similar matters, not only to his own subscribers, but also, through the secretaries of lime associations in "outside territory," to competitors located north of the Ohio River and west of the Mississippi, and keeping his subscribers and others advised of changes in freight rates and in the published prices for lime within and without the southeastern area herein concerned;

(7) Agreed among themselves and with said individual, and with certain other producers located in other sections, that when selling in "outside" territory, they would sell according to the delivered prices there prevailing, said secretary exchanging, in behalf of producers here concerned, information as to basing point prices, freight rates, etc., with those providing similar services for producers in other sections of the United States, with intent and effect of inducing reciprocal adherence to the delivered prices prevailing in all the respective districts;

(8) Made and carried out an agreement or understanding among themselves and with said individual that they would quote identical delivered prices, terms, and conditions of sale in sealed bids on invitations from municipalities, State and Federal Governments, and failed or refused to quote other than delivered prices or their equivalent in making such bids, and agreed with their respective dealer customers that the latter quote such prices when bidding on lime to be purchased by such Governments;

(9) Compiled and circulated lists of recognized jobbers and dealers who should be entitled to purchase lime at jobbers' and dealers' prices, terms and conditions of sale and agreed among themselves as to the amount of compensation to be allowed their respective dealers when bidding upon the requirements of municipalities, State and Federal Governments, and other large consumers, and agreed upon a uniform differential between the prices to dealers and those to contractors, amounting usually to 50 cents a ton to be deducted from the price quoted by such producers; and

(10) Made use of special meetings of their own and of said secretary as occasions for discussing, making, mending, and renewing agreements or understandings with respect to price and other matters, and delegated, as a practice, to said individual, function of forestalling and correcting any deviations from such agreements, and caused investigations of complaints to be made by said

individual, to whom they reported same, and who was very active in suggesting to producers the necessity of maintaining the published prices and other matters in regard to which they had passed resolutions at their various meetings, from time to time issuing numerous notices and bulletins to them with respect to such matters;

With the result that producers whose plants were not located at any basing point frequently assessed and collected as freight charges from their customers sums of money which were greater than the actual freight expense thereon, and on sales made for local use assessed and collected such sums for "phantom" or non-existent freight; identical delivered prices were quoted and charged to any given destination within the area in question, and varying net prices were received by producers at their plants, depending upon the freight rate to the various points of destination which had to be absorbed; prices exacted from customers at or near a plant were the same as would have prevailed had purchaser taken delivery from plants more distant or in other States; municipalities, in response to requests for bids, as a result of the practice known as the "lowest combination," received identical bids; and in many instances, purchasers within the territory involved, had to pay higher, and much higher, prices for lime than purchasers at outside points, and, conversely, outside producers were enabled to ship to purchasers in said southeastern territory and obtain net mill prices which, after deduction of freight, were higher than the net prices obtained by them within a few miles of their respective plants; certain outside producers made a practice of adopting the same system of arriving at prices as that used by producers in southeastern territory; and while prices for lime were descreasing at certain points outside of said southeastern area, such prices in said area had increased since decision invalidating National Industrial Recovery Act:

Held, That said acts and practices, as above set forth, were all to the prejudice of the public; had a dangerous tendency to and did actually hinder and prevent price competition between and among the producers herein involved in the sale of lime in commerce; placed in them the power to control and enhance prices; increased the prices of lime paid by the purchasers and consequently those paid by the public; created in them a monopoly in the sale of lime and unreasonably restrained commerce therein; and constituted unfair methods of competition and unfair acts and practices in commerce.

Before *Mr. Charles F. Diggs* and *Mr. Randolph Preston*, trial examiners.

Mr. Curtis C. Shears and *Mr. Merle P. Lyon* for the Commission.

Mr. Abram F. Myers, of Washington, D. C., and *Mr. Edgar Watkins* and *Mr. Allan Watkins, Jr.*, of Atlanta, Ga., for respondents.

Second 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 Pine Hill Lime & Stone Co., Southern States Lime Corp., Gager Lime Manufacturing Co., Knoxville Lime Manufacturing Co., Longview-Saginaw Lime Works, Inc., Cheney Lime & Cement Co., Ladd Lime & Stone Co., Virginia

Lime Products Co., Inc., Kimbalton Lime Co., Inc., Eagle Rock Lime Co., Williams Lime Manufacturing Co., Florida Lime Co., Dixie Lime Products Co., Keystone Lime Works, Inc., Green Bag Cement Co., of West Virginia, M. J. Grove Lime Co., Ripplemead Lime Co., Inc., Riverton Lime & Stone Co., Jesse Allen Lime Co., corporations; George L. Scott, Sr., an individual, trading as Alabaster Lime Co., and Hal S. Covert, 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 second amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The Commission names and includes each of the foregoing parties as respondents in this proceeding both separately and as representatives of each other.

PAR. 2. Respondent Pine Hill Lime & Stone Co. is a corporation, with its principal office and place of business at Room 1814, Munsey Building, in the city of Baltimore, Md. Said respondent owns and operates a lime manufacturing plant located at Pine Hill, Ky.

Respondent Southern States Lime Corporation is a corporation organized and existing under the laws of the State of South Carolina, with its principal office and place of business located in the city of Charleston, S. C. Said respondent owns and operates a lime manufacturing plant located at Crab Orchard, Tenn.

Respondent Gager Lime Manufacturing 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 Room 605, Provident Building, in the city of Chattanooga, Tenn. Said respondent owns and operates a lime manufacturing plant located at Sherwood, Tenn.

Respondent Knoxville Lime Manufacturing 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 22 Marietta Building, in the city of Atlanta, Ga. Said respondent owns and operates a lime manufacturing plant located at Knoxville, Tenn.

Respondent Longview-Saginaw Lime Works, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 721 Chamber of Commerce Building, in the city of Birmingham, Ala. Said respondent owns and operates lime manufacturing plants located at Long View and Saginaw, Ala.

Respondent Cheney Lime & Cement Co. is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business located in the Martin Building, in

the city of Birmingham, Ala. Said respondent owns and operates lime manufacturing plants located at Landmark and Greystone, Ala.

Respondent Ladd Lime & Stone Co. is a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business located at Cartersville, Ga. Said respondent owns and operates a lime manufacturing plant located at Cartersville, Ga.

Respondent Virginia Lime Products Co., Inc., is a corporation, organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Eagle Rock, Va. Said respondent owns and operates a lime manufacturing plant located at Eagle Rock, Va.

Respondent Kimbalton Lime Co., Inc., is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Shawsville, Va. Said respondent owns and operates a lime manufacturing plant located at Shawsville, Va.

Respondent Eagle Rock Lime Co. is a corporation organized and existing under the laws of the State of Maine, with its principal office and place of business located at Eagle Rock, Va. Said respondent owns and operates a lime manufacturing plant located at Eagle Rock, Va.

Respondent Williams Lime Manufacturing Co. is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located in the Hamilton National Bank Building, Knoxville, Tenn. Said respondent owns and operates a lime manufacturing plant located at Knoxville, Tenn.

Respondent Florida Lime Co. is a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at Ocala, Fla. Said respondent owns and operates a lime manufacturing plant located at Ocala, Fla.

Respondent Dixie Lime Products Co. is a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at 19 North Main Street, in the city of Ocala, Fla. Said respondent owns and operates a lime manufacturing plant located at Ocala, Fla.

Respondent Keystone Lime Works, Inc., is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business located in Keystone, Ala. Said respondent owns and operates a lime manufacturing plant located at Keystone, Ala.

Respondent Green Bag Cement Co. of West Virginia is a corporation organized and existing under the laws of the State of West

Virginia, with its principal office and place of business located at Kenova, W. Va. Said respondent owns and operates lime manufacturing plants located at Lawton, Ky., and Kenova, W. Va.

Respondent M. J. Grove Lime Co. is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Lime Kiln, Md. Said respondent owns and operates lime manufacturing plants located at Bonsville and Frederick, Md., and Stevensville, Va.

Respondent Ripplemead Lime Co., Inc., is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Ripplemead, Va. Said respondent owns and operates a lime manufacturing plant located at Ripplemead, Va.

Respondent Riverton Lime and Stone Co. is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Riverton, Va. Said respondent owns and operates a lime manufacturing plant located at Riverton, Va.

Respondent Jesse Allen Lime Co. is a corporation with principal office and place of business at Burns, Tenn. Said respondent owns and operates a lime manufacturing plant located at Burns, Tenn.

Respondent George L. Scott, Sr., is an individual trading as Alabaster Lime Co., and maintains his office and place of business at Siluria, Ala. Said respondent owns and operates a lime manufacturing plant located at Siluria, Ala.

All of the respondents described in this paragraph are engaged in the manufacture, sale, and distribution of lime used for agricultural, chemical and building purposes and are hereinafter referred to for convenience as "respondent lime producers."

PAR. 3. Respondent Hal S. Covert is an individual who maintains his office and place of business at the Arnold Hotel, in the city of Knoxville, within the State of Tennessee, and has since on or about June 30, 1935, acted as the paid representative and agent of respondent lime producers and of the lime producers and manufacturers located in the southeastern portion of the United States south of the Ohio River and east of the Mississippi River.

PAR. 4. All of said respondent lime producers have been for more than 3 years last past, and are now, engaged in the manufacture and distribution of agricultural, chemical, and building lime which they sell to their respective customers located in various States of the United States and cause said products when sold to be transported from their respective plants to purchasers located at various places in the several States of the United States other than the State where they are pro-

duced and from which they are shipped. Respondent lime producers sell their product direct to municipalities, State and Federal Governments and also to dealers, jobbers, and large contractors. Said respondent lime producers manufacture and sell a large majority of the total volume of agricultural, chemical, and building lime that is produced and sold in the southeastern part of the United States. To the extent that they act collusively and collectively in the production and pricing of their goods, respondent lime producers are in a position to dominate and manipulate the market in which Governmental agencies and unorganized purchasers must buy such goods in the southeastern part of the United States.

PAR. 5. Lime, the commodity with which this proceeding is concerned, is produced in a variety of qualities, has varied chemical constituents and is used for correspondingly varied purposes. Among the more important purposes for which it is used are as a building and construction material where it is widely in demand as an ingredient in mortar and plaster, as a bactericide, purifier and deodorant of municipal and other public water supplies, as an agricultural fertilizer and soil conditioner, as a plant insecticide and fungicide, and for miscellaneous household purposes.

PAR. 6. For more than 3 years last past respondents, their officers, agents, and employees, have engaged in a wrongful and unlawful combination and conspiracy among themselves, for the purpose and with the effect of substantially suppressing and frustrating competition as to price and otherwise in the sale of lime in commerce among the several States where respondent lime producers do business. To that end respondent by concerted action, agreement, and understanding among themselves and with others not joined herein as respondents, have adopted and carried out the following policies, rules, practices, and methods of competition:

(*a*) Respondents have continued in effect by agreement, understanding, and concerted action among themselves a system of non-competitive delivered prices that was embodied in an express agreement among them during the period that a Code for the industry was in operation under the National Industrial Recovery Act. Said system of delivered prices was designed to prevent differences in the cost of freight delivery between the various producers' plants and the respective places of delivery from creating any advantage or disadvantage to a purchaser in delivered cost without regard to which respondent lime producer the intending purchaser might apply. Said system of identical delivered prices was predicated upon the use of a number of so-called basing points whereby all delivered prices were calculated as

though shipments were made by rail from a single point or points having a common freight rate to destination.

(*b*) Respondents have employed and operated a cooperative system of filing and exchanging among themselves the base prices applicable to the respective basing points, but it was understood and agreed among respondent lime producers that quotations and sales would be made only on a delivered price basis and by adding to such understood common basing point prices the rail freight from the applicable basing point to destination. Said system, understanding and agreement were likewise a continuation of an express agreement among respondents that existed under the Code during the period of the National Industrial Recovery Act. By understanding, agreement, and concerted action respondents continued to adhere to the specific basing points and basing point prices in effect under the Code until higher basing point prices could be and were established.

(*c*) Respondents have employed and operated a cooperative system of calculating and circulating among themselves a compilation of freight rates from the respective basing points to various destinations in order to insure that differences in the actual freight from actual shipping points to a given destination and differences in the interpretation and application of freight tariffs would not create differences in the delivered price at any given destination. Said system was likewise a continuation of a practice carried on under the express agreement that existed under the Code during the period of the National Industrial Recovery Act.

(*d*) Respondent lime producers have agreed among themselves and with respondent Covert that the prices, terms and conditions of sale filed with respondent Covert and distributed among the producers should be adhered to without deviation until after other prices, terms and conditions of sale were likewise filed and distributed. The prices to be charged were agreed upon by respondent lime producers at meetings with the understandings that such agreed prices would thereafter be filed with respondent Covert as a formality or even not filed at all. Printed price lists showing delivered prices at various delivery points were distributed by respondent Covert for use of respondent lime producers and were calculated according to the applicable basing point price and freight rates therefrom. Respondent lime producers have sought the advice and permission of respondent Covert as to whether they should meet lower prices quoted by non-respondent producers of lime. Respondent Covert has endeavored from time to time to induce respondent lime producers not to reduce their prices to meet the lower prices of non-respondent lime producers and not to meet lower prices filed with him by certain of respondent lime producers.

(*e*) Respondent lime producers have made and carried out an agreement among themselves and with respondent Covert that they would submit identical delivered prices, terms and conditions of sale in sealed bids on invitations from municipalities, State and Federal Governments and would refuse to quote other than delivered prices or their equivalent in making such bids.

(*f*) Respondent lime producers have delegated to respondent Covert the function of forestalling and correcting deviations from the price agreements and other agreements herein alleged that restrict competition among said producers. Pursuant to such delegation they have reported to respondent Covert suspected deviations from the prices and terms agreed upon and have caused him to make investigations of their complaints regarding such deviations. Respondents have discussed such deviations among themselves and with producers suspected or charged therewith for the purpose and with the effect of obtaining renewed adherence to the alleged agreements on and affecting prices. Both regular and special meetings of respondent lime producers and respondent Covert have been used by them as the occasion for discussing, making, amending, and renewing such agreements.

(*g*) Respondent lime producers have agreed among themselves upon a uniform premium or addition to the price to be charged for delivery in carload lots of less than 15 tons as compared with the price for larger carloads.

(*h*) Respondent lime producers have agreed among themselves, with respondent Covert, and with non-respondent lime producers located in other sections of the country that when selling into territory outside that where respondents' basing point prices controlled the delivered prices they would recognize, adopt, and sell according to the delivered prices prevailing in such territory. Respondent Covert on behalf of respondent lime producers has exchanged information as to basing point prices, freight rates from basing points and delivered prices with persons providing services similar to those of respondent Covert for the lime producers in other districts of the country for the purpose and with the effect of inducing reciprocal adherence to the delivered prices prevailing in the respective districts.

(*i*) Respondent lime producers have agreed among themselves as to what concerns should be recognized as jobbers and dealers and thereby entitled to purchase lime at jobbers' and dealers' prices, terms and conditions of sale; and have compiled and circulated lists of such recognized jobbers and dealers in order to facilitate the execution of said agreement. Respondent lime producers have agreed among themselves upon a uniform amount of compensation to be allowed their respective dealers when bidding upon the requirements of municipal-

ities, State and Federal Governments and other large consumers, and have agreed upon a uniform differential between the prices to dealers and the price to contractors.

(*j*) Respondent lime producers have agreed with their respective dealer customers as to the prices to be quoted by such dealers when bidding on lime to be purchased by municipalities, State and Federal Governments and other large consumers.

(*k*) For the purpose and with the effect of making more difficult the detection and prevention of their unlawful combinations, agreements, and understandings herein alleged, respondents have destroyed documentary records and evidence of certain activities herein set forth or have avoided making such records and evidence.

PAR. 7. As a necessary result of respondents' agreement to use and their use of the above described basing point system of delivered prices, respondent lime producers whose plants are not located at any basing point have frequently assessed and collected sums of money from their customers in the guise of freight charges but in amounts that are greater than the actual freight expense incurred and on sales made for local use assess and collect such sums when there is no actual freight expense incurred.

PAR. 8. As an incident to and a necessary result of their agreed policy and practice of making delivered prices only and of making such prices identical notwithstanding differences in the actual freight from the various shipping points to given destinations, the respective respondent lime producers have habitually and systematically demanded, charged, accepted, and received larger sums of money per unit of product from their customers located near their respective plants than from their customers located at greater distances, have thereby forced their nearby customers to pay more to respondent lime producers per unit of product in order that more distant ones might pay less, have deprived their nearby customers of any price advantage by reason of their proximity to the place of production, and have thereby habitually and systematically discriminated in price among their respective customers in bad faith in order to suppress competition in price among respondent lime producers.

PAR. 9. By means of the aforesaid agreements, understandings, rules, policies, practices, and cooperative methods of competition, respondents have deprived purchasers and consumers of agricultural, chemical, and building lime of the advantages of normal competition that would otherwise exist among respondent lime producers. Respondents have thereby compelled unorganized purchasers to buy at prices and terms determined collectively and collusively by respondents and have artificially enhanced the amounts exacted from such purchasers above the

amounts obtainable had there been no such determination. The amounts so exacted from public agencies constitute part of the financial obligations of government payable either with or without interest out of tax receipts.

PAR. 10. The above alleged acts and things done by respondents are all to the injury and prejudice of the public engaged in the purchase and resale of agricultural, chemical, and building lime, of competitors engaged in the production and sale thereof and of consumers of such commodities, and constitute unfair methods of competition and unfair acts and practices in interstate commerce within the intent and meaning of section 5 of an act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 16th day of September, A. D., 1938, issued its complaint against the respondents named in the caption hereof, and on the 11th day of January, A. D., 1939, and on the 29th day of July, A. D., 1939, issued its amended complaints, and caused said complaints to be served upon each of said respondents, charging them with unfair methods of competition and unfair acts and practices in interstate commerce, and with restricting and suppressing competition in the interstate sale of agricultural, building, and chemical limes, in violation of the Federal Trade Commission Act. After the issuance of said complaints and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of the complaints were introduced by Curtis C. Shears and Merle P. Lyon, attorneys for the Commission, and in opposition to the allegations of the complaints by Abram F. Myers, Edgar Watkins, and Allan Watkins, Jr., attorneys for the respondents, before Randolph Preston, trial examiner of the Commission, duly designated by it to take testimony and receive evidence in this proceeding, 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 complaints, answers, testimony, and other evidence, the report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral argument on behalf of the Commission and of 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. Respondent Pine Hill Lime & Stone Co. is a corporation, with its principal office and place of business in Pine Hill, Ky., where it owns and operates a lime manufacturing plant, where it produces chemical and construction lime.

Respondent Southern States Lime Corp. is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located in the city of Charleston, S. C. Said respondent owns and operates a lime manufacturing plant located at Crab Orchard, Tenn. It produces no agricultural lime.

Respondent Gager Lime Manufacturing 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 Room 605, Provident Building, in the city of Chattanooga, Tenn. Said respondent owns and operates a lime manufacturing plant located at Sherwood, Tenn.

Respondent Knoxville Lime Manufacturing Co. is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located in Knoxville, Tenn., where said respondent owns and operates a lime manufacturing plant. It produces no agricultural lime.

Respondent Longview-Saginaw Lime Works, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 721 Chamber of Commerce Building, in the city of Birmingham, Ala. Said respondent owns and operates lime manufacturing plants located at Longview and Saginaw, Ala.

Respondent Cheney Lime & Cement Co. is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business located in the Martin Building, in the city of Birmingham, Ala. Said respondent owns and operates lime manufacturing plants located at Landmark and Greystone, Ala.

Respondent Ladd Lime & Stone Co. is a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business located at Cartersville, Ga. Said respondent owns and operates a lime manufacturing plant located at Cartersville, Ga. It produces a high magnesium lime used only for structural purposes, as well as some agricultural lime.

Respondent Virginia Lime Products Co., Inc., is a corporation, organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Eagle Rock, Va. Said respondent owns and operates a lime manufacturing plant located at Eagle Rock, Va.

Respondent Kimbalton Lime Co., Inc., is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Shawsville, Va. Said respondent owns and operates a lime manufacturing plant located at Shawsville, Va.

Respondent Eagle Rock Lime Co. is a corporation organized and existing under the laws of the State of Maine, with its principal office and place of business located at Eagle Rock, Va. Said respondent owns and operates a lime manufacturing plant located at Eagle Rock, Va.

Respondent Williams Lime Manufacturing Co. is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located in the Hamilton National Bank Building, Knoxville, Tenn. Said respondent owns and operates a lime manufacturing plant located at Knoxville, Tenn., where it makes chemical lime.

Respondent Florida Lime Products Co., Inc. (named in the complaint as Florida Lime Co.), is a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at Ocala, Fla. Said respondent owns and operates a lime manufacturing plant located at Ocala, Fla.

Respondent Dixie Lime Products Co. is a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at 19 North Main Street, in the city of Ocala, Fla. Said respondent owns and operates a lime manufacturing plant located at Ocala, Fla., where it produces a high calcium lime for structural and chemical uses and ground limestone for agricultural use.

Respondent Keystone Lime Works, Inc., is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business located in Keystone, Ala. Said respondent owns and operates a lime manufacturing plant located at Keystone, Ala.

Respondent M. J. Grove Lime Co. is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at Lime Kiln, Md. Said respondent owns and operates lime manufacturing plants located at Bonsville and Frederick, Md., and Stevensville, Va.

Respondent Ripplemead Lime Co., Inc., is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Ripplemead, Va. Said respondent owns and operates a lime manufacturing plant located at Ripplemead, Va. It makes no agricultural lime.

Respondent Riverton Lime & Stone Co. is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Riverton, Va. Said respondent owns and operates a lime manufacturing plant located at Riverton, Va., where it makes structural lime.

Respondent Jesse Allen Lime Co. is a corporation with its principal office and place of business at Burns, Tenn. Said respondent owns and operates a lime manufacturing plant located at Burns, Tenn., where it makes a high calcium structural and chemical lime.

Respondent George L. Scott, Sr. is an individual trading as Alabaster Lime Co. and maintains his office and place of business at Siluria, Ala. Said respondent owns and operates a lime manufacturing plant located at Siluria, Ala.

Respondent Green Bag Cement Co. of West Virginia is a corporation organized and existing under the laws of the State of West Virginia, with its principal office and place of business located at Kenova, W. Va. Said respondent owns and operates lime manufacturing plants located at Lawton, Ky., and Kenova, W. Va. It makes building lime only, and its building lime is an adjunct to its main cement business and constitutes less than one-half of 1 percent of its total business.

All of the respondents described as lime manufacturers are engaged in the manufacture, sale, and distribution of lime used for various purposes and are hereinafter referred to for convenience as "respondent lime producers."

As to respondent Green Bag Cement Co. of West Virginia, there is not sufficient evidence upon which to base an order to cease and desist. The references herein made to respondents as "lime producers" do not include the respondent Green Bag Cement Co. of West Virginia.

PAR. 2. Lime, which respondent lime producers manufacture, is produced in a variety of qualities, has varied chemical constituents and is used for correspondingly varied purposes. Among the more important purposes for which it is used are as a building and construction material where it is widely in demand as an ingredient in mortar and plaster, as a bactericide, purifier, and deodorant of municipal and other public water supplies, as an agricultural fertilizer and soil conditioner, as a plant insecticide and fungicide, and for miscellaneous household purposes.

Lime is a bulky, relatively cheap commodity, and consequently freight is an important and often the principal factor in the delivered cost. As regards its chemical constituency, lime is classified as high calcium lime and high magnesium lime. As regards its use, lime is classified as chemical, structural, and agricultural. Generally speak-

ing, calcium lime is usable for all three purposes, although in some cases a high magnesium lime is preferred for building purposes. Magnesium lime is used primarily in construction work. Both compete with cement, gypsum, and the various masonry cements and mortar mixes.

PAR. 3. The respondent lime producers, considered collectively, have been for more than 3 years last past, and are now, engaged in the manufacture and distribution of lime of various kinds, qualities, and descriptions, which they sell to their respective customers located in various States of the United States and cause said products when so sold to be transported from their respective plants to purchasers located at various places in various States of the United States other than the State where the products so purchased were produced and from which shipped. In the course of said operations said respondent lime producers sell their products direct to municipalities, State and Federal Governments, and also to dealers, jobbers, and contractors, located in various States of the United States.

Respondent lime producers produce a majority of the lime of all kinds and grades produced in the southeastern part of the United States as herein elsewhere defined, but somewhat less than a majority of the lime sold in that region. Respondent Hal S. Covert admitted that respondent lime producers produced 42.2 percent of the total lime sold in the southeast area, 32.9 percent is produced by other non-respondent lime producers in the southeast, and shipments from all plants outside the southeastern area were 24.9 percent of the total.

To the extent that they act, and have acted, collusively and collectively in the production and pricing of their products as hereinafter set forth, respondent lime producers are in a position to dominate, and have dominated, the market in which governmental agencies and unorganized purchasers must buy such products in the southeastern part of the United States. The price rise from $8.50 to $9.00 per ton on hydrated lime simultaneously put into effect by respondent lime producers in September 1935, and the simultaneous price rise put into effect by a large number of respondent lime producers on January 15, 1940, illustrate the ability of respondent lime producers to manipulate and control the market in the southeastern part of the United States. A fixed base price of $9.00 per ton was maintained by respondent lime producers for a number of years beginning in September 1935.

PAR. 4. Respondent Hal S. Covert for the 5 years last past had an office in Knoxville, Tenn. From the approximate date of June 30, 1935, and until the approximate date of March 1, 1939, said Covert acted as the paid representative of the respondent lime producers and

in conjunction with other lime producers in certain other portions of the United States. During the operation of the N. R. A. and prior to the decision of the Supreme Court of the United States in the case of *U. S.* v. *Schechter*, 295 U. S. 495, in the year 1935, which declared the N. R. A. unconstitutional, lime codes had apparently proved advantageous to the southeastern lime manufacturers, among whom were the said respondent lime producers. During said N. R. A. period the southeastern territory theretofore comprising districts 4, 10, and 11 of the National Lime Institute, also constituted the same numbered districts under the N. R. A. District 4 comprised the State of Virginia, Districts 10 and 11 the territory east of the Mississippi and south of the Ohio Rivers, exclusive of Virginia. Respondent Covert became, and continued to act as, secretary of the Districts Control Committee of the N. R. A. for said districts from and after March 4, 1934, and until its dissolution as aforesaid. After the termination of the N. R. A. he continued informally as secretary of substantially the same group of lime producers in the southeastern territory with the exception of a few concerns which immediately withdrew their support. Respondent Covert set out obtaining the consent of all the producers in said Districts 4, 10, and 11, to continue the N. R. A. activities or similar activities on a voluntary basis. He sent out, among other things, a circular asking said producers or manufacturers (the terms being used apparently interchangeably), to pledge themselves to aid him according to the plan he suggested for continuing the benefits of the N. R. A. Some producers responded and some did not. Respondent Covert succeeded in getting approximately 20 subscribers to his plan of operation who are the respondent lime producers named herein. They agreed to pay, and in most instances did pay, to him up to March 1, 1939, 5 cents per ton on all lime shipped by them and each of them, respectively, during the month preceding their said respective payments. There was a similar charge made under the N. R. A.

PAR. 5. For more than 3 years prior to the commencement of this proceeding, respondent lime producers, except Green Bag Cement Co. of West Virginia, their officers, agents and employees, engaged in a wrongful and unlawful combination and conspiracy among themselves, for the purpose and with the effect of substantially suppressing and frustrating competition as to price and otherwise in the sale of lime in commerce among various States in which said respondent lime producers do business. To that end said respondent lime producers, by concerted action, agreement, and understanding among themselves and with others not joined herein as respondents, adopted and carried out, among others, the following policies, rules, practices, and methods of competition, to wit:

Said respondents continued in effect by agreement, understanding, and concerted action among themselves a system of non-competitive delivered prices that was embodied in an express agreement among them during the period that a Code for the industry was in operation under the National Industrial Recovery Act. Said system of delivered prices was designed to prevent, and did in many instances prevent, differences in the cost freight delivery between various producers' plants and the respective places of delivery from creating any advantage or disadvantage to a purchaser or purchasers in delivered cost without regard to which of the respondent lime producers the intending purchaser or purchasers might apply. Said system of identical delivered prices was predicated upon the use of a number of so-called basing points as herein elsewhere named, whereby all delivered prices were calculated as though shipments were made by rail from a single basing point or points having a common or the same freight rate to respective destination or destinations.

Respondent lime producers employed and operated a cooperative system of filing and exchanging among themselves through respondent Covert the base prices applicable to the respective basing points, but it was understood and agreed among respondent lime producers that quotations and sales would be made only on a delivered price basis by adding to such understood or agreed common mill base prices the rail freight on said lime so shipped from the applicable basing point to destination.

This cooperative system of filing and exchanging among respondent lime producers the base prices applicable to the respective basing points through the medium of respondent Covert in effect carried over and continued in operation practices which had been carried on under the said N. R. A. code. Respondent Covert undertook to carry out, so far as he was able, the services which he had rendered as district secretary under the N. R. A. Up to March 1, 1939, the subscriber respondents to Covert's service agreed to send to Covert's office in Knoxville, Tenn., their published quotations on lime f. o. b. their respective plants, and Covert in return was to, and did, distribute this and other information to the other subscribers to the said service or association. Meetings of subscribers were called by respondent Covert at irregular but frequent intervals in various places in various States. Bulletins were sent out by Covert as a result of these meetings and the discussions had at these meetings, but no formal minutes and very few notes were kept of these proceedings.

Respondent lime producers also employed and operated a cooperative system of calculating and circulating among themselves through

respondent Covert a compilation of freight rates from the respective basing points herein named to various destinations in order to insure that the differences in the actual freight from said respective shipping points to a given destination and differences in the interpretation and application of freight tariffs would not create differences in the delivered price at any given destination as quoted and charged by respondent lime producers.

Respondent lime producers in many instances agreed among themselves or with respondent Covert that the prices, terms, and conditions of sale filed with respondent Covert and distributed among the producers should be adhered to without deviation until other prices, terms, and conditions of sale were likewise filed and distributed among said respondent lime producers. Printed price lists showing delivered prices at various delivery points were distributed by respondent Covert for use of respondent lime producers and were calculated according to and upon the agreed base price plus the applicable freight rates from the nearest basing point theretofore agreed upon. Respondent lime producers in numerous instances sought the advice of their said representative, respondent Covert, as to whether they should meet lower prices quoted by non-respondent producers of lime. Said respondent Covert endeavored from time to time to induce, and has induced, respondent lime producers not to reduce their prices to meet the lower prices of non-respondent lime producers and not to meet lower prices filed with him by certain of respondent lime producers.

Information relative to published base prices of competitors, freight rates, lime market conditions, and other similar matters was furnished by respondent Covert not only to his own subscribers, but also, through the secretaries of lime associations in so-called "outside territory," to competitors located north of the Ohio River and west of the Mississippi. Covert published the delivered prices for lime in various sections of the country, together with changes in the market conditions and volume of sales, and kept his subscribers and others advised of changes in freight rates and in the published prices for lime within and without the southeastern area.

Respondent lime producers made and carried out an agreement or understanding among themselves and with respondent Covert that they would quote identical delivered prices, terms, and conditions of sale in sealed bids on invitations from municipalities, State and Federal Governments and failed or refused to quote other than delivered prices or their equivalent in making such bids.

Respondent lime producers have as a practice delegated to respondent Covert the function of forestalling and correcting any deviations from the price agreements and other agreements as herein referred to

in order to restrict or eliminate price competition among said producers. Pursuant to such delegation they reported to respondent Covert suspected deviations from the prices and terms agreed upon and caused him to make investigations of their complaints regarding such deviations. Respondent lime producers discussed such deviations among themselves and with producers suspected or charged therewith for the purpose and with the effect, in part, of obtaining renewed adherence to the agreements on and affecting prices. Both regular and special meetings of respondent lime producers and respondent Covert have been used by them as the occasions for discussing, making, amending, and renewing such agreements or understandings.

Respondent Covert was very active in suggesting to respondent lime producers the necessity of maintaining the published prices and other matters in regard to which respondent lime producers had passed resolutions at the various meetings above referred to. He issued numerous notices and bulletins from time to time to respondent lime producers, directing or urging them to maintain their published prices and in some instances to ignore the cuts or reductions of other manufacturers, including some of the respondent lime producers. Typical of these is the following circular issued by respondent Covert:

Riverton base is still $8.50; Knoxville base is now $9.00, but the above earlier price will only apply as long as all manufacturers observe it.

He had practically a 100-percent response from respondent lime producers to the effect that they intended to observe the lime industry base prices and terms and would notify him of any proposed changes.

In December 1937 the respondent Riverton Lime & Stone Co. announced a reduction of $2.00 per ton on its lime. Respondent Covert at once took up with Judge A. C. Carson, an officer of the Riverton Co., the matter of restoring the price to $9.00, which respondent Riverton Co. shortly thereafter did.

On other occasions respondent Covert wrote letters or held consultations with other respondent lime producers with a view to maintaining the published prices.

On March 1, 1939, respondent lime producers and others organized the Southern Lime Institute, a corporation organized under the laws of Georgia.

Respondent lime producers agreed among themselves upon a uniform premium or addition to the price to be charged for delivery in less than carload lots of less than 15 tons as compared with the price for 15 or more ton carload lots, said premium being $1.00 per ton additional for all shipments of less than 15 ton carload lots.

Respondent lime producers agreed among themselves and with respondent Covert, and with certain non-respondent lime producers

located in other sections of the country that when selling into territory, or sections of the United States outside of those where respondents' basing point prices controlled the delivered prices, they would recognize, adopt and sell according to the delivered prices prevailing in such other respective territories or sections. Respondent Covert on behalf of respondent lime producers exchanged information as to basing point prices, freight rates from basing points and delivered prices with persons providing services similar to those of respondent Covert for the lime producers in certain other districts or sections of the United States for the purpose and with the effect of inducing reciprocal adherence to the delivered prices prevailing in all of the respective districts, including the said southeastern territory in which respondent lime producers operate.

Respondent Covert and some of the respondent lime producers have undertaken or attempted to agree among themselves as to what concerns should be recognized as jobbers and dealers and thereby entitled to purchase lime at jobbers' and dealers' prices, terms, and conditions of sale; and have compiled and circulated lists of such recognized jobbers and dealers in order to facilitate the execution of said agreement.

Respondent lime producers made an agreement among themselves as to the amount of compensation to be allowed their respective dealers when bidding upon the requirements of municipalities, State and Federal Governments and other large consumers, and agreed upon a uniform differential between the prices to dealers and the price to contractors, said amount being usually 50 cents for each ton of lime when sold, deducted from the price quoted by respondent lime producers.

Respondent lime producers agreed with their respective dealer customers as to the prices to be quoted by such dealers when bidding on lime to be purchased by municipalities, State and Federal Governments, to wit, the price quoted the dealer by the respondent lime producer or producers.

PAR. 6. As a necessary result of respondents' agreement to use and their use of the above-described basing point system of delivered prices, respondent lime producers whose plants are not located at any basing point have frequently assessed and collected sums of money from their customers in the guise of freight charges but in amounts that are greater than the actual freight expense incurred by them and also on sales made for local use, assess and collect such sums when there is no actual freight expense incurred.

PAR. 7. The system or method of respondent lime producers, as hereinabove set out, results and has resulted in identical delivered

prices being quoted and charged to any given destination within the area hereinbefore described. It also results and has resulted in varying net prices received by the producers at the plant depending upon the freight rate from the respective plants to the various and respective points of destination which had to be absorbed. Consumers of lime in Ocala, Fla., who purchase from the Dixie Lime Products Co., hereinafter called Dixie Co., and the Florida Lime Products Co., hereinafter called the Florida Co., (two of the respondents having plants located within a few miles of the city of Ocala, Fla.) pay the identical delivered prices for the lime so purchased, as the prices they would be charged by other lime producers located within the Keystone area consisting of the States of Florida, part of Georgia, and Alabama, as herein described; that is, the prices charged by the said Dixie Co. and the Florida Co. are the identical lime prices quoted at the Keystone, Ala., plant plus the freight rate from Keystone, Ala., to Ocala, Fla., or any other point of destination nearby the location of the said local plants. This practice is followed even though the actual delivery is made by truck or rail over a few miles journey from respondents' plant to point of destination at Ocala. As an illustration of how this practice enables a producer close to the point of delivery to collect "phantom freight," the net mill price realized by respondent Dixie Lime Products Co. in its sales to consumers at Tampa, Fla., amounted to $11.00 or more per ton during a period of years, when the base price was only $9.00 a ton, a clear net extra profit of $2.00 or more per ton due solely to its use of the "lowest combination" system followed by it in common with other respondent lime producers.

Nearby purchasers of lime from the Ladd Lime & Stone Co. located near Cartersville, Ga., pay the identical price for lime as they do, or would do, to respondent lime producers who are located anywhere within the said Keystone area, the said prices being arrived at in a similar manner to that made use of by the Dixie and Florida companies aforesaid. This same method of quoting and charging similar prices applies generally throughout the said Districts 10 and 11 herein elsewhere defined. The aforesaid prices are fixed and charged without regard to how far or how near the respondent lime producer quoting the price is located from the purchaser or purchasers and without regard to whether the actual freight rate from said points is less or more than the basing point freight rate from the said Keystone to the respective points of destination. The same methods obtain, and have obtained, as to sales by respondent lime producers in which basing points in the said southeastern area (other than Keystone) are made use of in computing the prices charged.

Respondent lime producers, whose plants are located in Virginia, when quoting prices in territories outside of Virginia and in the basing point areas of the Keystone, Sherwood, or Knoxville basing points aforesaid, always quote their uniform base price plus the freight from the nearest of the aforesaid bases to the point or points of destination. This practice is known in the lime trade as the "lowest combination."

PAR. 8. Respondent lime producers have continued in effect by agreement, understanding and concerted action among themselves a system of noncompetitive delivered prices. All of said producers have utilized a basing point system of pricing their products with the exception of agricultural lime sold through pickups to consumer purchasers at the location of the plant itself. Within the southeastern territory involved in this proceeding the basing points used are Riverton, Va., Knoxville, Tenn., Sherwood, Tenn., and Keystone, Ala., and the delivered prices to consumers or dealers are quoted as based upon the agreed prices at the different plants plus the freight rate from the nearest of the above basing points to points of delivery. As the "lowest combination" base price plus freight determined the delivered price of lime, identical prices were, in practically all cases, quoted to intending purchasers by the various respondent lime producers and other producers within and without the South. Some or all of respondent lime producers submitted identical bids to municipalities in the following instances:

In Knoxville, Tenn., in 1936, the four low bids submitted to the city of Knoxville were $9.288 per ton. The bids received by the city of Knoxville for several years were all identical, so finally the city did not ask for bids.

After the year 1936, the city of Tampa, Fla., bought lime on the open market because they got identical bids under the previous tenders. In 1934, there were eight identical bids at $12.42 per ton. In 1935, there were five identical bids by respondent lime producers at $12.62 per ton. In 1936, there were 15 identical bids at $13.12 per ton. One of the respondent companies in 1936 bid directly to the city of Tampa at $13.12 a ton and also through a local dealer at the same price in order to get double representation so that if the names were drawn out of a hat they would have a better chance. The practice in bidding on Tampa, Fla., requirements was to take the base mill price of the Keystone group and add the freight from Keystone, Ala., to Tampa, Fla.

The bids to the city of Atlanta for the year 1936 were all identical and the contract was awarded one car to each of 10 identical bidders

to be ordered as needed. The 10 names were put in a hat and drawn out, one at a time.

In bids for the city of Miami, Fla., requirements for the year 1937, five low bids were identical at $14.36. For the year 1938, eight were identical at $14.89.

The bids for the supply of hydrated lime to the city of Charlotte, N. C., for water purification purposes were identical for 1936 and several years subsequently, and in 1936 the successful bidder was decided by placing the names of all bidders in a hat and a councilman drawing out one name, because they were identical.

The municipalities of Winston-Salem, N. C.; Durham, N. C.; Norfolk, Va.; and Cincinnati, Ohio, received identical bids from respondent lime producers for several years and said cities did not receive the benefit of price competition in the purchase of lime for said years.

It has been a practice of respondent lime producers to submit identical bids in other cities in the said southeastern territory.

Some of the respondent lime producers maintain their own traffic department where complete freight information is kept up to date and are not dependent on and do not use the freight rate information disseminated by respondent Covert.

Municipalities often prefer, and have preferred, to buy from local dealers who are taxpayers and voters of their respective municipalities although manufacturers occasionally quote directly. The bidding is generally done by and through local dealers. Such dealers were not allowed to or did not in fact quote prices below the price fixed for them by the manufacturer or respondent they represented. In the sale of municipal lime, the contracts are usually entered into between the city and the local dealer. The lime is shipped by manufacturer to the place designated by the city. The city then pays dealer who deducts 50 cents per ton and remits the balance to the manufacturer. As price uniformity prevailed, attention was in some instances paid by the municipalities to the quality of the different respondents' products. In passing upon bids submitted, there was in most instances a local ordinance or practice which required the municipal authorities involved to accept the lowest bid which met the specifications.

PAR. 9. In addition to the foregoing, there were other identical price changes made and practices followed by respondent lime producers as a result of the said agreements and understanding.

A resolution was passed at a meeting of respondent lime producers held in Atlanta, Ga., providing for the listing of all jobbers and distributors with Secretary Covert. A notice was sent out by respondent Covert announcing no jobbing commissions were to be given without

supporting affidavits agreeing to strict adherence by respondent lime producers to published prices. Strict adherence was obtained to manufacturers' prices as is herein elsewhere set out in detail. There was an agreement at the meeting of respondent lime producers that resale commissions to dealers should be fixed at 50 cents per ton and 5 cents per barrel upon lime sold by dealers, agents or jobbers. This agreement was also generally followed by respondent lime producers.

In September 1935, there was a meeting held at Atlanta, Ga., called and attended by respondent lime producers or a majority of them. Shortly thereafter and as a result of action taken at said meeting, all respondent lime producers simultaneously raised their prices from $8.50 to $9.00 per ton for future deliveries. This agreed advance was thereafter followed by all respondent lime producers in making actual sales and remained in effect for some years as the consistent practice of all or a majority of respondent lime producers. There was some variation, however, in prices in the State of Virginia. In the latter part of December 1939, or in the early part of January 1940, the majority of the respondent lime producers published new base prices to be in effect immediately thereafter, to wit, January 15, 1940. The prices so published have remained in effect from that date to the date of the hearings in this proceeding. In substantially all instances this rise of base prices amounted to $1.00 over the price formerly charged by the respective lime producers.

PAR. 10. The said practices and methods as to the fixing and quoting of prices of lime by the respondent lime producers in Southeastern districts, as herein named, have also resulted in purchasers in many instances within said territory having to pay higher prices for lime than persons purchasing similar amounts of lime have had, or would have had, to pay at points located out of the said Southeastern territory. For example, lime which is produced in Florida a few miles from Ocala, as heretofore referred to, sells or has sold in Ocala for $14.00 a ton whereas lime was sold and delivered in the city of St. Louis for the years 1936 to 1940 at approximately $8.00 a ton with the trend of prices in said city sharply downward from and after January 1939. On and after January 1, 1940, lime similar to that which was sold at Ocala for $14.00 was sold to the city of St. Louis for $4.89, delivered. The Peerless Lime Company located near St. Genevieve, Mo., received a higher net mill price, to wit, $6.95 per ton, when bidding in the Southeastern territory and by reason of adopting the same methods as described aforesaid, than it received in making deliveries to nearby points in the neighboring State of Illinois, in which latter instance its net mill price was $5.15 per ton. As a result of the said method of price fixing herein else-

where set out, Missouri lime producers can and do sell and ship to purchasers at Charleston, S. C., and certain other points in the Southeastern territory and have and do obtain a net mill price or prices that are, after deduction of freight, higher than the net price or prices obtained within a few miles of the location of their respective plants and as a further result certain producers outside of the Southeastern territory have made a practice of adopting, and have adopted in many instances, the same system of arriving at prices as that used by respondent lime producers as herein elsewhere described, in the said Southeastern territory. While prices for lime have been decreasing in and near St. Louis, Mo., and in other points outside of said Southeastern area, the lime prices in said Southeastern area have increased since the Schechter decision hereinbefore referred to.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of lime 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 lime paid by the purchasers thereof and consequently the prices paid by the public; have created in the respondents a monopoly in the sale of lime in such commerce; have unreasonably restrained such commerce in lime and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint and amended complaints of the Commission, the answers of respondents, testimony and other evidence taken before Randolph Preston, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and amended complaints, and in opposition thereto, report of the trial examiner thereon, exceptions to said report, briefs of the attorneys for the Commission and respondents, and oral arguments by Curtis C. Shears and Merle P. Lyon, attorneys for the Commission, and by Abram F. Myers and Edgar Watkins, attorneys for the respondents, and the Commission having made its findings as to the facts and its conclusion that all of said respondents except Green Bag Cement Co. of West Virginia have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Pine Hill Lime & Stone Co., Southern States Lime Corporation, Gager Lime Manufacturing Co., Knoxville Lime Manufacturing Co., Longview-Saginaw Lime Works, Inc., Cheney Lime & Cement Co., Ladd Lime & Stone Co., Virginia Lime Products Co., Inc., Kimbalton Lime Co., Inc., Eagle Rock Lime Co., Williams Lime Manufacturing Co., Florida Lime Products Co., Inc., Dixie Lime Products Co., Keystone Lime Works, Inc.; M. J. Grove Lime Co., Ripplemead Lime Co., Inc., Riverton Lime & Stone Co., Jesse Allen Lime Co., corporations, George L. Scott, Sr., an individual, trading as Alabaster Lime Co., and Hal S. Covert, both separately and as representatives of each other, and their officers, representatives, agents, and employees, directly or through respondent Hal. S. Covert or through any corporate or other device, in connection with the offering for sale, sale and distribution of lime in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from continuing, entering into, carrying out, or aiding or abetting the carrying out of, any agreement, understanding, combination or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and any other persons, partnerships or corporations, for the purpose, or with the effect of restricting, restraining or monopolizing, or eliminating competition in, the purchase or sale in said commerce of such product, and from doing and performing by cooperative or concerted action, agreement or understanding between any two or more of them or between any one or more of them and other persons, partnerships or corporations, the following acts and things:

(*a*) Fixing, establishing, quoting, or maintaining delivered prices to any given point of delivery, predicated upon the use of basing points, by the use of which all delivered price quotations are calculated as though shipments are made by rail from a single point or points having a common freight rate to destination.

(*b*) Filing or exchanging among themselves or with others the base prices applicable to the respective basing points, and adhering or agreeing to adhere to specific basing points and specific basing point prices.

(*c*) Making quotations and sales of their said products upon a delivered basis only, with freight equalized from their respective shipping points, wherever the cost of their said products to any given buyer, when delivered from any point, is thereby made identical at any given destination, regardless of variations in freight from different places of production and shipment.

(*d*) Promising to adhere to filed prices, terms, and conditions of sale for their said products.

(*e*) Pursuant to any promise, assurance, or understanding, adhering to filed prices, terms, and conditions of sale in the making of quotations or sales of their said products.

(*f*) Fixing or establishing prices, terms, and conditions of sale at which they will sell lime to the purchasing public, and fixing or maintaining uniform prices, terms, and conditions of sale for such products.

(*g*) Compiling and circulating among themselves or others lists of freight rates from various basing points to various destinations in order to insure that differences in the actual freight from actual shipping points to a given destination and differences in the interpretation and application of freight tariffs will not create differences in the delivered price at any given destination.

(*h*) Submitting identical delivered price quotations, terms, and conditions of sale in sealed bids or other bids on invitations from municipalities, State or Federal Governments, or refusing to quote other than delivered prices or their equivalent in making such bids.

(*i*) Entering into, participating in, or carrying on, through respondent Hal S. Covert or under his auspices or direction, or through any central agency, meetings, or otherwise, discussions and exchanges of information concerning proposed or future prices, terms, and conditions of sale at which they will quote or sell lime to the purchasing public.

(*j*) Fixing or increasing the price to be charged for delivery in carload lots of less than 15 tons as compared with the price for larger carloads by adding thereto a uniform premium or surcharge.

(*k*) Collaborating or exchanging price information with trade associations composed of lime producers located in other sections of the United States, but who sell lime in the territory served by said respondent producers east of the Mississippi River and south of the Ohio and Potomac Rivers, for the purpose and with the effect of restricting and restraining competition as to prices, terms, and conditions of sale of said products in said territory.

(*l*) Collaborating or exchanging price information with trade associations composed of lime producers located in other sections of the United States, for the purpose and with the effect of recognizing, adopting, or selling their lime products according to delivered price quotations prevailing in other sections of the United States west of the Mississippi River and north of the Ohio and Potomac Rivers, when offering for sale or selling their said products in such "outside" territory and thereby restricting and restraining competition as to prices, terms and conditions of sale of said products in such "outside" territory.

(*m*) Exchanging information as to basing point price quotations, freight rates from basing points, and delivered price quotations with trade associations composed of lime producers located in other sections of the United States, for the purpose or with the effect of inducing reciprocal adherence to the delivered price quotations prevailing in the respective districts.

(*n*) Determining what concerns shall be recognized as dealers and jobbers and thereby entitled to purchase lime at jobbers' and dealers' prices, terms, and conditions of sale, or compiling or circulating lists of such recognized jobbers and dealers.

(*o*) Establishing or allowing uniform discounts, commissions, or compensation to their respective dealers when bidding upon the requirements of municipalities, State or Federal Governments or other large consumers, or establishing or allowing a uniform differential between the price to dealers and the price to contractors.

(*p*) Exchanging among themselves or with their dealer customers, in advance of the submission and opening of sealed bids on Federal, State and municipal requirements for lime products, the prices which they propose to quote in such bids.

(*q*) Fixing, establishing, or maintaining prices to be quoted by their dealer customers when bidding on lime to be purchased by municipalities, State or Federal Governments or other large consumers.

(*r*) Employing the respondent Hal S. Covert or any other person, partnership, or corporation, to act as an agency for putting into effect or carrying out, directly or indirectly, any of the policies, rules, practices, or methods of competition prohibited by this order; or adopting or taking any other concerted or cooperative action to carry out or make effective the acts and things prohibited by this order.

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to respondent Green Bag Cement Co. of West Virginia.

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

Syllabus

IN THE MATTER OF

I. BURMAN, DOING BUSINESS AS BURTLEY COMPANY

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

Docket 3665. Complaint, Dec. 16, 1938—Decision, June 30, 1941

Where an individual engaged in interstate sale and distribution of his "Marrilis" drug or cosmetic preparation for use in the removal of excess weight through application to the body, followed by immersion in a hot bath, and theory of which was that such coating closed the pores and prevented their taking into the body the usual amount of oxygen, and that the result and efforts of the body to supply its own oxygen from the system produced increased heat and heavy perspiration, leading to the burning up of fat and consequent reduction in weight;

In advertising his said product in newspapers of general circulation, advertising circulars and other pieces of advertising literature supplied to and distributed by department stores and other business establishment, to which he furnished demonstrators and sales persons to assist in the sale thereof, and in advertisements placed by said establishments in newspapers for which he supplied the copy or materials—

Represented, directly or by implication, that his preparation constituted an effective means and method whereby substantial reduction in body weight might be obtained, and that particular parts or areas of the body might be reduced in size and weight by application thereto without affecting other parts; and that preparation in question had been prepared or compounded by one of the world's leading cosmetic scientists;

The facts being that aforesaid theory upon which his product was based is not tenable, in that oxygen is not taken into the body through the skin in any appreciable amount, and it is impossible effectively to close or seal the pores through use of said preparation; said product was nothing more than an emollient ointment and possessed no value in removal of excess weight, favorable results apparently accomplished thereby being due to regulation of diet rather than use thereof; and while person referred to was a commercial chemist and consultant for certain cosmetic concerns, such facts did not constitute sufficient basis for representing him as one of the world's leading cosmetic scientists;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to said product and to cause it, because of the erroneous belief so engendered, to purchase substantial quantities thereof, with result that trade was diverted unfairly to him from his 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. John P. Bramhall*, trial examiner.

Mr. R. A. McOuat for the Commission.

Mr. Maxwell Stettner, 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 I. Burman, an individual trading and doing business as Burtley 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, I. Burman, is an individual trading and doing business as Burtley Co. with his office and principal place of business at 245 Fifth Avenue, New York, N. Y. For more than 2 years last past, respondent has been, and still is, engaged in the business of preparing for sale and selling, under the trade name of "Marrilis," a drug or cosmetic to be used as an external application for the purpose of reducing weight of the human body. Respondent causes said preparation when sold to be transported from his aforesaid place of business in the city of New York, State of New York, to 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 times herein mentioned has maintained, a course of trade in said preparation 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 engaged in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with other individuals, and with firms, partnerships, and corporations selling and distributing medicinal and other preparations and products designed and intended for, and used in, the treatment of obesity and the removal of excess weight from the human body. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products or the therapeutic properties thereof.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has and does now cause to be disseminated, false advertisements for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of respondent's said preparation. Said false advertisements were, and are, disseminated by use of the United States mails, and by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of

the United States. Various means have been, and are, used by the respondent to disseminate or cause the dissemination of said false advertisements for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase in commerce among and between the various States of the United States of respondent's said preparation. Among, and typical of, the statements and representations contained in said false advertisements so used and disseminated as aforesaid are the following:

"WASH AWAY" Excess Weight

This Amazing New Way

"MARRILIS" Weight Reducer

No Diets—No Exercises—No Massages

No Steam Rooms

It's almost unheard of . . . a really effective reducing preparation at such a minimum expenditure.

Sold with money-back guarantee

MAIL AND PHONE ORDERS FILLED.

* * * No complicated directions, simply apply a thin coat over the entire body or only over the part to be reduced, such as the hips, thighs, legs, chin or any other "spot"—take a warm bath and relax in bed for a short period. *That's all!* * * *

The "Marrilis" Method of Weight Reducing, as prepared by one of the world's leading cosmetic scientists, is remarkable in its ease of application. * * * Elimination of waste matter, fatty particles and excess water by perspiration is a natural function of the body which "Marrilis" speeds up without the weakening results and the high temperatures formerly used. * * * "Marrilis" with the aid of the sun's rays, will bring on perspiration considerably faster, and aid in the elimination of waste and fat through the skin.

* * * Test cases have shown that it is possible to lose from one to four pounds after the first application. That fact, coupled with the additional security that it has been found to be absolutely harmless makes it a boon to those who are looking for a slim, svelte figure and for the special reduction of certain "spots."

PAR. 4. Through the use of said statements and representations hereinabove set forth, and others similar thereto, not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in reducing weight of the human body, respondent has represented that his preparation is prepared by one of the world's leading cosmetic scientists; that it will cause a definite and substantial loss of body weight at the "spot" applied; will reduce weight from 1 to 4 pounds after each treatment by naturally and scientifically eliminating fatty particles, surplus water and waste from the human body through

the skin; and that tests have been made which demonstrate the truth of the foregoing representations.

PAR. 5. The aforesaid representations used and disseminated by the respondent in the manner above described, are grossly exaggerated, deceptive, misleading, and untrue, and constitute false advertisements, and induce or are likely to induce, directly or indirectly, the purchase of respondent's preparation. In truth and in fact, "Marrilis" is not prepared by any leading cosmetic scientist; the use of said preparation will not cause any reduction in weight anywhere in the human body; the effectiveness of any weight-reducing system, scheme or method is not enhanced in any way by the use of respondent's product. "Marrilis" is composed of spermaceti, paraffin oils, ozokerite, petroleum oils, and petrolatum. Respondent's preparation, when applied to the skin, serves merely as an emollient ointment.

Respondent's claims as to the value of efficacy of said preparation in the treatment of obesity or the removal of excess weight of the human body are grossly exaggerated, false, and deceptive, and greatly exceed any claims as to the value and efficacy of said preparation which might truthfully be made.

PAR. 6. The use by the respondent of the foregoing false, misleading, and deceptive statements, representations, and advertisements disseminated as aforesaid with respect to said preparation has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that respondent's said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

As a result, trade has been diverted unfairly to the respondent from his competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations and products, as described in paragraph 2 hereof. In consequence thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 16, 1938, issued and thereafter served its complaint in this proceeding upon respondent I. Burman, an individual, trading and doing business as Burtley 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 the complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by R. A. McOuat, attorney for the Commission, and in opposition to the allegations of the complaint by Maxwell Stettner, attorney for the respondent, 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 complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions thereto, and brief in support of the complaint (respondent not having filed brief and oral argument and 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, I. Burman, is an individual trading and doing business as Burtley Co., with his office and principal place of business at 245 Fifth Avenue, New York City, N. Y. He is now, and since 1937 has been, engaged in the sale and distribution of a drug or cosmetic preparation designated as "Marrilis" and intended to be used for the purpose of removing excess weight from the human body.

In the course and conduct of his business, the respondent causes, and since 1937 has caused, his 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 since 1937 has maintained, a course of trade in his preparation 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 cor-

porations, firms, and partnerships 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 medicinal preparations and other products designed and intended for the removal of excess weight from the human body.

PAR. 3. In the course and conduct of his business, the respondent has advertised his product by various means, including the sending of letters, circulars, and other advertising material through the United States mails. He has also inserted advertisements in newspapers having a general circulation among and between various States of the United States. A further method used by the respondent has been the supplying to department stores and other business establishments of demonstrators and sales persons to assist in the sale of his product by such stores and other establishments. In connection with this method of operation the respondent has supplied such retail establishments with advertising circulars and other pieces of advertising literature, which have been distributed by such establishments among purchasers and prospective purchasers of respondent's product. Respondent has also cooperated with such retail establishments in the placing of advertisements in newspapers, the copy or materials for such advertisements being supplied to such establishments by the respondent. All of the advertisements disseminated and caused by the respondent to be disseminated were for the purpose of inducing and were likely to induce, directly or indirectly, the purchase of respondent's product in commerce, as commerce is defined in the Federal Trade Commission Act.

Certain of the advertising material formerly used by the respondent in promoting the sale of his product was discontinued about March 1938. Among and typical of the representations used by respondent prior to March 1938 are the following:

No Diets, No Exercises, No Massages, No Steam Rooms

We have known women to lose from one to four pounds after each treatment easily, quickly and comfortably by naturally and scientifically eliminating fatty particles, surplus water and waste—the principal cause of excess weight.

Don't envy a SLIM figure. Slenderize healthfully with MARRILIS REDUCING METHOD. It reduces abdomen, double chin, legs, thighs, hips, arms. Test cases prove that it is possible to lose from 1 to 4 pounds after each application of "Marrilis" Ointment . . . and it is as simple as it is effective.

The "Marrilis" Method of Weight Reducing, as prepared by one of the world's leading cosmetic scientists, is remarkable in its ease of application. * * *. Elimination of waste matter, fatty particles and excess water by perspiration is a natural function of the body which "Marrilis" speeds up without the weakening results and the high temperatures formerly used * * *. "Marrilis" with the aid of the sun's rays will bring on perspiration considerably faster and aid in the elimination of waste and fat through the skin.

It's almost unheard of . . . A really effective reducing preparation at such a minimum expenditure. It's easy and comfortable to use . . . applied externally . . . no special skill necessary. Test cases have shown that it is possible to lose one to four pounds after the first application. It has been found to be absolutely harmless.

For Special Reduction of . . . Hips—Thighs—Abdomen—Legs—Twin Chins & Other "Spots."

It is, of course, best to use "Marrilis" over the entire body and induce elimination in its entirety. But if your problem is one where you merely desire to reduce in spots such as the legs, thighs, a bulging abdomen, the chin, or perhaps only the arms, then apply "Marrilis" to these parts only. Follow the same tub bath procedure as if the treatment was given to the entire body. * * *.

With the application of Marrilis system you can discard reducing girdles, corsets, hip reducers, bust reducers, etc. In a much shorter time a youthful figure is obtained with maximum of comfort. Elimination of waste matter, fatty particles and excess water by perspiration is a natural function of the body which "Marrilis" speeds up without the weakening results and the high temperatures formerly used.

Among and typical of the representations used by respondent subsequent to March 1938 are the following:

* * * No complicated directions, simply apply a thin coat over the entire body or only over the part to be reduced, such as the hips, thighs, legs, chin or any other "spot"—take a warm bath and relax in bed for a short period. That's all!

Don't Envy a SLIM Figure! Slenderize Healthfully with MARRILIS REDUCING METHOD

It Reduces

Abdomen	Double Chin
Legs	Thighs
Hips	Arms

Test cases prove that it is possible to lose from 1 to 4 pounds after each application of "Marrilis" Ointment . . . and it is as simple as it is effective.

That fact, coupled with the additional security that it has been found harmless, makes it a boon to those looking for a slim, svelte figure.

Applied to body before taking bath. Why not try it now and lose that excess poundage!

PAR. 4. The Commission finds that through the use of these representations, and others of a similar nature which are not specifically set forth herein, the respondent has represented, directly or by implication, that his preparation constitutes an effective means and method whereby substantial reduction in body weight may be obtained; that by the application of the preparation to particular parts or areas of the body, such parts or areas may be reduced in size and weight without affecting the weight of other parts of the body; and

that the preparation has been prepared or compounded by one of the world's leading cosmetic scientists.

PAR. 5. Respondent's preparation is composed of spermaceti, paraffin oils, ozocerite, petroleum oils, and petrolatum. The directions prescribed by respondent for the use of the preparation are as follows:

Apply sparingly a very thin coat of "Marrilis" all over body, face and legs. Take a tub bath. Make certain the whole body is immersed, including wrists. The water does not have to be too hot . . . just comfortable. In perhaps five to ten minutes you will note that perspiration is freely flowing from the face. Stay in the bath another ten or fifteen minutes. Then, while still wet, wrap yourself in a sheet and go to bed. Keep warmly covered . . . Relax . . . (In which case the perspiration will continue) for about a half hour. After this, cool off gradually . . . You may now take another tub or shower washing off the perspiration and Marrilis from your entire body. Weigh and measure yourself before and after each treatment. For Sun Bathing apply over entire body wearing as little clothes as possible. Follow this with a shower or tub bath.

PAR. 6. The theory upon which respondent bases his claims for his product was outlined substantially as follows by one of the witnesses testifying in his behalf. By coating the body with a film of the preparation the pores of the skin are closed or sealed. The film inhibits or prevents the effective working of the pores and prevents the pores from taking into the body the usual or normal amount of oxygen. The body is compelled to make up for this loss of oxygen and it undertakes to supply its own oxygen from the system. It breaks up its own fat, which it burns as carbohydrates, and in this way supplies its own oxygen. This increased chemical activity produces increased heat in the body. The heart and circulation are stimulated to greater activity. There is a great pouring out of perspiration. It is this pouring out of perspiration and the burning up of the fat which produce the reduction in weight.

PAR. 7. The expert testimony introduced at the instance of the Commission shows, and the Commission finds, that this theory is not tenable. It is at variance with the consensus of generally accepted and recognized medical opinion. Oxygen is not taken into the body through the skin in any appreciable amount. Moreover, it is impossible effectively to close or seal the pores of the skin through the use of respondent's preparation.

PAR. 8. The attempted reduction of weight through the stimulation of perspiration is a frequent occurrence. To generate the heat required to stimulate perspiration, hot baths, steam rooms, electric cabinets, etc., are used. Any reduction of weight obtained in this manner, however, has been found to be only temporary, as an excessive thirst is developed by the patient during the process, and any weight which

may have been lost is restored almost immediately by the drinking of large quantities of water or other beverages.

The consensus of medical opinion is that the external application of preparations such as respondent's is wholly ineffectual in reducing the weight of the body. The Commission is of the opinion from the evidence, and finds, that the use of respondent's preparation adds nothing to any results which might be obtained from the ordinary heat method of stimulating perspiration. The preparation is in fact nothing more than an emollient ointment. It possesses no value in the removal of excess weight from the body or from any particular part or area of the body.

Respondent introduced as witnesses two physicians, two physiotherapists, and a masseuse, all of whom testified that they had used respondent's preparation and had observed its effect upon others, and that the results obtained from its use were more substantial than the results usually obtained from the ordinary method of inducing perspiration through the application of heat alone. Several members of the public also testified that they had used the preparation and had obtained favorable results in the reduction of their weight. In practically all of these cases, however, there was more or less regulation of the diet in addition to the use of respondent's treatment, and the Commission is of the opinion that any reduction in weight obtained by the witnesses was due to the regulation of the diet rather than to the use of respondent's preparation. After careful consideration of this testimony, the Commission is of the opinion, and finds, that its probative value is insufficient to overcome the expert testimony introduced at the instance of the Commission and the consensus of medical opinion as disclosed by the record.

With respect to respondent's representation that his product was prepared or compounded by one of the world's leading cosmetic scientists, the evidence shows that this claim is based entirely upon the fact that the person referred to is a commercial chemist and is consultant for certain cosmetic concerns. The Commission is of the opinion, and finds, that these facts do not constitute a sufficient basis for respondent's claim.

PAR. 9. The Commission therefore finds that the representations of the respondent with respect to his preparation and its effectiveness in use, as set forth in paragraphs 3 and 4 hereof, are grossly exaggerated, false, and misleading, and constitute false advertisements.

PAR. 10. The Commission further finds that the use by the respondent of these representations and advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's preparation and

its effectiveness in use, and to cause such portion of the public to purchase substantial quantities of respondent's preparation as a result of the erroneous and mistaken belief so engendered. In consequence, trade has been diverted unfairly to the respondent from his competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John P. Bramhall, trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence and the exceptions thereto, and brief filed by R. A. McOuat, attorney for the Commission (respondent not having filed brief and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent I. Burman, individually and trading as Burtley 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 drug or cosmetic preparation designated "Marrilis," 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 value in the removal of excess weight from the human body, or from any particular part or area of 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.

It is further ordered, That the respondent, individually and trading as Burtley 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 said preparation, do forthwith cease and desist from:

Representing that said preparation has been prepared or compounded by one of the world's leading cosmetic scientists.

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

IN THE MATTER OF

PHILIP R. PARK, INC.

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

Docket 3815. Complaint, June 9, 1939—Decision, June 30, 1941

Where a corporation engaged in the competitive interstate sale and distribution of a dehydrated kelp product in powdered and tablet form designated respectively as "Granular Parkelp" and "Parkelp Tablets"; by advertisements in newspapers and periodicals and by circulars and leaflets, pamphlets and other advertising material and by radio broadcasts—

(*a*) Represented that its said preparation was rich in iodine, iron, calcium, and other minerals which were not present in land foods; would correct mineral deficiency, build resistance to mineral deficiency diseases, and furnish food minerals of value in combating goiter, anemia, and other mineral deficiency diseases; and contained iodine, iron, copper, calcium, phosphorus, sodium, potassium, magnesium, sulphur, and other minerals in quantities sufficient to have therapeutic value in the treatment and prevention of diseases or conditions resulting from a deficiency in such minerals, listing various diseases claimed to be thus caused; and

(*b*) Represented that the average diet of the American people is deficient in the minerals necessary for the proper functioning and health of the human body, and that vegetables such as lettuce, celery, asparagus, spinach, etc., are deficient in such necessary minerals;

Facts being that the only mineral appearing in its product in an amount that would be of therapeutic value was iodine; therapeutic value thereof was limited to the value of its iodine content, it being beneficial only in conditions resulting from an iodine deficiency and where administration of iodine was indicated; and its said preparation would not correct mineral deficiency, build up resistance to mineral deficiency diseases, or furnish food minerals other than iodine in quantities sufficient to combat such diseases; and, contrary to its claims, all the other minerals listed are present in varying amounts in land foods and their average diet contains as much as health requires;

With capacity and tendency to mislead and deceive purchasers into the erroneous belief that such misrepresentations were true and into the purchase of substantial quantities of its product, with result that trade was unfairly diverted from its competitors to it:

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.

As respects effect of seller's dehydrated kelp product on mineral deficiencies or its therapeutic value in the treatment or prevention of anemia or other mineral deficiency diseases in human beings, testimony with reference to certain biological tests made upon rats to determine effect of said product in cases of anemia, was of little or no probative value, it appearing that there was no testimony on the relationship between the effect of such tests upon rats as compared with humans, or the relationship between the amounts ingested by the rats under test as compared with the amount

which would be ingested by human beings under the directions for use, and that while test in question was made specifically to determine effect of said product on anemia caused by an iron or copper deficiency, which commonly appears in rats fed exclusively on a diet of milk, anemia in humans caused by such a deficiency in the diet is very rare as compared with other recognized forms of said ailment.

Before *Mr. William C. Reeves* and *Mr. John W. Addison*, trial examiners.

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

PARAGRAPH 1. Respondent, Philip R. Park, Inc., is a corporation, organized, existing, and doing business under the laws of the State of California, with its principal place of business located at San Pedro, Calif. It is now, and for some time last past has been, engaged in the sale and distribution of a dehydrated kelp product in powdered and tablet form, designated, respectively, as Granular Parkelp and Parkelp Tablets, 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 San Pedro, Calif., to purchasers thereof located in the various States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar products, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false and misleading advertising concerning its said product, by United States mail, by inserting

the same in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by continuities broadcast from radio stations which have sufficient power to, and do, convey the program emanating therefrom to listeners located in various States of the United States other than the State in which 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 is likely to induce, directly or indirectly, the purchase of its said product.

Among and typical of the false statements and representations contained in said advertising, disseminated and caused to be disseminated as aforesaid, are the following:

1. Parkelp is amazingly rich in iodine, iron, calcium and other food minerals which land foods lack.

2. Builds resistance to mineral deficiency diseases.

3. *PALE GIRLS find sea plant better than rouge.* Girls who lack colorful lips and cheeks should know that their blood stream needs more of certain minerals. No amount of rouge can bring beauty that is truly glamorous and sparkling.

The romantic story of kelp—the wonder plant of the sea—reveals that it is a veritable storehouse of iron, iodine and those other minerals needed to attain mineral-rich blood, rosy cheeks, red lips and sparkling eyes.

For an aid to natural beauty, eat kelp—in its pure form—not mixed with anything else.

4. Kelp is today recognized as nature's richest source of essential food minerals for combating goiter, anemia and other mineral deficiency diseases.

5. If you need food iodine, food manganese and calcium, you will find Parkelp an easy, economical way to add these food minerals to your diet.

6. It is interesting to know that lack of food minerals in such land-grown vegetables as lettuce, celery, asparagus, spinach, etc., which form a part of our daily diet, often results in deficiency conditions of the body. You can add these important minerals and vitamins to your diet in an easy and economical way. Try Parkelp, a pure, deep sea kelp product that brings you food minerals from the sea.

7. There is a new and pleasant way of correcting this mineral and vitamin deficiency by using Parkelp—a pure deep-sea kelp product.

8. Kelp—a natural sea plant that is a source of important food minerals.

9. Many of our land-grown vegetables are lacking in food minerals and Parkelp will help you restore those minerals to your diet.

10. Those of you who feel that you need more food iodine, food iron and other minerals in your diet, you will want to try Parkelp—a pure deep-sea kelp product that is amazingly rich in food minerals which many of our land foods lack.

PAR. 3. The respondent, through the use of the aforesaid representations and others not herein detailed, represents that the diet of the American people is deficient in the minerals necessary for the proper functioning and proper health of the human body; that vegetables such as lettuce, celery, asparagus, spinach, etc., are deficient in these necessary minerals; that by the use of respondent's product, as above

described, the deficiency in iodine, iron, calcium, manganese and other minerals will be supplied; that the use of respondent's product will also correct the alleged vitamin deficiency of the human body; that it will prevent and relieve anemia; and that the use of the product is of great therapeutic value to all who will take it.

PAR. 4. In truth and in fact the statements and representations of respondent hereinabove set out with respect to its product are false and misleading in the following respects: The only one of the minerals appearing in said product in an amount that would be of therapeutic value to anyone needing the minerals is iodine. The amount of minerals other than iodine contained in respondent's product is not sufficient to produce the results claimed in respondent's advertising. The diet of the American people is not deficient in the minerals mentioned in respondent's advertising, nor are the vegetables therein referred to deficient in such minerals. Respondent's product will not prevent and relieve anemia. Said product is refractory to digestion and the minerals therein contained are not made available for assimilation. Said product will not produce the general beneficial effects claimed by respondent.

PAR. 5. There are among the competitors of respondent many other corporations and individuals and firms that manufacture, sell, and distribute products and preparations which contain some or all of the minerals contained in respondent's product, or other preparations designed for similar uses, in commerce, as hereinabove set out, that do not misrepresent the therapeutic value or efficiency of their products.

PAR. 6. The use by respondent in its advertising matter and otherwise of the representations set forth in paragraph 2 hereof had, and has, a capacity and tendency to, and did, and does, deceive and mislead prospective purchasers and purchasers of its product into the belief that such representations are true.

On account of such mistaken and erroneous beliefs, a substantial portion of the purchasing public has been, and is, induced to purchase said product Parkelp from respondent, and thereby trade has been, and is, unfairly diverted to respondent from competitors named in paragraphs 1 and 5 hereof. As a result thereof injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 9, 1939, issued and subsequently served its complaint on the respondent, Philip R. Park, 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 Robert Mathis, Jr., attorney for the Commission, and in opposition to the allegations of the complaint by Daniel Dougherty, attorney 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 this proceeding regularly came on for final hearing before the Commission on said complaint, answer thereto, testimony and other evidence, report of the trial examiners upon the evidence and exceptions filed 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 Philip R. Park, Inc., is a corporation organized, existing, and doing business under the laws of the State of California, with its principal place of business located at San Pedro, Calif. It is now and for some time last past has been engaged in the sale and distribution of a dehydrated kelp product in powdered and tablet form, designated respectively as "Granular Parkelp" and "Parkelp Tablets" in commerce among and between the various States of the United States and in the District of Collumbia. Respondent causes and has caused said products when sold to be transported from San Pedro, Calif., to purchasers thereof located 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 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 respondent is in competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of like or similar products in com-

merce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said product by United States 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. 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, pamphlets, and other advertising material and by continuities broadcast from radio stations which have sufficient power to and do convey the programs emanating therefrom to listeners located in the various States of the United States other than the State in which said broadcasts originate are the following:

1. That respondent's preparation "Parkelp" is rich in iodine, iron, calcium, and other minerals which are not present in land foods;

2. That respondent's preparation will correct mineral deficiency, build resistance to mineral deficiency diseases, and furnish food minerals of value in combating goiter, anemia, and other mineral deficiency diseases;

3. That respondent's preparation contains iodine, iron, copper, calcium, phosphorus, sodium, potassium, magnesium, sulphur, and other minerals in quantities sufficient to have therapeutic value in the treatment and prevention of diseases or conditions resulting from a deficiency in such minerals;

4. That respondent's preparation has therapeutic value in the treatment or prevention of the following mineral deficiencies and the diseases and conditions which are alleged by the respondent to result therefrom:

(*a*) Iodine deficiency, which may cause goiter, skin diseases, low vitality, neuritis, nervousness, overweight, and rickets;

(*b*) Iron deficiency, which may cause anemia, headaches, weakness, and asthma;

(*c*) Copper deficiency, which may cause anemia;

(*d*) Calcium deficiency, which may cause stomach trouble, rickets, and eczema;

(*e*) Phosphorus deficiency, which may cause rickets, subnormal growth, and mental exhaustion;

(*f*) Sodium deficiency, which may cause stomach trouble, rheumatism, kidney disorders, and bladder disorders;

(*g*) Potassium deficiency, which may cause acidosis, heart disorders, and constipation;

(*h*) Magnesium deficiency, which may cause underweight and skin diseases;

(*i*) Sulphur deficiency, which may cause constipation, blood disorders, and liver disorders;

5. That the diet of the American people is deficient in the minerals necessary for the proper functioning and proper health of the human body and that vegetables such as lettuce, celery, asparagus, spinach, etc., are deficient in these necessary minerals.

PAR. 3. Respondent's product Parkelp is composed of the following mineral ingredients:

	Percent		*Percent*
Iodine	0.186	Magnesium	0.740
Calcium	1.050	Manganese	0.00044
Phosphorus	0.339	Sodium	3.98
Iron	0.037	Potassium	11.15
Copper	0.008	Chlorine	13.07

The respondent recommends that ½ to 1 teaspoonful be taken three times daily, preferably before meals, or 3 to 5 tablets of 5 grains each before or with meals if the product is used in tablet form. There is no difference in the constituent ingredients of Parkelp in the powder or tablet form.

PAR. 4. The Commission finds that under conditions of use the only mineral appearing in respondent's product in an amount that would be of therapeutic value is iodine. The therapeutic value of respondent's preparation is limited to the value of its iodine content and is beneficial only in those conditions resulting from an iodine deficiency and where the administration of iodine is indicated. There is not a sufficient amount of iron, copper, calcium, phosphorus, sodium, potassium, magnesium, or sulphur to have any therapeutic value in the treatment of any mineral deficiency or any disease or condition resulting from such mineral deficiency. All of these minerals are present in varying amounts in land foods and the average diet contains a sufficient amount of such minerals as are necessary for the proper functioning and health of the human body. Respondent's preparation will not correct mineral deficiency; will not build up resistance to mineral deficiency diseases, and will not furnish food minerals other than iodine in quantities sufficient to be of value in combating mineral deficiency diseases.

PAR. 5. On the subject of the therapeutic value of respondent's preparation Parkelp the respondent introduced in evidence testimony with

reference to certain biological tests made upon rats to determine the effect of respondent's product in cases of anemia. There is no testimony on the relationship between the effect of such tests upon rats as compared with human beings, or the relationship between the amounts ingested by the rats under test as compared with the amount which would be ingested by human beings under the directions for use. Furthermore, the test is made specifically to determine the effect of Parkelp on anemia caused by an iron or copper deficiency which commonly appears in rats fed exclusively on a diet of milk. Anemia in human beings caused by a deficiency of iron or copper in the diet is very rare as compared with other forms of anemia recognized in human beings. Consequently the Commission is of the opinion and finds that the testimony with reference to the biological tests made by the respondent is of little or no probative value in connection with the effect of respondent's preparation on mineral deficiencies or the therapeutic value of its preparation in the treatment or prevention of anemia or other mineral deficiency diseases in human beings.

PAR. 6. The use by the respondent of the aforesaid false advertisements and misleading representations has the capacity and tendency to and does mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of substantial quantities of respondent's product. As a direct result thereof trade has been diverted unfairly to the respondent from its competitors who are likewise engaged in the sale and distribution of similar products in commerce among and between the various States of the United States.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, answer of the respondent, testimony and other evidence 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 and exceptions filed 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 Philip R. Park, 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 their products "Granular Parkelp" or "Parkelp Tablets," or any other 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 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 has any therapeutic value in excess of that afforded by the iodine content thereof;

(*b*) That respondent's preparation contains iron, copper, calcium, phosphorus, sodium, potassium, magnesium, sulphur, or other minerals in quantities sufficient to have therapeutic value in the treatment or prevention of diseases or conditions resulting from a deficiency in such minerals or that it will build resistance to mineral deficiency diseases or furnish food minerals other than iodine in quantities sufficient to be of value in combating mineral deficiency diseases;

(*c*) That respondent's preparation contains minerals which are not present in land foods or that the average diet is deficient in the minerals necessary for proper functioning and health of the human body.

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

Syllabus

IN THE MATTER OF

JOHN H. OESTERHAUS, TRADING AS FARMERS VACCINE & SUPPLY COMPANY

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

Docket 4137. Complaint, May 21, 1940—Decision, June 30, 1941

Where an individual engaged in competitive interstate sale and distribution of his "Abortion Vaccine" to render cattle immune to Bang's Disease; by means of advertisements disseminated through the mails and numerous newspapers and periodicals of general circulation, and by circulars, pamphlets, and other advertising literature—

(*a*) Represented, directly or by implication, that by the injection of his vaccine into each animal of a herd of cattle the entire herd and each treated animal was rendered immune to Bang's Disease, that these results might be obtained in all cases regardless of the age of the animal and of whether it was infected with said disease at the time of treatment, that the use of said preparation gave lasting protection and that animals treated therewith, although later exposed, would not become infected, and that a substantial degree of protection was afforded within 2 weeks after treatment was administered;

The facts being that his said preparation, in common with practically all others on the market for treatment of disease in question, was made of "Strain 19," used generally by veterinarians and stockmen for prevention of such disease; the value and effectiveness of the vaccine were limited chiefly to cases of calves of from 4 to 8 months of age, the treatment not being generally recognized as effective in the case of mature cattle and being possibly harmful, and being also ineffective as to cattle already infected; immunity afforded was not in all cases permanent and was lost by a substantial percentage of animals after a certain period; and no substantial degree of protection was usually afforded within 2 weeks after treatment; and said individual, for a substantial period of time, made no change in his advertising material—to certain of which, however, he attached advisory notice—to comply with the regulation of the Department of Agriculture of May 26, 1938, requiring that such vaccines should be recommended only for treatment of calves from 4 to 8 months of age;

(*b*) Represented that abortion would be prevented in all females treated with the vacine and that such females would carry their calves for the full period, and might safely be bred at any time after treatment; and

(*c*) Represented that he guaranteed that a calf would be born to each breeding cow treated with the vaccine;

The facts being that the fact that a cow had received the treatment did not necessarily mean that abortion would be prevented, and that a period of 2 or 3 months should be allowed to elapse before such animals were bred, since time was needed to develop immunity, and in some cases there is a virulent reaction from the treatment which might produce the disease; and the only guaranty made in fact by said individual was that the purchase price of the vaccine would be refunded in cases where a calf was not born;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and to cause it, because of such erroneous belief, to purchase his said preparation, and with result that trade was diverted unfairly to him from his competitors, many of whom do not misrepresent their products:

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

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

Mr. Randolph W. Branch for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that John H. Oesterhaus, an individual trading under the name of Farmers Vaccine & Supply Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual trading and doing business under the name of Farmers Vaccine & Supply Co., and maintaining an office and principal place of business at 1619 West Sixteenth Street, Kansas City, Mo.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of selling a certain preparation containing drugs, described by him as "Abortion Vaccine," and recommended by him for use as a means of rendering cattle immune to an ailment known as "Bang's Disease." Respondent causes said preparation, when sold, to be transported from his aforesaid place of business in the State of Missouri 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 preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent had disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product; and

respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, and by circulars, pamphlets, catalogs, and other advertising literature are the following:

* * * inject * * * each animal in your herd.

IMMUNIZE YOUR HERD WITH ABORTION VACCINE.

* * * your heifer or cow is made immune against Bang's Abortion Disease.

* * * one dose of which gives lasting protection.

Our experience indicates that a considerable degree of protection is afforded within two weeks from the use of our Abortion Vaccine.

* * * an Immune Herd; which even though exposed later will not become infected.

Start now on your yearlings, heifers and two-year olds and vaccinate the balance as convenient.

* * * since 1932 * * * Abortion Vaccine has been used on the entire herd at once—heifers, open cows and bred cows at all stages of pregnancy, and the results on thousands of animals in hundreds of herds apparently justified the practice.

Abortion Vaccine will immune animals against Bang's Disease and result in full term calves * * *.

* * * end abortion losses from already infected animals.

Breeding may be commenced at any time you choose after vaccination * * *.

Now to prove our own faith in our Abortion Cure we are insuring you a calf from each cow.

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 that by one injection of his abortion vaccine into each animal of a herd of cattle, the herd and each treated animal is rendered immune to Bang's Disease and will not, although later exposed, become infected therewith; that one dose does, in fact, give lasting protection; and that a considerable degree of protection is afforded in 2 weeks' time; that the product may be advantageously used and these results attained in all cases regardless of the age of the animals and of whether or not they are infected at the time of treatment; that all treated females will carry their calves for the full term; that treated females may be bred at any time after injection; that respondent guarantees a calf to be born to each female treated with his vaccine.

PAR. 5. The foregoing representations are grossly exaggerated, misleading, and untrue. In truth and in fact, the use of the respondent's vaccine does not in all cases render animals to whom it is administered immune to, or protected against, Bang's Disease. Immunity is not attained in 2 weeks after treatment. When administered to uninfected mature cows, a considerable period, sometimes as long as 2 years, must elapse before immunity from the disease may be anticipated, and such immunity is not always attained; when administered to infected mature animals, the vaccine in no way contributes to the gaining of immunity which may result, however, from a natural recovery. The use of this vaccine on mature females will not assure or assist full term gestation and parturition of calves in any cases except those in which pregnancy occurs after immunity has been gained from the use of the vaccine. Abortion or premature birth may be due to other factors as well as to Bang's Disease. Treated, mature uninfected females should not, under the accepted principles of animal husbandry, be bred until a reasonable time has elapsed after treatment. Respondent's alleged guarantee that a calf will be born to each cow treated with his vaccine is not in fact such a guarantee, but merely an announced undertaking to refund the price of the vaccine if a treated cow does not bear a calf.

PAR. 6. The use by the respondent of the foregoing, false, deceptive, and misleading statements and representations with respect to his preparation disseminated as aforesaid has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's vaccine.

PAR. 7. In the course and conduct of his said business, respondent is now, and has been for more than 1 year last past, in substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of abortion vaccines in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The United States Department of Agriculture, through its Bureau of Animal Industry, has, since 1934, been engaged in a program for the better control and ultimate eradication of Bang's Disease. Abortion vaccines, under the provisions of "An act making appropriations for the Department of Agriculture for the fiscal year ending June thirteenth, nineteen hundred and fourteen" (37 Stat. 832), may be legally manufactured only in establishments licensed by

the Department of Agriculture. Respondent is not a manufacturer of vaccine, but his product is manufactured for him by a licensed establishment. Many of those engaged in the sale and distribution of such vaccine, as set forth in paragraph 7 hereof, are also licensed manufacturers thereof.

PAR. 9. On May 26, 1938, the said Department of Agriculture, through its Bureau of Animal Industry, as a part of its program mentioned in paragraph 8 hereof, ordered such licensed establishments to recommend the use of abortion vaccine only for the treatment of calves from 4 to 8 months of age, inclusive. Many licensed manufacturers complied with said order. Respondent, however, by means of various of the representations and statements set forth in paragraph 3 hereof, and others not specifically set out herein, has continued to recommend his vaccines for use regardless of the age of the animal.

PAR. 10. As a direct result of this recommendation by respondent, many members of the consuming public have purchased substantial amounts of respondent's vaccine, and in consequence trade has been diverted unfairly to respondent from competitors likewise engaged in the business of selling and distributing abortion vaccines who, in compliance with the order of the Department of Agriculture, recommend their vaccines for use only on calves from 4 to 8 months of age. As a result thereof, injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 11. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and respondent's competitors, and constitute unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 21, 1940, issued and thereafter served its complaint in this proceeding upon respondent John H. Oesterhaus, an individual, trading as Farmers Vaccine & Supply 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 the complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Randolph W. Branch, attorney for the Commission,

and in opposition to the allegations of the complaint by the respondent, appearing in his own behalf, before William C. Reeves, trial examiner of the Commission theretofore duly designated by it, and the testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions thereto, 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, John H. Oesterhaus, is an individual trading as Farmers Vaccine & Supply Co., with his office and principal place of business at 1619 West Sixteenth Street, Kansas City, Mo. Respondent is now, and for more than 3 years last past has been, engaged in the sale and distribution of a certain drug preparation designated by him as "Abortion Vaccine" and intended for use as a means of rendering cattle immune to a certain ailment or disease known as "Bang's Disease."

In the course and conduct of his business respondent causes, and for more than 3 years last past has caused, his preparation, when sold, to be transported from his place of business in the State of Missouri 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 preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and for more than 3 years last past has been, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution, in commerce among and between the various States of the United States and in the District of Columbia, of similar preparations and other preparations intended for the same purpose.

PAR. 3. In the course and conduct of his business the respondent has disseminated and is now disseminating, and has caused, and is now causing the dissemination of, advertisements concerning his 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, 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 statements and representations contained in such advertisements, disseminated and caused to be disseminated as herein set forth, by the United States mails, by advertisements in numerous newspapers and periodicals having a general circulation in various States of the United States, and by circulars, pamphlets, and other advertising literature, are the following:

IMMUNIZE YOUR HERD WITH ABORTION VACCINE.

Simply inject one ample dose well under the skin on the side of neck of each animal in your herd; * * *.

We have shown you that Vaccine will save you more than twice what you pay in infected herds simply for the increased milk flow and the comparative freedom from afterbirth troubles alone. Besides this, and at no extra cost, your heifer or cow is made immune against Bang's abortion disease.

You can Control Infectious Abortion and have an immune herd in a short time best by using our Abortion Vaccine, one dose of which gives a lasting protection.

Our experience indicates that a considerable degree of protection is afforded within two weeks from the use of our Abortion Vaccine.

Dairymen should, however, start at once to build an immune herd—a herd that not only will be a Bang's Disease Free Herd, but which is much more important also an Immune Herd; which even though exposed later will not become infected.

Start now on your yearlings, heifers and two-year olds and vaccinate the balance as convenient.

Since 1932 in herds where abortion losses were heavy, and something had to be done, our Abortion Vaccine has been used on the entire herd at once—heifers, open cows and bred cows at all stages of pregnancy, and the results in thousands of animals in hundreds of herds apparently justified the practice.

* * * let us say again that the use of Abortion Vaccine will immune animals against Bang's disease and result in full term calves, but it will NOT make a reactor cow a non-reactor; at least not for a long time, sometimes 18 months to two years being required.

Abortion Vaccine, is an immunizing agent and as such its purpose is as much to prevent the spread of infection in a herd as to end abortion losses from already infected animals.

Breeding may be commenced at any time you choose after vaccination, but we like to wait a few weeks.

Now to prove to you our own faith in our Abortion Vaccine we are insuring you a calf from each cow.

PAR. 4. Through the use of these statements and representations, and others of a similar nature, the respondent has represented, directly

or by implication, that by the injection of his vaccine into each animal of a herd of cattle the entire herd and each treated animal is rendered immune to Bang's Disease; that these results may be obtained in all cases, regardless of the age of the animal and regardless of whether the animal is infected with Bang's Disease at the time of the treatment; that the use of the preparation gives lasting protection and that animals treated with the preparation, although later exposed, will not become infected with the disease; that a substantial degree of protection is afforded within 2 weeks after the treatment is administered; that abortion will be prevented in all females treated with the vaccine and that such females will carry their calves for the full period of time; that females treated with the vaccine may safely be bred at any time after treatment; and that respondent guarantees that a calf will be born to each breeding cow treated with the vaccine.

PAR. 5. The evidence shows, and the Commission finds, that the disease or condition among cattle known as Bang's Disease is an infectious condition caused by certain organisms or bacteria. The principal and most harmful effect of the disease is that when it is present in a pregnant cow it is likely to cause an abortion; that is, cause the premature birth of the calf. In fact, while there are other causes of abortion among cows, probably the greater percentage of such cases are due to the presence of Bang's Disease.

PAR. 6. The method in general use among veterinarians and stockmen for the prevention of Bang's Disease is the injection of a vaccine known as "Strain 19." Respondent's preparation is made of this vaccine, as are practically all other preparations on the market which are intended for the treatment of this disease. It has been found however that the value and effectiveness of the vaccine are limited chiefly to the case of calves of from 4 to 8 months of age. The indiscriminate vaccination of entire herds of cattle with the vaccine is not recommended by veterinarians or stockmen generally. The treatment is not generally recognized as effective in the case of mature cattle, and in fact may prove harmful, in that the use of the vaccine for pregnant cows has the tendency to cause such cows to abort. The treatment is also ineffective as to cattle which are already infected with the disease. In dealing with herds of cattle the generally approved and recognized method of combating Bang's Disease, in addition to the vaccination of the young calves, is to test the members of the herd for the disease and to slaughter those found to be infected.

PAR. 7. The United States Department of Agriculture, through its Bureau of Animal Industry, has been engaged for a number of years in a program for the prevention, control, and ultimate eradication of Bang's Disease. Abortion vaccines may be legally manufactured

only in establishments licensed by the Department of Agriculture. Respondent is not a manufacturer of vaccines, but he obtains his vaccine from a laboratory which is a licensed establishment. Many of respondent's competitors are also licensed manufacturers and manufacture the vaccines sold by them.

On May 26, 1938, the Department of Agriculture issued a regulation addressed to "Licensed Establishments and Others," which read in part as follows:

In order that in the marketing and use of bovine abortion vaccine there need be no interference with the Cooperative Control of Bang's Disease, it is hereby ordered: 1. That this vaccine shall be recommended only for the treatment of calves from four to eight months of age, inclusive. * * *

There was a general compliance with this regulation on the part of licensed manufacturers and others engaged in the sale of abortion vaccines. Respondent attached to certain of his advertising literature a notice calling attention to the regulation, but for a substantial period of time he made no change in the advertising material itself; that is, the advertising material continued to carry the representations referred to above.

PAR. 8. The evidence shows, and the Commission finds, that where respondent's preparation is effective the immunity afforded is not in all cases permanent. The period of time during which a vaccinated animal will retain its immunity varies, but a substantial percentage of animals will lose their immunity after the lapse of certain periods of time. No substantial degree of protection is usually afforded within 2 weeks after the treatment. While the immunizing process begins soon after the vaccination, several weeks must elapse in the usual case before any substantial degree of protection develops, the maximum degree of protection being reached about 3 months after the treatment.

The fact that a cow has received the treatment does not necessarily mean that abortion will be prevented and that she will be able to carry her calf for the full period. Nor may treated cows safely be bred at any time after treatment; a period of some 2 or 3 months should be allowed to elapse before such animals are bred. The reason for this is that the animal needs time to develop immunity. In some cases also there is a virulent reaction from the treatment and this reaction might produce the disease.

With respect to respondent's representation that he guarantees that a calf will be born to each breeding cow treated with the preparation, the evidence shows that respondent does not in fact guarantee that result. The only guaranty made by the respondent is that in those cases where a calf is not born the purchase price of the vaccine will be refunded to the purchaser.

PAR. 9. The Commission is therefore of the opinion, and finds, that the representations made by the respondent with respect to his preparation and its effectiveness are exaggerated and misleading, and constitute false advertisements.

PAR. 10. The Commission further finds that the use of these advertisements by respondent has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic value of respondent's preparation and with respect to the effectiveness of the preparation, and to cause such portion of the public to purchase respondent's preparation as a result of the erroneous and mistaken belief so engendered. In consequence, trade has been diverted unfairly to the respondent from his competitors, many of whom do not misrepresent the therapeutic value of effectiveness of their products.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce 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 William C. Reeves, trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence and the exceptions thereto, and briefs filed by Randolph W. Branch, attorney for the Commission, and by the respondent, appearing in his own behalf (oral argument not having been requested); 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, John H. Oesterhaus, individually and trading as Farmers Vaccine & Supply 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 drug preparation designated "Abortion Vaccine," 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 the use of said preparation upon entire herds of cattle will immunize such herds against the disease known as Bang's Disease, or that said preparation is effective in all cases;

(*b*) That the immunity afforded by said preparation against Bang's Disease is in all cases permanent;

(*c*) That said preparation affords in the usual case any substantial degree of protection against Bang's Disease within 2 weeks after its use;

(*d*) That by the use of said preparation abortion will be prevented in all cases, or that cows treated with said preparation will in all cases carry their calves for the full period of time;

(*e*) That cows treated with said preparation may safely be bred immediately after such treatment;

(*f*) That respondent guarantees that a calf will be born to each breeding cow treated with 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 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

HENRY M. SALISBURY AND FRANK R. JOHNSON, TRADING AS SMOKE CONDITIONER COMPANY

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

Docket 4166. Complaint, June 19, 1940—Decision, June 30, 1941

Where two individuals engaged in the interstate sale and distribution of their "Smoke Conditioner" cigarette holder; in advertising matter distributed by them, expressly and by implication—

Represented that their said product embodied entirely new and revolutionary principles in cigarette holders, never had a bad odor or taste, and prevented nicotine and irritating substances in the cigarette from reaching the smoker, and that use thereof promoted health by eliminating all deleterious substances from the smoke;

Facts being that said "Smoke Conditioner" was not new or revolutionary in its principle of operation; had, after use, both a bad odor and taste; would not prevent nicotine and other irritating substances from reaching the smoker, or promote health by the elimination of all deleterious substances from tobacco smoke; and use thereof eliminated only a small percent of nicotine and other aforesaid substances present in tobacco;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such misleading statements were true and into the purchase of their said product because of such mistaken belief:

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

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

Mr. R. A. McOuat for the Commission.

Mr. Crichton Clarke, 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 Henry M. Salisbury and Frank R. Johnson, trading as Smoke Conditioner 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 Henry M. Salisbury and Frank R. Johnson are individuals trading as Smoke Conditioner Co. with their office and principal place of business at 254 West Thirty-first

Street in the city of New York, State of New York. Respondents 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 certain cigarette holder designated as Smoke Conditioner. In the course and conduct of their business, respondents caused their said cigarette holders 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.

PAR. 2. In the course and conduct of their aforesaid business, and in the furtherance of the sale of said product, respondents have made many misleading statements and representations relative to said cigarette holder by means of advertising matter circulated and distributed to purchasers and prospective purchasers located in various States of the United States. Among and typical of such misleading statements and representations contained in said advertising matter distributed as aforesaid, are the following:

Now "Smoke Conditioning," an entirely new and revolutionary principle in cigarette holders, is available with the Smoke Conditioner.

The Smoke Conditioner will remove—by condensation—substances from the cigarette smoke that are detrimental to your health—which ordinarily lodge in the cigarette, itself. This—its main objective—is only one of its outstanding advantages.

The Smoke Conditioner is made of a substance which never permits an objectionable or foul odor to arise, even after several packs of cigarettes have been smoked through it.

You owe it to yourself to get the utmost in pleasure—without any health hazards—from every cigarette you smoke. Buy a Smoke Conditioner today for your health's sake.

The scientific way to avoid excess nicotine cigarette "bite"—harsh irritants.

The Smoke Conditioner has two definite purposes—to cool cigarette smoke and to remove from it all irritating substances.

The Smoke Conditioner never has a bad odor or taste.

The aforesaid statements and representations together with similar statements appearing in respondents' advertising, but not herein set out, purport to be descriptive of respondents' cigarette holder, its functions and its effectiveness in use. In the manner and by the means aforesaid, respondents represent expressly and by implication that said "Smoke Conditioner" embodies entirely new and revolutionary principles in cigarette holders; that it never has a bad odor or taste; that it prevents nicotine and irritating substances in a cigarette from reaching the smoker; and that its use promotes health by eliminating all deleterious substances from the tobacco smoke.

PAR. 3. In truth and in fact, said "Smoke Conditioner" is not new or revolutionary in its principles of operation; it will, after use, have both a bad odor and taste; its use will not prevent nicotine and the

irritating substances from reaching the smoker, nor will its use promote health by the elimination of all deleterious substances from tobacco smoke. The use of said holder eliminates only a small percentage of nicotine and other deleterious substances present in tobacco.

PAR. 4. The aforesaid acts and practices used by respondents in connection with the offering for sale and sale of their said cigarette holders have had, and now have, the capacity and tendency to and do mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true, and into the purchase of respondents' said cigarette holders because of said belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 19th day of June 1940, issued and thereafter served its complaint in this proceeding upon respondents Henry M. Salisbury and Frank R. Johnson, individuals trading as Smoke Conditioner Co., charging them with use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Subsequently respondents filed their answer dated May 12, 1941, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer thereto, and the Commission, having duly considered the matter, and now being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents Henry M. Salisbury and Frank R. Johnson are individuals trading as Smoke Conditioner Co. with their office and principal place of business at 254 West Thirty-first Street in the city of New York, State of New York. For more than 1 year last past respondents have been engaged in the sale and distribution in commerce between and among the various States of the United

States of a certain cigarette holder designated as Smoke Conditioner. In the course and conduct of their business, respondents have caused their cigarette holders 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.

PAR. 2. In the course and conduct of their aforesaid business, and in the furtherance of the sale of said product, respondents have made many misleading statements and representations relative to said cigarette holder by means of advertising matter circulated and distributed to purchasers and prospective purchasers located in various States of the United States. Among and typical of such misleading statements and representations contained in said advertising matter distributed as aforesaid are the following:

Now "Smoke Conditioning," an entirely new and revolutionary principle in cigarette holders, is available with the Smoke Conditioner.

The Smoke Conditioner will remove—by condensation—substances from the cigarette smoke that are detrimental to your health—which ordinarily would lodge in the cigarette, itself. This—its main objective—is only one of its outstanding advantages.

The Smoke Conditioner is made of a substance which never permits an objectionable or foul odor to arise, even after several packs of cigarettes have been smoked through it.

You owe it to yourself to get the utmost in pleasure—without any health hazards—from every cigarette you smoke. Buy a Smoke Conditioner today for your health's sake.

The scientific way to avoid excess nicotine cigarette "bite"—harsh irritants.

The Smoke Conditioner has two definite purposes—to cool cigarette smoke and to remove from it all irritating substances.

The Smoke Conditioner never has a bad odor or taste.

The aforesaid statements and representations, together with similar statements appearing in respondents' advertising, but not herein set out, purport to be descriptive of respondents' cigarette holder, its functions and effectiveness in use. Through the use of said statements and representations, respondents have engaged in the practice of falsely representing, expressly and by implication, that said "Smoke Conditioner" embodies entirely new and revolutionary principles in cigarette holders; that said Smoke Conditioner never has a bad odor or taste; that said Smoke Conditioner prevents nicotine and irritating substances in the cigarette from reaching the smoker; and that the use of the Smoke Conditioner promotes health by eliminating all deleterious substances from the tobacco smoke.

PAR. 3. Said representations are exaggerated, false and misleading. The Smoke Conditioner is not new or revolutionary in its principle of operation. It will, after use, have both a bad odor and taste. The

use of the Smoke Conditioner will not prevent nicotine and other irritating substances from reaching the smoker. The use of the Smoke Conditioner will not promote health by the elimination of all deleterious substances from tobacco smoke. The use of said cigarette holder eliminates only a small percentage of nicotine and other deleterious substances present in tobacco.

PAR. 4. The use by the respondents of the foregoing false and misleading statements and representations in their advertising literature with respect to their said product has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such misleading statements and representations are true and into the purchase of respondents' product because of said erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of the respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that the said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Henry M. Salisbury and Frank R. Johnson, individually and trading as Smoke Conditioner Co. or under any other name or names 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 cigarette holders now known as and sold under the name of "Smoke Conditioner," or any other similar product sold under the same name or any other name in commerce as "commerce" is defined by the Federal Trade Commission Act, do forthwith cease and desist from representing that:

1. Said product embodies any new or revolutionary principles of operation in cigarette holders.

2. Said cigarette holder never has a bad odor or taste.

3. Said product prevents nicotine and irritating substances from reaching the smoker.

4. The use of said product promotes health.

5. Said product eliminates more than a small percentage of any deleterious substances present in tobacco.

It is further ordered, That respondents shall within 60 days after the 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.

IN THE MATTER OF

ACME PREMIUM SUPPLY CORPORATION

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

Docket 4198. Complaint, July 26, 1940—Decision, June 30, 1941

Where a corporation engaged in the competitive interstate sale and distribution of aluminum ware, enamel ware, smoker sets, cigarette cases, lamps, glassware, fishing tackle, and other articles of merchandise—

(*a*) Supplied its customers with assortments of said merchandise together with Bingo sets, by means of which such merchandise was sold and distributed to the consuming public in a manner involving the operation of a game of chance, gift enterprise, or lottery scheme under a plan providing that a player securing, by chance, necessary numbers, as drawn by game's operator, to call "Bingo" became entitled to receive as prize one of said articles, value of which exceeded cost of participation to players; and thereby

Supplied to and placed in the hands of others means of conducting lotteries in the sale of its merchandise, in accordance with aforesaid sales plan or method, involving game of chance to procure article of merchandise at much less than normal price thereof, contrary to established public policy of the United States Government, and in competition with many who, unwilling to use such or other method contrary to public policy, refrain therefrom;

With result that many persons were attracted by its said sales plan and the element of chance involved therein and were thereby induced to buy and sell its merchandise in preference to that of its said competitors, and trade in commerce was unfairly diverted to it from them; and

(*b*) Sold and distributed devices commonly known as push cards and punchboards, separate and apart from any other merchandise, including (1) push cards and punchboards with the legends or instructions printed on the face thereof explaining the manner in which they were to be used in the sale of various specified articles of merchandise, and that purchasers punching disks in the cards and thereby revealing certain lucky numbers received articles of merchandise without additional cost, at prices much less than the normal retail price, and that others received nothing for their money other than the privilege of making a punch; and (2) similar devices bearing no instructions or legends thereon but having blank spaces provided therefor on which purchasers placed instructions of the same import as those printed on the aforesaid devices;

With result that—

(1) Many who sold or distributed candy, cigars, and other articles of merchandise in commerce bought said push card and punchboard devices and packed and assembled assortments comprised of various articles of such merchandise, together with such cards and boards, and retail dealer buyers of such assortments, either as direct or indirect purchasers, and retailers who made up their own assortments, exposed same to purchasing public and sold and distributed such articles through use of said push cards or punchboards and in accordance with sales plans as above described;

involving game of chance or sale of a chance to procure articles in question at prices much less than normal retail price thereof, and the teaching and encouraging of gambling among members of the public; all to the injury thereof, and contrary to an established public policy of the United States Government, and in violation of criminal laws;

(2) Many members of the purchasing public, because of element of chance involved in sale and distribution of said merchandise by means of said push cards and punchboards, and many retailers, were thereby induced to deal or trade with manufacturers, wholesalers, and jobbers selling and distributing their merchandise, together with said devices, in competition with many who, faced with alternative of descending to use of said cards and boards or other similar devices which they were under a powerful moral compulsion not to use, or suffer loss of substantial trade, did not thus sell and distribute their products, because of element of chance or lottery features therein involved, and because such practices were contrary to public policy of the United States; and refrained from supplying to or placing in hands of others such cards, boards, or any other similar devices for such use; whereby substantial trade was unfairly diverted from said competitors to those purchasing and using its said devices; and

(3) It supplied thereby to and placed in the hands of others, through such sale or distribution of said push cards and punchboards, means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of merchandise to members of public, and means and instrumentalities for engaging in unfair methods of competition and unfair acts and practices:

Held, (1) That such acts and practices in selling and distributing assortments of merchandise, together with said "Bingo" sets, as above set forth, were all to the prejudice and injury of the public, and competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein; and

(2) That its acts and practices in selling and distributing said push card and punchboard devices, separate and apart from any other merchandise, to dealers for use in sale and distribution of their products, under circumstances set forth, were all to the prejudice and injury of the public and constituted unfair acts and practices in commerce.

Mr. J. V. Mishou for the Commission.

Mr. Albert E. Hausman and *Mr. Otto F. Karbe*, 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 Acme Premium Supply 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

Count 1

PARAGRAPH 1. Respondent, Acme Premium Supply Corporation, is a corporation organized and existing under the laws of the State of Wisconsin with its principal office and place of business located at 3139 Olive Street, St. Louis, Mo. Respondent is now and for more than 2 years last past has been engaged in the sale and distribution of aluminum ware, enamel ware, smoker sets, cigarette cases, lamps, glassware, fishing tackle, and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from its aforesaid place of business in St. Louis, Mo., to purchasers thereof at their respective points of location in the various States of the United States other than the State of Missouri and in the District of Columbia. There is now and for more than 2 years last past has been a course of trade by respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, as described in paragraph 1 hereof, the respondent in selling and distributing its said merchandise has supplied its customers with assortments of said merchandise together with certain paraphernalia known as Bingo sets, by means of which 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 tally sheet, containing 75 numbers; a number of Bingo cards on each of which appear 24 numbers arranged in a square, the numbers on the said cards corresponding to the numbers on the tally sheet; and a number of small wooden blocks on each of which appears a number, the numbers on the said blocks also corresponding with the numbers on the tally sheet. Each of said Bingo cards has a different group of numbers thereon, and one of said cards appears substantially as follows:

START BY PLACING GRAIN OF CORN IN "CENTER" 37 FIVE NUMBERS ACROSS ANY LINE WINS

WHEN YOU GET
5 GRAINS IN A ROW
YELL OUT LOUD—
B I N G O

2	21	34	52	75
15	30	39	47	61
4	17	CENTER	58	73
12	28	35	54	62
5	20	37	60	74

By means of said Bingo set, said merchandise is distributed to the purchasing public in substantially the following manner: Respondent's 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 blocks in a container and so mixes them that the numbers thereon are concealed until one of said wooden blocks is withdrawn from the container by the operator. In the center of the participant's Bingo card is a square marked "CENTER" 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 wooden block as said block 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 tally sheet, 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 therein vary 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.

Respondent has sold and distributed various Bingo sets and other devices for use in the sale and distribution of his 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 who have purchased either directly or indirectly, respondent's said assortments of merchandise, together with said Bingo sets, have used said Bingo sets in selling and distributing respondent's merchandise in accordance with the aforesaid sales plan or method. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan or method hereinabove described. The use by respondent of said sales plan or method in the sale and distribution of its merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of 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 sales plan or method or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other sales plan or method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise, and by the element of chance involved therein, and have been and are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plan or method by respondent because of said game of chance has the tendency and capacity to and does unfairly divert trade in commerce between and among the various States of the United States

and in the District of Columbia to respondent from its said competitors who do not use the same or equivalent sales plans or methods.

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

Count 2

PARAGRAPH 1. Respondent, Acme Premium Supply Corporation, is a corporation organized and existing under the laws of the State of Wisconsin with its office and principal place of business located at 3139 Olive Street, St. Louis, Mo. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of devices commonly known as push cards and punchboards to dealers in various other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes and has caused said devices, when sold, to be transported from his aforesaid place of business in St. Louis, Mo., to 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. There is now and has been for some time last past a course of trade by said respondent in such push cards and punchboards, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, to dealers push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes and has sold and distributed, many kinds of said push cards and punchboards, but all of said push cards and punchboards involve the same chance or lottery features, when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the device, for the amount of money paid, and when a

push or punch is made a disk or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons not obtaining one of the lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondent's said push card and punchboard devices and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise, together with said push card and punchboard devices. Retail dealers who have purchased said assortments, either directly or indirectly, or retail dealers who have purchased said devices direct from respondent and made up their own assortments, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plans as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers

have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise, together with said devices. Said persons, firms, and corporations have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punchboard devices, or other similar devices, which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of push card and punchboard devices, or similar devices, because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and in violation of criminal laws, and such competitors refrain from supplying to, or placing in the hands of, other push card and punchboard devices, or any other similar devices, which are to be used, or which may be used in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery, game of chance, or gift enterprise. As a result thereof, substantial trade in commerce between and among the various States of the United States and in the District of Columbia has been unfairly diverted from said competitors who do not sell or use said devices to persons, firms, and corporations who purchase and use said devices of the respondent.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof, and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plans or methods in the sale of merchandise, and the sale of merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice of a sort which is contrary to an established public policy of the Government of the United States, and in violation of criminal laws, and constitutes unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The sale or distribution of said push card and punchboard devices by the respondent, as hereinabove alleged, supplies to and places in the hands of others the means of conducting lotteries, games of

chance, or gift enterprises in the sale or distribution of merchandise. The respondent thus supplies to and places in the hands of said persons, firms, and corporations the means of, and the instrumentalities for, engaging in unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 26, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Acme Premium Supply Corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granting 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 proceedure and further hearings as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Acme Premium Supply Corporation, is a corporation organized and existing under the laws of the State of Wisconsin with its principal office and place of business located at 3139 Olive Street, St. Louis, Mo. Respondent is now and for more than 2 years last past has been engaged in the sale and distribution of aluminum ware, enamel ware, smoker sets, cigarette cases, lamps, glassware, fishing tackle, and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from its aforesaid place of business in St. Louis, Mo.,

to purchasers thereof at their respective points of location in the various States of the United States other than the State of Missouri and in the District of Columbia. There is now and for more than 2 years last past has been a course of trade by respondent in said merchandise in commerce between and among the various states of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other corporations, and with individuals, and partnerships engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, as described in paragraph 1 hereof, the respondent in selling and distributing its said merchandise has supplied its customers with assortments of said merchandise, together with certain paraphernalia known as Bingo sets, by means of which 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 tally sheet, containing 75 numbers; a number of Bingo cards on each of which appear 24 numbers arranged in a square, the numbers on the said cards corresponding to the numbers on the tally sheet; and a number of small wooden blocks on each of which appears a number, the numbers on the said blocks also corresponding with the number on the tally sheet. Each of said Bingo cards has a different group of numbers thereon, and one of said cards appears substantially as follows:

START BY PLACING GRAIN OF CORN IN "CENTER"		37		FIVE NUMBERS ACROSS ANY LINE WINS WHEN YOU GET 5 GRAINS IN A ROW YELL OUT LOUD— B I N G O
2	21	34	52	75
15	30	39	47	61
4	17	CENTER	58	73
12	28	35	54	62
5	20	37	60	74

By means of said Bingo sets, said merchandise is distributed to the purchasing public in substantially the following manner: Respondent's customer, or someone designated by such customer, acts as an operator in the sale or distribution of said merchandise. The oper-

ator 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 blocks in a container and so mixes them that the numbers thereon are concealed until one of said wooden blocks is withdrawn from the container by the operator. In the center of the participant's Bingo cards is a square marked "CENTER" 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 wooden block as said block 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 tally sheet, 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 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.

Respondent has sold and distributed various Bingo sets and other devices for use in the sale and distribution of his 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 the one hereinabove described, varying only in detail.

PAR. 3. The persons who have purchased either directly or indirectly, respondent's said assortments of merchandise, together with said Bingo sets, have used said Bingo sets in selling and distributing respondent's merchandise in accordance with the aforesaid sales plan or method. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan or method hereinabove described.

The use by respondent of said sales plan or method in the sale and distribution of its merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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

PAR. 5. In the course and conduct of its business, the respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of devices commonly known as push cards and punchboards separate and apart from any other merchandise in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes and has caused said devices, when sold, to be transported from its aforesaid place of business in St. Louis, Mo., to 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. There is now and has been for some time last past a course of trade by said respondent in such push cards and punchboards in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. In the course and conduct of its business, as described in paragraph 5 hereof, respondent sells and distributes, and has sold

and distributed, to dealers push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes and has sold and distributed, many kinds of said push cards and punchboards, but all of said push cards and punchboards involve the same chance or lottery features, when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the device, for the amount of money paid, and when a push or punch is made a disk or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitled purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons not obtaining one of the lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondent on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove found.

PAR. 7. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase

and have purchased respondent's said push card and punchboard devices and pack and assemble, and have packed and assembled. assortments comprised of various articles of merchandise, together with said push card and punchboard devices. Retail dealers who have purchased said assortments, either directly or indirectly, or retail dealers who have purchased said devices direct from respondent and made up their own assortments, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plans as described in paragraph 6 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise, together with said devices. Said persons, firms, and corporations have many competitors who sell or distribute like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punchboard devices, or other similar devices, which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell or distribute their merchandise by means of push cards and punchboard devices, or similar devices, because of the element of chance or lottery features involved therein, and because such practices are contrary to the public policy of the Government of the United States and in violation of criminal laws, and such competitors refrain from supplying to, or placing in the hands of, others push card and punchboard devices, or any other similar devices, which are to be used, or which may be used, in connection with the sale or distribution of the merchandise of such competitors to the general public by means of a lottery, game of chance, or gift enterprise. As a result thereof, substantial trade in commerce between and among the various States of the United States and in the District of Columbia has been unfairly diverted from said competitors who do not sell or use said devices to persons, firms, and corporations who purchase and use said devices of the respondent.

PAR. 8. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above found,

involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof, and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plans or methods in the sale of merchandise, and the sale of merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice of a sort which is contrary to an established public policy of the Government of the United States, and in violation of criminal laws, and constitutes unfair methods of competition in commerce, and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The sale or distribution of said push card and punchboard devices by the respondent, as hereinabove found, supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of merchandise. The respondent thus supplies to and places in the hands of said persons, firms, and corporations the means of, and the instrumentalities for, engaging in unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The aforesaid acts and practices of the respondent in selling and distributing its said assortments of merchandise, together with Bingo sets, as hereinabove found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act, and the aforesaid acts and practices of respondent in selling and distributing said push card and punchboard devices separate and apart from any other merchandise to dealers for use in the sale and distribution of said dealer's merchandise, as hereinabove found, are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of 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 the conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Acme Premium Supply 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 aluminum ware, enamel ware, smoker's sets, cigarette cases, lamps, glassware, fishing tackle, or any other articles of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling 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 any merchandise, together with Bingo sets, punchboards, push or pull cards, or other lottery devices which said Bingo sets, punchboards, push or pull cards or other lottery devices are to be used or may be used in selling or distributing said merchandise to the public.

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

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

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

It is further ordered, That the 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

DENISTON COMPANY

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

Docket 4219. Complaint, Aug. 6, 1940—Decision, June 30, 1941

Where a corporation engaged in the manufacture and in the interstate sale of lead head roofing nails, including types designated as "drive screw" and "ring shank"; in advertising in circulars and in trade publications—

(*a*) Represented and implied that the holding power of its "drive screw" and "annular ring" nails was approximately four times that of the straight shank nails, facts being that while such nails may have more holding power than other, they do not have four times, or even twice, holding power of said other; and

(*b*) Represented and implied that its "drive screw" shank nail would afford greater holding power than any other type of lead head nail, facts being that, while such nail, as well as same type made by its competitors, might have greater holding power than other types of lead head nails under certain conditions of use, they did not have such holding power under all conditions:

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

Mr. Clark Nichols for the Commission.

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

PARAGRAPH 1. Respondent, Deniston Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 4856 South Western Avenue, Chicago, Ill. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture and sale of lead head roofing nails of various kinds, one type being designated by the respondent as "drive screw" and another type being designated "ring shank." Respondent causes said products, when sold, to be transported from its place of business in the State of Illinois to purchasers

thereof located at various points in the several 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 several States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of its business in said commerce as aforesaid and for the purpose of inducing the purchase of its roofing nails designated "drive screw" and "ring shank," respondent has circulated among prospective purchasers of said products through advertisements in the form of circulars and advertisements placed in trade publications, many statements concerning the claimed superiority and efficiency of its said nails over those manufactured and sold by competitors in said commerce. Among the statements so used and circulated among prospective purchasers by the respondents are the following:

The holding power of drive screw and annular ring nails is approximately 4 times that of the straight shank nail.

* * * * * * *

The drive screw shank gives the nail greater holding power than any other lead head nail made.

Through the use of the foregoing statements, and others of similar import and meaning not set out herein, the respondent represents and implies that the holding power of its "drive screw" nail and the holding power of its "ring shank" nail is approximately four times that of the straight shank nail; that a nail provided with the "drive screw" shank will afford greater holding power than any other type of lead head nail and that both the "drive screw" nail and the "ring shank" nail possess a substantial superiority in holding power over all competitive products.

PAR. 3. The above and foregoing representations and implications are false, misleading, and deceptive, for in truth and in fact, the holding power of respondent's "drive screw" nail or respondent's "ring shank" nail is not four times that of the straight shank nail. Respondent's "drive screw" shank nail will not afford greater holding power than all other types of lead head nails. The comparative superiority and holding power claimed by the respondent for both types of its nails is greatly in excess of any superiority that does exist between either of said types of nails and straight shank nails and other competitive nails.

PAR. 4. The use by the respondent of the foregoing false and misleading representations and implications respecting its said product as to the holding power and superiority of its product over all other types of lead head nails, has had, and now has, the capacity and tendency

to, and does, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations and implications are true, and causes a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase said product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 6th day of August 1940, issued and thereafter served its complaint in this proceeding upon respondent, Deniston 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 an answer by respondent thereto, a stipulation as to the facts was entered into between Parker and Carter, attorneys of record for respondent, by Leslie M. Carter on behalf of respondent, and W. T. Kelley, Chief Counsel of the Federal Trade Commission, in which it is provided that the Commission may proceed upon such statement of facts, including the inferences which may be drawn therefrom, to make its findings as to the facts and its conclusion based thereon, and to enter its order disposing of the proceeding without the presentation of argument, the filing of briefs, or 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 by the Commission, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Deniston Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business at 4856 South Western Avenue, Chicago, Ill. Respondent is now and for more than 2 years last past has been engaged in the manufacture and sale of lead head roofing nails of various kinds, one type being designated by the respondent as "drive screw" and another type being designated as "ring shank."

Respondent also makes and sells a type known as "plain barbed." Respondent causes said products when sold to be transported from its place of business in the State of Illinois to purchasers thereof located at various points in the several 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 several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business in said commerce, as aforesaid, and for the purpose of inducing the purchase of its roofing nails designated "drive screw" and "ring shank," respondent has circulated among prospective purchasers of said products, advertisements in the form of circulars and statements placed in trade publications, in which it claims superiority and efficiency for its said nails over those manufactured and sold by competitors in said commerce. Among the statements so used and circulated among prospective purchasers by the respondent are the following:

The holding power of drive screw and annular ring nails is approximately 4 times that of the straight shank nails.

The drive screw shank gives the nail greater holding power than any other lead head nail made.

PAR. 3. Through the use of the first of the foregoing quoted statements, the respondent represents and implies that the holding power of its "drive screw" and "annular ring" nails is approximately four times that of a straight shank nail.

The first of the above quoted statements is exaggerated, false, and misleading, because, while the "drive screw" and the "annular ring" nails may have more holding power than straight shank nails they do not have four times the holding power or even twice the holding power of the straight shank nails.

Through the use of the second of the foregoing statements, the respondent represents and implies that its "drive screw" shank nail will afford greater holding power than any other type of lead head nail.

The second statement above quoted is exaggerated, false, and misleading, because, while the "drive screw" nail made by the respondent as well as the drive screw type of nail made by respondent's competitors may have greater holding power than other types of lead head nails under certain conditions of use, they do not have such greater holding power under all conditions of use.

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 proceeding, 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, Deniston Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale and the sale and distribution of its lead head roofing nails, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Representing in any manner, that the holding power of its drive screw and annular ring nails is approximately four times that of the straight shank nail, or any other number of times in excess of the true ratio of the holding power of such nails.

2. Representing in any manner, that its drive screw shank nail has greater holding power than any other type of lead head nail, under all conditions of use.

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

Syllabus

IN THE MATTER OF

HOWARD S. WEAVER, TRADING AS WEAVER REAL ESTATE APPRAISAL TRAINING SERVICE

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

Docket 4353. Complaint, Oct. 22, 1940—Decision, June 30, 1941

Where an individual engaged in interstate sale and distribution of correspondence home study courses in rural and city real estate appraisal training; in offering his said courses through his sales representatives, advertisements in newspapers and magazines of general circulation, printed matter and radio broadcasts—

(*a*) Represented and implied that the demand for land appraisers greatly exceeded the supply, and that land appraising was an uncrowded field lacking qualified men, through such statements as "Never before was the demand so great and the shortage so acute," and "At present the appraisal field is using thousands of unskilled, untrained men who should be replaced—and are being replaced * * * with competent, qualified trained men as rapidly as they are available"; and

(*b*) Represented and implied that various Government loan agencies, as well as private industry, were seeking men trained by him, that the Civil Service Commission was holding examinations for land appraisers from time to time with salaries up to $3,800 obtainable, that men trained by him were earning $175 to $300 monthly, and that choice money-making positions were available to them;

The facts being that, while in some instances in certain locations, services of competent appraisers were not available, there were more appraisers with field experience than could be gainfully employed; occupation in question does not, of itself, insure choice money-making opportunities; it was not true that loan agencies or private industry were seeking men trained by him, and that institutions acquainted with his school commended it most highly and were eager to get his graduates (notwithstanding his training was highly thought of by some who employed such graduates); and while Civil Service Commission had held examinations in recent years for real-estate appraisers, considerable experience was required, with exception of examination for Junior Appraiser for Land Banks, for which, however, graduation from said individual's school alone would not qualify the graduate; choice money-making positions were not available to his graduates, he did not have jobs to offer and was not in a position to guarantee earnings in any amount; and

(*c*) Represented that only a limited number of students were to be selected for training, and that each student was to receive his individual assistance and guidance; and

(*d*) Represented and implied that the tuition fee was less than half the regular tuition charge, through statement that, in view of his confidence in students securing "one of the many positions available on completing the course," he asked payment of less than half of the low fee in two installments, with

balance to be paid when employment was secured as field-man, appraiser or supervisor;

The facts being number of students permitted to enroll was not limited, said individual did not give his personal attention and care to every student, work of correction of papers being entrusted to two assistants, who did not refer to him answers deemed correct, each student, however, during the course of training receiving at least two personal letters from him; and course was not sold for less than half the regular tuition fee but regular full tuition fee was charged;

With effect of leading purchasers and prospective purchasers into the belief that aforesaid representations were true, and of inducing them to purchase and pursue his courses of study 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.

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

Mr. Wilbur N. Baughman and *Mr. L. E. Creel, Jr.* for the Commission.

Mr. A. L. Vonck, of Kansas City, Mo., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Howard S. Weaver, an individual, trading under the name Weaver Real Estate Appraisal Training Service, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Howard S. Weaver, is an individual, trading under the name Weaver Real Estate Appraisal Training Service, with his office, and principal place of business at 2322 East Forty-ninth Street, Kansas City, State of Missouri.

PAR. 2. Respondent is now and for several years last past has been engaged in the sale and distribution of home-study courses in rural and city real-estate appraisal training. Said courses of study and instruction are pursued by correspondence through the medium of the United States mail. He causes said courses, together with books and material used in connection therewith, when sold, to be transported from his aforesaid 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. Said respondent maintains, and at all times mentioned herein has main-

tained, a course of trade in said courses in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in soliciting the sale of, and in selling, his said courses of study and instruction, and in the distribution thereof in said commerce, has made numerous false and misleading statements and representations with reference to said courses of study by one or more of the following methods, to wit: through his sales representatives engaged in soliciting the sale of such courses; through advertising matter published in newspapers and magazines circulated among the general public; through printed matter distributed among prospective students, enrolled students and others located in the several States of the United States and in the District of Columbia; and through radio broadcasts to members of the public generally. Among and typical of such false and misleading statements and representations made by or through one or more of the said methods are the following:

Here's good news for ambitious men from 25 to 55. Right now when most industrial and professional fields are overcrowded there is an actual lack of trained men to act as farm land appraisers, field men and town and city residence and business property appraisers * * * To meet this great shortage of trained men the Weaver Real Estate Appraisal Training Service was founded.

Never before was the demand so great and the shortage so acute.

At present the appraisal field is using thousands of unskilled, untrained men who should be replaced—and are being replaced—with competent, qualified, trained men as rapidly as they are available.

The real estate appraisal field offers to trained men choice money-making opportunities.

The New Federal Housing Bill passed by Congress will cause the F. H. A. to be greatly expanded and thousands of new appraisers will be needed by this agency and other financial institutions cooperating with the F. H. A.

The United States Government Loan Agencies, the Major insurance companies, banks, trust companies all need hundreds of (appraisers) * * * In a circular recently issued by the Government for Civil Service applicants, form number 2279, positions as land appraisers were listed at $5,800 per year, associate land appraisers $3,200 and assistant land appraisers $2,600. * * * The natural question is, how does one fit himself for such a secure, well-paid position? The answer to that is easy—you can get such a training right in your own home through the Weaver Real Estate Appraisal Training Service.

Institutions who know the Weaver school commend it most highly and are eager to get Weaver trained men.

WANTED—Men to train for farm land appraisers * * * earn $175 to $300 monthly * * * write Weaver Real Estate Appraisal Training Service.

To make certain that you do fully grasp all points you will find a set of questions with each lesson that you answer and return to us, Mr. Weaver personally scanning these and correcting you if you are wrong on any points. This personal service has a rather sharp limit to it. That is, Mr. Weaver can

give his personal attention and care to only so many students. When that point is reached no fresh enrollments can be accepted.

Here then is your big opportunity. The course can be taken in 6 to 12 weeks right in your own home, and so sure is Mr. Weaver that you will fit one of the many positions available on completing the course that you are asked to pay less than half of the low fee in two installments. The balance is to be paid only when you secure employment as field man, appraiser, or supervisor.

By the means and in the manner aforesaid, the respondent represents and implies that the demand for land appraisers greatly exceeds the supply. The prospective student, and the public generally, is led to believe that land appraising is an uncrowded field, lacking qualified men; with the various loan agencies of the Federal Government, as well as private industry, being on the lookout for Weaver trained men. Respondent further represents and implies that the Civil Service Commission is holding examinations for land appraisers, from time to time, and that salaries up to $5,800 are obtainable. Weaver trained men are represented as earning $175 to $300 monthly, and that choice money-making opportunities are available. The prospective student is induced to enroll on the representation that only a limited number are selected for training; that each student receives the individual assistance and guidance of Mr. Weaver, the head of the school; and that the tuition fee is less than half the regular tuition charged.

PAR. 4. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact there is not a lack of appraisers, nor does the demand exceed the supply. The appraisal field is not using thousands of unskilled, untrained men, who are being replaced by competent, trained men as rapidly as they are available. As a matter of fact, there are already more appraisers with field experience than can be gainfully employed and such an occupation does not of itself assure choice money-making opportunities.

The various loan agencies of the United States Government do not need additional or newly trained appraisers, and lucrative earnings cannot be assured; nor is there a demand in private industry for appraisers which will assure lucrative earnings.

Furthermore, the Civil Service Commission has not held an appraisal examination in recent years, as represented by respondent; and graduating from respondent's school, in and of itself, would not qualify the graduate to take such examination, if and when held.

It is not a fact that institutions which know the Weaver School commend it most highly and are eager to get Weaver trained graduates; but the facts are that the respondent daily contacts large busi-

ness houses in an effort to get them to employ the graduates of his school, with only limited success. The respondent does not have jobs to offer, and is not in position to guarantee earnings of $175 to $300 monthly, or in any amount. The number of students permitted to enroll is not limited as represented; nor does the respondent personally scan and correct all answers or give his personal attention and care to every student. The course is not sold for less than half as represented, but the regular full tuition fee is charged.

PAR. 5. The foregoing acts and practices used by respondent in connection with the offering for sale, sale and distribution of his said courses of study and instruction, as hereinbefore set out, 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 as herein alleged, are true, and to induce them to purchase and pursue such courses of study and instruction on account thereof.

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 22, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Howard S. Weaver, an individual trading under the name Weaver Real Estate Appraisal Training Service, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the said act, and on November 13, 1940, the respondent filed his answer in this proceeding. Thereafter, at a regularly scheduled hearing, counsel for the respondent and counsel for the Commission entered into a stipulation whereby it was stipulated and agreed that a statement of facts read into the record at said hearing might be taken as the facts in this proceeding and in lieu of testimony in support of, and in opposition to, the charges stated in the complaint. Respondent also waived the filing of a report on the evidence by the trial examiner, brief, and his right to request oral argument. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Howard S. Weaver, is an individual trading under the name Weaver Real Estate Appraisal Training Service, with his office and principal place of business at 2322 East Forty-ninth Street, Kansas City, Mo.

PAR. 2. The respondent is now and for several years last past has been engaged in the sale and distribution of home study courses in rural and city real estate appraisal training. Said courses of study and instruction are pursued by correspondence through the medium of the United States mail. He causes said courses, together with the books and material used in connection therewith when sold, to be transported from his aforesaid 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. Said respondent maintains and at all times mentioned herein has maintained a course of trade in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent in soliciting the sale of, and in selling, his said courses of study and instruction, and in the distribution thereof in said commerce, has made numerous statements and representations with reference to said courses of study by one or more of the following methods, to wit: through his sales representatives engaged in soliciting the sale of such courses; through advertising matter published in newspapers and magazines circulated among the general public; through printed matter distributed among prospective students, enrolled students and others located in the several States of the United States and in the District of Columbia; and through radio broadcasts to members of the public generally. Among and typical of such statements and representations made by or through one or more of the said methods are the following:

Here is good news for ambitious men from 25 to 55. Right now when most industrial and professional fields are overcrowded there is an actual lack of trained men to act as farm land appraisers, field men and town and city residences and business property appraisers * * * to meet this great shortage of trained men the Weaver Real Estate Appraisal Training Service was founded.

Never before was the demand so great and the shortage so acute.

At present the appraisal field is using thousands of unskilled, untrained men who should be replaced—and are being replaced * * * with competent, qualified trained men as rapidly as they are available.

The real estate appraisal field offers to trained men choice money-making opportunities.

The new Federal Housing Bill passed by Congress will cause the Federal Housing Authority to be greatly expanded and thousands of new appraisers

will be needed by this agency and other financial institutions cooperating with the F. H. A.

The United States Government loan agencies, the Major insurance companies, banks, trust companies, all need hundreds of (appraisers) * * * In a circular recently issued by the Government for Civil Service applicants (Form No. 44279), positions as Land Appraisers were listed at $3,800 per year; Associate Land Appraisers, $3,200 and Assistant Land Appraisers, $2,600 * * * the natural question is how does one fit himself for such a secure, well paid position? The answer to that is easy—you can get such a training right in your own home through the Weaver Real Estate Appraisal Training Service.

Institutions who know the Weaver School commend it most highly and are eager to get Weaver trained men.

WANTED—men to train for farm land appraisers * * * earn $175 to $300 monthly * * * Write Weaver Real Estate Appraisal Training Service.

To make certain that you do fully grasp all points you will find a set of questions with each lesson and return to us. Mr. Weaver personally scanning these and correcting you if you are wrong on any point. This personal service has a rather sharp limit to it. That is, Mr. Weaver can give his personal attention and care to only so many students. When that point is reached no fresh enrollments can be accepted.

Here then is your big opportunity. The course can be taken in 6 to 12 weeks right in your own home and so sure is Mr. Weaver that you will get one of the many positions available on completing the course that you are asked to pay less than half of the low fee in two installments. The balance is to be paid only when you secure employment as field-man, appraiser or supervisor.

PAR. 4. By the means and in the manner aforesaid, the respondent represented and implied that the demand for land appraisers greatly exceeded the supply; that land appraising was an uncrowded field, lacking qualified men; that various loan agencies of the Government, as well as private industry, were seeking men trained by respondent; that the Civil Service Commission was holding examinations for land appraisers from time to time, and that salaries up to $3,800 were obtainable; that men trained by respondent were earning $175 to $300 monthly, and that choice money-making positions were available to them.

The respondent further represented that only a limited number of students were to be selected for training; that each student was to receive the individual assistance and guidance of respondent, the head of the school, and that the tuition fee was less than half the regular tuition charge.

In truth and in fact there was not and is not a lack of appraisers, nor has the demand exceeded the supply. However, there have been instances in certain locations in which prospective employers sought to secure the services of competent appraisers and in certain instances such appraisers were not available. The appraisal field is not using

thousands of unskilled men who are being replaced by competent trained men wherever they are available. There are already more appraisers with field experience than can be gainfully employed and such an occupation does not of itself insure choice money-making opportunities.

PAR. 5. The various loan agencies of the United States Government do not need additional or newly trained appraisers and lucrative employment can not be assured; nor is there demand in private industry for appraisers which will assure lucrative earnings. The Civil Service Commission has in recent years held examinations for real-estate appraisers, as represented by the respondent but the applicants for such examinations were required to have had considerable experience in actual appraisal work except that examinations have been called by the Civil Service Commission for Junior Appraiser for Land Banks who were not required to have had actual experience in real-estate appraisal work. Graduation from respondent's school in and of itself would not qualify the graduate to take such examination.

PAR. 6. It is not a fact that institutions which know the respondent's school commend it most highly and are eager to get respondent's graduates. The respondent daily contacts large business houses in an effort to get them to employ the graduates of his school with only limited success. However, there are among the institutions so contacted several who think highly of the training of the respondent's school and have employed graduates from the school. The respondent does not have jobs to offer and is not in position to guarantee earnings of from $175 to $300 a month or in any amount. The number of students permitted to enroll is not limited as was represented; nor does the respondent personally scan and correct all answers or give his personal attention and care to every student. The respondent employs two assistants among whose duties is the work of correcting the lessons of the students. If, in the opinion of these employees the answers given are correct, they are not referred to respondent for attention. However, when, in the opinion of these employees the answers to the questions are incorrect they are then referred to respondent for correction. During the course of training each student receives at least two personal letters from Mr. Weaver. The course was not sold for less than half the regular tuition fee as was represented, but the regular full tuition fee was charged.

PAR. 7. The foregoing acts and practices used by respondent in connection with the offering for sale, sale and distribution of his said course of study and instruction, as hereinbefore set out, have had,

and now have, the tendency and capacity to, and do, lead purchasers and prospective purchasers thereof into the 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. 8. The aforesaid advertising material was used by respondent during the year 1939 but its use has since been discontinued.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent and a stipulation as to the facts entered into on the record herein, and the Commission having duly considered the record and having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Howard S. Weaver, an individual trading as Weaver Real Estate Appraisal Training Service, or under any other trade name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of home study courses in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That there is a lack of real-estate appraisers available for employment or that the demand for such appraisers exceeds the supply.

2. That the real-estate appraisal field is using thousands of unskilled, untrained men who are being replaced by competent trained men as rapidly as they are available.

3. That the various loan agencies of the United States Government and private lending agencies need additional or newly trained appraisers.

4. That lucrative earnings can be assured trained real-estate appraisers.

5. That institutions generally, which know the respondent's school, commend it most highly or are eager to get respondent's graduates.

6. That he can assure or guarantee earnings in any amount to graduates of his school.

7. That the number of students permitted to enroll in his school is limited.

8. That he personally corrects all written lessons of his students.

9. That his course of study is sold for less than half the regular tuition fee charged.

10. That graduation from his school in and of itself, qualifies one for a Government position as a real-estate appraiser.

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

PLOMB TOOL COMPANY

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

Docket 4384. Complaint, Nov. 23, 1940—Decision, June 30, 1941

Where a corporation engaged in competitive interstate sale and distribution of tools and other articles of merchandise to wholesalers, jobbers, and retailers, and in advertising same and its sales plan or method for resale thereof to purchasing public by means of printed cards, circulars, samples, and personal solicitation—

Furnished, together with its said products, various club plans which involved resale thereof to purchasing public by use of game of chance, gift enterprise, or lottery, and under which, as illustrative, through plan of fixed weekly payments for specified number of weeks, and weekly drawings, certain members received $25 worth of its tools for $1, $2, $3, etc., in accordance with chance drawing of particular member's name at first, second, and succeeding weekly drawings, all others paying full amount, and which included, at the end of the period, drawing for a grand prize, to which all members of the club were eligible; and thereby

Supplied to and placed in the hands of retailers means of conducting lotteries in the sale of its merchandise through their exposure and sale of same to purchasing public in accordance with such plans, under which the amount the ultimate purchaser paid for products, and fact as to which club member received final award, was determined wholly by lot or chance, and which involved game of chance to procure articles of merchandise at much less than normal retail price; 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 adopt and use such or any method contrary to public policy, refrain therefrom;

With result that many persons were attracted by its said sales plan and element of chance involved therein, and were thereby induced to buy and sell its merchandise in preference to that offered and sold by its competitors who did not use the same or an equivalent method, and with effect of unfairly diverting trade in commerce to it from its said competitors, to the injury of competition in commerce:

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

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.
Mr. William Hawes Smith, 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 Plomb Tool 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, Plomb Tool Co., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 2209 Santa Fe Avenue, Los Angeles, Calif. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of tools and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from its aforesaid place of business in the State of California to purchasers thereof at their respective points of location in the various States of the United States other than the State of California and in the District of Columbia. There is now, and for more than 2 years last past has been, a course of trade by said respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold its said merchandise to wholesale dealers, jobbers, and retail dealers, along with a sales plan or method by which the said merchandise is to be, and is, resold to the purchasing public. Said plan or method involves the use of a game of chance, gift enterprise, or lottery scheme in the sale and distribution of said merchandise to the ultimate purchasers thereof. Respondent has advertised its said merchandise and its said sales plan or method by means of printed cards, circulars, samples of said merchandise, and by personal solicitation. The sales plan or method as suggested and advertised by respondent is substantially as follows:

The sales plan or method is described as the "Tool Club." Each club has a fixed number of members, usually 100. Each member of a club pays a fixed amount each week, usually $1, for a period not to exceed a given number of weeks, usually 25 weeks. At the end of the first week a drawing is held and the member whose name or number is drawn receives from the retail dealer his choice of $25 worth of

respondent's tools, for the payment of 1 week's dues, and such winner or member then is dropped from the club. Each succeeding week the same procedure is followed and thus one member receives tools as aforesaid for the payment of 1 week's dues, another for 2 weeks' dues, another for 3 weeks' dues, and so on to the end of the fixed period. At that time all remaining members receive $25 worth of tools, but such members have paid the full contract price therefor. Also, at the end of the fixed period a drawing is held for a grand prize to which all the members of the club are eligible. Thus, the amount which an ultimate purchaser pays for the tools and the fact as to which club member receives the final award is determined wholly by lot or chance.

Respondent furnishes and has furnished various "Club Plans" for use in the sale and distribution of its merchandise by means of a game of chance, gift enterprise or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said "Club Plans" is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said merchandise expose for sale and sell the same to the purchasing public in accordance with the aforesaid sales plan or method. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of its merchandise and the sale of 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 articles of merchandise at a price which is much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance, or the sale of a chance to win something by a chance or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its merchandise, and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use

the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to and does unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to the respondent from its said competitors who do not use the same or an equivalent method. As a result thereof injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and 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 November 23, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Plomb Tool 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 December 18, 1940, the respondent filed its original answer in this proceeding. Subsequently, on May 12, 1941, the respondent filed a motion to withdraw its original answer and file in lieu thereof a substitute answer dated May 12, 1941, in which it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and 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, Plomb Tool Co., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 2209 Santa Fe Avenue, Los Angeles, Calif. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of

tools and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from its aforesaid place of business in the State of California to purchasers thereof at their respective points of location in the various States of the United States other than the State of California and in the District of Columbia. There is now, and for more than 2 years last past has been, a course of trade by said respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold its said merchandise to wholesale dealers, jobbers, and retail dealers, along with a sales plan or method by which the said merchandise is to be, and is, resold to the purchasing public. Said plan or method involves the use of a game of chance, gift enterprise, or lottery scheme in the sale and distribution of said merchandise to the ultimate purchasers thereof. Respondent has advertised its said merchandise and its said sales plan or method by means of printed cards, circulars, samples of said merchandise, and by personal solicitation. The sales plan or method as suggested and advertised by respondent is substantially as follows:

The sales plan or method is described as the "Tool Club." Each club has a fixed number of members, usually 100. Each member of a club pays a fixed amount each week, usually $1, for a period not to exceed a given number of weeks, usually 25 weeks. At the end of the first week a drawing is held and the member whose name or number is drawn receives from the retail dealer his choice of $25 worth of respondent's tools, for the payment of 1 week's dues, and such winner or member then is dropped from the club. Each succeeding week the same procedure is followed and thus one member receives tools as aforesaid for the payment of 1 week's dues, another for 2 weeks' dues, another for 3 weeks' dues, and so on to the end of the fixed period. At that time all remaining members receive $25 worth of tools, but such members have paid the full contract price therefor. Also at the end of the fixed period a drawing is held for a grand prize to which all the members of the club are eligible. Thus, the amount which an ultimate purchaser pays for

the tools and the fact as to which club member receives the final award is determined wholly by lot or chance.

Respondent furnishes and has furnished various "Club Plans" for use in the sale and distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said "Club Plans" is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said merchandise expose for sale and sell the same to the purchasing public in accordance with the aforesaid sales plan or method. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of its merchandise and the sale of 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 found involves a game of chance, or the sale of a chance, to procure articles of merchandise at a price which is much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondent, as above found, are unwilling to adopt and use said method or any method involving a game of chance, or the sale of a chance to win something by a chance or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its merchandise, and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to and does unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to the respondent from its said competitors who do not use the same or an equivalent method. As a result thereof, injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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, Plomb Tool 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 tools 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 tools or any other merchandise, together with a sales plan or method involving the use of a game of chance, gift enterprise, or lottery scheme by which said merchandise is to be, or may be, sold to the purchasing public.

2. Selling or otherwise disposing of any merchandise by the use of a game of chance, gift enterprise, or lottery scheme.

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

IN THE MATTER OF

HY-PHEN CORPORATION

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

Docket 4418. Complaint, Dec. 14, 1940—Decision, June 30, 1941

Where a corporation engaged in the interstate sale and distribution of its "Hy-Phen" medicinal preparation; in advertisements in newspapers, by radio continuities, and other advertising media, directly or by implication;

Represented that its said preparation would prevent colds and was a cure or remedy therefor; and was a competent and effective treatment for various ailments and conditions including toothache, earache, neuralgia, twitching nerves, after-extraction pains, aching muscles, rheumatic pains, and women's periodic pains, which would relieve the pain attendant upon such conditions more quickly and for a longer period of time than any other preparation; and that it was unqualifiedly safe for use;

Facts being that the therapeutic properties of its said preparation were limited to those of an analgesic, affording only temporary relief from painful symptoms and having no curative action upon the underlying factors causing pain; ingredients in said preparation were similar to those found in many other like preparations, and it had no special properties which would permit it to relieve pain more quickly or for a longer time than many other such preparations; its effectiveness in the treatment of the conditions listed was limited to furnishing temporary relief from their painful symptoms, it had no therapeutic value in treatment of such conditions as migraine headaches, headaches due to infection, pain caused by abscessed tooth, and others, and use thereof was not entirely free from danger, due to its drug content;

With result of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and into the purchase of substantial quantities of its said product:

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

Mr. 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 Hy-Phen Corporation, a corporation (successor to Bradley's Laboratory, Inc., a corporation), hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Hy-Phen Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia with its office and principal place of business at Matoaka, W. Va.

PAR. 2. Respondent is now and has been for more than 2 years last past, engaged in the business of selling and distributing a medicinal preparation described as Hy-Phen intended as a treatment for various ailments of the human body.

Respondent causes its said preparation, when sold, to be transported from its said place of business in the State of West Virginia to purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, by radio continuities, and other advertising literature, are the following:

Thousands of people have found that they can avoid colds the year around by using Hy-Phen pain and cold tablets.

Nothing else seems to stop a cold like Hy-Phen.

* * * stop toothache and after extraction pain * * *, quickly and pleasantly by taking one or two Hy-Phen tablets.

Neuralgia? twitching nerves? Stop them quickly and for a longer period with Hy-Phen.

Hy-Phen for simple headache, toothache, earache, head colds, neuralgic pain and aching muscles. * * * relieves pain quicker and longer.

TWO HY-PHEN TABLES * * * will relieve that headache or cold almost immediately * * * will help ward off headaches * * *.

HYPHEN * * * "Safety First" * * * effective in relieving pain * * * Women everywhere have found they can always rely on Hyphen tablets. Doctors, lawyers, dentists, miners, all find Hyphen tablets indispensable in easing pain.

Hyphen tablets will quickly and safely relieve you.

Hy-Phen does not contain any dangerous or habit-forming drugs; may we ask that you safeguard your health and be insured against pain at all times by keeping a package of Hyphen handy.

For quickest relief simple Headaches, Cold, Neuralgia, Lumbago, Rheumatic Pains and Women's Periodic Pains.

Hy-Phen being a tablet, reaches the point of absorption before dissolving giving you the full effect of its medicines. That is why Hy-Phen gives you quicker and long-lasting relief.

Bradley's Lab., Matoaka, West Virginia, * * * HY-PHENS FOR HEADACHES!

PAR. 4. Through the use of the statements and representations hereinabove set forth and in statements and representations not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of said preparation, respondent represents directly or by implication: that its said preparation will prevent colds; that it is a cure or remedy for colds; that said preparation is a competent and effective treatment for toothache, earache, neuralgia, twitching nerves, after extraction pains, aching muscles, rheumatic pains, women's periodic pains, and that it will relieve the pain attendant upon such conditions more quickly and for a longer period of time than any other preparation. Respondent further represents that said preparation is unqualifiedly safe for use.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. The use of said preparation will not prevent colds and the preparation itself does not constitute a cure or remedy for colds. The therapeutic properties of respondent's product are limited to that of an analgesic only affording temporary relief from painful symptoms, and would have no curative action upon the underlying factors that cause pain. The ingredients of this preparation are similar to those found in many other like preparations, and this preparation has no special therapeutic properties which would permit it to relieve the pain more quickly or for a longer period of time than many other preparations on the market. The effectiveness of this preparation in the treatment of colds, toothache, earache, neuralgia, twitching nerves, after extraction pains, and women's periodic pains is limited to furnishing temporary relief to the symptoms of pain in some instances, and it would have no therapeutic value in the treatment of such conditions as migraine headaches, infectious diseases, headaches due to infection, pains due to abscessed teeth, or pains from pressure on nerves. By reason of the existence of acetophenetidin, caffeine, and hyoscyamus in this preparation, its administration is not entirely free from danger.

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, the tendency and capacity to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true and into the purchase of substantial quantities of respondent's preparation.

PAR. 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 14th day of December 1940, issued, and on the 16th day of December 1940, served, its complaint in this proceeding upon the respondent Hy-Phen Corporation, a corporation (successor to Bradley's Laboratory, Inc., a corporation), charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Hy-Phen Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia with its office and principal place of business at Matoaka, W. Va.

PAR. 2. Respondent is now and has been for more than 2 years last past, engaged in the business of selling and distributing a medicinal preparation, described as Hy-Phen, intended as a treatment for various ailments of the human body.

Respondent causes its said preparation, when sold, to be transported from its said place of business in the State of West Virginia to pur-

chasers located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, by radio continuities, and other advertising media, are the following:

Thousands of people have found that they can avoid colds the year around by using Hy-Phen pain and cold tablets.

Nothing else seems to stop a cold like Hy-Phen.

* * * stop toothache and after extraction pain * * * quickly and pleasantly by taking one or two Hy-Phen tablets.

Neuralgia? twitching nerves? Stop them quickly and for a longer period with Hy-Phen.

Hy-Phen for simple headache, toothache, earache, head colds, neuralgic pain and aching muscles. * * * relieves pain quicker and longer.

TWO HY-PHEN TABLETS * * * will relieve that headache or cold almost immediately * * * will help ward off headaches * * *.

HYPHEN * * * "Safety First" * * * effective in relieving pain * * *. Women everywhere have found they can always rely on Hyphen tablets. Doctors, lawyers, dentists, miners, all find Hyphen tablets indispensable in easing pain.

Hyphen tablets will quickly and safely relieve you.

Hy-Phen does not contain any dangerous or habit-forming drugs; may we ask that you safeguard your health and be insured against pain at all times by keeping a package of Hyphen handy.

For quickest relief simple Headaches, Cold, Neuralgia, Lumbago, Rheumatic Pains and Women's Periodic Pains.

Hy-Phen being a tablet, reaches the point of absorption before dissolving giving you the full effect of its medicines. That is why Hy-Phen gives you quicker and long-lasting relief.

Bradley's Lab., Matoaka, West Virginia, * * * HY-PHENS FOR HEADACHES!

PAR. 4. Through the use of the statements and representations hereinabove set forth and in statements and representations not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of said preparation, respondent represents directly or by implication: that its said preparation will prevent colds; that it is a cure or remedy for colds; that said preparation is a competent and effective treatment for toothache, earache, neuralgia, twitching nerves, after extraction pains, aching muscles, rheumatic pains, women's periodic pains, and that it will relieve the pain attendant upon such conditions more quickly and for a longer period of time than any other preparation. Respondent further represents that said preparation is unqualifiedly safe for use.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. The use of said preparation will not prevent colds and the preparation itself does not constitute a cure or remedy for colds. The therapeutic properties of respondent's preparation are limited to that of an analgesic only affording temporary relief from painful symptoms, and said preparation has no curative action upon the underlying factors that cause pain. The ingredients of respondent's preparation are similar to those found in many other like preparations, and said preparation has no special therapeutic properties which would permit it to relieve pain more quickly or for a longer period of time than many other such preparations on the market. The effectiveness of respondent's preparation in the treatment of colds, toothache, earache, neuralgia, twitching nerves, after-extraction conditions, and women's periodic conditions is limited to furnishing temporary relief from the painful symptoms of such conditions. Said preparation has no therapeutic value in the treatment of such conditions as migraine headaches, infectious diseases, headaches due to infection, pains caused by abscessed teeth, or pressure on nerves. The use of said preparation is not entirely free from danger due to the fact that it contains acetophenetidin, caffeine, and hyoscyamus.

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, the tendency and capacity to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true and into the purchase of substantial quantities of respondent's preparation.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint and states that 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 Hy-Phen 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 or distribution of its preparation designated Hy-Phen, 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 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 preparation will prevent colds; that it is a cure or remedy for colds; that it has any therapeutic properties other than an analgesic affording temporary relief from painful symptoms, or that it will have any curative action upon the underlying factors that cause pain; that it contains any ingredients or possesses any special therapeutic properties which cause it to relieve such painful symptoms more quickly or for a longer period of time than many other preparations on the market; that the extent of its effectiveness in the treatment of colds, toothaches, earaches, after-extraction conditions, and women's periodic conditions is any more than to furnish temporary relief from the painful symptoms thereof; that it has any therapeutic value in the treatment of such conditions as migraine headaches, infectious diseases, headaches due to infection, pains caused by abscessed teeth or by pressure on nerves; or that its use is entirely free from danger.

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 preparation,

which advertisements contain any of the representations prohibited in paragraph 1 hereof.

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

IN THE MATTER OF

P. D. MEADORS AND M. M. MEADORS, TRADING AS MEADORS 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 4473. Complaint, Mar 21, 1941—Decision, June 30, 1941

Where two individuals engaged in the manufacture and in the competitive interstate sale and distribution of candy and nut products, including certain assortments, which were so packed and assembled as to involve the use of games of chance, gift enterprise or lottery schemes when sold and distributed to consumers, a typical assortment consisting of (a) 150 assorted pink or white candy-covered gum balls concealed in a hollow cardboard container for sale under a plan by which purchasers of balls, at 1 cent each, who punched the white balls received that gum only, while those punching a pink ball received in addition a 5-cent candy bar; and (b) 32 packages of peanuts packed in a carton bearing a label reading "* * * Prize in Every Package. A Silver Dime in One * * *," under which plan the facts as to whether a purchaser received nothing but a package of peanuts and a prize of insignificant value, or a package with a 10-cent prize included therein, were determined wholly by lot or chance;

Sold such assortments to wholesalers and jobbers, and, directly or indirectly to retailers by whom they were exposed and sold to the purchasing public in accordance with said sales plan, involving game of chance to procure candy at less than its regular retail price, and package of nuts, with money in addition, contrary to the established public policy of the United States Government, and in competition with many who, unwilling to use such or any method contrary to public policy, refrain therefrom;

With result that many persons were attracted by their said sales plans and the element of chance involved therein and were thereby induced to buy and sell their products in preference to those of their said competitors, and with tendency and capacity to divert trade in commerce unfairly from such competitors to them:

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

Mr. J. W. Brookfield, Jr., for the Commission.

Blythe & Bonham, of Greenville, S. Car., 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 P. D. Meadors and M. M. Meadors, individually and trading as Meadors 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, P. D. Meadors and M. M. Meadors, are individuals trading and doing business as Meadors Manufacturing Co., with their office and principal place of business located at 533 South Main Street, Greenville, S. C. 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 and nut products to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondents cause and have caused said candy and nut products, when sold, to be transported from their place of business in the city of Greenville, S. C., to purchasers thereof at their respective points of location in various States of the United States other than South Carolina 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 and nut 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 firms and with corporations engaged in the sale and distribution of candy and nut products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy and nuts so packed and assembled as to involve the use of games of chance, gift enterprise, or lottery schemes when sold and distributed to the consumers thereof. Two of said assortments are hereinafter described for the purpose of showing the method used by respondent, and are as follows:

This assortment consists of 150 assorted candy covered gum balls. One hundred and twenty-eight of said balls are white colored and 22 of said balls are colored pink. Said balls are concealed in a hollow cardboard container so that they may be punched from the container, one at a time. Sales are made in the following manner. Purchases are 1 cent each. Persons who punch the white balls of gum receive that gum only; persons who punch one of the pink balls are given, in addition, a five-cent bar of candy. The balls are so concealed in the container that the purchaser cannot determine until after the

punch is made whether he will receive a white or pink ball; or whether he will receive nothing but the white ball, or the pink ball and a 5-cent bar of candy. The candy is thus distributed to the purchasers of punches from the container wholly by chance.

Respondent has also packed certain assortments of peanuts described as follows:

The peanuts are packed in a carton containing 32 packages. Upon a label fastened to said carton appears the following legend: "Meadors Prize Peanuts, Prize in Every Package. A Silver Dime in One. Meadors Manufacturing Company, Greenville, South Carolina."; and distributed in the following manner:

The said packages of peanuts retail at the price of 5 cents each. In each of 31 of the said packages of peanuts there is packed a small novelty of a value of less than 1 cent. The other package contains a dime (10 cents). All of said packages of peanuts are sealed and the purchaser thereof is unable to determine until after the packages have been opened whether he will receive the novelty merchandise of a value of less than 1 cent or a 10-cent piece. The fact as to whether the purchaser of a package of peanuts receives nothing but the peanuts and a prize of insignificant value or whether he receives the peanuts plus 10 cents (twice the purchase price) is thus determined wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondents' candy or nuts, 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 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.

PAR. 4. The sale of candy and packages of nuts to the purchasing public by the methods or sales plans hereinabove set forth involves a game of chance or the sale of a chance to procure candy at less than the retail regular prices of said candy and a sum of money in addition to a package of said nuts. Many persons, firms, and corporations who sell and distribute products in competition with respondents, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method which is 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 products and by the element of chance involved therein and are thereby induced to buy and sell respondents' products in preference to products 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 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.

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 March 21, 1941, issued, and on March 22, 1941, served its complaint in this proceeding upon respondents P. D. Meadors and M. M. Meadors, individually and trading as Meadors 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. On April 11, 1941, the respondents, through their attorneys, filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint. Subsequently the respondents, through their attorneys, waived the filing of a brief and oral argument. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and the answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, P. D. Meadors and M. M. Meadors, are individuals trading and doing business as Meadors Manufacturing Co., with their office and principal place of business located at 533 South Main Street, Greenville, S. C. 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 and nut products to wholesale dealers, jobbers, and retail dealers located at points in the various

States of the United States and in the District of Columbia. Respondents cause and have caused said candy and nut products, when sold, to be transported from their place of business in the city of Greenville, S. C., to purchasers thereof at their respective points of location in various States of the United States other than South Carolina 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 and nut 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 firms and with corporations engaged in the sale and distribution of candy and nut products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy and nuts so packed and assembled as to involve the use of games of chance, gift enterprise, or lottery schemes when sold and distributed to the consumers thereof. Two of said assortments are hereinafter described for the purpose of showing the method used by respondent, and are as follows:

This assortment consists of 150 assorted candy covered gum balls. One hundred and twenty-eight of said balls are white colored and 22 of said balls are colored pink. Said balls are concealed in a hollow cardboard container so that they may be punched from the container, one at a time. Sales are made in the following manner. Purchases are 1 cent each. Persons who punch the white balls of gum receive that gum only; persons who punch one of the pink balls are given, in addition, a 5-cent bar of candy. The balls are so concealed in the container that the purchaser cannot determine until after the punch is made whether he will receive a white or pink ball; or whether he will receive nothing but the white ball, or the pink ball and a 5-cent bar of candy. The candy is thus distributed to the purchasers of punches from the container wholly by chance.

Respondent has also packed certain assortments of peanuts described as follows:

The peanuts are packed in a carton containing 32 packages. Upon a label fastened to said carton appears the following legend: "Meadors Prize Peanuts, Prize in Every Package. A Silver Dime in One. Meadors Manufacturing Company, Greenville, South Carolina."; and distributed in the following manner:

The said packages of peanuts retail at the price of 5 cents each. In each of 31 of the said packages of peanuts there is packed a small novelty of a value of less than 1 cent. The other package contains a dime (10 cents). All of said packages of peanuts are sealed and the purchaser thereof is unable to determine until after the packages have been opened whether he will receive the novelty merchandise of a value of less than 1 cent or a 10-cent piece. The fact as to whether the purchaser of a package of peanuts receives nothing but the peanuts and a prize of insignificant value or whether he receives the peanuts plus 10 cents (twice the purchase price) is thus determined wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondents' candy or nuts, 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 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.

PAR. 4. The sale of candy and packages of nuts to the purchasing public by the methods or sales plans hereinabove set forth involves a game of chance or the sale of a chance to procure candy at less than the retail regular prices of said candy and a sum of money in addition to a package of said nuts. Many persons, firms, and corporations who sell and distribute products in competition with respondents, as above found, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method which is 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 products and by the element of chance involved therein and are thereby induced to buy and sell respondents' products in preference to products 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 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 acts and practices in commerce within the intent and meaning of the Federal 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 respondents having thereafter waived the filing of brief and oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, P. D. Meadors and M. M. Meadors, individually and trading under the name of Meadors Manufacturing Co., or trading under any other name, 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 candy, nuts, or nut products or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing 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 any devices, schemes or plans either with assortments of merchandise or separately, which said devices, schemes, or plans are to be used or may be used in selling or distributing such merchandise to the public.

3. Packaging or assembling any merchandise which is ultimately to be sold to the public in such a manner that cash or other prizes or awards are distributed to the purchasers thereof by means of a game of chance, gift enterprise, or lottery scheme.

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

JACOB SCHACHNOW, TRADING AS MODERN HAT WORKS

MODIFIED CEASE AND DESIST ORDER

Docket 2047. Order, July 3, 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 2, 1940, 31 F. T. C. 1256, made its findings and conclusion and issued cease and desist order, and (2) Circuit Court of Appeals for the Third Circuit, on April 2, 1941, in *Jacob Schachnow, trading as Modern Hat Works* v. *Federal Trade Commission*, 32 F. T. C. 1875, not reported in Federal Reporter, issued its decree modifying said order and directing Commission to modify the same in accordance therewith—

Requiring respondent, 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 second-hand materials are new or composed of new materials, by failure to stamp on the sweat bands, in conspicuous and legible terms which cannot be removed, etc., a statement to such effect, as in order set forth, and subject to proviso thereof; and to cease and desist from representing in any manner that hats made in whole or in part from old, used, or second-hand materials are new or composed of new materials.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on November 2, 1940, 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 April 2, 1941, the United States Circuit Court of Appeals for the Third Circuit 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 said court decree.

It is ordered, That respondent Jacob Schachnow, an individual trading as Modern Hat Works, or trading under any other name or names, his representatives, agents and employees, directly or through any corporate or other device in connection with the offering for

sale, sale and distribution of hats in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that hats composed in whole or in part of used or second-hand materials, are new or are composed of new materials by failure to stamp on the sweatbands thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweatbands, a statement that said products are composed of second-hand or used materials (e. g., "Second-Hand," "Used" or "Made-Over"), provided that if sweatbands 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.

Syllabus

IN THE MATTER OF

BERLAND SUPPLY 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 3861. Complaint, July 27, 1939—Decision, July 9, 1941

Where three corporations engaged in manufacture of glassware, including tableware such as tumblers, highball glasses, etc., and in interstate sale and distribution thereof to purchasers, among others, in the Milwaukee trade area, in substantial competition with each other and other manufacturers except insofar as such competition had been hindered or restricted and potential competition forestalled as below set forth; an individual, agent, of one of said manufacturers, and a corporation, agent, of the other two, engaged in the sale of their products in aforesaid area; four corporations dealing at wholesale, in glassware, among other things, with places of business in Milwaukee; and two individuals with places of business therein, engaged in sale of hotel and restaurant supplies, including glassware, and charter members, along with the four corporate wholesalers before referred to, of a corporation organized in 1933 as "Hotel, Restaurant & Tavern Equipment Association," in connection with the enforcement of the National Industrial Recovery Act; in substantial competition with each other and other wholesalers except insofar as such competition had been hindered or restricted and potential competition forestalled, as hereinafter set forth—

(*a*) Combined and conspired together and with each other, and cooperated, to cut off supply of glassware of a certain concern when latter, organized as "Badger Cash and Carry Stores" to engage in sale of liquors, tobacco, and cigars, thereafter undertaking sale of glassware at wholesale in trade area in question, cut the resale prices of such ware below those of said wholesalers; forming and participating in a plan for the elimination of said "Cash and Carry Stores" as competitor, under which said wholesalers contacted factory representatives of the aforesaid manufacturers, and former notified their principals, following which said manufacturers refused to sell to said competitor; and

Where said "Hotel, Restaurant & Tavern Equipment Association" and its wholesaler members, pursuant to the aforesaid conspiracy and combination—

(*b*) Concertedly wrote letters and used other means of persuasion to, and did, enlist the cooperation of said manufacturers who cooperated with them and others and monopolized trade in commerce in glassware in city in question;

With the result that at least one wholesaler of glassware was unable to purchase supplies from said three manufacturers or their agents, and was thereby handicapped in the conduct of his business; interstate sales were curtailed; elimination of at least one wholesaler tended to stabilize wholesale prices of glassware at levels inconsonant with free competition, competition in the wholesaling of such ware in said trade area was suppressed, and trade was restrained; and

Where said glass manufacturers, pursuant to said conspiracy and combination, and acting in concert with said association and its wholesaler members—

(c) Canceled or refused to accept orders for glassware from said "Cash and Carry Stores" for resale by latter in Milwaukee trade area, in competition with such wholesalers;

With the result that competition between said "Cash and Carry Stores" and said wholesalers was unduly restrained; competition by and between said manufacturers was unduly suppressed; and interstate commerce in glassware restrained:

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

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

Mr. Lynn C. Paulson for the Commission.

Mr. Jack A. Berland, of Milwaukee, Wis., for Berland Supply Co., Inc., I. Shapiro, Inc., Louis M. Mintz, and W. A. Reinemann.

Lecher, Michael, Whyte & Spohn, of Milwaukee, Wis., for S. J. Casper Co., Inc., and Roseware, Inc.

Mr. Alfred Mueller, of Milwaukee, Wis., for National Beverage Distributing Co.

Mr. Hugh C. Laughlin, of Lancaster, Ohio, for Anchor Hocking Glass Corporation and W. H. Peterson.

Mr. Herbert M. Blair, of Weston, W. Va., for West Virginia Glass Specialty Co., Inc.

Bonham & Emshwiller, of Hartford City, Ind., for Indiana Glass Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Berland Supply Co., Inc., S. J. Casper, Inc., I. Shapiro, Inc., Louis M. Mintz, trading as Mintz Supply Co., W. A. Reinemann, trading as Hotel and Restaurant Supply Co., National Beverage Distributing Co., Anchor-Hocking Glass Co., West Virginia Glass Specialty Co., and Indiana Glass Co., Roseware, Inc., W. H. Peterson, Hotel, Restaurant & Tavern Equipment Association, and its members, hereinafter referred to as respondents, have been and are now, using unfair methods of competition in commerce as "commerce" is defined by said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Berland Supply Co., Inc., is a Wisconsin corporation with its principal office and place of business at 1914 Vliet Street, Milwaukee, Wis.

Respondent S. J. Casper, Inc., is a Wisconsin corporation with its principal office at 845 North Plankinton Avenue, Milwaukee, Wis.

Respondent I. Shapiro, Inc., is a Wisconsin corporation with its principal office at 334 West Juneau Avenue, Milwaukee, Wis.

Respondent Louis M. Mintz is an individual trading and doing business as Mintz Supply Co., with offices at 144 South First Street, Milwaukee, Wis.

Respondent W. A. Reinemann is an individual trading and doing business as Hotel and Restaurant Supply Co., with offices at 315 West Juneau Avenue, Milwaukee, Wis.

Respondent National Beverage Distributing Co., is a Wisconsin corporation with its principal office at 1134 North Water Street, Milwaukee, Wis.

Respondent Anchor-Hocking Glass Co. is an Ohio corporation with its main plant and principal office at Lancaster, Ohio.

Respondent West Virginia Glass Specialty Co. is a West Virginia corporation with its principal office at Weston, W. Va.

Respondent Indiana Glass Co. is an Indiana corporation with its principal office at Dunkirk, Ind.

Respondent Roseware, Inc., is a Wisconsin corporation with its principal office at 772 North Milwaukee Street, Milwaukee, Wis.

Respondent, W. H. Peterson, is an individual. His principal office is at 334 Commerce Building, Milwaukee, Wis.

Respondent Hotel, Restaurant & Tavern Equipment Association is an incorporated trade association which includes as its members, persons, firms, or corporations engaged in the hotel, restaurant, and tavern equipment industry. It was organized in 1933 for the purpose of promoting the mutual interests of its members. It was incorporated in the State of Wisconsin. It operates through its board of directors and other officers.

PAR. 2. Respondents Berland Supply Co., Inc., I. Shapiro, Inc., S. J. Casper, Inc., Louis M. Mintz, doing business as Mintz Supply Co., W. A. Reinemann, doing business as Hotel & Restaurant Supply Co., and National Beverage Distributing Co. are engaged in the sale of glassware and other hotel, restaurant and tavern supplies at wholesale and retail in Milwaukee, Wisconsin, and the surrounding trade area, which includes the State of Wisconsin and parts of adjoining States.

Respondents Anchor-Hocking Glass Co., West Virginia Glass Specialty Co., and Indiana Glass Co. are engaged in the manufacture and sale of glassware.

Respondent Roseware, Inc., is a factory representative for respondents West Virginia Glass Specialty Co. and Indiana Glass Co., and

is engaged in the sale of glassware at wholesale and retail in the city of Milwaukee, Wis., and the surrounding trade area.

Respondent W. H. Peterson is a factory representative for respondent Anchor-Hocking Glass Co., and is engaged in the sale of glassware at wholesale and retail in the city of Milwaukee, Wis., and the surrounding trade area.

PAR. 3. In the course and conduct of their respective businesses, respondents Berland Supply Co., Inc., S. J. Casper, Inc., I. Shapiro, Inc., Louis M. Mintz, trading as Mintz Supply Co., W. A. Reinemann, trading as Hotel and Restaurant Supply Co., Roseware, Inc., W. H. Peterson, and National Beverage Distributing Co., have purchased and do purchase various products from the producers and manufacturers thereof located at various points throughout the United States for resale in the city of Milwaukee, and the surrounding trade area, and have sold and shipped, and do cause to be sold and shipped these products to various individuals located at points in the State of Wisconsin and in the adjoining States; and when said purchases are made, and as part thereof, said producers and manufacturers regularly have shipped or caused to be shipped said products from their respective points of location in the several States of the United States other than the State of Wisconsin to the said respondents.

In the course and conduct of their respective businesses, respondent manufacturers Anchor-Hocking Glass Co., West Virginia Glass Specialty Co. and Indiana Glass Co. have sold and shipped, or caused to be sold and shipped, and do sell and ship, or cause to be sold and shipped, their products from the States in which they are located to other States within the United States and the District of Columbia.

Respondent Hotel, Restaurant & Tavern Equipment Association is not engaged in interstate commerce, but is engaged in carrying out certain unlawful methods as alleged herein, which directly and substantially affect competition among its members.

All of the respondents, in the aforementioned manner, maintained, and still do maintain, a course of trade in said products in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 4. Prior to 1938, respondent wholesalers were in active and substantial competition with each other and with other wholesalers and jobbers in the city of Milwaukee, Wis., and the surrounding trade area. Respondent manufacturers sold and shipped glassware to said respondent wholesalers and jobbers in competition with each other and with other manufacturers and producers, and sold and shipped glassware to said other wholesalers and jobbers who were in active competition with the said respondent wholesalers and jobbers.

PAR. 5. During 1938, respondents entered into and thereafter carried out and are still carrying out an understanding, agreement, combination, and conspiracy to prevent, suppress, hinder, and lessen competition in the sale and distribution of said glassware products in commerce in the aforesaid territory. To carry out the aforesaid purposes, the respondents have done, and do among others, the following acts and things:

1. Conspired, combined, cooperated, and bargained amongst themselves to cut off the source of supply of at least one competing jobber and make it impossible for said jobber to purchase merchandise in the same markets as its competitors.

2. Respondent wholesalers cooperated with each other and with respondent factory representatives, Roseware, Inc., and W. H. Peterson, of the respondent manufacturers and producers, and concertedly wrote letters and did other acts to enlist the cooperation of the respondent manufacturers to the end that at least one jobber, who was in active competition, and but for the said acts and practices alleged herein would be in active competition with said respondent wholesalers and respondent factory representatives aforesaid, would be unable to obtain supplies of glassware, which said designated wholesaler had theretofore been able to obtain in like manner, and from the same sources of supply as the respondent wholesalers.

3. Respondent manufacturers directly and through their factory representatives, respondents Roseware, Inc., and W. H. Peterson, bargained, combined, conspired, and cooperated with the said respondent wholesalers and have refused, and do refuse, to fill orders and ship their products to at least one jobber designated by respondent wholesalers in pursuance of the aforesaid agreement, combination, conspiracy, and undertaking, and for no lawful reason.

4. Directly or through their agents in cooperation with one another have maintained and do maintain membership in respondent Hotel, Restaurant & Tavern Equipment Association, and have made and do make use of the respondent association in furtherance of their purpose to restrict and restrain full and free competition in the glassware wholesale and retail markets in the aforesaid trade area, being the city of Milwaukee, the State of Wisconsin, and parts of adjoining States.

5. Used and engaged, in concert and cooperation with one another, other acts and coercive methods and practices in promoting, establishing, and carrying out the foregoing combination, conspiracy, confederation, and undertaking.

PAR. 6. The combination, conspiracy, confederation, and undertaking so entered into and carried out by said respondents, and the acts and things done thereunder and pursuant thereto as hereinabove al-

leged resulted and result in the suppression, hindrance, and lessening of competition in the sale and distribution of glassware products in commerce between and among the several States of the United States and in the District of Columbia, and more particularly in the aforesaid trade area, to the prejudice and injury of respondents' competitors and of the public. The acts and practices of the respondents, as aforesaid, have resulted and result in the undue enhancement of prices of glassware products to the using public, and the public has been and is deprived of the benefits of the competition that did exist in the glassware market in the city of Milwaukee, Wis., and the surrounding trade area, and which would have continued to exist but for the aforesaid acts and practices.

PAR. 7. The aforesaid acts and practices of the respondents 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 27, 1939, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of answers thereto by all the respondents except respondent Hotel, Restaurant & Tavern Equipment Association, testimony and other evidence in support of the allegations of the complaint were introduced by Lynn C. Paulson, attorney for the Commission, and in opposition to the allegations of the complaint by W. C. Miller, attorney for respondent Anchor Hocking Glass Corporation (named Anchor-Hocking Glass Co. in the complaint) before Edward E. Reardon, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceedings regularly came on for final hearing before the Commission on said complaint, the answers thereto, the testimony and other evidence, the report of the trial examiner thereon and exceptions to said report and briefs in support of the complaint and in opposition thereto and oral argument by the attorney for the Commission and attorneys 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, Anchor Hocking Glass Corporation, West Virginia Glass Specialty Co., Inc. (named Virginia Glass Specialty Co. in the complaint), and Indiana Glass Co., are corporations having their principal places of business, respectively, in Lancaster, Ohio; Weston, W. Va.; and Dunkirk, Ind.; under the laws of which States, respectively, they were organized and are existing as corporations.

Each of the above three respondent corporations is and has been engaged in the manufacture of glassware including glassware known as tableware, consisting of tumblers, drinking glasses, whiskey glasses, table glasses, and highball glasses, and they are and have been respectively, engaged in the sale of such glassware to purchasers located in Wisconsin and in other States to whom they have caused their glassware, when so sold, by them, to be transported, in commerce, to the purchasers from their respective places of business referred to above.

Each of the above three respondent corporations, in the sale of their glassware, in commerce, are and have been in substantial competition with each other and with other glass manufacturers who are and have been engaged in the sale in commerce of similar glassware, except insofar as said competition has been hindered, lessened, restricted, or restrained, and potential competition among them forestalled by the understandings and agreements among them and the acts and things done in pursuance thereto, as hereinafter set forth.

The Anchor Hocking Glass Corporation does business of about $100,000 a year in the sale of tableware in the Milwaukee trade area. The gross sales of glassware by the West Virginia Glass Specialty Co., Inc., in the Milwaukee, Wis., trade area for the 3 years 1937, 1938, and 1939 amounted to the total sum of about $36,000, and the Indiana Glass Co. is also a large seller of glassware in the Milwaukee, Wis., trade area.

PAR. 2. The respondent W. H. Peterson, for several years prior to March 1938 was engaged as a salesman of the Great Northern Products Co. of Chicago, the agent for several States of the Anchor Hocking Glass Corporation, in the sale of its glassware, and since March 1, 1938, he has been and still is the factory agent of the Anchor Hocking Glass Corporation with the authority of his principal to select its customers subject to its approval of all orders taken by him for the purchase of its glassware.

The respondent, Roseware, Inc., is and has been since prior to 1936, the factory agent, respectively, of the respondents West Virginia

Glass Specialty Co., Inc., and of the respondent Indiana Glass Co. in the sale of their glassware in Milwaukee, Wis., and in the surrounding territory known as the Milwaukee trade area, which includes places in the adjacent State of Michigan. Roseware, Inc., had authority to select customers subject to the approval of these companies.

PAR. 3. The respondents S. J. Casper Co., Inc., (named in the complaint, S. J. Casper, Inc.); I. Shapiro, Inc., National Beverage Distributing Co.; and Berland Supply Co., Inc., are Wisconsin corporations and they are and have been wholesale dealers, among other things, in glassware, with their respective places of business in Milwaukee, Wis.

Respondents Louis M. Mintz, trading as Mintz Supply Co., and W. A. Reinemann, trading as Hotel and Restaurant Supply Co., are and have been engaged in the business of the sale of hotel and restaurant supplies, including glassware, with their respective places of business in Milwaukee, Wis., and the six wholesale dealers mentioned herein are and have been in substantial competition with each other and with other wholesale dealers in glassware in Milwaukee, Wis., and in the Milwaukee trade area above mentioned, except insofar as said competition has been hindered, lessened, restricted, or restrained, and potential competition among them forestalled by the understandings and agreements among them and the acts and things done in pursuance thereto, as hereinafter set forth.

PAR. 4. Respondent, Hotel, Restaurant & Tavern Equipment Association, is a corporation organized in 1933 under the laws of Wisconsin to operate in connection with the enforcement of the N. I. R. A. Act, under the N. R. A. Its charter members included the respondent wholesale dealers mentioned above in paragraph 3 hereof. S. J. Casper, president of respondent S. J. Casper Co., Inc., is and has been at all times president of the Association; I. Shapiro, president of respondent I. Shapiro, Inc., is and has been at all times its treasurer; and Jack Berland, Esq., counsel in this proceeding for respondents, Berland Supply Co., Inc., I. Shapiro, Inc., Louis M. Mintz, and W. A. Reinemann, is and has been at all times the secretary of the respondent Hotel, Restaurant & Tavern Equipment Association.

PAR. 5. In 1933, the Badger Cash & Carry Stores, a Wisconsin corporation, engaged in the business of the sale of liquors, tobacco, and cigars in Milwaukee, Wis., and in 1936 began the sale of glassware, as a wholesale dealer, in the Milwaukee, Wis., trade area. It purchased supplies of glassware from the respondent glass manufacturers at certain times in 1936 and subsequent thereto, among

others, from the Anchor Hocking Glass Corporation, on September 21, 1936, in October and November 1937, and on January 31, 1938. In 1936 it also purchased some glassware from the respondent West Virginia Glass Specialty Co., Inc., and from the respondent Indiana Glass Co. The last purchase of glassware the Badger Cash & Carry Stores made from West Virginia Glass Specialty Co., Inc., was on September 16, 1937, and its last purchase from the Indiana Glass Co. was made on January 6, 1938.

PAR. 6. Early in 1938, or shortly theretofore the Badger Cash & Carry Stores cut the resale prices of its glassware below the resale prices of the above-mentioned respondent wholesale dealers in Milwaukee who learned of this price-cutting through their customers and from advertising circulars distributed by the Badger Cash & Carry Stores to the retail trade.

The respondent wholesale dealers proceeded to cut off the Badger Cash & Carry Stores sources of supply. They indicated plainly to Roseware, Inc., that they would boycott Roseware, Inc., the Indiana Glass Co., and the West Virginia Glass Specialty Co., Inc., unless sales to Badger Cash & Carry Stores were stopped. The president of Roseware, Inc., thereupon contacted every one of the respondent wholesale dealers and persuaded them temporarily from taking steps to carry out the threatened boycott.

On January 21, 1938, respondents S. J. Casper Co., Inc.; I. Shapiro, Inc.; Berland Supply Co., Inc.; and the National Beverage & Distributing Co., by their respective presidents; and W. A. Reinemann trading as the Hotel and Restaurant Supply Co.; and Louis M. Mintz, trading as Mintz Supply Co., wrote to the respondent Anchor Hocking Glass Corporation stating that, as members of the Hotel, Restaurant & Tavern Equipment Association, they were calling the Hocking Corporation's attention to the price-cutting activities and other practices employed by the Badger Cash & Carry Stores in the sale of the Hocking Corporation's products as shown by a circular which they enclosed in the letter revealing price-cutting of the Hocking Glass Corporation's products and stating that they felt that such price-cutting should be discouraged for the welfare of the entire industry and that they were appealing to the Anchor Hocking Glass Corporation for its cooperation to that end.

On January 27, 1938, only a few days after the wholesale dealers sent their letter above mentioned to the Anchor Hocking Glass Corporation, the West Virginia Glass Specialty Co., Inc., received a telegram from Roseware, Inc., its factory agent, stating that it was imperative that an order of January 5, 1938, for glassware still unde-

livered to the Cash & Carry Stores be canceled and on January 29, 1938, the West Virginia Glass Specialty Co., Inc., received a letter from Roseware, Inc., confirming the above-mentioned telegram and in explanation thereof to the effect that the cancellation requested was because of the price-cutting by the Cash & Carry Stores together with the action of the respondent wholesale dealers including the writing of the letter by them of January 21, 1938, to the Anchor Hocking Glass Corporation.

In its letter of January 29, 1938, to its principal the West Virginia Glass Specialty Co., Inc., Roseware, Inc., asked the Glass Co., to cooperate in refusing to sell glassware to the Cash & Carry Stores. The West Virginia Glass Specialty Co., Inc., canceled the Cash & Carry order of January 5, 1938, and in a letter dated February 1, 1938, advised Roseware, Inc., of its action and that they would cooperate with Roseware, Inc., in refusing to fill orders from the same source and for that purpose would not answer any correspondence from the Cash & Carry Stores but would turn all letters and orders which they received back to Roseware, Inc., to be handled by the latter.

PAR. 7. Respondent Anchor Hocking Glass Corporation on January 29, 1938, acknowledged receipt of the letter of January 21, 1938, from the respondent Hotel, Restaurant & Tavern Equipment Association, which was signed by the respondent wholesale dealers as already set forth above, and the Anchor Hocking Glass Corporation sent a copy of the letter received from the respondent wholesale dealers to its agent at Chicago who forwarded the letter to respondent Peterson, the Hocking Corporation's factory agent at Milwaukee. Thereupon on February 5, 1938, Peterson replied to the Hocking Corporation's agent at Chicago that it would be more profitable to cooperate with the respondent wholesale dealers than to sell the Cash & Carry Stores but that at the same time he suggested that two of the wholesale dealers whose names he mentioned should give the Hocking Corporation more business in certain glassware in consideration of the cooperation of the Anchor Hocking Glass Corporation.

On February 12, 1938, the Anchor Hocking Glass Corporation made further reply to the letter of January 21, 1938, from the Hotel, Restaurant & Tavern Equipment Association in which the Hocking Corporation stated that their factory agent, respondent Peterson, could be depended on to cooperate with them if they would in turn reciprocate by favoring the Hocking Corporation somewhat more than they had in the past. Thereafter, the Anchor Hocking Glass Corporation and its factory agent respondent Peterson refused to fill orders for glassware which they received from the Cash & Carry Stores.

PAR. 8. Subsequent to the sending of the letter of January 21, 1938, by the respondent wholesale dealers to the Anchor Hocking Glass Corporation, the Indiana Glass Co. was informed of that letter by its factory agent Roseware, Inc., who stated the substance thereof in a letter dated January 29, 1938, to the Indiana Glass Co. and further stated that it had assured all the jobbers that the situation would be handled in a very satisfactory manner both by the Indiana Glass Co. and Roseware, Inc. Roseware, Inc., also stated in its letter of January 29, 1938, to the Indiana Glass Co. that the Cash & Carry Stores asked the price of a certain item of the Indiana Glass Co.'s glassware and that it quoted them a price on that item which was 50 cents per dozen over the then existing price for that item.

The letter of Roseware, Inc., closed with the statement to the Indiana Glass Co. that it did not want to take upon itself to refuse to sell the Cash & Carry Stores, as a representative of the Indiana Glass Co., without the latter's authority and asked the advices of the Indiana Glass Co. on the matters contained in its letter.

The Indiana Glass Co. replied to the above letter of Roseware, Inc., dated January 29, 1938, in a telephone conversation when the president of the Indiana Glass Co. called the president of Roseware, Inc., on the telephone on another matter. The president of the Indiana Glass Co. was fully informed as to the circumstances in Milwaukee and being fully informed knew that Roseware, Inc., was refusing to accept orders from the Badger Cash & Carry Stores. He told the president of Roseware, Inc., that he had authority to act as he saw fit. The president of Roseware, Inc., indicated to the Badger Cash & Carry Stores on more than one occasion that its orders were no longer welcome and would not be filled. The Badger Cash & Carry Stores wanted to secure merchandise manufactured by the Indiana Glass Co. but was unable to do so. The president of Roseware, Inc., made it plain to the Badger Cash & Carry Stores that it would not fill orders placed by it by such means as misrepresenting current prices and misrepresenting the time necessary for filling orders, and the Indiana Glass Co. had a policy of not selling to the purchasing public when orders were sent directly to it. Respondents Indiana Glass Co. and Roseware, Inc., refused to fill orders for glassware received from the Cash & Carry Stores.

PAR. 9. The respondent glass manufacturing companies and the respondent wholesale dealers conspired, and combined together and with each other and cooperated together to cut off the purchase of a supply of glassware for resale by the Cash & Carry Stores with the purpose and intent unduly to restrain the Cash & Carry Stores from purchasing merchandise for resale in the same markets as its competi-

tors, the respondent wholesale dealers in the trading area of Milwaukee, Wis., and with the effect directly and unduly to hinder and to restrain the interstate commerce in glassware by glass manufacturers with wholesale dealers in the Milwaukee, Wis., trade area.

A plan to eliminate Badger Cash & Carry Stores as a competitor in the sale of glassware was conceived. Respondent wholesalers notified the factory representatives and they in turn notified their principals. For their part, the manufacturing companies refused to sell. The agents of the manufacturers were active in getting the plan underway, and they made contacts with each other and with the respondent wholesalers and helped to persuade their principals to do their part in making the plan effective.

Pursuant to the conspiracy, combination, and cooperation, the respondent Hotel, Restaurant and Tavern Equipment Association and its members, the respondent wholesale dealers, concertedly wrote letters and used other means of persuasion to enlist the cooperation of the respondent glass manufacturers and the respondent glass manufacturers cooperated with the other respondents and monopolized trade in commerce in glassware in the city of Milwaukee. As a result of this combination, at least one wholesaler of glassware was unable to purchase supplies from the three respondent manufacturers or their agents and was therefore handicapped in the conduct of his business. The refusals to sell and fill orders in themselves constituted a curtailment of interstate sales and the elimination of at least one wholesaler tended to stabilize wholesale prices of glassware products at levels inconsonant with free competition. Competition in the wholesaling of glassware in the city of Milwaukee and the surrounding trade area was suppressed and trade was restrained as a result of the combination, conspiracy, and cooperation entered into and carried out among and between the various respondents and the acts and practices done pursuant thereto.

Pursuant to the said conspiracy, combination, and cooperation of the respondents, the respondent glass manufacturers in concert with the respondent Association and its members, the respondent wholesale dealers, canceled or refused to accept orders for glassware from the Cash & Carry Stores for resale by the latter in the Milwaukee, Wis., trade area in competition with the respondent wholesale dealers, and as a result of the above acts and practices of the respondents, competition between the Cash & Carry Stores and the respondent wholesale dealers was unduly restrained, competition by and between respondent glass manufacturers was unduly suppressed, and interstate trade and commerce in glassware was restrained.

CONCLUSION

The aforesaid acts and practices of the respondent Hotel, Restaurant & Tavern Equipment Association and of its members, the respondent wholesale dealers, and of the respondent glass manufacturers, Anchor Hocking Glass Corporation, West Virginia Glass Specialty Co., Inc., and the Indiana Glass Co. were each and all to the prejudice of the public and constitute unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST [1]

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 Edward E. Reardon, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding in support of the allegations of the complaint and in opposition thereto, the report of the trial examiner thereon and the exceptions to said report, brief in support of the complaint and in opposition thereto and oral argument by counsel for the Commission and 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 Berland Supply Co., Inc.; S. J. Casper Co., Inc.; I. Shapiro, Inc.; Louis M. Mintz, trading as Mintz Supply Co.; W. A. Reinemann, trading as Hotel and Restaurant Supply Co.; National Beverage Distributing Co.; Anchor-Hocking Glass Corporation; West Virginia Glass Specialty Co., Inc.; Indiana Glass Co.; Roseware, Inc.; W. H. Peterson; and Hotel, Restaurant & Tavern Equipment Association and its members, their officers, directors, representatives, agents, and employees, directly or through

[1] By order dated November 10, 1941, the Commission, having duly considered the request for modification of respondent Anchor-Hocking Glass Corporation, made a modified order, effect of which was to change the first two paragraphs of the original order, as above published, leaving unchanged the balance thereof, as follows, to wit:

It is ordered, That respondents Berland Supply Company, Inc.; S. J. Casper Company, Incorporated; I. Shapiro, Inc.; Louis M. Mintz, trading as Mintz Supply Company; W. A. Reinemann, trading as Hotel and Restaurant Supply Company; National Beverage Distributing Company; Anchor-Hocking Glass Corporation; West Virginia Glass Specialty Company; Indiana Glass Company; Roseware, Inc.; W. H. Peterson; and Hotel, Restaurant & Tavern Equipment Association and its members, in connection with the offering for sale, sale, and distribution of glassware in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist:

From continuing, entering into, or assisting each other in carrying out, any conspiracy, agreement, understanding, cooperative plan, program, concert or common course of action among said respondents, between any two or more of them, or between the officers, agents, and employees of any two or more of them:

(*a*) To refuse to sell glassware to any person, partnership, or corporation; etc.

any corporate or other device, in connection with the offering for sale, sale and distribution of glassware in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist:

From combining, conspiring, agreeing, or cooperating among themselves, or between any two or more of them, or with others, or from entering into or carrying out any agreements or understandings, or formulating or participating in any cooperative plan or program with the effect or the tendency of suppressing, hindering, restraining, or interfering with competition:

(*a*) To refuse to sell glassware to any person, partnership or corporation;

(*b*) To cut off the source or sources of supply of any person, partnership, or corporation or hinder, impede, or handicap any person, partnership, or corporation in its efforts to obtain supplies of glassware for sale or resale in trade and commerce, or to otherwise deprive any person, partnership, or corporation of an opportunity to compete in the sale or resale of glassware.

(*c*) To determine or designate who shall be a wholesaler of glassware and who shall not be in Milwaukee and the surrounding trade area or in any other trade area in the United States;

(*d*) To coerce or persuade any wholesaler, retailer, or dealer of glassware to refrain from engaging in price competition in the sale and distribution of glassware in commerce;

(*e*) To limit the number of persons, partnerships, or corporations who may participate in trade and commerce in glassware or to limit or proscribe or seek to limit or proscribe the rights of any such person, partnership, or corporation to conduct trade and commerce according to its own free will.

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

IN THE MATTER OF

SISCO-HAMILTON COMPANY

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

Docket 4471. Complaint, Mar. 13, 1941—Decision, July 9, 1941

Where a corporation engaged in the manufacture of candy and in the competitive interstate sale and distribution thereof, including certain assortments which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, a typical assortment consisting of 24 boxes of chocolate candy, together with a push card for use in sale and distribution thereof, as thereon explained, by a plan under which customer paid for a box from 1 to 32 cents, depending upon the number he secured by chance—

Sold such assortments to wholesalers, jobbers, and retailers, by whom said candy was 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 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 many who, unwilling to use method involving a game of chance or other method contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales plan or method and the element of chance involved therein, and were thereby induced to buy and sell its candy in preference to that of its said competitors, and with effect of unfairly diverting trade in commerce 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.

Mr. J. V. Mishou 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 Sisco-Hamilton 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, Sisco-Hamilton Co., is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 514 South Loomis

Street, Chicago, Ill. Respondent is now and for more than 6 years last past has been engaged in the manufacture and in the sale and distribution of candy. Respondent causes and has caused said candy, when sold, to be transported from its aforesaid place of business in the State of Illinois to purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois and in the District of Columbia. There is now and for more than 6 years last past has been 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 individuals and partnerships engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and 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 24 boxes of chocolate candy 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 No. 32. Purchasers punching numbers over 32 pay only 32 cents. The purchasers aforesaid receive one of said boxes of chocolate candy for the amount of money expended. The numbers are effectively concealed within the said disks until same are pushed or separated from the card. The push card bears a legend or instructions as follows:

EVERY PUNCH WINS

1¢ to 32¢

Nos. 1 to 32 Pay What You Punch
Nos. Over 32 Pay Only 32¢

NO HIGHER

EVERY PLAY WINS
A BOX OF
CHOCOLATES

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 boxes of candy 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 its candy 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 candy 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 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 candy 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.

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 a box of candy at a price which is much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute candy in competition with the respondent, as above alleged, are unwilling to adopt and use said 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 responent in the sale and distribu-

tion of its merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's said candy in preference to candy offered for sale and sold by said competitors of respondent, who do not use the same or equivalent methods. The use of said method by respondent, because of said game of chance, has a tendency and capacity to 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. As a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 13, 1941, issued and thereafter served its complaint in this proceeding upon respondent Sisco-Hamilton Co., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint respondent filed its 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, 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, Sisco-Hamilton Co., is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 514 South Loomis Street, Chicago, Ill. Respondent is now and for more than 6 years last past has been engaged in the manufacture and in the sale and distribution of candy. Respondent causes and has caused said candy, when sold, to be transported from its aforesaid place of business in the State of Illinois to purchasers thereof at their respective points of

location in various States of the United States other than the State of Illinois and in the District of Columbia. There is now and for more than 6 years last past has been 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 individuals and partnerships engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and 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 24 boxes of chocolate candy 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 No. 32. Purchasers punching numbers over 32 pay only 32 cents. The purchasers aforesaid receive one of said boxes of chocolate candy for the amount of money expended. The numbers are effectively concealed within the said disks until same are pushed or separated from the card. The push card bears a legend or instructions as follows:

EVERY PUNCH WINS

1¢ to 32¢

Nos. 1 to 32 Pay What You Punch

Nos. Over 32 Pay Only 32¢

NO HIGHER

EVERY PLAY WINS

A BOX OF

CHOCOLATES

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 boxes of candy 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 its candy 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 candy 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 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 candy 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 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 a box of candy at a price which is much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute candy in competition with the respondent, as above found, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's said candy in preference to candy offered for sale and sold by said competitors of respondent, who do not use the same or equivalent methods. The use of said 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 the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Sisco-Hamilton 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

IRVING COHN, TRADING AS IRVIN 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 4464. Complaint, Feb. 11, 1941—Decision, July 10, 1941

Where an individual engaged in the competitive interstate sale and distribution of candy and novelty merchandise, including certain assortments so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers, typical assortments consisting of (1) 2 cedar chests filled with candy, together with a punchboard for use in sale thereof to consuming public, as explained thereon, under a plan by which the two customers securing the 2 winning numbers from the 200 concealed on the board, received said chests and candy, value of which was in excess of the 5 cents paid, and of (2) hair brush and push card, under a plan by which the purchaser of a chance at 10 cents, selecting from the feminine names displayed on the card that corresponded to the name concealed under the master seal received said brush—

Sold such assortments to dealers and retailers by whom they were exposed and sold 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 his products, involving sale of a chance to procure an article at much less than its normal retail price; 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 sales method involving chance or any other sales plan contrary to public policy, refrain therefrom;

With the result that many dealers in and ultimate consumers of said merchandise were attracted by said sales plans and the element of chance involved therein, and were thereby induced to buy his merchandise in preference to that of his said competitors, and with effect of unfairly diverting trade to him from them; to the substantial injury of competition in commerce:

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

Mr. D. C. Daniel for the Commission.

Hutton, Clark & Hutton, of Danville, 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 Irving Cohn, individually and trading as Irvin Novelty 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 interest of the public hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Irving Cohn is an individual trading as Irvin Novelty Co., with his principal place of business located at 125½ East Main Street, Danville, Ill. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of candy and novelty merchandise to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise when sold to be transported from his said place of business in the State of Illinois to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now and has been for 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 corporations and partnerships engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to dealers various assortments of candy and other merchandise so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers thereof.

One of said assortments consists of two cedar chests filled with candy, together with a device commonly called a punchboard. Said cedar chests and candy are distributed to the consuming public by means of said punchboard in the following manner: The sales are 5 cents each and when a punch is made from the board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board (200) but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing prospective purchasers as to which numbers entitle the purchaser thereof to receive a cedar chest and candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the cedar chests and candy receives nothing for his money. The cedar chests and candy are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for said chest 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 number punched or separated from the board. The cedar chests and candy are thus distributed to the purchasing public wholly by lot or chance.

Another of said assortments consists of a device commonly known as a push card together with a hair brush. The push card bears 15 feminine names, with ruled columns on the side for writing the name of the purchaser opposite the feminine name selected. Under each of the 15 feminine names said push card has a small perforated disk, on the face of which is printed the word "push." Each purchaser pays 10 cents for the privilege of selecting one of the names and pushing the corresponding disk. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The name under the master seal is effectively concealed from purchasers and prospective purchasers and is not revealed until the seal has been broken after all of the disks are pushed. The person selecting the feminine name corresponding with the one under the master seal receives the hair brush. The purchasers of the pushes under the other feminine names receive nothing. 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.

The respondent sells and distributes and has sold and distributed various other assortments of candy and merchandise involving a lot or chance feature but the sales plan or methods by which said merchandise is distributed are similar to the ones hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said candy or other merchandise expose and sell the same to the purchasing public in accordance with the aforesaid sales plans or methods. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said sales plans or methods in the sale of his candy or other merchandise and the sale of said candy or other merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and 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 merchandise are attracted by said sales plans or methods employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein and are thereby induced to buy respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plans or methods by repondent 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 the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 11, 1941, issued and thereafter served its complaint in this proceeding upon respondent Irving Cohn, individually and trading as Irvin Novelty Co., charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Irving Cohn is an individual trading as Irvin Novelty Co., with his principal place of business located at 125½ East Main Street, Danville, Ill. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of candy and novelty merchandise to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise when sold to be transported from his said place of business in the State of Illinois to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now, and has been for 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 corporations and partnerships engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The Commission finds that 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 and other merchandise so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers thereof.

One of said assortments consists of two cedar chests filled with candy, together with a device commonly called a punchboard. Said cedar chests and candy are distributed to the consuming public by means of said punchboard in the following manner: The sales are 5 cents each and when a punch is made from the board a number is disclosed. The numbers begin with one and continue to the number of punches there are on the board (200) but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing prospective purchasers as to which numbers entitle the purchaser thereof to receive a cedar chest and candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the cedar chests and candy receives nothing for his money. The cedar chests and candy are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for said chest 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 number punched

or separated from the board. The cedar chests and candy are thus distributed to the purchasing public wholly by lot or chance.

Another of said assortments consists of a device commonly known as a push card together with a hair brush. The push card bears 15 feminine names, with ruled columns on the side for writing the name of the purchaser opposite the feminine name selected. Under each of the 15 feminine names said push card has a small perforated disk, on the face of which is printed the word "push." Each purchaser pays 10 cents for the privilege of selecting one of the names and pushing the corresponding disk. The push card also has a large master seal and concealed with the master seal is one of the feminine names appearing on the face of said card. The name under the master seal is effectively concealed from purchasers and prospective purchasers and is not revealed until the seal has been broken after all of the disks are pushed. The person selecting the feminine name corresponding with the one under the master seal receives the hair brush. The purchasers of the pushes under the other feminine names receive nothing. 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.

The respondent sells and distributes and has sold and distributed various other assortments of candy and merchandise involving a lot or chance feature but the sales plan or methods by which said merchandise is distributed are similar to the ones hereinabove described, varying only in detail.

PAR. 3. The Commission finds that retail dealers who directly or indirectly purchase respondent's said candy or other merchandise expose and sell the same to the purchasing public in accordance with the aforesaid sales plan 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 described. The use by respondent of said sales plan or methods in the sale of his candy or other merchandise and the sale of said candy or other merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The Commission finds that the sales 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 and distribute merchandise in competition with respondent, as above described, are unwilling to

adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or the sale of a chance to win something by chance or any other sales plans or methods that are contrary to public policy and such competitors refrain therefrom. Many dealers in, and ultimate consumers of, said merchandise are attracted by said sales plans or methods employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein and are thereby induced to buy respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plans or methods by respondent, because of said game of chance, has a tendency and capacity to and does unfairly divert trade to respondent from 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 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 acts and practices in commerce within the intent and meaning of the Federal 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 Irving Cohn, individually and trading as Irvin Novelty Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of candy and novelty merchandise, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing any merchandise so packed and assembled that sales of said merchandise to the 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, which said push or pull cards, punchboards or other devices are to be used or may be used in selling or distributing said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

3. Supplying to or placing in the hands of others push or pull cards, punchboards or other devices, which said push or pull cards, punchboards, or other devices are to be used or may be used in the sale or distribution of said merchandise to the public at retail.

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

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

IN THE MATTER OF

BEN GORDON (ALSO KNOWN AS BENJAMIN GORDON) AND LOUIS GORDON, TRADING AS BENGOR PRODUCTS COMPANY AND GOLF 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 4479. Complaint, Mar. 29, 1941—Decision, July 10, 1941

Where two individuals engaged in interstate sale and distribution of various commodities including two medicinal preparations, one designated as "Dupree Pills" and as "Dr. Gordon's Single Strength Pills," and the other as "Dupree Pills Double Strength" and as "Dr. Gordon's Double Strength Pills"; by means of advertisements disseminated through the mails and by various other means—

(*a*) Represented, falsely, directly or through implication, that their said preparations constituted competent and effective treatments for amenorrhea and dysmenorrhea; and

(*b*) Failed to reveal facts material in the light of such representations, and that, due to presence in said preparations of certain drugs, use thereof under the conditions prescribed in aforesaid advertisements or under such conditions as are customary or usual, might result in gastro-intestinal disturbances, catharsis, nausea, and vomiting, with pelvic congestion and hemorrhage, and in cases of pregnancy might result in uterine infection, blood poisoning, and other serious conditions;

With tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that said representations were true, and, because of such mistaken belief thus engendered, to induce the public to purchase substantial quantities of their said preparations:

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

Mr. R. P. Bellinger for the Commission.

Mr. Samuel J. Ernstoff, 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 Ben Gordon (also known as Benjamin Gordon) and Louis Gordon, trading as Bengor Products Co. and as Golf Products Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Ben Gordon (also known as Benjamin Gordon) and Louis Gordon, are individuals trading as Bengor Prod-

ucts Co. and as Golf Products Co., with their principal place of business at 878 Broadway, New York, N. Y., from which address they conduct business under the above trade names.

PAR. 2. The respondents are now, and for more than 2 years last past have been, engaged in the sale and distribution of various commodities, among which are two medicinal preparations, one being designated as Dupree Pills, and as Dr. Gordon's Single Strength Pills, and the other as Dupree Pills Double Strength and as Dr. Gordon's Double Strength Pills.

In the course and conduct of their business respondents cause their said medicinal preparations, 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 their said medicinal 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 business as aforesaid, 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 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 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, 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 catalogs and other advertising literature are the following:

DUPREE PILLS

(Single Strength)

A combination of Tansy, Cotton Root, Apiol and Pennyroyal.

Each------ 25¢ Dozen------ $2.75

DUPREE PILLS

(Double strength)

A specially prepared regulator, scientifically compounded for Amenorrhea and Dysmenorrhea, 24 pills to a box. Each box 85¢.

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondents represent, directly or through inference, that their said preparations constitute competent and effective treatment for amenorrhea and dysmenorrhea. These representations are grossly exaggerated, false, and misleading, in that neither of said preparations constitutes a competent or effective treatment for amenorrhea or dysmenorrhea.

PAR. 5. 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 in such advertisements, 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 result in serious injury to health. The preparation Dupree Pills contains, among other ingredients, the drugs extract cotton root bark, extract black hellebore, aloe, oil of tansy, and oil of savin. The preparation Dupree Pills Double Strength contains, among other ingredients, the drugs ergotin, extract cotton root bark, extract black hellebore, aloe, and oil of savin. Such drugs are present in said preparations in quantities sufficient to cause serious injury to health if said preparations are used under the conditions referred to above.

The use of said preparations under such conditions may result in gastro-intestinal disturbances, catharsis, nausea and vomiting, with pelvic congestion and 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.

PAR. 6. The use by the respondents of said false and misleading advertisements with respect to their preparations has the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the representations in said advertisements are true and that said preparations are safe for use, and the tendency and capacity to induce the public to purchase substantial quantities of respondents' preparations as a result of the erroneous and mistaken belief engendered by said advertisements.

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 March 29, 1941, issued and thereafter served its complaint in this proceeding upon respondents, Ben Gordon (also known as Benjamin Gordon) and Louis Gordon, trading as Bengor Products Co. and as Golf Products Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 29, 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, Ben Gordon (also known as Benjamin Gordon) and Louis Gordon, are individuals trading as Bengor Products Co. and as Golf Products Co., with their principal place of business at 878 Broadway, New York, N. Y., from which address they conduct business under the above trade names.

PAR. 2. The respondents are now, and for more than 2 years last past have been, engaged in the sale and distribution of various commodities, among which are two medicinal preparations, one being designated as Dupree Pills, and as Dr. Gordon's Single Strength Pills, and the other as Dupree Pills Double Strength and as Dr. Gordon's Double Strength Pills.

In the course and conduct of their business respondents cause their said medicinal preparations, 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 their said medicinal 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 business as aforesaid, 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 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 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, 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 catalogs and other advertising literature are the following:

DUPREE PILLS

(Single Strength)

A combination of Tansy, Cotton Root, Apiol and Pennyroyal.

Each------ 25¢ Dozen------ $2.75

DUPREE PILLS

(Double Strength)

A specially prepared regulator, scientifically compounded for Amenorrhea and Dysmenorrhea,

24 pills to a box. Each box 85¢.

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondents represent, directly or through inference, that their said preparations constitute competent and effective treatments for amenorrhea and dysmenorrhea. These representations are grossly exaggerated, false, and misleading, in that neither of said preparations constitutes a competent or effective treatment for amenorrhea or dysmenorrhea.

PAR. 5. 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 in such advertisements, 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 result in serious injury to health. The preparation Dupree Pills contains, among other ingredients, the drugs extract cotton root bark, extract black hellebore, aloe, oil of tansy, and oil of savin. The preparation Dupree Pills Double Strength contains, among other ingredients, the drugs ergotin, extract cotton root bark, extract black hellebore, aloe, and oil of savin. Such drugs are present in said preparations in quan-

tities sufficient to cause serious injury to health if said preparations are used under the conditions referred to above.

The use of said preparations under such conditions may result in gastro-intestinal disturbances, catharsis, nausea, and vomiting, with pelvic congestion and 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.

PAR. 6. The use by the respondent of said false and misleading advertisements with respect to their preparations has the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the representations in said advertisements are true and that said preparations are safe for use, and the tendency and capacity to induce the public to purchase substantial quantities of respondents' preparations as a result of the erroneous and mistaken belief engendered by said advertisements.

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 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, Ben Gordon (also known as Benjamin Gordon) and Louis Gordon, trading as Bengor Products Co. and as Golf Products 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 their two medicinal preparations, the one designated as Dupree Pills and as Dr. Gordon's Single Strength Pills, the other as Dupree Pills Double Strength and as Dr. Gordon's Double Strength Pills, or any preparation 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 respondents' said preparations constitute a competent and effective treatment for amenorrhea or dysmenorrhea; or that said preparations are safe and harmless; or which advertisement fails to reveal that the use of said preparations may result in gastro-intestinal disturbances with pelvic congestion and congestion of the uterus leading to excessive uterine hemorrhage and that the use of said preparations in cases of pregnancy may result in uterine infection extending to other pelvic and abdominal structures and to the blood stream causing septicemia or 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 advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement fails to reveal that the use of said preparations may result in gastro-intestinal disturbances with pelvic congestion and congestion of the uterus leading to excessive uterine hemorrhage and that the use of said preparations in cases of pregnancy may result in uterine infection extending to other pelvic and abdominal structures and to the blood stream causing septicemia or 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 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

WILLIAM E. EVANS, TRADING AS PIONEER MATTRESS COMPANY

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

Docket 4483. Complaint, Apr. 5, 1941—Decision, July 10, 1941

Where an individual engaged in the manufacture and interstate sale and distribution of mattresses through advertising letters and cards bearing purported signatures of certain women's clubs, prepared subject to his approval and mailed by a New York advertising agency to addresses of numerous prospective purchasers supplied by him, and also through circulars, letters, cards, and other advertising material, and through tags and labels attached to his products, and otherwise—

(*a*) Represented that his said mattresses had been designed, sponsored or recommended by a physician, and were the products of a certain competitor long engaged in manufacture and sale of nationally advertised and widely and favorably known mattresses, through use of words "Dr." and "Simmons" in such statements as "Dr. Simmons Spring-filled Mattress * * *," "* * * Dr. Simmons Inner-Spring mattress is nationally known * * *" notwithstanding the fact his said mattresses were not designed, sponsored, or recommended by any physician and were not the product of the Simmons Co.;

(*b*) Represented that his said mattresses were approved or sponsored by women's clubs or organizations through use of various purported offers and such statements as "HAS BEEN APPROVED BY US" and "THE WORLD'S BEST INNER-SPRING MATTRESS" over such names as "American Good Housekeeper Club" and "The Great Northern Women's Club," and "Recommended by the leading Women's Clubs * * *"; the facts being that such names were wholly fictitious, their purported addresses being the address of the advertising agency referred to;

(*c*) Misrepresented the customary or regular retail prices of his products through placing on tags and labels attached to certain mattresses, and inserting in advertising material, "$39.50," notwithstanding fact mattresses in question never sold at any price approximating said amount, but were customarily offered and sold at retail for about $10.95;

(*d*) Represented that his prices were special or reduced prices or applicable for a limited time only, or for advertising purposes, or represented only cost of manufacture, and that prospective purchasers were selected and might obtain his products at prices less than those at which they were customarily sold, through such statements as "LAST OPPORTUNITY! CAMPAIGN CLOSES * * * DR. SIMMONS SPRING-FILLED MATTRESS MADE BY Pioneer Mattress Company * * *," and "HAS BEEN APPROVED BY US. This mattress retails for $39.50. During this campaign you can buy one for $10.95 if you will phone or write them at once, as your name was selected to get one at the actual manufacturers cost. * * * AMERICAN GOOD HOUSEKEEPERS CLUB * * *," and "* * * I recently had the pleasure of selecting your name to receive a beautiful new Dr. Simmons Health Inner-Spring Mattress for advertising purposes, and have instructed The Pioneer Mattress Company, Spartanburg, S. C., to deliver this mattress to you at $10.95 which is the actual manufac-

turers cost. This mattress retails for $39.50. * * * THE GREAT NORTHERN WOMEN'S CLUB," and "* * * Your name carrying Number 9380, by the American Good Housekeepers Club, * * * has been selected to receive one of our beautiful new * * * Mattresses for advertising purposes * * *" and other similar statements; facts being the prices at which his said products were offered were as aforesaid, his regular and customary retail prices, and names of purchasers were not selected on any particular basis, but merely formed part of the general mailing lists used by said individual and his said advertising agency; and

(e) Represented that his said mattresses were made entirely of new and unused materials and were germ and vermin proof, through such statements as "* * * We absolutely guarantee the mattress to be all new material * * *" and, in advertising, "CLEAN, NEW, SANITARY, GERM AND VERMIN PROOF * * *," and, on the label, "* * * contains all new materials"; facts being, in many cases his said products were made of used or second-hand materials, and were neither germ nor vermin proof;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to his products, and to induce it to purchase substantial quantities thereof as a result of such erroneous belief:

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

Mr. Jesse D. Kash for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that William E. Evans, an individual trading as Pioneer Mattress 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 William E. Evans is an individual trading and doing business under the name of Pioneer Mattress Co., with his office and principal place of business located at 980 Church Street, in Spartanburg, S. C.

PAR. 2. Respondent is now, and for more than 3 years last past has been, engaged in the manufacture, sale, and distribution of mattresses. Respondent causes his said products, when sold, to be transported from his aforesaid place of business in the State of South Carolina 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 mattresses in commerce among and between the various States in the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of his products, the respondent

entered into an agreement with an advertising or mailing agency located in the city of New York, under which agreement such agency prepared form of advertising letters and cards and forwarded such forms to the respondent at his place of business in Spartanburg, S. C., for approval. The respondent had letters and cards printed from such forms and sent such letters and cards to said advertising agency, which proceeded to mail them to numerous prospective purchasers of respondent's products, the names and addresses of such prospective purchasers being supplied to said agency by the respondent. These advertising letters and cards bore the signatures of certain purported women's clubs, namely "American Good Housekeepers Club" and "The Great Northern Women's Club."

Among and typical of the statements and representations appearing in such advertising material are the following:

LAST OPPORTUNITY! CAMPAIGN CLOSES FEBRUARY 4, 1939

DR. SIMMONS SPRING-FILLED

MATTRESS

MADE BY

Pioneer Mattress Company

Spartanburg, S. C.

HAS BEEN APPROVED BY US This mattress retails for $39.50. During this campaign you can buy one for $10.95 if you will phone or write them at once, as your name was selected to get one at the actual manufacturers cost. However, you must act immediately.

AMERICAN GOOD HOUSEKEEPERS CLUB,
210–5th Avenue, Suite 1102,
New York City, Tel. Ashland 4–9221.

* * * * * * * * * * I recently had the pleasure of selecting your name to receive a beautiful new Dr. Simmons Health Inner-Spring Mattress for advertising purposes, and have instructed The Pioneer Mattress Company, Spartanburg, S. C., to deliver this mattress to you at $10.95 which is the actual manufacturers cost. This mattress retails for $39.50. * * *

THE GREAT NORTHERN WOMEN'S CLUB

* * * * * * *

THE WORLD'S BEST INNER-SPRING MATTRESS

Made by

PIONEER MATTRESS COMPANY

CLEAN, NEW, SANITARY, GERM AND VERMIN PROOF MATTRESS

This mattress is plainly labeled to retail for $39.50. During this campaign you can buy one for $14.95 and your old mattress. * * *

AMERICAN GOOD HOUSEKEEPERS CLUB

THIS OFFER WILL NEVER HAPPEN AGAIN

PAR. 4. In addition to the foregoing representations, the respondent has made other representations to prospective purchasers of his products, such representations being disseminated by means of circulars, letters, cards, and other advertising material distributed among prospective purchasers, by means of tags and labels attached to respondent's products, and by other means.

Among and typical of the statements and representations appearing in such advertising material are the following:

* * * Your name carrying Number 9380, by the American Good Housekeepers Club, 210—5th Avenue, New York City, N. Y., has been selected to receive one of our beautiful new $39.50 Dr. Simmons Health Inner-Spring Mattresses for advertising purposes.

* * * * * * *

PIONEER MATTRESS CO.

* * * Here, now is a mattress designed to bring uncommon luxury into one-third of your life—one that will frankly spoil you for guest week-ends at the Joneses. A deep, tempting come-to-bed mattress. This Dr. Simmons Inner-Spring mattress is nationally known. Recommended by the leading Women's Clubs and is absolutely guaranteed for 15 years. During this campaign, you can save $27.55 on this mattress as our wholesale price is $16.95 and the attached coupon for $5.00 when properly endorsed by you brings the actual cost down to $11.95.

THE PIONEER MATTRESS CO.
By W. E. EVANS (Manager)

SPARTANBURG, S. C.,
August 28th, 1939.

Dear Madam: We have selected your name to receive a beautiful new WORLD'S BEST INNER-SPRING MATTRESS for only $11.95 and your old mattress which will be passed on to the needy, or sold for junk.

* * * * * * *

This mattress is plainly labeled to retail for $39.50. We absolutely guarantee the mattress to be all new material and to please you in every respect or we will refund you every penny of your money.

THE PIONEER MATTRESS CO.

(Label) This article contains all new materials.

PAR. 5. Through the use of the foregoing representations, and others of similar import not specifically set out herein, the respondent has represented that his said mattresses are designed, sponsored or recommended by a physician; that the prospective purchaser's name has been selected or chosen on some basis, and that by reason thereof such prospective purchaser is given an opportunity to obtain one of respondent's mattresses at a special or reduced price which represents the actual cost of manufacture of such mattress; that such offer is open for a limited time only; that such offer is made in connection with a special advertising campaign; that respondent's mattresses are made entirely of new and unused materials; that such mattresses are germ proof

and vermin proof; that such mattresses are approved or recommended by various women's clubs.

PAR. 6. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's mattresses are not designed, sponsored, or recommended by any physician. The use by the respondent of the legend "Dr." to designate his mattresses is within itself misleading and deceptive. The names of prospective purchasers are not selected or chosen on any particular basis, but such names merely form a part of general mailing lists used by the respondent and by the respondent's advertising agency as aforesaid. The prices at which respondent's mattresses are offered for sale are not special or reduced prices, nor do they represent only the cost of the manufacture of such mattresses. Such prices are in fact the regular and customary retail prices of respondent's mattresses. Such offers are not limited as to time, nor are they made in connection with any special advertising campaign.

In many cases respondent's mattresses are not made entirely of new or unused materials, but are made of used or second-hand materials. Respondent's mattresses are neither germ proof nor vermin proof. They are not approved or recommended by any women's club. In truth and in fact, the names of the purported women's clubs appearing in respondent's advertising are wholly fictitious, the purported addresses of such clubs being the address of respondent's advertising agency.

PAR. 7. A further practice on the part of respondent is the use of fictitious price markings in connection with his products, such markings being placed on tags and labels attached to said products, and also inserted in other advertising material. Among and typical of such price markings is the legend "$39.50" which the respondent uses in connection with certain of his mattresses. Through the use of this legend, the respondent represents that the customary retail price of said mattress is $39.50. This representation is false and misleading, in that said mattresses have never been sold at retail for $39.50 or for any price approximating such amount. In truth and in fact, the price at which said mattresses are customarily offered for sale and sold at retail in the normal and regular course of business is only about $10.95.

PAR. 8. One of the competitors of the respondent, namely, Simmons Co., has for many years manufactured and sold mattresses under the trade name "Simmons." Such mattresses have been nationally advertised under such trade name and are widely and favorably known among members of the purchasing public. The use by the respondent of the name "Simmons" to designate his products serves as a repre-

sentation to the public that respondent's mattresses are the product of the Simmons Co. In truth and in fact, respondent's mattresses are not the product of said Simmons Co., and the use by the respondent of the name "Simmons" to designate such mattresses constitutes a false and misleading representation.

PAR. 9. The use by the respondent of the aforesaid acts and practices has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's products, and to induce such portion of the public to purchase substantial quantities of respondent's products as a result of such erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 5, 1941, issued and subsequently served its complaint in this proceeding upon respondent William E. Evans, an individual trading as Pioneer Mattress Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Subsequently, respondent filed his answer in which he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent William E. Evans is an individual trading and doing business under the name of Pioneer Mattress Co., with his office and principal place of business located at 980 Church Street, in Spartanburg, S. C.

PAR. 2. Respondent is now, and for more than 3 years last past has been, engaged in the manufacture, sale, and distribution of mattresses. Respondent causes his said products, when sold, to be transported from his aforesaid place of business in the State of South

Carolina 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 mattresses 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, and for the purpose of inducing the purchase of his products, the respondent entered into an agreement with an advertising or mailing agency located in the city of New York, under which agreement such agency prepared forms of advertising letters and cards and forwarded such forms to the respondent at his place of business in Spartanburg, S. C., for approval. The respondent had letters and cards printed from such forms and sent such letters and cards to said advertising agency, which proceeded to mail them to numerous prospective purchasers of respondent's products, the names and addresses of such prospective purchasers being supplied to said agency by the respondent. These advertising letters and cards bore the signatures of certain purported women's clubs, namely, "American Good Housekeepers Club" and "The Great Northern Women's Club."

Among and typical of the statements and representations appearing in such advertising material are the following:

LAST OPPORTUNITY!
FEBRUARY 4, 1939

DR. SIMMONS SPRING-FILLED

MATTRESS

MADE BY

Pioneer Mattress Company

Spartanburg, S. C.

HAS BEEN APPROVED BY US This mattress retails for $39.50. During this campaign you can buy one for $10.95 if you will phone or write them at once, as your name was selected to get one at the actual manufacturers cost. However, you must act immediately.

AMERICAN GOOD HOUSEKEEPERS CLUB
210—5th Avenue, Suite 1102,
New York City, Tel. Ashland 4-9221.

* * * * * * * * * * * I recently had the pleasure of selecting your name to receive a beautiful new Dr. Simmons Health Inner-Spring Mattress for advertising purposes, and have instructed The Pioneer Mattress Company, Spartanburg, S. C., to deliver this mattress to you at $10.95 which is the actual manufacturers cost. This mattress retails for $39.50. * * *

THE GREAT NORTHERN WOMEN'S CLUB

* * * * * * *

THE WORLD'S BEST INNER-SPRING MATTRESS

Made by

PIONEER MATTRESS COMPANY

CLEAN, NEW, SANITARY, GERM AND VERMIN PROOF MATTRESS.

This mattress is plainly labeled to retail for $39.50. During this campaign you can buy one for $14.95 and your old mattress. * * *

AMERICAN GOOD HOUSEKEEPERS CLUB

THIS OFFER WILL NEVER HAPPEN AGAIN

PAR. 4. In addition to the foregoing representations, the respondent has made other representations to prospective purchasers of his products, such representations being disseminated by means of circulars, letters, cards, and other advertising material distributed among prospective purchasers, by means of tags and labels attached to respondent's products, and by other means.

Among and typical of the statements and representations appearing in such advertising material are the following:

* * * Your name carrying Number 9380, by the American Good Housekeepers Club, 210—5th Avenue, New York City, N. Y., has been selected to receive one of our beautiful new $39.50 Dr. Simmons Health Inner-Spring Mattresses for advertising purposes.

* * * * * * *

* * * Here, now is a mattress designed to bring uncommon luxury into one-third of your life—one that will frankly spoil you for guest week-ends at the Joneses. A deep, tempting come-to-bed mattress. This Dr. Simmons Inner-Spring mattress is nationally known. Recommended by the leading Women's Clubs and is absolutely guaranteed for 15 years. During this campaign, you can save $27.55 on this mattress as our wholesale price is $16.95 and the attached coupon for $5.00 when properly endorsed by you brings the actual cost down to $11.95.

THE PIONEER MATTRESS CO.
By W. E. Evans (Manager)

Spartanburg, S. C.
August 28th, 1939

Dear Madam: We have selected your name to receive a beautiful new WORLD'S BEST INNER-SPRING MATTRESS for only $11.95 and your old mattress which will be passed on to the needy, or sold for junk.

* * * * * * *

This mattress is plainly labeled to retail for $39.50. We absolutely guarantee the mattress to be all new material and to please you in every respect or we will refund you every penny of your money.

THE PIONEER MATTRESS CO.

(Label) This article contains all new materials.

PAR. 5. Through the use of the foregoing representations, and others of similar import not specifically set out herein, the respondent has represented that his said mattresses are designed, sponsored, or recommended by a physician; that the prospective purchaser's name has been selected or chosen on some basis, and that by reason thereof such prospective purchaser is given an opportunity to obtain one of respondent's mattresses at a special or reduced price which represents the actual cost of manufacture of such mattress; that such offer is open for a limited time only; that such offer is made in connection with a special advertising campaign; that respondent's mattresses are made entirely of new and unused materials; that such mattresses are germ proof and vermin proof; that such mattresses are approved or recommended by various women's clubs.

PAR. 6. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's mattresses are not designed, sponsored, or recommended by any physician. The use by the respondent of the legend "DR." to designate his mattresses is within itself misleading and deceptive. The names of prospective purchasers are not selected or chosen on any particular basis, but such names merely form a part of general mailing lists used by the respondent and by the respondent's advertising agency as aforesaid. The prices at which respondent's mattresses are offered for sale are not special or reduced prices, nor do they represent only the cost of the manufacture of such mattresses. Such prices are in fact the regular and customary retail prices of respondent's mattresses. Such offers are not limited as to time, nor are they made in connection with any special advertising campaign.

In many cases respondent's mattresses are not made entirely of new or unused materials, but are made of used or second-hand materials. Respondent's mattresses are neither germ proof nor vermin proof. They are not approved or recommended by any women's club. In truth and in fact, the names of the purported women's clubs appearing in respondent's advertising are wholly fictitious, the purported addresses of such clubs being the address of respondent's advertising agency.

PAR. 7. A further practice on the part of respondent is the use of fictitious price markings in connection with his products, such markings being placed on tags and labels attached to said products, and also inserted in other advertising material. Among and typical of such price markings is the legend "$39.50" which the respondent uses in connection with certain of his mattresses. Through the use of this legend, the respondent represents that the customary retail price of said mattress is $39.50. This representation is false and misleading,

in that said mattresses have never been sold at retail for $39.50 or for any price approximating such amount. In truth and in fact, the price at which said mattresses are customarily offered for sale and sold at retail in the normal and regular course of business is only about $10.95.

PAR. 8. One of the competitors of the respondent, namely, Simmons Co., has for many years manufactured and sold mattresses under the trade name "Simmons." Such mattresses have been nationally advertised under such trade name and are widely and favorably known among members of the purchasing public. The use by the respondent of the name "Simmons" to designate his products serves as a representation to the public that respondent's mattresses are the product of the Simmons Co. In truth and in fact, respondent's mattresses are not the product of said Simmons Co., and the use by the respondent of the name "Simmons" to designate such mattresses constitutes a false and misleading representation.

PAR. 9. The use by the respondent of the aforesaid acts and practices has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's products, and to induce such portion of the public to purchase substantial quantities of respondent's products as a result of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission 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, William E. Evans, individually and trading as Pioneer Mattress Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of mattresses in commerce, as "commerce" is defined

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

1. Using the word "Doctor" or the abbreviation "Dr." to designate, describe or refer to respondent's products, or otherwise representing that respondent's products are designed, sponsored, or recommended by any physician.

2. Using the word "Simmons," alone or in conjunction or connection with any other word or words, to designate, describe or refer to respondent's products, or otherwise representing that respondent's products are products of the concern known as Simmons Company.

3. Soliciting the purchase of respondent's products through the use of offers which purport to have originated with women's clubs or organizations sponsoring respondent's products.

4. Representing that respondent's products are approved or recommended by any women's club or organization.

5. Representing as the customary or regular retail prices of respondent's products prices which are in excess of the prices at which such products are regularly and customarily sold by respondent at retail in the normal and usual course of business.

6. Representing that the prices at which respondent offers his products for sale are special or reduced prices, or that such prices are applicable for a limited time only, or that such prices are for advertising purposes, or that such prices represent only the cost of the manufacture of such products, when in fact such prices are the usual and customary prices at which respondent sells his products at retail in the normal and usual course of business.

7. Representing that the names of prospective purchasers which are taken from general mailing lists are "selected," and that such prospective purchasers may obtain respondent's products at prices less than the prices at which such products are customarily sold.

8. Representing that products which contain any used or second-hand materials are made entirely of new or unused materials.

9. Representing that respondent's products are germ proof or vermin proof.

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

REFRIGERATION & AIR CONDITIONING INSTITUTE, INC.

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

Docket 3811. Complaint, Oct. 31, 1939[1]*—Decision, July 11, 1941*

Where a corporation engaged in competitive interstate sale and distribution of a course of study in refrigeration and air conditioning, which consisted primarily of a series of lessons to be pursued at home, followed by a period of shop training and instruction at its school in Chicago;

In advertising, through newspapers of wide circulation and extensively by means of radio programs, for the purpose, primarily, of arousing the interest of prospective purchasers and of causing them to make inquiries of it for additional information, and by oral representations of its field representatives or agents, through whom it conducted actual solicitation of prospective purchasers—

(a) Represented, directly or by implication, that there was a great and unusual demand for new employees, and that as many as 5,000 or more new employees per year were needed in the refrigeration and air conditioning industry, that unusual and extraordinary opportunities for employment were open to persons completing its course of study, and that employment in said industry was assured to such persons;

The facts being that, while there are opportunities for employment in said industry, there is no unusual or extraordinary demand for employees therein, instruction and training in subject being offered also by many other correspondence schools, as well as universities and colleges, and the industry and the trade unions also supplying additional workers; even assuming that the industry could absorb 5,000 new workers a year, it was doubtful, in view of the large number of persons seeking to enter it, that the major portion of its 2,000 annual graduates would be able to obtain employment, and in no event could such graduates be assured thereof; and

(b) Represented that its said school was under the direction and supervision of the industry and was conducted in cooperation therewith;

Facts being that, while it maintained as a part of its organization a group of individuals holding responsible positions in the industry, and known as its "Board of Governors," which, at bi-monthly meetings, discussed various school matters and offered suggestions and criticisms, the work of such "Board," generally speaking, was advisory only: it did not undertake to direct or supervise in detail operations of the school, and the companies with which its individual members were connected fell far short of constituting the entire industry, though occupying prominent places therein; and while certain individuals in the industry had evinced interest in the school and cooperated with it to a limited extent, there had been no cooperative action by it as such, and no member thereof had contributed in any way to its financial support;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and to cause it, as a result of the erroneous belief thus

[1] Amended.

engendered, to purchase its course of study, whereby 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.

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

Mr. William L. Pencke for the Commission.

Mr. Richard S. Oldberg, of Chicago, Ill., for respondent.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Refrigeration & Air Conditioning Institute, 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Refrigeration & Air Conditioning Institute, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 2150 Lawrence Avenue in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for more than 4 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 and subjects connected therewith or incident thereto, which said courses of study and instruction 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 its said courses of study and instruction together with books and material connected therewith to be transported from its said place of business in Illinois to, into and through States of the United States other than Illinois to the purchasers thereof in such other States.

PAR. 3. During the time above mentioned, other individuals, firms, and corporations in various States of the United States have been and are engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of courses of study and instruction in air conditioning and

refrigeration and in subjects pertaining to various trades, callings, and pursuits and in preparation for work and positions of various kinds, all of which said courses of study and instruction are given and pursued either in whole or in part by means of correspondence through the medium of the United States mail. Respondent has been, during the time aforesaid, in substantial competition in commerce between and among the various States of the United States in the sale of its said courses of study and instruction with such other individuals, firms, and corporations.

PAR. 4. 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 caused by respondent to be published in newspapers and magazines circulated among the general public, including prospective students, in various States of the United States; in printed matter circulated by respondent by mail or otherwise to prospective students, enrolled students and others in various States of the United States; in radio broadcasts to members of the public generally. Among such misleading representations made by or through one or more of the said methods are representations that import or imply:

1. That the person solicited has been specially selected to take the course offered and that all those solicited and enrolled are specially selected.

2. That jobs are available for students who complete respondent's instruction and that such students are given preference in available jobs by members of the industries involved by actual employment.

3. That laboratory work given at respondent school may be taken by the student upon completion of the home study regardless of whether payments have been made in full.

4. That immediate enrollment is necessary in order to secure the training offered or that opportunity to enroll will not be available later because enrollment will not then be accepted.

5. That starting pay that may be expected by students who finish respondent's course is higher than it is in fact.

6. That little previous education is necessary in order to successfully pursue and finish the course offered or that apparent educational deficiencies will not be a bar thereto.

7. That the manufacturers whose officials have endorsed or commended respondent's course have agreed to give employment to respondent's graduates or a large part thereof.

8. That the salesman or other representative of respondent will call back and assist the student solicited in his studies.

9. That respondent's so-called Board of Governors, composed of officers or employees of certain manufacturers, is in full charge of respondent school; that it is in direct and actual charge of the work of instruction; that it is appointed by and acts on behalf of the industry or the so-called endorsers as a whole; or that its status is other than it is in fact.

10. That the student solicited may elect and arrange to spend extra time at the laboratory of respondent school in addition to that regularly provided.

11. That the manufacturers in the industry whose officers or employees have given letters commending respondent's course actually sponsor the school or contribute financially to the upkeep of the same or to the cost of instruction.

12. That the size of the institution conducted by respondent is greater than it is in fact; that respondent school occupies the entire space in the buildings depicted in its literature and advertisements; and that a certain building so depicted in some of its literature is actually built and in use.

13. That the school operated by respondent was founded by or is operated by the industries involved, or by the concerns whose officials have endorsed the same.

14. That the industries involved absorb and will absorb all of the graduates of respondent school or that approximately 5,000 graduates of the school can and will be so absorbed annually.

15. That all the openings for employment arising and existing annually in the industries involved of the kind for which respondent's training qualifies its students will be filled by graduates of respondent school or that respondent has been authorized by said industries to prepare and furnish men for all of such openings.

16. That all of respondent's graduates have found employment in the industries involved.

17. That respondent school does and will obtain jobs for its graduates.

18. That a refund will be made of money paid by students who sign respondent's enrollment blanks if the students are unable to proceed with the training or cannot assimilate the same or that payments will be suspended during unemployment or other events preventing the continuance of payments, or, if the student desires to discontinue the course after starting, further payments will be canceled.

19. That the contract caused by respondent to be presented to and signed by prospective students is a mere application for the training offered and not a contract and is merely preliminary and of no further binding effect on those signing the same.

20. That there is a great demand for men in the industries involved or that the demand is much greater than it is in fact.

21. That respondent school is the only one of the kind having endorsements from manufacturers or their representatives.

22. That by enrolling in respondent school, the student is accepting the chance of a lifetime and that by graduating therefrom his future is assured.

23. That the home study course conducted by respondent is the only one of the kind having shop training in connection therewith.

24. That the training given by respondent qualifies students thereof as engineers in the fields involved and that by taking respondent's training jobs as engineers can be procured.

25. That the employment opportunities stressed by respondent in its advertising matter and by its salesmen are in the manufacturing plants in the industries involved.

26. That the number of students accepted by respondent is limited to the number of openings for employment in the industries involved and available to those who graduate.

27. That the value or cost of laboratory equipment in respondent school is greater than it is in fact.

28. That transportation cost of the student to and from Chicago for laboratory training is paid by respondent.

29. That a so-called limited quota of enrollments is employed by respondent and applied to restrict the number thereof so that those who finally graduate will not exceed the demand for such graduates in the industries involved.

30. That respondent school is the official training agency of the refrigeration and air conditioning industries.

31. That all of certain listed manufacturers had officially endorsed respondent's training.

32. That respondent school solicits and enrolls only a comparatively small number of students.

PAR. 5. Among the statements of respondent in its radio broadcasts, advertising matter or literature, circulated or published at one time or another as aforesaid, which import or imply one or more of the foregoing representations or which encourage such representations by its salesmen or furnish a background therefor, are the following:

* * * In fact, in the last three years, Air Conditioning installations have increased more than FOURTEEN HUNDRED PERCENT! BUT, with this wonderful growth, a serious problem has arisen, for now the Industry finds that there are not enough trained men available to carry on its work. Recent surveys show that from five to seven thousand additional trained men will be needed EVERY YEAR for at least the next 10 years. * * * To meet this demand a nation-wide training program, officially endorsed and recommended by more than a

hundred leading manufacturers, is now being carried on, to create the new type craftsman so badly needed * * * MEN ARE BEING SELECTED FOR THIS TRAINING NOW! * * *

* * * with one or two widely scattered exceptions every single student who has completed our training, and attended the laboratory in Chicago and received his diploma, has made an immediate and highly satisfactory connection in this industry * * *

* * * * * * *

This program, endorsed by over 50 leading manufacturers and directly supervised by Engineers appointed by these manufacturers consists of * * * etc.

* * * * * * *

* * * while many men are needed, the Board will accept only those whom they think will be successful in this field, * * *

* * * * * * *

* * * Qualified men are being selected for training NOW * * *

* * * * * * *

* * * the most modern and complete laboratory of its kind in the world; $100,000 of equipment in actual operation; * * *

* * * * * * *

We carefully select the men we train.

* * * * * * *

A few men in this locality will be accepted for training under arrangements with 20 of largest manufacturers by the Refrigeration and Air Conditioning Institute * * *.

* * * * * * *

Wanted immediately—Several men to train under direct supervision of factory engineers, appointed by arrangement with 50 leading manufacturers. Those qualifying will be prepared by Refrigeration and Air Conditioning Institute, * * *.

The Refrigeration and Air Conditioning Institute was founded at the request of several well-known manufacturers of refrigeration and air-conditioning equipment, and is conducted for the purpose of providing the industry with men * * *.

* * * * * * *

The Only School Offering "Officially Endorsed" and Industry-Supervised Training.

* * * * * * *

Fifty leading manufacturers in the industry cooperated with us in making possible a complete training program that prepares for ACTUAL JOBS and includes a national placement service.

* * * * * * *

Wanted Immediately—Right now—there exists an urgent need for men to sell, install, and service new types of equipment in a new, fast growing industry but only especially trained men are needed—men who have had complete theoretical training and also practical experience on operating equipment.

Men are being selected for training now * * *. If you are interested in where this opportunity exists and how you can prepare for good paying positions in that field—write to Industrial Training Corp. * * *.

* * * * * * *

Help Wanted—Men

Men wanted immediately—Men mechanically inclined to train for good paying positions in a new and fast-growing industry. Training includes practical experience on operating equipment. For complete information write to Refrigeration and Air Conditioning Institute * * *.

* * * * * * *

Supervised by an Industry Appointed Board of Governors—The manufacturers endorsing Refrigeration and Air Conditioning Institute Training assist in the supervision of the training through an industry-appointed Board of Governors * * *.

* * * * * * *

* * * The Refrigeration and Air Conditioning Institute also furnishes your transportation * * *.

* * * * * * *

* * * Well-paid positions in estimating, installation, service engineering and maintenance on many new types of mechanical equipment are open to the properly trained men * * *.

* * * * * * *

The purpose of this program is to provide the air-conditioning industry with men who have been specially trained to handle installation, maintenance, and service engineering * * *.

* * * * * * *

* * * we are accepting for training only men of good character, fair education, * * *.

* * * * * * *

as well as others of like tenor or effect or which carry implications of the kind embraced in one or more of the misleading representations enumerated in the preceding paragraph of this amended complaint.

PAR. 6. In truth and in fact—no special selection is or has been made of prospective students who are interviewed by respondent's salesmen and solicited to enroll for training by them, but generally speaking, all who make inquiry in response to respondent's advertising efforts, as aforesaid, are interviewed and solicited to enroll; generally speaking, jobs in the industries involved are not available for all students who complete respondent's instruction or for the great majority thereof, nor do members of such industries, generally speaking, give preference to respondent's graduates by furnishing them employment; respondent requires payment in full before students are eligible to take laboratory training and does not permit such training to be taken until payment has been made in full; in order to be accepted by respondent, it is not necessary or required that prospective students enroll immediately when first called upon by respondent's representatives; the subjects involved in respondent's training not only require a considerable degree of intelligence and the ability to concentrate and study systematically and persistently but also require some knowledge of chemistry, physics, and high

school mathematics, which have not ordinarily been acquired by students having little previous education or only a common school education; the so-called endorsing manufacturers have not and do not furnish employment to all of respondent's graduates or to a large part thereof but only in a comparatively few instances; it is not a part of respondent's system of training for the salesmen or other representatives of respondent to call back and assist students in their work; respondent's so-called board of governors is not in direct charge of respondent school or of its instruction and does not govern the school, but acts in a mere advisory capacity; neither does said board represent the industry as a whole or the so-called endorsing manufacturers as a group; but only the individual concerns with which the members thereof are connected; respondent does not provide for or permit the taking of extra laboratory work but only provides that given to all students in regular course; respondent's so-called endorsing manufacturers do not sponsor respondents school or contribute to the upkeep of the same or to the cost of instruction; the buildings occupied by respondent school and depicted in its advertising matter as such are not entirely occupied by respondent but are also occupied by other associated schools; one picture of a building, formerly used by respondent in its advertising matter, was from a drawing of a proposed building that was never built; respondent school was not founded by nor is it operated by the industries involved or by the concerns whose officials have endorsed the same; the industries involved have not and do not absorb all of respondent's graduates or approximately 5,000 of them annually; all openings for employment in the industries involved are not filled by respondent's graduates nor is respondent authorized by said industries to prepare and furnish men for such openings as may exist; all of respondent's graduates have not found employment in the industries involved; respondent does not in practice obtain jobs for its students but merely attempts to assist therein; respondent does not make a practice of refunding money paid by students who are unable to proceed with the training or who find that they cannot assimilate the same, nor are payments generally suspended during students' unemployment or other events preventing the continuance of payments, nor are further payments canceled as a general practice when students desire to discontinue the course, but, in practice, respondent generally attempts to collect the amounts called for on all contracts or to make some compromise settlement thereon; the so-called application signed by students is a contract for the payment of the price of the course in full, including transportation to and from Chicago, and becomes final upon acceptance by respondent

without further action or election by the applicants involved; there is not now, nor has there been for the last year or 2 at least, any great demand for men in the refrigeration and air conditioning industries or for new men not already connected therewith or that is not capable of being principally supplied through regular channels in the industries involved; respondent school is not the only school of the kind that has endorsements from manufacturers; it is incorrect and greatly exaggerated to represent that by enrolling in respondent school one is accepting the chance of a lifetime and that by graduating therefrom one's future is assured; respondent school is not the only one of the kind having shop training in connection therewith; respondent's training is not such as to qualify graduates thereof as "engineers" under the usual acceptance of that term nor engineering training in the sense that students thereof receive the same kind and grade of training as given in colleges and universities granting degrees in engineering but is in the nature of a trade school offering training tending to qualify students for jobs as mechanics or service men; comparatively few of respondent's graduates have found employment in manufacturing plants of the industries involved; the quota of students fixed by respondent as the limit of enrollments is not such that those who graduate are in fact absorbed by employment in the industries involved; the represented value of respondent's laboratory equipment is based on alleged retail price valuation of the equipment involved, rather than on actual present value or cost to respondent since the equipment was purchased at prices greatly below the alleged retail prices on which such represented valuation is fixed; transportation cost to and from Chicago for laboratory work is furnished and paid in advance by the student as a part of the charge made by respondent for the training; the so-called limited quota of enrollments is not employed and applied by respondent so as to result in supplying only enough graduates who find or receive employment in the industries concerned but leaves out of account all other sources of supply of new employees in such industries and is grossly large and unreasonable if a really substantial percentage of respondent's enrollees should graduate; respondent school is not the official training agency of the refrigeration and air conditioning industries nor of the so-called endorsing manufacturers as a group; not all of the manufacturing concerns listed by respondent in its advertising matter as having endorsed its training had officially endorsed the same but some so listed were concerns that had not given official endorsement thereof and any endorsements involved were merely the personal acts of individuals connected therewith; respondent's enrollments are not small when considered on a total and yearly

basis but are based on an annual quota of approximately 20,000 enrollments and made to appear small, restrictive, and selective by dividing such total quota into areas extending over the entire United States and then breaking down these divisions into monthly quotas.

PAR. 7. The foregoing acts and practices used by respondent in connection with the offering for sale and sale of its 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. Thereby trade is unfairly diverted to respondent from competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of correspondence courses in air conditioning and refrigeration as well as from those engaged in such sale of correspondence courses in subjects pertaining to various trades, callings and pursuits and in preparation for work and positions of various kinds. There are among the competitors of respondent those who in the sale of their respective courses of study and instruction do not similarly or in any manner misrepresent the same or matters pertaining thereto. As a result of respondent's said practices, as herein set forth, substantial injury has been and is now being done by respondent to competition in commerce between and among the various States of the United States.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 7, 1939, issued and thereafter served its complaint in this proceeding upon the respondent, Refrigeration & Air Conditioning Institute, 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. Thereafter, on October 31, 1939, the Commission issued and subsequently served its amended complaint in this proceeding upon said respondent, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaints and the filing of

respondent's answers thereto, testimony and other evidence in support of the allegations of the complaints were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allegations of the complaints by Richard S. Oldberg, attorney for the respondent, before trial examiners of the Commission theretofore duly designated by it, and the testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the original and amended complaints, the answers thereto, testimony and other evidence, report of the trial examiners upon the evidence and the exceptions thereto, briefs in support of the complaints and in opposition thereto, and oral argument before the Commission; and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Refrigeration & Air Conditioning Institute, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2150 Lawrence Avenue, in the city of Chicago, Ill. Respondent is now, and since 1935 has been, engaged in the sale and distribution of correspondence courses of study and instruction in refrigeration and air conditioning.

Respondent causes, and since 1935 has caused, its courses of study and instruction, when sold, to be transmitted from its place of business in the State of Illinois through the United States mails and by other means to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and since 1935 has maintained, a course of trade in its courses of study and instruction in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and since 1935 has been, in substantial competition with other corporations and with firms and individuals 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 correspondence courses of study and instruction in the subjects of refrigeration and air conditioning.

PAR. 3. Respondent's course of study consists primarily of a series of lessons to be pursued by the student in his home. Upon the completion of the series of lessons a period of shop training and instruction is given the student at respondent's school in Chicago. Originally,

this shop training was limited to 2 weeks but subsequently it was increased to 4 weeks. Twelve to 18 months are usually required for the completion of the entire course of study.

In the course and conduct of its business and for the purpose of promoting the sale of its course of study, respondent inserts advertisements in newspapers having a wide circulation and also advertises extensively by means of radio programs. These newspaper and radio advertisements are primarily for the purpose of arousing the interest of prospective purchasers in respondent's course of study, and of causing such prospective purchasers to make inquiry of respondent for additional information with respect to the course.

The actual solicitation of prospective purchasers is conducted by respondent almost entirely through agents or solicitors located in various sections of the United States, these agents being designated by respondent as field representatives. For the purpose of contacting prospects and selling them the course of study, respondent has divided the United States into numerous sales districts, with field representatives located in each of these districts. Respondent customarily has in its employ approximately 150 field representatives, all of whom are compensated on a commission basis.

Among and typical of the statements and representations made by the respondent in its newspaper advertisements and radio programs are the following:

[Newspaper advertisements]

Also—more than 70 of the leading manufacturers in this industry are "officially" endorsing and recommending R-A-C-I training because they know that under such supervision, any man taking it is going to be trained exactly as they want him trained.

Again!—Isn't it reasonable to suppose that after "officially" endorsing this Training that these same 70 manufacturers—and their thousands of distributors and dealers, everywhere—will give our graduates the preference when they have jobs to fill, everything else being equal, of course.

And trained men are needed—don't overlook that—hundreds of them, in fact. But first they must be trained—and trained right. That's our job. And that's the reason for this ad—we are looking for men who are really interested.

Because of our pledge to these manufacturers to be extra careful we are accepting for training only men of good character, fair education, and with some mechanical ability.

* * * * * * *

Wanted immediately—several men to train under direct supervision of factory engineers, appointed under arrangement with leading manufacturers. Those qualifying will be prepared by Refrigeration and Air Conditioning Institute * * *.

* * * * * * *

Fifty leading manufacturers in the industry cooperated with us in making possible a complete training program that prepares for ACTUAL JOBS and includes a national placement service.

The type of training is offered that employers in this industry want their men to have. Its success is proven by the fact that all of the graduates in the Chicago District are already employed in permanent, good pay jobs. All tools and equipment furnished without charge.

* * * * * * *

To our knowledge the Training offered by the Refrigeration & Air Conditioning Institute, of Chicago, IS THE ONLY ONE IN THE ENTIRE AIR CONDITIONING FIELD THAT IS ACTUALLY DIRECTED AND SUPERVISED BY ENGINEERS AND EXECUTIVES WORKING RIGHT IN THE INDUSTRY.

[Radio continuities]

* * * In fact, in the last three years, Air Conditioning installations have increased more than FOURTEEN HUNDRED PERCENT! But, with this wonderful growth, a serious problem has arisen, for now the Industry finds that there are not enough trained men available to carry on its work. Recent surveys show that from five to seven thousand ADDITIONAL trained men will be needed EVERY YEAR for the next TEN years * * * To meet this demand a nation-wide training program, officially endorsed and recommended by more than a hundred leading manufacturers, is now being carried on, to create the new type craftsman so badly needed * * * MEN ARE BEING SELECTED FOR THIS TRAINING, NOW! * * *

* * * * * * *

As I understand it, this training program is directed and supervised by engineers and executives working right in the industry. Is that true?

Yes, that's right! And these men were actually appointed by the presidents of some of the manufacturers who endorse this program for the very purpose of directing and supervising the training, to make sure the men taking it are trained. Preliminary instruction is followed by practical shop work in what are probably the largest and most modern shops of their kind in the world! AND MEN ARE BEING SELECTED FOR THIS TRAINING, NOW!

* * * * * * *

As you probably know, refrigeration and air conditioning is one of the fastest growing businesses in America * * * but do you know also that so rapid has been its growth that there are not enough trained men to carry on the work of estimating, planning, installing and service engineering? That's the situation right now. Consequently fifty of the leading manufacturers in the field are cooperating with the Refrigeration and Air Conditioning Institute in a training program that will prepare the men needed for this work.

* * * * * * *

PAR. 4. The Commission finds that through the use of these statements and representations and others of a similar nature, and through oral representations made by respondent's field representatives to prospective purchasers, respondent has represented, directly or by implication, that there is a great and unusual demand in the refrigeration and air conditioning industry for new employees; that as many as 5,000 or more new employees per year are needed in the industry; that unusual and extraordinary opportunities for employment in the indus-

try are open to persons completing respondent's course of study, and that employment in the industry is assured to such persons; that respondent's school is under the direction and supervision of the industry, and is conducted in cooperation with the industry.

PAR. 5. There is a sharp conflict in the testimony on the question as to the number of new employees which the refrigeration and air conditioning industry may reasonably be expected to absorb each year, and on the question as to the opportunities for employment which are open to graduates of respondent's school. Testifying at the instance of the Commission were a number of witnesses who were well qualified to express an opinion on the subject and some of whom held high positions in the industry. These witnesses were of the opinion that the industry could not absorb 5,000 new employees per year or any number approaching that figure.

A number of well qualified witnesses for the respondent were of the contrary view, their opinion being that the industry should be able to use 5,000 new employees annually for some years to come. Several of respondent's witnesses held important positions with concerns engaged in the manufacture of refrigeration and air conditioning equipment. While these latter witnesses were optimistic in their views on the possibilities for employment in the industry, their testimony failed to show that anything more than a negligible number of respondent's graduates had been employed in the manufacturing plants represented by the witnesses. In fact, it was only in exceptional and isolated instances that respondent's graduates had found employment with these companies. Nor was there any testimony indicating that any substantial number of respondent's graduates had obtained positions with the sales agencies and service concerns throughout the country which sell and service the products of these manufacturers.

In connection with its school, respondent maintains an employment service to assist its graduates in obtaining positions. From a survey made by respondent in 1938, it appears that only about 26 percent of respondent's graduates had been able to obtain employment in the industry, and a similar survey made in 1939 indicated that not more than 35 percent had been successful in that respect. A third survey presented a more favorable picture. Between October 1939 and June 1940, 1,090 persons graduated from respondent's school, and this survey indicated that during the same period, 1,099 graduates had found employment in the industry. This latter figure, however, included persons who had graduated during previous years as well as those who had graduated during this particular period. There is no indication in the record as to how many of the positions obtained by the 1,099 persons were of a permanent nature and how many were only temporary.

A factor which tends to limit the opportunities for employment open to respondent's graduates is that the trade or labor unions themselves maintain trade schools for apprentices, and by means of these schools the trade unions in many cases supply all of the new men needed for work of this character. A further factor is that in the field of home refrigeration there has been a decided tendency among manufacturers during recent years to enclose their machines in hermetically sealed containers, with the result that when in need of service or repair such machines cannot be attended to by local service men but must be returned to the manufacturer.

Approximately 2,000 students are graduated from respondent's school each year. Not only are there many other correspondence schools offering instruction and training similar to that offered by respondent, but many universities and colleges also offer courses of instruction and training in this field. The industry itself and the trade unions supply an additional number of workers. Even if it be assumed that the industry can absorb approximately 5,000 new workers per year, it is doubtful, in view of the large number of persons seeking to enter the industry, that the major portion of respondent's graduates would be able to obtain employment.

The Commission is therefore of the opinion from the evidence that while there are opportunities for employment open in the refrigeration and air conditioning industry, there is no unusual or extraordinary demand for employees in the industry. In no event can respondent's graduates be assured of employment.

PAR. 6. Respondent's claim that its school is directed and supervised by the refrigeration and air conditioning industry is based upon the fact that the school maintains as a part of its organization a group composed of individuals holding responsible positions in the industry. This group is known as the school's "Board of Governors" and usually consists of five members. At the meetings of the board, which are held every 2 months, various matters in connection with the school are discussed, and suggestions and criticisms are offered by the members of the board. Generally speaking, the work of the board is of an advisory nature only. The board does not undertake to direct or supervise in detail the operations of the school. The companies with which the individual members of the board are connected, while occupying prominent places in the industry, fall far short of constituting the entire industry.

The Commission finds that there is no substantial basis for respondent's representation that its school is conducted in cooperation with the industry. Certain individuals in the industry have evinced interest in the school, and have cooperated with it to a limited extent, but

there has been no cooperative action by the industry as such. No member of the industry has contributed in any way to the financial support of the school.

PAR. 7. The Commission therefore finds that the claims and representations of the respondent with respect to its school and with respect to the opportunities for employment open to the graduates of its school, as set forth in paragraphs 3 and 4 herein, are grossly exaggerated, misleading, and deceptive.

PAR. 8. The Commission further finds that the use by the respondents of these representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and to cause such portion of the public to purchase respondent's course of study as a result of the erroneous and mistaken belief so engendered. In consequence thereof, trade has been diverted unfairly to the respondent from its competitors.

CONCLUSION

The acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce 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 original and amended complaints of the Commission, the answers of respondent, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaints and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, attorney for the Commission, and by Richard S. Oldberg, attorney 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, Refrigeration & Air Conditioning Institute, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its correspondence courses of study and instruction in refrigeration and air conditioning, do forthwith cease and desist from:

1. Representing that there is a great or unusual demand in the refrigeration and air conditioning industry for new employees.

2. Representing that unusual or extraordinary opportunities for employment in said industry are open to persons completing respondent's course of study, or that employment in said industry is assured to such persons.

3. Representing that respondent's school is under the direction or supervision of said industry, or that respondent's school is conducted in cooperation with said industry.

It is further ordered, That said 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

HOLLYWOOD RACKET 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 3931. Complaint, Oct. 19, 1939—Decision, July 11, 1941

Where a corporation engaged in interstate sale and distribution of tennis, badminton, and squash rackets, in the course of which business it purchased and imported from Japan unfinished tennis rackets which were there made according to its specifications, and which it further processed and completed in accordance with the particular specifications of the order to be filled; in course of aforesaid processing—

(*a*) Completely removed, obliterated, and covered up the words "Made in Japan" which appeared upon handle of the racket when imported, and imprinted thereon its name, "Hollywood Racket Mfg. Co.," and made use in its advertising material of legends "Hollywood Rackets" and "Hollywood Racket Mfg. Co.," without disclosing that said rackets were made in Japan, either upon the products themselves or in any of its advertising; and

Where said corporation, engaged as aforesaid in the purchase and importing of unfinished tennis rackets, the handles of which required further processing in addition to that given the rackets described above—

(*b*) Sold said rackets, likewise, with no disclosure in advertising or otherwise that they were originally made in Japan and imported into this country;

With effect of misleading and deceiving a substantial portion of the purchasing public, familiar with domestic manufacturers' long-established custom of marking products of foreign origin, into the erroneous belief that said rackets were products wholly made in the United States, for which it had a decided preference over those made in Japan or many other foreign countries, with result that a substantial portion of said public purchased its said products, and with effect of placing in the hands of unscrupulous and uninformed dealers a means and instrumentality whereby such dealers were enabled to mislead and deceive members of the purchasing public:

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

Before *Mr. Miles J. Furnas* and *Mr. William C. Reeves*, trial examiners.

Mr. Maurice C. Pearce for the Commission.

Mr. Robert W. Fulwider, 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 Hollywood Racket Manufacturing Co., Inc., 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, Hollywood Racket Manufacturing Co., Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of California. It has its principal office and place of business at 7462 Melrose Avenue, city of Hollywood, State of California.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of tennis, badminton, and squash rackets. Respondent causes its said products, when sold, to be transported from its place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein, respondent has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent uses constituent parts and materials of both foreign and domestic origin in its aforesaid rackets. Such foreign parts and materials, when imported and received by the respondent, bear marks and imprints indicating the country of their origin. Among such foreign-made parts used by respondent are racket frames which are imported from the country of Japan and which bear the mark "Made in Japan."

PAR. 4. In the course and conduct of its business, it has been and is the practice of respondent to lacquer such imported racket frames and place thereon a leather grip as well as stringing said racket frames. In such processes the mark "Made in Japan" is obliterated or concealed, and such rackets are then sold and distributed by the respondent in commerce aforesaid without any marking thereon to inform members of the purchasing public that the frames of said rackets are of Japanese or foreign origin.

PAR. 5. A further practice of the respondent in connection with the sale and distribution of its said rackets is to stamp or imprint upon such rackets the legend "Hollywood Racket Mfg. Co." Respondent also issues and distributes among prospective customers catalogues, circulars, price lists, and other advertising material which contain legends representing that such rackets are manufactured at the respondent's place of business in Hollywood, Calif., and that such rackets are wholly of domestic origin and manufacture rather than foreign origin and manufacture. Among and typical of such representations is the following: "Hollywood Rackets, Tennis, Badminton, Squash, Hollywood Racket Mfg. Co., Hollywood, California."

In truth and in fact such rackets are not wholly of domestic origin and manufacture, as the frames thereof which constitute the basic part of such rackets are made in Japan.

PAR. 6. For many years last past there has been obtained among manufacturers in the United States an established custom and practice of marking products of foreign origin in such manner as to indicate that such products are in fact of foreign rather than domestic origin. The purchasing public is familiar with and relies upon such custom and practice and when products bear no marking indicating that they are of foreign origin, the purchasing public assumes that such products are of domestic origin.

PAR. 7. 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. 8. The practices of respondent in obliterating or obscuring from its racket frames the legend "Made in Japan" and in imprinting on its rackets the legend "Hollywood Racket Mfg. Co." and in using in its advertising material the legends "Hollywood Rackets" and "Hollywood Racket Mfg. Co., Hollywood, California," without disclosing that the frames of such rackets are made in Japan, have the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's rackets are wholly of domestic origin and manufacture. As a result of such erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the purchasing public are induced to and do 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. 9. 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 October 19, A. D. 1939, issued and subsequently served its complaint in this proceeding upon the respondent, Hollywood Racket 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. After the

issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Pencke and C. Robert Mathis, Jr., attorneys for the Commission, and in opposition to the allegations of the complaint by Robert W. Fulwider, attorney 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, report of the trial examiner upon the evidence, briefs, in support of the complaint and in opposition thereto and oral arguments before the Commission; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Hollywood Racket Manufacturing Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of California. It has its principal office and place of business at 7462 Melrose Avenue, city of Hollywood, State of California.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of tennis, badminton, and squash rackets. Respondent causes its said products, when sold, to be transported from its place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein, respondent has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business the respondent purchases and imports unfinished tennis rackets made in Japan according to the specifications of the respondent. These specifications include the selection, cutting, and bending of the wood, gluing, the preparation of the bend and handles, pallets, and overlays, which are then applied and shaped and the racket drilled. When such rackets are imported into the United States they bear upon the handle thereof the legend "Made in Japan." Such rackets are further processed by the respondent when received by it. This processing consists of the application of wood filler and several coats of lacquer, trimming with windings, and application of trade-marks or brands. The handles of such rackets are covered with leather

and the entire racket tested for balance and drilled or weighted in accordance with the particular specifications of the order to be filled. In the course of this processing the words "Made in Japan" which appeared upon the handle of the racket when imported are completely removed, obliterated, and covered up. These rackets are usually sold unstrung, except in some instances where the dealer or purchaser does not have facilities for stringing such rackets. On the tennis rackets so described appears the name "Hollywood Racket Mfg. Co." The respondent also publishes circulars and other advertising material bearing the notations "Hollywood Rackets" and "Hollywood Racket Mfg. Co." The respondent does not disclose that such tennis rackets are made in Japan, either upon said tennis rackets or in any of its advertising literature.

At or about the time of the filing of the complaint herein or shortly prior thereto, the respondent began the purchase and importation of unfinished tennis rackets, the handles of which require further processing by shaping, gluing on of additional overlays, and weighting. With the addition of this further processing the same procedure is followed as hereinabove described in the finishing and marking of such rackets. These rackets are likewise sold by the respondent without any disclosure in advertising or otherwise that said rackets were originally manufactured in Japan and imported into this country.

PAR. 4. For many years last past, there has obtained among manufacturers in the United States an established custom and practice for marking products of foreign origin in such a manner as to indicate that such products are, in fact, of foreign, rather than domestic, origin. The purchasing public is familiar with, and relies upon, such custom and practice, and when products bear no marking indicating that they are of foreign origin the purchasing public assumes that such products are of domestic origin.

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 countries.

PAR. 5. The practices of the respondent in obliterating or obscuring from its racket frames the legend "Made in Japan" and in imprinting on its rackets the legend "Hollywood Racket Mfg. Co." and in using in its advertising material the legends "Hollywood Rackets" and "Hollywood Racket Mfg. Co." without disclosing that the frames for such rackets are made in Japan, have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's rackets are wholly of domestic origin and manufacture. As the

result of such erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the purchasing public are induced to, and do, purchase respondent's products.

By the use of the practices herein set forth the respondent has also placed in the hands of unscrupulous and 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 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, 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, briefs filed herein and oral argument before the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Hollywood Racket Manufacturing Co., Inc., a corporation, its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of tennis, badminton, and squash rackets in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the name "Hollywood Racket Mfg. Co." or any other name of similar import or meaning on labels or in advertising of tennis, badminton, or squash rackets or other similar products, without clearly disclosing the foreign origin of such products.

2. Representing, in any manner whatsoever, that respondent's products are made in the United States when, in fact, such products are manufactured in whole or in part in Japan or any other foreign country.

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

IN THE MATTER OF

BERTRAM A. STRAUSS, TRADING AS COLUMBIA PENCIL COMPANY

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

Docket 4083. Complaint, Apr. 4, 1940—Decision, July 11, 1941

Where an individual engaged in competitive interstate sale and distribution of pencils; by circulars, letterheads, and other advertising material—

(*a*) Represented, prior to stipulation entered into with Commission to cease and desist such representations, that he made and manufactured his said products and owned and operated or directly and absolutely controlled the plant or factory in which same were manufactured, through such statements as "* * * direct from the factory at a saving of 33⅓%," etc., when in fact he did not manufacture the pencils he sold; and

(*b*) Represented his concern as "Manufacturers of Pencils for all Purposes," through statements to that effect, facts being that, while he was a manufacturer of the mechanical pencils which he offered and sold, he was not a manufacturer of the other types thus dealt in, purchasing his supplies of crayon pencils from others, and buying lead pencils from manufacturer thereof in completed form except for painting and adding of ferrule and eraser which he proceeded to do:

With tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public, who have a marked preference for dealing directly with manufacturers, by reason of their belief that thereby lower prices and other advantages may be obtained, into the erroneous belief that said representations were true, and into purchase of a substantial quantity of said products, whereby trade was unfairly diverted to said individual from his competitors, among whom there are many who manufacture their products and others who do not manufacture same or represent themselves as manufacturers; to the substantial injury of competition in commerce:

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

Before *Mr. John W. Addison* and *Mr. Lewis C. Russell*, trial examiners.

Mr. Jesse D. Kash for the Commission.

Mr. Joseph Strauss, 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 Bertram A. Strauss,

individually and trading as Columbia Pencil 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. Bertram A. Strauss is an individual trading and doing business as Columbia Pencil Co., with his office and principal place of business at 29 West Seventeenth Street, 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 of pencils, including ordinary lead pencils and mechanical or automatic pencils. Respondent causes his products when sold by him, to be transported from his 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.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, the respondent has been and is in substantial competition with other individuals and with firms and corporations also engaged in the sale and distribution of pencils in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who manufacture their products and others who do not manufacture their products but who do not represent themselves to be manufacturers.

PAR. 3. 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 that he is a manufacturer and that his said products are manufactured by him, such representations being made by means of circulars, letterheads, billheads, and other advertising material distributed among prospective purchasers. Among and typical of such false and misleading representations are the following:

FAMOUS
COLUMBIA PENCILS

Direct from the factory at a saving of 33⅓%.

Here is our story. We are selling thousands of business concerns throughout the country, and we want you to become one of our customers.

It is our notion that a straight line is the shortest, quickest, and most economical route from the factory to the ultimate consumer. Every time a product

makes a detour at a distributor, a special factory representative or dealer, the COST GOES UP—and YOU pay it. Therefore, we have taken the middlemen by the seats of their trousers and tossed them out. We hope you don't mind.

Columbia Pencil Company, Manufacturers of Pencils for All Purposes.

In truth and in fact, respondent is not a manufacturer and does not manufacture any of his said pencils. With the exception of his mechanical or automatic pencils, respondent purchases all of his pencils outright from manufacturers or from wholesalers and jobbers. As to such mechanical or automatic pencils, respondent purchases the parts from other parties and merely assembled such parts at his place of business.

PAR. 4. There is a marked preference on the part of dealers and the purchasing public for dealing with the manufacturer of products direct, such preference being due to a belief on the part of such dealers and the purchasing public that thereby lower prices and other advantages may be obtained.

PAR. 5. The use by the respondent of the foregoing false and misleading representations has the tendency and capacity to and does mislead and deceive a substantial number of dealers and members of the purchasing public into the erroneous and mistaken belief that such representations are true and into the purchase of a substantial quantity of respondent's products. As a result, trade is diverted unfairly to respondent from his 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. 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 April 4, 1940, issued and subsequently served its complaint in this proceeding upon respondent Bertram A. Strauss, an individual, trading as Columbia Pencil Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission

and in opposition thereto by the 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, report of the trial examiner, 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 Bertram A. Strauss is an individual doing business under the name and style of Columbia Pencil Co., with his principal place of business at 29 West Seventeenth Street, New York, N. Y. Respondent for a number of years last past has been engaged in the sale and distribution of pencils.

PAR. 2. In the course and conduct of his business respondent has transported or caused to be transported from his place of business in the State of New York pencils of various types sold by him to purchasers thereof located in other States of the United States and in the District of Columbia, and has maintained a constant course of trade in such pencils in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. For the purpose of inducing the purchase of his said products respondent has, by means of circulars, letterheads, and other advertising material distributed among prospective purchasers, made various representations in connection with the sale of such pencils. Respondent commenced his present business in 1931 and in 1936 and prior thereto made representations such as:

FAMOUS
COLUMBIA PENCILS
direct from the factory at a saving of 33⅓%

Here is our story: We are selling thousands of business concerns throughout the country, and we want you to become one of our customers.

It is our notion that a straight line is the shortest, quickest, and most economical route from the factory to the ultimate consumer. Every time a product makes a detour at a distributor, a special factory representative or dealer, the COST GOES UP—and YOU pay it. Therefore, we have taken the middlemen by the seats of their trousers and tossed them out. We hope you don't mind!

At the time such representations were being made respondent did not manufacture the pencils offered for sale and sold by him. By stipulation to cease and desist entered into with the Federal Trade Commission and approved on August 3, 1936, respondent agreed to cease and desist from the use of representations such as those set out above or of any other statements of similar meaning "so as to import or imply that the said Bertram A. Strauss makes or manufactures said products or that he actually owns and operates or directly and absolutely controls the plant or factory wherein said products are made or manufactured."

In 1939 respondent, by the aforesaid means, made and circulated representations such as:

COLUMBIA PENCIL CO.
Manufacturers of Pencils for all Purposes

PAR. 4. At the time respondent represented himself to be a manufacturer of pencils for all purposes he was engaged in offering for sale and selling crayon pencils, lead pencils, and mechanical pencils. Respondent did not, and does not now, manufacture the crayon pencils sold by him but purchases his supplies of such products from others. The lead pencils offered for sale and sold by respondent are purchased by him from a manufacturer thereof in completed form except that they are unpainted and have no ferrule and eraser. Respondent proceeds to paint or lacquer the pencils so purchased and add ferrules and rubber erasers thereto.

With respect to mechanical pencils sold and offered for sale by respondent, respondent purchases plastic tubing in pieces several feet in length which his employees cut into appropriate lengths and subject to various drawing and forming processes by which pencil barrels and caps for mechanical pencils are produced. The ferrules and clips for such pencils are made by respondent's employees from brass strips and then attached to and made a part of the barrel and cap produced as stated above. To complete the pencil a mechanical action for holding the necessary lead is purchased from others and inserted in the barrel. A connecting link is provided between the cap and barrel and an eraser and leads are supplied. This is substantially the process followed by other manufacturers of mechanical pencils.

In the circumstances stated the Commission finds that the respondent is a manufacturer of mechanical pencils offered for sale and sold by him but is not a manufacturer of the other types of pencils which he offers for sale and sells.

PAR. 5. Respondent has been, and is, in substantial competition with other individuals and with firms and corporations also engaged

in the sale and distribution of pencils in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who manufacture their products and others who do not manufacture their products but who do not represent themselves to be manufacturers.

PAR. 6. There is a marked preference on the part of dealers and the purchasing public for dealing directly with the manufacturer of products purchased, such preference being due to a belief on the part of such dealers and the purchasing public that thereby lower prices and other advantages may be obtained.

PAR. 7. The use by respondent of the false and misleading representations as aforesaid has the tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public into the erroneous and mistaken belief that such representations are true and into the purchase of a substantial quantity of respondent's products. As a result trade is unfairly diverted to respondent from his 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.

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 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, and 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 respondent Bertram A. Strauss, individually, and trading as Columbia Pencil Co., or trading under any other name, his representatives, agents, and employees, directly or through

any corporate or other device, in connection with the offering for sale, sale and distribution of pencils of any type in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or indirectly, by the use of the words or terms "manufacturer," "direct from the factory," or any other words or terms of similar import or meaning, that respondent is the manufacturer of any such product which is not in fact manufactured in a plant owned and operated or directly and absolutely controlled by him.

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

IN THE MATTER OF

REX DRUG COMPANY, AND LOUIS PODROFSKI, INDIVIDUALLY AND TRADING AS REX DRUG COMPANY, AND AS AN OFFICER THEREOF

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, Oct. 10, 1940—Decision, July 11, 1941

Where a corporation and an individual, who was president and treasurer thereof and directed and controlled its policies and practices, engaged in interstate sale and distribution of various medicinal preparations, including one designated "Rex Perio Pills," for treatment of delayed menstruation; by means of advertisements disseminated through the mails, in periodicals, and by circulars, leaflets, pamphlets, and other advertising literature; in cooperation with one another—

(*a*) Represented, directly or by implication, that their said preparation constituted a competent and effective treatment for delayed, scanty, and painful menstruation, and that it was safe and harmless;

The facts being it was not a competent or effective treatment for said condition, and was not safe or harmless, in that it contained certain drugs, use whereof under the conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and, where used to interfere with pregnancy, might result in uterine infection and blood poisoning or other serious and irreparable injury to health; and

(*b*) Failed to reveal facts material in the light of such representations, and that the use of said preparation under prescribed or usual conditions might result in said serious and irreparable injury;

With effect of misleading and deceiving a substantial portion of the purchasing public into the belief that their said 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, that, because of such belief, said public purchased substantial quantities of their 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. Arthur F. Thomas*, trial examiner.

Mr. William L. Taggart for the Commission.

Jacobson, Merrick, Nierman & Silbert, 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 Rex Drug Co., a

corporation and Louis Podrofski, individually and trading as Rex Drug Co., and as an officer of Rex Drug Co., a corporation, 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 Rex Drug 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 201 East Thirty-fifth Street, Chicago, Ill.

Respondent Louis Podrofski is an individual trading as Rex Drug Co. with his principal office and place of business located at 201 East Thirty-fifth Street, Chicago, Ill. Respondent Podrofski is also president and treasurer of the corporate respondent Rex Drug Co. and directs and controls the policies and practices of the corporate respondent.

The respondents have acted in conjunction and cooperate with each other in carrying out the acts and practices hereinafter alleged.

PAR. 2. Respondents are now and for more than 2 years last past have been engaged in the sale and distribution of various medicinal preparations, including a preparation designated Rex Perio Pills, intended for use in the treatment of delayed menstruation. Respondents cause and have caused their said preparation, when sold, to be transported from their place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in their 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 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 the United States mails, by advertisements in periodicals and by circulars, leaflets, pamphlets, and other advertising literature are the following:

Ladies * * * For abnormally Delayed Periods. REX PERIO PILLS used for many years by many women all over the country for the relief of ABNORMALLY DELAYED, SCANTY, and PAINFUL MENSTRUATION PERIODS, when due to unnatural causes.

Rex Perio Pills have given timely relief to many considerably past due, abnormally delayed periods and are praised highly by many women all over the country because they were not disappointed in their time of need, and for this reason tell one another how good they are for relief of abnormal, unnatural delay.

This non-foeticidal compound is composed of time tested ingredients, such as have been in use by many physicians in their practice for many years. It contains no opiates, no dope, no narcotic, no habit forming drugs, so why take a chance and maybe experience the fretfulness and jitters that are often caused by unnatural delay? Order a box of Rex Perio Pills at once and see for yourself the satisfactory relief they may bring you, which is just what women want, not flashy and exaggerated claims.

We cannot begin to tell you about the many satisfied customers we have all over the country and about the wonderful relief and satisfaction they report from these pills, in their time of need. Nothing we can say about the satisfactory relief these pills afford will be nearly as convincing as your using them yourself would be, and so sure are we that they will prove their satisfaction to you, that we make this liberal offer of your money back in full on the first box, if they fail to prove satisfactory.

You must agree with us that nothing could be more fair to you, and in no other way except by trying them could you experience the satisfaction their fine ingredients, carefully compounded, will afford you, at this fretful trying time, when you really need something excellent. Then too, absolute privacy is assured when ordering from us. No prying eyes or gossipy tongues to know your business.

Some women keep these pills always on hand and take a few just before the due time, so as to help obtain the relief of a full, unsuppressed period, free from abnormal delay, which is so desirable. * * *

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, the respondents have represented, directly or through inference, that their said preparation constitutes a competent and effective treatment for delayed, scanty, and painful 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 respondents' preparation does not constitute a competent or effective treatment for delayed, scanty, or painful menstruation. Said preparation is not safe or harmless, as it contains the drugs ergotin, extract of black hellebore, aloes, and oil of savin, in quantities sufficient to cause serious and irreparable

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 gastro-intestinal disturbances, such as catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy, such use may result in uterine infection, with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects upon the human system, and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition of the lower limbs, resulting possibly in loss of limbs or in other serious and irreparable injury to health.

PAR. 6. 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 result in serious and irreparable injury to health.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their said preparation, disseminated as aforesaid, has had, and now has, the capacity and tendency to, 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 the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondents' preparation.

PAR. 8. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 10th day of October

1940, issued, and on the 12th day of October 1940, served its complaint in this proceeding upon respondents, Rex Drug Co., a corporation, and Louis Podrofski, individually and trading as Rex Drug Co., and as an officer of Rex Drug Co., 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. Respondent Rex Drug 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 201 East Thirty-fifth Street, Chicago, Ill.

Respondent Louis Podrofski is an individual trading as Rex Drug Co. with his principal office and place of business located at 201 East Thirty-fifth Street, Chicago, Ill. Respondent Podrofski is also president and treasurer of the corporate respondent Rex Drug Co. and directs and controls the policies and practices of the corporate respondent.

The respondents have acted in conjunction and cooperate with each other in carrying out the acts and practices hereinafter alleged.

PAR. 2. Respondents are now and for more than 2 years last past have been engaged in the sale and distribution of various medicinal preparations, including a preparation designated Rex Perio Pills, intended for use in the treatment of delayed menstruation. Respondents cause and have caused their said preparation, when sold, to be transported from their place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade

in their 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 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 means of 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 means of the United States mails, by advertisements in periodicals and by circulars, leaflets, pamphlets, and other advertising literature are the following:

Ladies * * * For abnormally Delayed Periods. REX PERIO PILLS used for many years by many women all over the country for the relief of ABNORMALLY DELAYED, SCANTY, and PAINFUL MENSTRUATION PERIODS, when due to unnatural causes.

Rex Perio Pills have given timely relief to many considerably past due, abnormally delayed periods and are praised highly by many women all over the country because they were not disappointed in their time of need, and for this reason tell one another how good they are for relief of abnormal, unnatural delay.

This non-foeticidal compound is composed of time tested ingredients, such as have been in use by many physicians in their practice for many years. It contains no opiates, no dope, no narcotic, no habit forming drugs, so why take a chance and maybe experience the fretfulness and jitters that are often caused by unnatural delay? Order a box of Rex Perio Pills at once and see for yourself the satisfactory relief they may bring you, which is just what women want, not flashy and exaggerated claims.

We cannot begin to tell you about the many satisfied customers we have all over the country and about the wonderful relief and satisfaction they report from these pills, in their time of need. Nothing we can say about the satisfactory relief these pills afford will be nearly as convincing as your using them yourself would be, and so sure are we that they will prove their satisfaction to you, that we make this liberal offer of your money back in full on the first box, if they fail to prove satisfactory.

You must agree with us that nothing could be more fair to you, and in no other way except by trying them could you experience the satisfaction their fine ingredients, carefully compounded, will afford you, at this fretful trying time, when you really need something excellent. Then too, absolute privacy is assured when ordering from us. No prying eyes or gossipy tongues to know your business.

Some women keep these pills always on hand and take a few just before the due time, so as to help obtain the relief of a full, unsuppressed period, free from abnormal delay, which is so desirable. * * *

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, the respondents have represented, directly or by implication, that their said preparation constitutes a competent and effective treatment for delayed, scanty, and painful 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 respondents' preparation does not constitute a competent or effective treatment for delayed, scanty, or painful menstruation. Said preparation is not safe or harmless, as it contains the drugs ergotin, extract of black hellebore, aloes, and oil of savin, in quantities sufficient to cause serious and irreparable 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 gastro-intestinal disturbances, such as catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy, such use may result in uterine infection, with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects upon the human system, and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition of the lower legs, resulting possibly in loss of legs or in other serious and irreparable injury to health.

PAR. 6. 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 result in serious and irreparable injury to health.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to

their said preparation, disseminated as aforesaid, has had, and now has, the capacity and tendency to, 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 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, Rex Drug Co., a corporation, and its officers, and Louis Podrofski, as an officer of said corporation, and as an individual trading as Rex 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 known as Rex Perio Pills, or any other medicinal preparation or 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 by implication, that said preparation constitutes a competent or effective treatment for delayed, scanty, or painful menstruation, 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 the pelvic organs, and in cases of pregnancy, may cause uterine infection and blood poisoning.

2. Disseminating or causing to be 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 cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in cases of pregnancy, may cause uterine infection and blood poisoning.

It is further ordered, That 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

MOTOR TIRE RETREAD COMPANY, INC., BENJAMIN DUCHEN, LILLIAN HOLLOWICH AND JOHN M. WEINER, AS OFFICERS AND DIRECTORS OF MOTOR TIRE RETREAD COMPANY, INC., ALSO TRADING AS NATION WIDE TIRE COMPANY, CENTRAL TIRE & RETREADING EXCHANGE, ETC.

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

Docket 4325. Complaint, Sept. 30, 1940—Decision, July 12, 1941

Where a corporation and an individual, who was president and director thereof, engaged in interstate sale and distribution of used tires which had been retreaded or recapped for use on automobiles, trucks, and buses; to obtain salesmen for their products—

(*a*) Represented, through newspaper advertisements and through their "crew managers," that salesmen employed by them received a commission of 10 percent on all orders obtained by them, which amount salesmen collected from purchaser as a deposit at the time order was taken, that their salesmen were further credited with a bonus of 5 percent on each order accepted and paid for in full by purchaser, and that they would also pay all expenses incurred by the salesman for oil and gasoline used in operation of his automobile, provided his sales totaled a specified minimum varying from $200 to $250 per week; and

(*b*) Represented, through their said "crew managers," that the $5 so-called "bond deposits" required of the salesmen for the sample kits which the "crew managers" supplied to them, and which contained cross-section tire specimens represented by said corporation as being samples of and representative of the tires sold by them, would be refunded to the salesmen after they had been in their employ for three weeks;

The facts being that their salesmen did not receive, in all cases, the deposit of 10 percent collected by them on each order, but in the event the remainder of the purchase price of tires ordered was not paid by purchasers, said deposit was deducted from future earnings of the salesman, and in many cases they did not pay their salesmen a bonus on sales paid for by customers; they did not pay salesmen expense incurred for oil and gasoline used in operation of their automobiles, even though said salesmen's aggregate weekly sales might total specified minimum above referred to; did not, in many cases, refund to salesmen so-called "bond deposit" after the salesmen had been in their employ for 3 weeks, or at any other time; and the cross-section tire specimens in aforesaid sample kits were not, in fact, representative of the tires actually sold and delivered to purchasers, which were far inferior to such purported samples; and

Where said corporation and individual, to induce purchase of their said products, by means of letters, order blanks, and other written or printed material

and through oral representations made by their crew managers and salesmen—

(*c*) Represented that the tires purchased from them would be identical with the samples displayed to prospective purchaser by their agents, that the carcasses used in their retreaded or recapped tires were less than 1 year old, that their tires would be free from boots and patches, and that tires ordered by purchaser would be shipped to him from points in the vicinity in which he was located, thereby effecting a substantial saving in freight, and that they were the manufacturers of the tires sold by them;

The facts being they made a practice of shipping to purchasers inferior and, in many cases, worthless tires or tires of different size, kind or make from those ordered; they had no way of knowing the age of said "carcasses," and in many instances the tires were older than represented; their tires frequently contained boots and patches; shipments were not made from points in purchaser's vicinity except near Chicago, and the freight rate was often much higher than represented; and they were not the manufacturers of the tires sold by them; and

(*d*) Represented that they would ship tires to purchasers on consignment, and that their said tires were sold under a warranty that they would replace their passenger tires within 6 months or their truck tires within 3 months, at one-half the prevailing prices, should such tires prove defective; that their tires were suitable for the purpose for which purchased; and that they would give many miles of service in the normal course of usage at a fraction of the cost of a like amount of service from new tires;

The facts being they did not ship tires on consignment, but made shipments thereof only on C. O. D. basis or bill of lading with sight draft attached, the tires being fully wrapped when delivered and purchasers therefore being unable to make inspection thereof before payment of the balance due thereon and acceptance of merchandise; they failed and refused, in many cases, to make good their said warranty that they would replace tires that proved defective at half price; in many instances their tires were not suitable for the purpose for which they were purchased, and purchaser did not obtain any service whatsoever therefrom; cost of service, where any was obtained from their tires, was generally in excess of the cost of obtaining a like amount of service from new tires; and, as aforesaid, the purported tire samples furnished their said agents, and used by them in soliciting sales were far superior to the tires actually sold; and

Where said corporation and individual, to obtain orders from persons who had had previous unsatisfactory experience with them—

(*e*) Made use of various trade names and purported addresses, which they placed on samples, order blanks, and advertising material supplied to their agents, and represented, through said agents, that the purported business carried on under such names had no connection with them or with the business carried on by them under other trade names;

When, in truth and in fact, all orders obtained by them under any of said trade names, or under their corporate name, were received at and filled from their said place of business in Chicago;

With the effect of misleading and deceiving a substantial number of prospective salesmen into accepting employment by them, and a substantial portion of the purchasing public into the purchase of substantial quantities of their said products:

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

Mr. J. R. Phillips, Jr. for the Commission.
Mr. David Auerbach, 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 Motor Tire Retread Co., Inc., a corporation, and Benjamin Duchen, Lillian Hollowich, and John M. Weiner, individually and as officers and directors of Motor Tire Retread Co., Inc., said corporate and individual respondents also trading as Nation Wide Tire Co., Central Tire and Retreading Exchange, Standard Brand Retread Tire Co., Zephyr Tire Co., and Retread Tire Distributors, 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 Motor Tire Retread Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, having its office and principal place of business at 2441 South Indiana Avenue, Chicago, Ill. Respondents Benjamin Duchen, Lillian Hollowich, and John M. Weiner are president, secretary, and treasurer, respectively, and members of the Board of Directors of the respondent Motor Tire Retread Co., Inc., and formulate and control its business policies and practices. All of said individual respondents have offices and places of business at 2441 South Indiana Avenue, Chicago, Ill. Respondents Motor Tire Retread Co., Inc., Benjamin Duchen, Lillian Hollowich, and John M. Weiner, are also trading and doing business under various trade names, including Nation Wide Tire Co., Central Tire and Retreading Exchange, Standard Brand Retread Tire Co., Zephyr Tire Co,. and Retread Tire Distributors as well as under the name of the corporate respondent. The business conducted under said various trade names is conducted from 2441 South Indiana Avenue, Chicago, Ill.

The respondents Motor Tire Retread Co., Inc., a corporation, Benjamin Duchen, Lillian Hollowich, and John M. Weiner, have acted in concert and in cooperation each with the other in doing the acts and things hereinafter alleged.

PAR. 2. Respondents are now, and for more than 2 years last past have been, engaged in selling and distributing used tires which have been retreaded or recapped. Said retreaded or recapped tires are for use on automobiles, trucks, and buses. Respondents cause said retreaded or recapped tires, when sold by them, to be transported from their said place of business in Chicago, Ill., to the purchasers thereof at their respective points of location in the various States of the United States other than the State of Illinois, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said retreaded and recapped tires 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, and for the purpose of obtaining salesmen for their products and thus to further the sale of such products, the respondents have made many false and misleading representations to prospective agents and salesmen, such representations being made through advertisements in newspapers and through certain representatives of respondents designated as "crew managers."

Among and typical of such false and misleading representations are the following: that salesmen employed by the respondents receive as compensation a commission of 10 percent on all orders obtained by them, which amount the salesman collects from the purchaser as a deposit at the time the order is taken; that respondents' salesmen are also credited with a bonus of 5 percent on each order accepted and paid for in full by the purchaser; that respondents will also pay all expenses incurred by the salesman for oil and gasoline used in the operation of the salesman's automobile, provided the sales of the salesman total a specified minimum varying from $200 to $250 per week.

Respondents, through their said crew managers, supply each of their salesmen with a sample kit for which the salesman is required to pay over to the respondents a so-called bond deposit of $5. Respondents represent to the salesmen that such deposit will be refunded to them after they have been in the employ of the respondents for a period of 3 weeks. Such sample kits contain cross-section tire specimens which are represented by the respondents to be samples of, and representative of, the tires sold by respondents.

PAR. 4. The foregoing representations are false and misleading. In truth and in fact, respondents' salesmen do not receive in all cases the deposit of 10 percent collected by them on each order, but such commission is contingent upon the payment by the purchasers of the remainder of the purchase price of the tires ordered. In the event

such balance is not paid by the purchaser, said deposit of 10 percent is deducted by respondents from the future earnings of the salesman. In many cases respondents do not pay their salesmen a bonus of 5 percent or any other bonus on the sales made by them which are accepted and paid for by customers. Respondents do not pay the expense incurred by their salesmen for oil and gasoline used in the operation of the salesmen's automobiles, even though the aggregate weekly sales of such salesmen may total the specified minimum above referred to.

In many cases respondents do not refund to their salesmen the so-called bond deposit of $5 after the salesmen have been in respondents' employ for a period of three weeks, nor do respondents make such refund at any other time. The cross-section tire specimens in said sample kits are not, in fact, samples of nor representative of the tires sold by respondents. The tires actually sold and delivered to purchasers are far inferior to such purported samples.

PAR. 5. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said products, respondents have also made many false and misleading representations to prospective purchasers concerning their said tires, such representations being made by means of letters, order blanks, and other written or printed material, and by means of oral representations made by respondents' crew managers and salesmen. Among and typical of such false and misleading representations are the following:

1. That the tires purchased from the respondents will be identical in kind, size, make, and quality with the samples displayed to the prospective purchaser by respondents' agents.

2. That the carcasses used by the respondents in their retreaded or recapped tires are less than 1 year old.

3. That respondents' tires will be free from boots and patches.

4. That the tires ordered by the purchaser will be shipped to the purchaser from points in the vicinity in which the purchaser is located, and that thereby a substantial saving in freight will be effected.

5. That respondents are the manufacturers of the retreaded or recapped tires sold by them.

6. That respondents will ship tires to purchasers on consignment.

7. That the respondents' retreaded or recapped tires are sold under a warranty that respondents will replace their passenger tires within 6 months or their truck tires within 3 months, should such tires prove defective, at one-half of the prevailing prices of such tires.

8. That respondents' tires are suitable for the purpose for which they are purchased, and that they will give many miles of service in

the normal course of usage at a fraction of the cost of a like amount of service from new tires.

PAR. 6. The aforesaid representations made by the respondents, as aforesaid, are false and misleading. In truth and in fact, respondents do not ship to purchasers tires of the same quality or size or kind or make as the samples displayed by their agents and ordered by the purchaser, but make a practice of shipping inferior and, in many cases, worthless tires or tires of different size, kind, or make than those ordered. Respondents have no way of knowing the age of the carcasses used in the retreaded or recapped tires sold by them, and in many instances the tires are older than represented.

Respondents' tires are not free from boots and patches, but in many instances contain boots and patches. Shipments are not made from points in the vicinity in which the purchaser is located, except in the vicinity of Chicago, Ill., and the freight rate is often much higher than it is represented to be by respondents' agents. Respondents are not the manufacturers of the tires they sell.

Respondents do not ship tires on consignment. They make shipments of their tires only on the basis of C. O. D. or bill of lading with sight draft attached, and when said tires are delivered they are fully wrapped and the purchasers are unable to make an inspection of such tires before payment of the balance due thereon and acceptance of the merchandise. In many cases respondents fail and refuse to make good their said warranty that they will replace, at half price, tires that prove defective.

In many instances respondents' tires are not suitable in any manner for the purpose for which they are purchased, and the purchaser thereof does not obtain any service whatsoever from said tires. In those cases where any service is obtained from respondents' tires the cost of such service is generally in excess of the cost of obtaining a like amount of service from the use of new tires.

PAR. 7. All samples, order blanks, and other advertising and sales material and supplies used by respondents' agents in soliciting sales are supplied to such agents by the respondents. Included in such material and supplies are the purported tire samples, hereinbefore referred to, which are represented to prospective purchasers by respondents' agents as being representative of the tires sold by the respondents. In truth and in fact, such purported samples are in no way representative of the tires actually sold by the respondents, but are far superior thereto.

PAR. 8. A further misleading and deceptive practice on the part of respondents is the use of various trade names and purported addresses, in order that respondents may be able to obtain, under

certain of such names, orders from persons who have had previous unsatisfactory experience with respondents under other of such names. Respondents supply to their agents samples, order blanks, and advertising material carrying certain of such trade names and addresses, and respondents represent, through their said agents, that the purported business carried on under such names has no connection with respondents or with the business carried on by respondents under other of respondents' trade names. In truth and in fact, all orders obtained by the respondents under any of said trade names, or under the name of the corporate respondent, are received at and filed from respondents' said place of business at 2441 South Indiana Avenue, Chicago, Ill.

PAR. 9. The aforesaid acts and practices of the respondents have had, and now have, the capacity and tendency to, and do, mislead and deceive a susbtantial number of prospective salesmen into accepting employment by the respondents, and a substantial portion of the purchasing public into the purchase of substantial quantities of respondents' products.

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 September 30, 1940, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, 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 respondents filed answer thereto. Subsequently respondent Benjamin Duchen, in his individual capacity and as an officer and director of respondent Motor Tire Retread Co. Inc., and said corporate respondent Motor Tire Retread Co., Inc., were granted permission to withdraw their answers and to substitute therefor an answer admitting all the material allegations set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. In connection with said substitute answer respondent Benjamin Duchen filed an affidavit with respect to respondents John M. Weiner and Lillian Hollowich as individuals and as officers and directors of the said corporate respondent. Thereafter this proceeding regularly came on for final hearing before the Commission upon the said

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Motor Tire Retread Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its office and principal place of business at 2441 South Indiana Avenue, Chicago, Ill. Respondents Benjamin Duchen, Lillian Hollowich, and John M. Weiner are president, secretary, and treasurer, respectively, and members of the board of directors of the respondent Motor Tire Retread Co., Inc. However, the individual respondents Lillian Hollowich and John M. Weiner, although officers and members of the board of directors of said corporate respondent, have taken no part in the operation of said business, the formulation of the policies of the corporate respondent, nor have they engaged in any of the acts and practices of said corporate respondent as hereinafter found and set forth. At the time of the incorporation of said company they permitted their names to be used to comply with the legal requirements with respect thereto, but have never participated to any greater extent in the affairs of the corporation. The respondents Motor Tire Retread Co., Inc., and Benjamin Duchen are also trading and doing business under various trade names, including Nation Wide Tire Co., Central Tire and Retreading Exchange, Standard Brand Retread Tire Co., and Zephyr Tire Co., as well as under the name of the corporate respondent. The business under said various trade names is conducted from 2441 South Indiana Avenue, Chicago, Ill. The respondent Benjamin Duchen also maintains an office and place of business at the same address. Hereafter when the word "respondents" is used in these findings the same shall refer to Motor Tire Retread Co., Inc., a corporation, Benjamin Duchen and Motor Tire Retread Co., Inc., trading as Nation Wide Tire Co., Central Tire and Retreading Exchange, Standard Brand Retread Tire Co. and Zephyr Tire Co.

PAR. 2. Respondents are now, and for more than 2 years last past have been, engaged in selling and distributing used tires which have been retreaded or recapped. Said retreaded or recapped tires are for use on automobiles, trucks, and busses. Respondents cause said retreaded or recapped tires, when sold by them, to be transported from their said place of business in Chicago, Ill., to the purchasers

thereof at their respective points of location in the various States of the United States other than the State of Illinois, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said retreaded and recapped tires 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, and for the purpose of obtaining salesmen for their products and thus to further the sale of such products, the respondents have made many false and misleading representations to prospective agents and salesmen, such representations being made through advertisements in newspapers and through certain representatives of respondents designated as "crew managers."

Among and typical of such false and misleading representations are the following: that salesmen employed by the respondents receive as compensation a commission of 10 percent on all orders obtained by them, which amount the salesman collects from the purchaser as a deposit at the time the order is taken; that respondents' salesmen are also credited with a bonus of 5 percent on each order accepted and paid for in full by the purchaser; that respondents will also pay all expenses incurred by the salesman for oil and gasoline used in the operation of the salesman's automobile, provided the sales of the salesman total a specified minimum varying from $200 to $250 per week.

Respondents, through their said crew managers, supply each of their salesmen with a sample kit for which the salesman is required to pay over to the respondents a so-called bond deposit of $5. Respondents represent to the salesmen that such deposit will be refunded to them after they have been in the employ of the respondents for a period of 3 weeks. Such sample kits contain cross-section tire specimens which are represented by the respondents to be samples of, and representative of, the tires sold by respondents.

PAR. 4. The foregoing representations are false and misleading In truth and in fact, respondents' salesmen do not receive in all cases the deposit of 10 percent collected by them on each order, but such commission is contingent upon the payment by the purchasers of the remainder of the purchase price of the tires ordered. In the event such balance is not paid by the purchaser, said deposit of 10 percent is deducted by respondents from the future earnings of the salesman. In many cases respondents do not pay their salesmen a bonus of 5 percent or any other bonus on the sales made by them which are accepted and paid for by customers. Respondents do not pay the expense incurred by their salesmen for oil and gasoline used

in the operation of the salesmen's automobiles, even though the aggregate weekly sales of such salesmen may total the specified minimum above referred to.

In many cases respondents do not refund to their salesmen the so-called bond deposit of $5 after the salesmen have been in respondents' employ for a period of three weeks, nor do respondents make such refund at any other time. The cross-section tire specimens in said sample kits are not, in fact, samples of nor representative of the tires sold by respondents. The tires actually sold and delivered to purchasers are far inferior to such purported samples.

PAR. 5. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said products, respondents have also made many false and misleading representations to prospective purchasers concerning their said tires, such representations being made by means of letters, order blanks, and other written or printed material, and by means of oral representations made by respondents' crew managers and salesmen. Among and typical of such false and misleading representations are the following:

1. That the tires purchased from the respondents will be identical in kind, size, make, and quality with the samples displayed to the prospective purchaser by respondents' agents.

2. That the carcasses used by the respondents in their retreaded or recapped tires are less than 1 year old.

3. That respondents' tires will be free from boots and patches.

4. That the tires ordered by the purchaser will be shipped to the purchaser from points in the vicinity in which the purchaser is located, and that thereby a substantial saving in freight will be effected.

5. That respondents are the manufacturers of the retreaded or recapped tires sold by them.

6. That respondents will ship tires to purchasers on consignment.

7. That the respondents' retreaded or recapped tires are sold under a warranty that respondents will replace their passenger tires within 6 months or their truck tires within 3 months, should such tires prove defective, at one-half of the prevailing prices of such tires.

8. That respondents' tires are suitable for the purpose for which they are purchased, and that they will give many miles of service in the normal course of usage at a fraction of the cost of a like amount of service from new tires.

PAR. 6. The aforesaid representations made by the respondents, as aforesaid, are false and misleading. In truth and in fact, respondents do not ship to purchasers tires of the same quality or size

or kind or make as the samples displayed by their agents and ordered by the purchaser, but make a practice of shipping inferior and, in many cases, worthless tires or tires of different size, kind, or make than those ordered. Respondents have no way of knowing the age of the carcasses used in the retreaded or recapped tires sold by them, and in many instances the tires are older than represented.

Respondents' tires are not free from boots and patches, but in many instances contain boots and patches. Shipments are not made from points in the vicinity in which the purchaser is located, except in the vicinity of Chicago, Ill., and the freight rate is often much higher than it is represented to be by respondents' agents. Respondents are not the manufacturers of the tires they sell.

Respondents do not ship tires on consignment. They make shipments of their tires only on the basis of C. O. D. or bill of lading with sight draft attached, and when said tires are delivered they are fully wrapped and the purchasers are unable to make an inspection of such tires before payment of the balance due thereon and acceptance of the merchandise. In many cases respondents fail and refuse to make good their said warranty that they will replace, at half price, tires that prove defective.

In many instances respondents' tires are not suitable in any manner for the purpose for which they are purchased, and the purchaser thereof does not obtain any service whatsoever from said tires. In those cases where any service is obtained from respondents' tires the cost of such service is generally in excess of the cost of obtaining a like amount of service from the use of new tires.

PAR. 7. All samples, order blanks, and other advertising and sales material and supplies used by respondents' agents in soliciting sales are supplied to such agents by the respondents. Included in such material and supplies are the purported tire samples, hereinbefore referred to, which are represented to prospective purchasers by respondents' agents as being representative of the tires sold by the respondents. In truth and in fact, such purported samples are in no way representative of the tires actually sold by the respondents, but are far superior thereto.

PAR. 8. A further misleading and deceptive practice on the part of respondents is the use of various trade names and purported addresses, in order that respondents may be able to obtain, under certain of such names, orders from persons who have had previous unsatisfactory experience with respondents under other of such names. Respondents supply to their agents samples, order blanks, and advertising material carrying certain of such trade names and addresses, and respondents represent, through their said agents, that the purported

business carried on under such names has no connection with respondents or with the business carried on by respondents under other of respondents' trade names. In truth and in fact, all orders obtained by the respondents under any of said trade names, or under the name of the corporate respondent, are received at and are filled from respondents' said place of business at 2441 South Indiana Avenue, Chicago, Ill.

PAR. 9. The aforesaid acts and practices of the respondents have had, and now have, the capacity and tendency to, and do, mislead and deceive a substantial number of prospective salesmen into accepting employment by the respondents, and a substantial portion of the purchasing public into the purchase of substantial quantities of respondents' products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents Motor Tire Retread Co., Inc., a corporation, and Benjamin Duchen, individually and as an officer and director of the said corporate respondent, in which answer said respondents admit all the material allegations of fact set forth in said complaint and waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Motor Tire Retread Co., Inc., a corporation, trading as Nation Wide Tire Co., Central Tire and Retreading Exchange, Standard Brand Retread Tire Co., Zephyr Tire Co., or trading under any other name or names, its officers, representatives, agents, and employees, and Benjamin Duchen, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of retreaded or recapped automobile, truck, and bus tires in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that any specified commissions or bonuses are paid salesmen for the sale of respondents' products in excess of those actually paid.

2. Representing that repayment will be made to salesmen for expenses arising in soliciting business or that refund of deposit for sample kit will be made unless said repayments and refunds are actually made.

3. Exhibiting to customers or prospective customers as representative of tires sold or offered for sale samples of recapped or retreaded tires which are substantially superior in quality to tires actually delivered.

4. Shipping tires that are not the same quality, size, make, or kind as those ordered.

5. Representing that the carcasses of retreaded or recapped tires are less than any stated age or that tires repaired with boots or patches are not so repaired.

6. Representing that respondents manufacture the retreaded or recapped tires sold or offered for sale by them.

7. Representing that tires will be shipped to purchasers on consignment when such is not the fact.

8. Representing that tires are sold under a warranty against defects unless all the terms and conditions of such warranty are strictly complied with.

9. Representing that tires ordered by purchasers will be shipped from any point other than the actual point of shipment.

10. Representing that tires which are not suitable for the purpose for which they are advertised are suitable for such purpose, or that respondent's tires give service at a lower cost per mile than new tires, when such is not the fact.

11. Representing that the business carried on under trade names has no connection with and is not a part of the business of respondents or with the business of respondents carried on under other trade names.

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

It is further ordered, That this proceeding be, and the same hereby is, closed as to the respondents Lillian Hollowich and John M. Weiner, without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and to proceed thereon in accordance with its regular procedure.

IN THE MATTER OF

HELENA RUBINSTEIN, INC.

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

Docket 4254. Complaint, Aug. 21, 1940—Decision, July 14, 1941

Where a corporation engaged in the manufacture and interstate sale and distribution of its "Town and Country Face Powder," "Eye Lash Grower Cream," "Eye Lash Cream and Darkener," and "Egg Complexion Soap" cosmetic preparations; by means of advertisements disseminated through the mails, newspapers, and periodicals and other advertising literature—

(*a*) Represented, directly and by implication, that face powder generally tends to draw out and absorb the natural moisture of the skin, making it dry, parched, and susceptible to lines and premature aging, and that ordinary powder particles swell because of absorption of skin moisture and clog the pores, causing enlarged pores, blackheads, and blemishes; that its said powder was moisture-proof and did not absorb natural moisture of the skin or clog the pores, and that use thereof would prevent the skin from becoming dry and parched, prevent lines and premature aging, and prevent or remove enlarged pores, blackheads, and blemishes;

Facts being that the primary purpose of face powder is to absorb excess moisture and cover shiny skin, such absorption resulting from the capillary effect of the minute spaces between adjacent particles of powder without expansion or increase in the bulk thereof; face powder, of itself, will not cause enlarged pores, blackheads, or blemishes as the result of any swelling of particles within the pores; its said representations with respect to the pre-expanded quality of its face powder and its moisture-proof qualities had no scientific basis, and use thereof would not prevent lines or premature aging or prevent or remove enlarged pores, blackheads, or blemishes because of any pre-expanded quality or "balsamizing process," by which said face powder was, purportedly, pre-expanded and saturated with moisture before reaching the consumer;

(*b*) Represented, further, that its "Eye Lash Grower Cream" had special properties which would be effective in causing eyelashes to grow, and that its "Eye Lash Cream and Darkener" had special properties which would prevent eyelashes from breaking; when in fact such products had no value in promoting growth of eyelashes or preventing their breaking, respectively; and

(*c*) Represented that its "Egg Complexion Soap" would benefit the complexion through the presence of eggs therein and purified the skin;

Facts being the egg content of said soap was of no value to the complexion, and would not purify the skin in excess of cleansing the surface thereof;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of such representations were true, and to induce it to purchase said cosmetic preparations because of such belief, thus engendered:

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

Before *Mr. Lewis C. Russell*, trial examiner.
Mr. John M. Russell for the Commission.
Mr. Henry M. Flateau, 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 Helena Rubinstein, 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, Helena Rubinstein, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its office and principal place of business at 715 Fifth Avenue in the city of New York, in said State.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the manufacture and in the sale and distribution of certain cosmetic preparations. Respondent sells its said products to purchasers situated in various States of the United States and in the District of Columbia, and causes said products, when sold by it, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in its said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its 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, and other advertising literature, are the following:

1. Representations made with reference to "Town and Country Face Powder";

HELENA RUBINSTEIN'S NEW

TOWN & COUNTRY FACE POWDER

A Really Different Powder

* * * Mme. Rubinstein * * * realized the risks that women take with face powder * * * These risks * * * are: (1) Face Powder tends to draw out and absorb the natural moisture of the skin—leaving the skin dry and parched, susceptible to lines and premature aging. (2) When a powder particle absorbs precious skin moisture, it swells—as a grain of wheat swells in contact with water. Particles resting in the opening of a pore will press, as they swell against the walls of the pore—eventually causing enlarged pores, blackheads—even blemishes.

Mme. Rubinstein has felt * * * the only way to eliminate these dangers completely was to create a powder on an entirely new principle—a moisture-resisting principle. * * *

Mme. Rubinstein conceived a second brillant process. Town and Country Face Powder, before it is balsamized, is pre-expanded! It is exposed to compressed moisture so that every particle absorbs all the moisture it can hold. In other words, it is expanded fully before it touches your skin. Next it is reduced to exquisite fineness—and then balsamized. The result is a powder that is proof against drying the skin * * * enlarging the pores, * * * the onslaughts of weather—and permanent * * *.

Face Powder * * * the balsamizing and pre-expanding processes to make it moisture proof.

Helena Rubinstein announces * * * all of her face powders are made moisture proof.

2. Representations made with reference to "Eye Lash Grower Cream:"

Eye Lash Grower * * * for lovely long lashes.

3. Representations made with reference to "Eye Lash Cream and Darkener";

Eye Lash Cream and Darkener, * * * Makes the lashes dark, silky, luxuriant looking.

Eye Lash Cream and Darkener—makes the lashes dark and silky. Prevents them from breaking.

4. Representations made with reference to "Egg Complexion Soap";

Egg Complexion Soap. * * * Purifies the skin. Made of eggs and soothing oils.

PAR. 4. Through the use of the statements and representations hereinabove set forth and other similar statements and representations not specifically set out herein, all of which purport to be descriptive of respondent's said cosmetic preparations and their effectiveness when used, respondent directly and by implication represents that face powder generally tends to draw out and absorb the natural moisture of the skin, making the skin dry, parched, and susceptible to lines and premature aging; that ordinary powder particles swell because of absorption of skin moisture and clog the pores, causing enlarged pores, blackheads, and blemishes; that respondent's cosmetic preparation Town and Country Face Powder does not absorb natural moisture of the skin and is moisture proof, and does not clog the pores; that the use of this preparation will prevent the skin from becoming dry and parched, prevent lines and premature aging and prevent or remove enlarged pores, blackheads, and blemishes. Respondent further represents that its cosmetic preparation Eye Lash Grower Cream has special properties which will be effective in causing eye lashes to grow, and that its Eye Lash Cream and Darkener makes the lashes dark, silky, and luxuriant looking and has special properties which will be effective in preventing eye lashes from breaking. Respondent further represents that its Egg Complexion Soap will benefit the complexion through the presence of eggs therein and that such product purifies the skin

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact the primary purpose of the use of face powder is to absorb excess moisture and to cover shiny skin. Such absorption of excess moisture results from the capillary effect of the minute spaces between adjacent particles of powder without expansion or increase in bulk of such powder. Face powder, of itself, will not cause enlarged pores, blackheads, or blemishes as a result of any swelling of particles within the pores. The representations made by the respondent with reference to the pre-expanded quality of its face powder and its moisture-proof qualities has no scientific basis and the use of said product will not prevent lines or premature aging or prevent or remove enlarged pores, blackheads, or blemishes because of any pre-expanded quality or balsamizing process. Respondent's preparation Eye Lash Grower Cream has no properties which would be of any value in promoting the growth of eye lashes and has no effect upon the growth of eye lashes, and its Eye Lash Cream and Darkener will not make the lashes dark, silky, or luxuriant looking, or prevent them from breaking. The egg content of Egg Complexion Soap is of no value to and will not benefit

the complexion. Said soap will not purify the skin in excess of cleansing the surface thereof.

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 the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements and representations are true, and to induce a substantial portion of the purchasing public to purchase respondent's cosmetic preparations 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 21st day of August 1940, issued, and on the 22d day of August 1940, served its complaint in this proceeding upon said respondent herein, Helena Rubinstein, Inc., a corporation, charging it with using unfair and deceptive acts or practices in commerce in violation of the provisions of said act. On the 9th day of November 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 Richard P. Whiteley, Assistant Chief Counsel for the Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the 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 being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Helena Rubinstein, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its office and principal place of business at 715 Fifth Avenue in the city of New York, in said State.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture and in the sale and distribution of certain cosmetic preparations, to wit, "Town and Country Face Powder," "Eye Lash Grower Cream," "Eye Lash Cream and Darkener," and "Egg Complexion Soap." Respondent sells its said products to purchasers situated in various States of the United States and in the District of Columbia, and causes said products, when sold by it, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its 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 were 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 were likely to induce, directly or indirectly the purchase of its said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, 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 other advertising literature, are the following.

HELENA RUBINSTEIN'S NEW
TOWN & COUNTRY FACE POWDER
A Really Different Powder

* * * Mme. Rubinstein * * * realized the risks that women take with face powder * * * These risks * * * are: (1) Face Powder tends to draw out and absorb the natural moisture of the skin—leaving the skin

dry and parched, susceptible to lines and premature aging. (2) When a powder particle, absorbs precious skin moisture, it swells—as a grain of wheat swells in contact with water. Particles resting in the opening of a pore will press, as they swell against the walls of the pore—eventually causing enlarged pores, blackheads—even blemishes.

Mme. Rubinstein has felt * * * the only way to eliminate these dangers completely was to create a powder on an entirely new principle—a moisture-resisting principle. * * *

Mme. Rubinstein conceived a second brilliant process. Town and Country Face Powder, before it is balsamized, is pre-expanded! It is exposed to compressed moisture so that every particle absorbs all the moisture it can hold. In other words, it is expanded fully before it touches your skin. Next, it is reduced to exquisite fineness—and then balsamized. The result is a powder that is proof against drying the skin * * * enlarging the pores, * * * the onslaughts of weather—and permanent * * *.

Face Powder * * * the balsamizing and pre-expanding processes to make it moisture-proof.

Helena Rubinstein announces * * * all of her face powders are made moisture-proof. * * * "Balsamized" and "Pre-expanded".

Eye Lash Grower * * * for lovely long lashes.

Eye Lash Cream and Darkener—makes the lashes dark and silky. Prevents them from breaking.

Egg Complexion Soap. * * * Purifies the skin. Made of eggs and soothing oils.

PAR. 4. Through the use of the statements and representations hereinabove set forth and other similar statements and representations not specifically set out herein, all of which purport to be descriptive of respondent's said cosmetic preparations and their effectiveness when used, respondent directly and by implication represented that face powder generally tends to draw out and absorb the natural moisture of the skin, making the skin dry, parched, and susceptible to lines and premature aging; that ordinary powder particles swell because of absorption of skin moisture and clog the pores, causing enlarged pores, blackheads and blemishes; that respondent's cosmetic preparation "Town and Country Face Powder" is moistureproof and does not absorb natural moisture of the skin, or clog the pores; that the use of this preparation will prevent the skin from becoming dry and parched, prevent lines and premature aging and prevent or remove enlarged pores, blackheads, and blemishes. Respondent further represented that its cosmetic preparation Eye Lash Grower Cream has special properties which will be effective in causing eyelashes to grow, and that its Eye Lash Cream and Darkener has special properties which will be effective in preventing eyelashes from breaking. Respondent further represented that its Egg Complexion Soap will benefit the complexion through the presence of eggs therein and that such product purifies the skin.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the primary purpose of the use of face powder is to absorb excess moisture and to cover shiny skin. Such absorption of excess moisture results from the capillary effect of the minute spaces between adjacent particles of powder without expansion or increase in bulk of such powder. Face powder, of itself, will not cause enlarged pores, blackheads, or blemishes as a result of any swelling of particles within the pores. The representations made by the respondent with reference to the pre-expanded quality of its face powder and its moisture-proof qualities have no scientific basis and the use of said product will not prevent lines or premature aging or prevent or remove enlarged pores, blackheads, or blemishes because of any pre-expanded quality or balsamizing process. Respondent's preparation Eye Lash Grower Cream has no properties which would be of any value in promoting the growth of eyelashes, and has no effect upon the growth of eyelashes, and its Eye Lash Cream and Darkener will not prevent them from breaking. The egg content of Egg Complexion Soap is of no value to and will not benefit the complexion. Said soap will not purify the skin in excess of cleansing the surface thereof.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations. disseminated as aforesaid, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements and representations are true, and to induce a substantial portion of the purchasing public to purchase respondent's cosmetic preparations because of such erroneous and mistaken belief engendered as above set forth.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and a stipulation as to the facts entered into between respondent herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve

upon the respondent herein findings as to the facts and conclusion based thereon, and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Helena Rubinstein, 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 preparations designated Town and Country Face Powder, Eye Lash Grower Cream, and Eye Lash Cream and Darkener, 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 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:

(*a*) Represents, directly or through inference, that said preparation Town and Country Face Powder does not absorb natural moisture of the skin, or that it is moisture-proof; that it will prevent lines or premature aging, or that it will prevent or remove enlarged pores, blackheads, or blemishes;

(*b*) Uses the word "Grower," or any other word of similar import, to designate or describe said preparation Eye Lash Grower Cream, or otherwise represents that said preparation has any effect upon the growth of eyelashes;

(*c*) Represents, directly or through inference, that said preparation Eye Lash Cream and Darkener will prevent eyelashes from breaking;

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, its officers, representatives, agents, and employees, as aforesaid, 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 respondent's soap product designated Egg Complexion Soap, 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:

Representing that the egg content of said soap has any beneficial effect upon the skin, or that said soap purifies the skin in excess of cleansing the surface 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

STETSON CHINA 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 4477. Complaint, Mar. 26, 1941—Decision, July 14, 1941

Where a corporation engaged in the interstate sale and distribution of dinnerware, including chinaware and glassware; by means of cards, letters, circulars, and other printed and written matter circulated generally among dealers and supplied to them for distribution to the purchasing public; directly or by implication—

(*a*) Represented that certain of its said products were a reproduction of expensive imported chinaware; and

(*b*) Represented that the prices at which such products were offered for sale represented special or reduced prices which were much less than those at which they were customarily offered and sold, through such statements as "Lady Evette Set. You may have one of these test sets at only $9.95 for the entire 54 pieces, service for 8. This set was made to retail regularly at $16.75. The complete 100-piece service is being specially priced at $19.95 which is $10 less than the regular retail price";

The facts being said chinaware was not a reproduction of imported or expensive chinaware, but was of ordinary grade and quality, and the prices at which they were offered for sale were the regular retail prices at which they were customarily offered and sold; $9.95 was the customary retail price of the set in question which never sold for $16.75, and the price of $19.95 on the larger set did not represent any saving, but was the customary retail price;

With the effect of misleading and deceiving a substantial portion of purchasing public with respect to its products, and of placing in the hands of uninformed or unscrupulous dealers a means whereby they were enabled to mislead and deceive such public, and of causing substantial portion thereof to purchase substantial quantities of said products because of the erroneous belief thus engendered:

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

Mr. B. G. Wilson for the Commission.

Mr. J. L. Kaufmann, 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 Stetson China 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 Stetson China Co., 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 1801 West Seventy-fourth Street, Chicago, Ill.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of selling and distributing dinnerware, including chinaware, glassware, and other tableware, in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes and has caused its said products, when sold, to be shipped or 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 aforesaid business, and for the purpose of inducing the purchase of its products, the respondent has disseminated false and misleading statements and representations with respect to the character, quality, and prices of its products, such representations being made by means of cards, letters, circulars, and other printed and written matter circulated generally among dealers and supplied to dealers for distribution to the purchasing public. Among and typical of the false and misleading representations so used and disseminated as aforesaid are the following:

A fine reproduction of very expensive imported china.

Lady Evette Set. You may have one of these test sets at only $9.95 for the entire 54 pieces, service for eight. This set was made to retail regularly at $16.75.

The complete 100-piece service is being specially priced at $19.95 which is $10 less than the regular retail price.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, the respondent represents directly or by implication that certain of its said products are a reproduction of expensive imported chinaware, and that the prices at which such products are offered for sale represent special or reduced prices which are much less than the prices at which such products are customarily offered for sale and sold in the usual and normal course of business.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, the china-

ware so designated is not a reproduction of imported or expensive chinaware, but is chinaware of ordinary grade and quality. The prices at which said products are offered for sale do not represent special or reduced prices but are the regular retail prices at which such products are customarily offered for sale and sold in the normal and usual course of business. The set of chinaware offered for sale at $9.95 has never sold for $16.75 but the customary retail price of such chinaware has been and is only $9.95. The price of $19.95 on the 100-piece set of said chinaware does not represent a saving of $10 or any other amount from the regular retail price of such chinaware, but in fact the customary retail price of such set of chinaware is and has been $19.95.

PAR. 6. This practice on the part of respondent serves also to place in the hands of uninformed or unscrupulous dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive members of the purchasing public with respect to the value and customary retail prices of respondent's products.

PAR. 7. The use by the respondent of the acts and practices herein set forth has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public with respect to the character, quality, and value of respondent's products, and to cause the purchasing public to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief so engendered.

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 26th day of March 1941, issued and subsequently served its complaint in this proceeding upon respondent, Stetson China 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 the respondent filed its answer admitting all the material allegations of fact set forth in the 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 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 Stetson China Co., 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 1801 West Seventy-fourth Street, Chicago, Ill.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of selling and distributing dinnerware, including chinaware, glassware, and other tableware, in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes and has caused its said products, when sold, to be shipped or 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 aforesaid business, and for the purpose of inducing the purchase of its products, the respondent has disseminated by means of cards, letters, circulars, and other printed and written matter circulated generally among dealers and supplied to dealers for distribution to the purchasing public various representations with respect to the character, quality, and prices of its products. Among and typical of the representations so used and disseminated as aforesaid are the following:

A fine reproduction of very expensive imported china.

Lady Evette Set. You may have one of these test sets at only $9.95 for the entire 54 pieces, service for eight. This set was made to retail regularly at $16.75.

The complete 100-piece service is being specially priced at $19.95 which is $10.00 less than the regular retail price.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, the respondent represents directly or by implication that certain of its said products are a reproduction of expensive imported chinaware, and that the prices at which such products are offered for sale represent special or reduced prices which are much less than the prices

at which such products are customarily offered for sale and sold in the usual and normal course of business.

PAR. 5. In truth and in fact, the chinaware so designated is not a reproduction of imported or expensive chinaware, but is chinaware of ordinary grade and quality. The prices at which said products are offered for sale do not represent special or reduced prices but are the regular retail prices at which such products are customarily offered for sale and sold in the normal and usual course of business. The set of chinaware offered for sale at $9.95 has never sold for $16.75 but the customary retail price of such chinaware has been and is only $9.95. The price of $19.95 on the 100-piece set of said chinaware does not represent a saving of $10 or any other amount from the regular retail price of such chinaware, but in fact the customary retail price of such set of chinaware is and has been $19.95.

PAR. 6. This practice on the part of respondent serves also to place in the hands of uninformed or unscrupulous dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive members of the purchasing public with respect to the value and customary retail prices of respondent's products.

PAR. 7. The use by the respondent of the acts and practices herein set forth has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public with respect to the character, quality, and value of respondent's products, and to cause the purchasing public to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief so engendered.

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 deceptve acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Stetson China 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 chinaware, glassware, and other tableware in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as the customary or regular retail prices or values of respondent's products prices and values which are in excess of the prices at which such products are regularly and customarily sold at retail in the normal and usual course of business.

2. Representing that the prices at which respondent's products are offered for sale constitute a discount to the purchaser, or that such prices are special or reduced prices, when in fact such prices are the usual and customary prices at which such products are offered for sale in the normal and usual course of business.

3. Representing that respondent's chinaware is a reproduction of expensive imported chinaware.

4. Representing that the character, grade, or quality of respondent's products are other than the actual character, grade, or quality of such products.

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

IN THE MATTER OF

WILBERT W. HAASE COMPANY, INC., NATIONAL AFFILIATION OF WILBERT VAULT MANUFACTURERS, AND ITS MEMBERS, 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 3808. Complaint, June 6, 1939—Decision, July 15, 1941

Where three corporations and three individuals engaged variously in the licensing of others to construct and sell concrete burial vaults made under letters patent, in the manufacture of supplies and materials for such vaults and of the vaults themselves, and in interstate sale and distribution thereof, to wit:

I. A corporation which (1) was engaged in licensing others to construct and sell its Wilbert vaults, and in the lease or sale to such licensees of various materials and supplies for use in said manufacture, and, under the trade name of "National Affiliation of Wilbert Vault Manufacturers," in conducting advertising programs to promote the sale of its vaults, (2) sold, and furnished without charge, to its eighty-odd licensees located in many of the States, advertising brochures, pamphlets, advertising mats, circulars, catalogs, leaflets, printed, and illustrated materials, and placed advertisements of its said vaults in magazines and other publications of general circulation, (3) sold and distributed, also, to its licensees, miniature Wilbert vaults for display completely submerged in water, with arrangement for lighting and inspection of the interior, with the intent of causing purchasers to believe that said vaults had the characteristics below represented and (4) undertook, through periodical inspections of the plants of licensees, to maintain similar standards of manufacturing by all;

II. A corporation which was engaged as licensee of former in making and selling said vaults, and also in manufacturing or providing the materials and supplies leased or sold by former to other licensees; an individual who was president of and majority stockholder in both said corporations, and in active charge of their businesses; and a second individual who was secretary and treasurer of former corporation and actively engaged in the conduct of its business and of aforesaid advertising program; and

III. A corporation engaged as licensee of first concern in the manufacture and sale of said vaults, and an individual similarly engaged as licensee, which caused advertising materials to be transported from the Chicago place of business of said first-named licensing concern and from their places of business in Maryland, to prospective customers;

In said advertising material, circulated and displayed by said corporations and individuals, furnished by the licensees to their undertaker customers, and displayed by them to the purchasing public, and in other advertising materials prepared and circulated by the licensees themselves—

(*a*) Represented said Wilbert vaults as asphalt, through such statements as "Asphalt Waterproof Vault," and in the marking and designation thereof made use of phrase "Wilbert Asphalt Waterproof Inner Vault" in large letters, with words "United with Reinforced Concrete Outer Vault" in type

so small as frequently to be illegible, and referred to the ⅜-inch asphalt lining attached to the concrete portion of the vault, as an "inner vault," and sometimes to the vault itself as a "Dual Vault";

Facts being vault in question was of concrete lined with asphalt, and not, as implied, made in major part, if not entirely, of the more expensive asphalt, and said asphalt lining thereof was not, as implied, separately suitable for use as a burial chamber, nor was the entire product a dual vault;

(*b*) Represented that their said vault was "breakproof" and that "earth weight will not crush it," that it was sweatproof and constituted an eternal, dry, underground mausoleum;

Facts being concrete, in thickness used in said vaults, will permit slow passage of water, tending to carry with it chemicals from the soil, and gradually to separate from the inner surface any asphalt or bituminous material attached thereto; deterioration of concrete may be quite rapid in soils containing an alkali and dependent also upon a variety of other conditions, including quality of the concrete, amount of moisture, etc.; and vault in question, under varying conditions of interment, would not be either air-tight or waterproof eternally or for 50 years, or for any other fixed period of time, but might easily fail and permit entrance of water, as in fact occurred in some instances within a few years; and product in question had no distinctive feature making it sweatproof, but did have a tendency to permit progressive passage of water into the interior between protruding metal parts and the concrete;

(*c*) Represented that their vault was guaranteed "Insured for Fifty Years," as airtight and water resisting, watertight if cover was properly placed and sealed, and as against being crushed by earth weight, and that said guarantee was insured by one of the large insurance companies;

The facts being that the insurance in question, as respects insurer, was based on fact or assumption that chance of disinterment was remote, and as respects various vault concerns and individuals herein involved, was primarily a sales plan, and not, as implied, an insurance of the manufacturers' guarantee for the benefit of purchasers of vaults, but was for the benefit of the licensees and to reimburse them for any payments they might be required to make as a result of the guarantee as issued by them; and advertising thereof failed to disclose that the insurance might be canceled at any time by either said licensing company or the insurer, implying that it was primarily for the benefit of purchasers and was unqualified for the full period of 50 years; and

(*d*) Stated that the well-known insurance company in question had "investigated every phase of the Wilbert organization before accepting the responsibility of underwriting Wilbert Vault Guarantees," and that "Their acceptance is a remarkable endorsement of the vault and the organization behind it";

Facts being that no such investigation was made, and acceptance of underwriting risk by said insurance company did not constitute such an endorsement, being based, as above indicated, not upon probable performance of the vault, but principally upon the fact that in the normal course there would be relatively few disinterments;

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 causing it, because of such belief, to purchase large numbers of

said vaults, whereby trade was unfairly diverted 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. Randolph Preston*, trial examiner.

Mr. Curtis C. Shears and *Mr. William L. Pencke* for the Commission.

Mr. Eugene Meacham, of Washington, D. C., and *Mr. Harold C. Osburn* and *Mr. Bernard W. Vinissky*, 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 the respondents in the caption hereof and hereinafter more particularly designated and described, have violated, and are now violating, the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. (*a*) Respondent Wilbert W. Haase Co., 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 1015 Troost Avenue, Forest Park, Ill. It is owner of certain letters patent of the United States relating to the construction, manufacture, and use of a certain kind or kinds of cement burial vaults used to encase or enclose coffins in the burial of the dead. Said patented vaults are hereinafter designated and referred to as Wilbert vaults. Said respondent is now, and for some time last past has been, engaged in the business of licensing other corporations, individuals, partnerships, and firms to construct and sell Wilbert vaults made and manufactured under said patents and in selling and distributing certain supplies, services, and materials, hereinafter more fully designated and described, to said licensees. It grants licenses under said patents to some 80 manufacturers of Wilbert vaults located throughout the United States under a licensing agreement. Said licensing agreement provides, in part, that the licensees shall have the right to manufacture and sell said Wilbert vaults in a specified territory designated therein. The licensee agrees to manufacture said vaults in accordance with specifications as contained in said letters patent governing same, and to purchase or rent from respondent Wilbert W. Haase Co., Inc., the metallic

molds, asphalt cooker, reinforcing for covers and boxes, handles, clevices, rods, asphalt and asphalt paint, Wilbert stenciling and decorating devices, an electric spraying outfit and all other materials used in the construction of said Wilbert vaults excepting cement, sand, and gravel. Respondent Wilbert W. Haase Co., Inc., will be hereinafter designated and referred to as licensor. Said licensor sells, supplies, and renders certain services to said licensee manufacturers of said Wilbert vaults, including the selling, renting and supplying of various materials, equipment, tools, forms, brochures, advertising mats, circulars, letters, booklets, pamphlets, catalogs, leaflets, and other printed and illustrated materials, and other supplies, hereinafter designated and referred to as supplies, services, and materials, used in connection with the manufacture, promotion, sale, and use of said Wilbert vaults under said licensing agreements, and incident to and connected with purchasing, manufacturing, sales promotion, advertising, planning, publication and insurance of said Wilbert vaults, directly or indirectly for said licensees. Said license agreement provides for a royalty on each vault sold by a licensee. Licensor, directly or indirectly, conducts a national advertising service for the benefit of its licensees, who are hereinafter more fully described and designated.

(*b*) Respondent, National Affiliation of Wilbert Vault Manufacturers, is an unincorporated association having its principal place of business at 1015 Troost Avenue, in the city of Forest Park, State of Illinois. It is hereinafter referred to as the "association" and its members are burial vault manufacturers located in various sections of the United States, engaged in the manufacture of said Wilbert vaults under said licensing agreements based on said letters patent held by said licensor. Said licensor is the operating agency for said association and, as such, acts on behalf of said association in conducting among other services a national advertising campaign, directly or through said association in promoting the sale of said Wilbert vaults.

(*c*) Respondent members of said association are about 80 in number and they are located in various sections of the United States. Said members are corporations, partnerships, and individuals engaged in the business of manufacturing said Wilbert vaults. All of the members of said association are not known to the Commission. Those of its officers and representative members who are known and who can be conveniently reached are specifically named as respondents herein. All the other members of said association are hereby made respondents without being individually named because they constitute a class or group too numerous to be brought before the

Commission in this proceeding without manifest inconvenience and delay. The following named representative members of said association are made respondents herein both individually and in their said representative capacity: American Vault Works, Inc., an Illinois corporation, having its principal place of business at 1015 Troost Avenue, Forest Park, Ill.; Baltimore Concrete Products Co., a Maryland corporation, trading and doing business under the name and style of Baltimore Wilbert Vault Works, with its principal place of business located at 3025 Cold Spring Lane, Baltimore, Md.; Leo Wolfkill, an individual trading and doing business under the name and style of Washington Vault Works, having his principal place of business at Rockville, Md. Respondent members of the association, both named and unnamed, are hereinafter collectively referred to as "licensees." Membership in said association is obtained solely by virtue of said licensing agreements entered into by and between said members and said licensor.

(*d*) Respondent American Vault Works, Inc., one of said licensees and a member of said association, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois having its office and principal place of business at the same local address in the city of Forest Park, State of Illinois, as respondent licensor. It is now, and for several years last past has been, engaged in the business of manufacturing and selling in interstate commerce said Wilbert vaults and manufacturing forms, equipment, supplies, and materials used in the making of said Wilbert vaults under said licensing agreements for said licensor. Said licensor, in turn, sells and distributes said forms, equipment, supplies, and materials to and among said licensees located in various States of the United States and in the District of Columbia.

(*e*) Respondent Wilbert W. Haase is an individual having his office at 1015 Troost Avenue, Forest Park, Ill. He is, and for some time last past has been, the president of respondent licensor and of respondent American Vault Works, Inc., and is and has been majority stockholder of such corporate respondents and in active charge of their businesses, controlling and directing their acts, practices, and policies. He organized or caused to be organized respondent association and directly or indirectly controls and directs its acts, practices, and policies. Sydney L. Schultz is an individual having his office at 1015 Troost Avenue, Forest Park, Ill. He is, and for some time last past has been, secretary and treasurer of the respondent licensor and secretary of respondent association, and has been actively engaged in the conduct of the businesses of said respondents.

PAR. 2. Respondent association and many of its members, including respondent licensees named herein individually and in a representative capacity, in the usual course and conduct of their respective businesses, are engaged in interstate commerce, transporting and causing to be transported said Wilbert vaults and burial supplies, equipment, advertising matter, and other materials used in the promotion, sale, distribution and use of said Wilbert vaults from the respective States of their production to the respective consumers thereof located in other States of the United States and in the District of Columbia. Said licensor, in the regular course and conduct of its business, acting for and on behalf of the association and its members in its merchandising and advertising activities referred to in paragraph 1 hereof, is engaged in selling and distributing said materials, supplies, and services and causing the same to be transported from the State of Illinois to, through and into other States of the United States wherein the various licensees are located. There is now, and has been for some time last past, a course of trade in said Wilbert vaults and said materials, supplies, and services by said respondents in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of their businesses respondents are now, and for several years last past have been, in active and substantial competition with other corporations, individuals, partnerships, and firms engaged in the manufacture, sale, and transportation in commerce between and among various States of the United States and in the District of Columbia, of steel, stone, concrete, cement, and other vaults and supplies, services, and materials used in connection with the manufacture, sale, and distribution of said vaults, used in the burial of the dead.

PAR. 3. In the course and conduct of their businesses as described in paragraph 1 hereof, respondents in soliciting the sale, selling, and reselling said Wilbert vaults, and said supplies, materials, and services, and as an incident to and a means of inducing and procuring the sale of said Wilbert vaults are now causing, and for some time last past have caused, advertisements and advertising matter relating to said vaults to be inserted, published, and displayed in magazines, newspapers, circulars, pamphlets, letters, stationery, booklets, forms, catalogs, leaflets, and other printed and illustrated material circulated or distributed among prospective purchasers of such vaults, and they have affixed advertising matter to vaults, buildings, trucks, and other media for dissemination of information, directly or indirectly to the public, all of which said advertising matter is hereinafter designated and referred to as "advertising." Said licensor cooperates and has

cooperated with said licensees in the sale of said Wilbert vaults in said commerce as aforesaid through advertising circulated among the various States of the United States and in the District of Columbia, and which said licensor has caused directly or through said association to be inserted, published, and displayed in publications circulated throughout the various States of the United States and in the District of Columbia. Said licensor also supplies advertising mats and other advertising matter to licensees, who, in turn, cause and have caused said mats and other advertising matter to be inserted, published, and displayed in various publications, circulated as aforesaid. Licensor also sells and distributes directly or indirectly said advertising to said licensees. Said licensees, in turn, furnish said advertising to their undertaker customers for use in aid of the sale of said Wilbert vaults to the ultimate purchasers thereof. Said undertakers publish, distribute, display, and expose said advertising directly or indirectly to the ultimate purchasing public. In the aforesaid manner said licensor, said association and its members and said licensees, have cooperated with each other and acted together in distributing said advertising and advertising matter under the control and direction as aforesaid of Wilbert W. Haase and Sydney L. Schultz. All of said respondents are now, and have been, acting in concert in promoting the sale of said Wilbert vaults in the manner and through the methods herein alleged.

PAR. 4. Respondents, in advertising or causing said advertising to be published, distributed, displayed, or exposed, as aforesaid, are making and have made many false and misleading representations, in and through such media, to the effect that said Wilbert vaults, when manufactured, are made and constructed, in whole or in part, of asphalt; consist of an inner vault of asphalt united with an outer vault of reinforced concrete; are waterproof, airtight, and of enduring, break-proof strength, and are guaranteed for 50 years. Another representation is and has been made by or through the means of tests and demonstrations which were and are calculated, and have had and now have the tendency and capacity, to and do in fact mislead and deceive the consuming public into the erroneous and mistaken belief that said Wilbert vaults are waterproof and airtight at the time of burial, that they will endure as waterproof and airtight under actual burial conditions, and that every said vault manufactured by any of said licensees affords eternal or long enduring protection to bodies encased or enclosed therein, against contact with water and other destructive agents in the soil where said Wilbert vault is interred.

Among and typical of said representations used and caused to be used by said respondents are the following:

1. Wilbert Waterproof Burial Vaults.

The burial vault with an insured guarantee.

Wilbert vault guarantees insured for 50 years.

Eternal.

Dry Underground Mausoleum.

Insured guarantees—Wilbert Vault Manufacturers provide a liberal and well-defined waterproof and break-proof vault guarantee that is insured for a period of 50 years by the Aetna Insurance Company of Hartford, Conn., Incorporated 1819.

Wilbert Waterproof Dual Vault.

We hereby guarantee * * * WILBERT ASPHALT WATERPROOF INNER VAULT UNITED WITH REINFORCED CONCRETE OUTER VAULT * * * that said vault interred in said cemetery is airtight and water-resistant; that earth weight will not crush it, no water from the outside will enter it after cover has been properly placed and sealed.

The Aetna Insurance Company investigated every phase of the Wilbert organization before accepting the responsibility of underwriting Wilbert Burial Vault guarantees. Their acceptance is a remarkable endorsement of the vault and the organization behind it.

2. Wilbert Asphalt Waterproof Vault.

Wilbert Asphalt Waterproof Burial Vault.

Thick Asphalt Inner Vault.

Pure cast Asphalt for Waterproof protection; reinforced concrete scientifically moulded for enduring strength.

When you explain asphalt protection to your client and sell a Wilbert vault with its insured guarantee, you have accomplished the ultimate for his "PEACE OF MIND" and your own Wilbert Waterproof Burial Vault.

3. Mr. Haase's supreme desire was to produce a vault that would give full protection regardless of varying conditions of burial. Taking a tip from the ancient Egyptian embalmers he started experimenting with asphalt. Realizing that pure asphalt must have a supporting agent, he decided to unite a thick cast asphalt inner vault to an outer vault of enduring concrete, a material which he knew would stand the test of time.

In addition to the advertisements and representations hereinabove set out, miniature vaults are sold and distributed by licensor to said licensees for advertising purposes. These miniature vaults are constructed in substantially the same manner as said Wilbert vaults and like said Wilbert vaults contain licensor's trade-mark moulded into the side and ends of same. Said licensees who purchase said miniature vaults display them or cause them to be displayed submerged in water with an arrangement provided for the lighting, inspection, and testing of their interiors by prospective ultimate purchasers of same, for the purpose of leading said ultimate purchasers to believe that said Wilbert vaults have the characteristics listed above in this paragraph under actual burial conditions. Respondents instruct their undertaker customers to make said test and demonstration and it is often made by said undertaker customers for said purpose.

PAR. 5. In truth and in fact, the statements and representations set forth in paragraph 4 hereof are false and misleading in that respondents' vaults and so-called inner vaults are not waterproof and eternally dry, nor do they insure enduring strength, nor are they always waterproof, airtight or breakproof at the time of installation or for a period of 50 years or any other stated period of time; the so-called inner vault is not itself a vault nor is it composed of thick asphalt, nor is the vault properly described and designated as an asphalt vault.

Said miniature vaults are not displayed under nor subjected to actual burial conditions. The tests and demonstrations referred to above are misleading and deceptive for the reason that the same physical conditions do not prevail when the tests are being made as would and do prevail when the vaults of the respondents are buried in the ground and such tests do not prove that said vaults are airtight, waterproof, or watertight.

Said representations regarding insured guarantees infer absolute protection but in truth and in fact the master policy insuring said licensor for the benefit of said licensees contains two or more saving clauses, one conditional upon the cover being properly placed and sealed, and another retaining to the insurance company the right to cancel said master policy if losses under said policy amount to more than 25 percent of the total premium paid for same, all of which is not disclosed to the ultimate consuming public. Disinterment after burial is so rare as to make the said certificate of guarantee worthless to the vast majority of purchasers of respondents' said vaults for the reason that no opportunity is afforded them in which to ascertain whether the vault is waterproof or not.

The term waterproof as used by respondents in their advertising as aforesaid means to the consuming public a watertight vault, a vault which will not permit water to enter it, and respondents' said vault is not waterproof as the term is so understood by the consuming public, and water will seep into it through the joints and the walls thereof, when used in the burial of the dead.

No test has been made or can be made to prove that said vaults will endure eternally or for 50 years from disintegration, electrolysis, oxidation, corrosion, and erosion, under all burial conditions. The so-called asphalt inner vault cast as a part of said Wilbert vault is now and has been constructed of an approximate thickness of $\frac{3}{8}$ of an inch of asphalt. Respondents, who directly or indirectly manufacture, sell, and distribute said Wilbert concrete vaults with asphalt inner lining do not know that a specific vault buried in a particular place is waterproof, airtight and breakproof at the time of

interment; and morever respondents do not know that a certain vault buried in a particular place will endure as a waterproof, airtight and breakproof structure for a period of 50 years, or for any long-enduring period.

PAR. 6. The use by respondents of the foregoing advertisements, statements, representations, tests, and demonstrations and others similar thereto in advertising, soliciting, and offering for sale and selling said Wilbert vaults, and said supplies, services, and materials used in connection with the advertising, sale, and use of said vaults, as herein set out, was and is calculated to and has had and now has the tendency and capacity to and does in fact, mislead and deceive a substantial portion of the purchasers and prospective purchasers thereof into the erroneous and mistaken belief that the aforesaid representations are true, and induces them to purchase said vaults on account of said erroneous and mistaken belief. Thereby trade has been and is now unfairly diverted to said licensees from competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia who do not make use of similar misrepresentations with respect to their products of the same general kind as those offered by respondents.

As a result of respondents' said practices, as herein set out, substantial injury has been and is now being done by said respondents to the public and to competitors engaged in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. The above alleged acts and practices of respondents are each and all to the injury and prejudice of the public and of competitors of respondents and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 6, 1939, issued and subsequently served its complaint upon the respondents named in the caption hereof 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, testimony and other evidence in support of the allegations of said complaint were introduced by attorneys for the Commission and in opposition thereto by attorneys for respondents, 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, report of the trial examiner and exceptions thereto, 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 Wilbert W. Haase Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, having its principal place of business at 1015 Troost Avenue, Forest Park, Ill. This respondent is the owner of certain United States letters patent relating to the construction and manufacture of concrete burial vaults. For a number of years respondent has been, and is now, engaged in the business of licensing individuals, partnerships, and other corporations to construct and sell concrete burial vaults manufactured under said letters patent, and in the lease or sale to such licensees of various materials and supplies used in or in connection with the manufacture of concrete burial vaults which are designated and described as "Wilbert" vaults.

Respondent National Affiliation of Wilbert Vault Manufacturers, alleged in the complaint to be an unincorporated association, has no officers, by-laws, or formal organization, and is in fact a trade name and style used by respondent Wilbert W. Haase Co., Inc., individually and in cooperation with its licensees, in conducting advertising programs for the benefit of itself and of its licensees in promoting the sale of Wilbert vaults. Some advertising material is sold to licensees by Wilbert W. Haase Co., Inc., and other such material is furnished to licensees without specific charge therefor. Advertisements to publicize Wilbert vaults and induce their purchase are placed by Wilbert W. Haase Co., Inc., and by licensees in magazines and other publications circulating in and among the several States of the United States and in the District of Columbia. This advertising program is in part supported by royalty payments of licensees and in part by a further payment by such licensees of 25 cents per vault sold, which payments are directly devoted to advertising carried on under the aforesaid name of National Affiliation of Wilbert Vault Manufacturers.

Respondent American Vault Works, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, having its principal place of business at 1015 Troost Avenue, Forest Park, Ill. This respondent has been, and is now, engaged in the business of manufacturing and selling Wilbert vaults as a licensee of respondent Wilbert W. Haase Co., Inc., and in addition manufacturers or otherwise provides the materials and supplies leased or sold by respondent Wilbert W. Haase Co., Inc., to other licensees.

Respondent Wilbert W. Haase, an individual, has been, and is now, president of respondent Wilbert W. Haase Co., Inc., and of respondent American Vault Works, Inc., and has been, and is now, the holder of a majority of the stock in both of said corporate respondents and has been and is, in active charge of their respective businesses, controlling and directing their policies, acts, and practices.

Respondent Sidney L. Schultz, an individual, has been, and is now, secretary and treasurer of respondent Wilbert W. Haase Co., Inc., and has been, and is now, actively engaged in the conduct of its business and in the conduct of the advertising program carried out under the name of National Affiliation of Wilbert Vault Manufacturers in aid of and in cooperation with the other respondents and other licensees not specifically named in said complaint.

Respondent Baltimore Concrete Products Co. is a corporation organized under and doing business by virtue of the laws of the State of Maryland, having its principal place of business at 3025 Cold Spring Lane, Baltimore, Md. This respondent in its capacity as a licensee of respondent Wilbert W. Haase Co., Inc., trades under the name and style of Baltimore Wilbert Vault Co. and is engaged, among other things, in the manufacture, offering for sale, and sale of Wilbert vaults.

Respondent referred to in the caption hereof as Leo Wolfkill is in fact Lee A. Wolfkill, an individual having his place of business in Rockville, Md., and trading under the name and style of Washington Vault Works, is a licensee of respondent Wilbert W. Haase Co., Inc., and is engaged, among other things, in the manufacture, offering for sale, and sale of Wilbert vaults.

PAR. 2. Respondent Wilbert W. Haase Co., Inc., trading under its own name and under the name and style of National Affiliation of Wilbert Vault Manufacturers, sells and also furnishes without charge to its licensees, some 80 in number, located in many States of the United States, various advertising brochures, pamphlets, advertising mats, circulars, catalogs, leaflets, printed and illustrated materials for the use of such licensees in promoting and inducing the sale of

Wilbert vaults, and causes such materials to be transported from its place of business to licensees in other States of the United States, and causes advertisements intended to, and which do, promote and induce the sale of Wilbert vaults to be inserted in magazines and other publications having circulation in and among the several States of the United States and in the District of Columbia. This respondent, in conjunction with respondent American Vault Works, Inc., sells and causes to be transported from Illinois through and into other States of the United States various materials and supplies sold to licensees for use in or in connection with the manufacture of Wilbert vaults and maintains a constant course of trade in commerce in such materials and supplies in and among the several States of the United States and in the District of Columbia.

Respondents Baltimore Concrete Products Co., a corporation, trading as Baltimore Wilbert Vault Co., and Lee A. Wolfkill, an individual trading as Washington Vault Works, cause brochures, circulars, letters, pamphlets, leaflets, and ther printed and illustrated materials intended to promote their sales of Wilbert vaults to be transported from the place of business of Wilbert W. Haase Co., Inc., in Illinois and from their respective places of business in Maryland to customers and prospective customers in other States and in the District of Columbia, and further cause to be transported from their respective places of business in Maryland into other States of the United States and in the District of Columbia Wilbert vaults manufactured and sold by them to purchasers in such other States and in the District of Columbia. Said respondents maintain a course of trade in commerce in and among various States of the United States and in the District of Columbia of said advertising materials and Wilbert vaults.

PAR. 3. In the course and conduct of their respective businesses, in order to induce the purchase of Wilbert vaults, respondents circulate and display the advertising material heretofore referred to and the licensees of respondents in turn furnish said advertising material to their undertaker customers and prospective customers for use in aiding and promoting the sale of Wilbert vaults to the ultimate purchasers thereof, and such advertising material is distributed, displayed, and exposed to the purchasing public. In addition to the advertising materials purchased from or furnished by Wilbert W. Haase Co., Inc., licensees also prepare and circulate advertising representations of their own with respect to Wilbert vaults.

Among and typical of the representations made and caused to be made or used by respondents are:

Wilbert Waterproof Burial Vaults.

THE BURIAL VAULT WITH AN INSURED GUARANTEE.

Wilbert Vault Guarantees Insured For Fifty Years.

Eternal, Dry Underground Mausoleum.

Insured Guarantees—Wilbert Vault Manufacturers provide a liberal and well defined waterproof and breakproof vault guarantee that is insured for a period of fifty years by the Aetna Insurance Company of Hartford, Conn., Incorporated 1819.

Wilbert Waterproof Dual Vault.

WE HEREBY GUARANTEE * * * Wilbert Asphalt Waterproof Inner Vault United with Reinforced Concrete Outer Vault * * * that said vault interred in said cemetery is Air Tight and Water Resisting, that earth weight will not crush it, and that no water from the outside will enter it after the cover has been properly placed and sealed.

The Aetna Insurance Company investigated every phase of the Wilbert organization before accepting the responsibility of underwriting Wilbert Vault Guarantees. Their acceptance is a remarkable endorsement of the vault and the organization behind it.

Wilbert Asphalt Waterproof Vault.

Wilbert Asphalt Waterproof Burial Vault.

Thick Asphalt Inner Vault.

Pure Cast Asphalt for Waterproof protection; Reinforced Concrete scientifically molded for enduring strength.

When you explain asphalt protection to your client and sell a Wilbert Vault with its Insured Guarantee, you have accomplished the ultimate for his "PEACE OF MIND" and your own.

Mr. Haase's supreme desire was to produce a vault that would give full protection regardless of the varied conditions of burial. Taking a tip from the ancient Egyptian embalmers, he started experimenting with asphalt. Realizing that pure asphalt must have a supporting agent, he decided to unite a thick cast asphalt inner vault to an outer vault of enduring concrete; a material which he knew would stand the test of time.

In addition to representations such as those set out above, miniature vaults are sold and distributed by respondent Wilbert W. Haase Co., Inc., to its licensees for advertising purposes. These vaults are constructed in substantially the same manner as the adult size Wilbert vaults. They are intended to be, and are, displayed by the licensees and by their customers to prospective purchasers in the condition of being completely submerged in water with an arrangement provided for lighting and inspection of the interior thereof. This advertisement or demonstration is intended to cause prospective purchasers to believe that Wilbert vaults have the characteristics which they are represented to have.

PAR. 4. The terms of the license granted by Wilbert W. Haase Co., Inc., for the manufacture of Wilbert vaults provides that licensees secure equipment and supplies other than the Portland cement, sand, and gravel or crushed stone for use in the manufacture of such vaults from the licensor, and by periodical inspections of the plants of

licensees the licensor attempts to maintain similar standards of manufacturing by all licensees. The Wilbert burial vault in substance consists of a box of sufficient size to hold a casket and having a separate top or cover, both box and cover being made of reinforced concrete and having an inner lining of asphalt. In general the method of manufacture is to construct the vaults in two pieces, one the box and the other the top or cover. The procedure in making the box is to set up metal forms in an inverted position leaving a 3/8-inch space between inner and outer forms which is poured full of hot asphalt. When cool the outer part of the form is removed, the surface of the asphalt is treated with a solvent, the reinforcing metal put in position, and an outer form put in place, leaving a space between the asphalt and the outer form of 1½ inches on the sides and 2½ inches at the top which, when the box is placed in the expected position, is the bottom. This space is then filled with concrete which is vibrated for the purpose of increasing its density, and when the concrete has set the inner and outer forms are removed, the outer surface pointed up, painted with an asphalt compound and the vault put aside for a curing period. The purpose of using a solvent on the asphalt inner lining prior to pouring the concrete around it is to create a bond between the asphalt and the concrete and cause the asphalt to adhere firmly to the concrete. The top or cover is made by a similar process. Before delivery of the vault to a purchaser its exterior is painted with bronze or other paint for decorative purposes.

In order to assist in moving the vault, suitable metal handles are placed in position before the concrete is poured so that they are imbedded in and become a part of the vault. For the purpose of making a tight joint between the box and the top or cover, they are cast with a tongue along the top edge of the sides and ends of the box and a groove along the edge of the cover intended to fit the tongue on the box. The groove is filled with asphalt, usually in three layers, the first being of a firmer consistency than the succeeding layers, and the top is intended to be accurately placed over the sides of the box in order that the weight of the cover and the earth placed upon it will gradually force the tongue and groove together and the asphalt will create a seal between the two parts of the vault. Where the regulations of the cemetery permit, it is the practice of the licensor to have a licensee or an employee attend to the placement of the top of the vault at the time of burial in order to assure, so far as possible, the sealing of the top to the box in the manner intended.

PAR. 5. The annual volume of business in Wilbert vaults manufactured by the some 80 licensees approximate $2,500,000. Out of the thousands of Wilbert vaults sold each year relatively few are

disinterred, and consequently it is seldom that the condition of the vault after it has been put into use is accurately ascertained. There have been, however, a number of disinterments of Wilbert vaults, some of which were found to be in excellent condition and some of which were not. The first so-called Wilbert vault was manufactured about 1928 and various modifications were made during a period of several years. Wilbert vaults of the type now being made have been sold for approximately 6 or 7 years. As a result the disinterments which have occurred were of vaults that have been in use for a relatively short period of time. Among the disinterments in which Wilbert vaults were found to be in good condition was one which had been underground for about 32 months, and on removal from a wet grave and opening the interior of the vault was found to be dry; another was disinterred at Waldheim, Forest Park, Ill., after having been underground some 8 months, and on removal from a wet grave the interior of the vault showed no evidence of dampness; another was disinterred at River View Cemetery, Essex, Conn., after having been underground for some 8 months and the interior of the vault was dry and in good condition; and there were other similar instances. Among the instances of disinterments where a failure of the Wilbert vault had occurred was one at Mount Carmel Cemetery, Hillside, Ill., which had been underground some 14 months, and upon disinterment the cover of the vault was found to be cracked and the vault itself contained a large quantity of water; a disinterment of a vault at Middletown, Conn., which had been underground some 11 months disclosed cracks in the top of the vault, a quantity of water in it, and the asphalt inner lining separated from the concrete and collapsed upon the casket; a disinterment of a vault at Holy Cross Cemetery, Yearden, Pa., which had been underground some 19 months, disclosed that the top of the vault had cracked and collapsed toward the center; and other similar instances have been found. Respondents contend by way of explanation for failures of the Wilbert vaults that in some instances they have resulted because of the custom in some localities of making several interments one above the other in the same grave, thus placing more weight upon the vault than it was originally designed to bear; that in others they resulted from the vaults being manufactured by a licensee who had just commenced the production of Wilbert vaults and the cause of failures was subsequently corrected; and that in the instance where the asphalt inner lining was found to be separated from the concrete it was probably caused by failure of the licensee to use respondents' solvent preparation on the asphalt inner lining before casting the concrete about it.

PAR. 6. Considerable expert testimony was introduced by the Commission and by the respondents bearing upon whether or not Wilbert vaults are airtight, sweatproof, waterproof, and subject to being crushed by earth weight, and whether such vaults afford eternal or long-enduring protection, constitute a dry underground mausoleum, or will endure without failure for 50 years or any other fixed period of time. There is much direct conflict between the testimony of the expert witnesses produced by the Commission and those produced by the respondent.

The Commission finds that concrete is not an airtight material and in the thickness used in Wilbert vaults will permit the slow passage of water. Water passing through the concrete has the tendency to carry with it certain chemicals in the soil in which it may be interred and such water and chemicals in solution tend to gradually separate from the inner surface of the concrete any asphalt or bituminous material which may have been attached thereto and to cause such material to buckle away from that surface or crack if the temperature is low. In the absence of the support given by being attached to other material the asphalt used in Wilbert vaults will not permanently support itself but will gradually flow in response to the pull of gravity. Placing a waterproofing material such as asphalt on the inner surface of a cement structure instead of on the side exposed to water is not a good practice. The maintenance of a Wilbert vault in a substantially airtight and waterproof condition is dependent upon the accomplishment of a complete seal between the two parts of the vault at the time of interment, upon the asphalt lining remaining securely attached to the interior of the vault, upon the concrete portion of the vault remaining unbroken by earth pressure or deterioration resulting from conditions encountered when interred, and upon other conditions. Any failure of the concrete portion of the vault will result also in failure of the asphalt inner lining and such inner lining may also fail as a result of water penetration of the concrete portion of the vault without an actual structural failure thereof.

Concrete is susceptible to deterioration, and in soils containing an alkali, which condition exists in many parts of the United States, this deterioration may be quite rapid, and deterioration may be caused by alternate freezing and thawing in the presence of moisture. The use of reinforcing materials such as are placed in the Wilbert vault adds little, if anything, to the strength of the vault, its principal value being to prevent the concrete from falling apart if fractured. The resistance to deterioration of concrete buried in the earth is determined by the quality of the concrete, the type of soil, the amount of moisture, temperatures to which subjected, and other

factors which vary widely throughout the country. There is a limit to the resistance of the vault to earth pressure, as demonstrated by the vault failures hereinbefore mentioned. The quality of any concrete structure is greatly affected by the quality, quantity, and type of materials used, and by the manner in which it is made and cured after manufacture. How long any given vault will endure without cracking, crushing, or otherwise failing is necessarily dependent not only upon the vault itself but upon whether it is placed in a favorable or unfavorable situation after interment, and it is concluded that the Wilbert vault under varying conditions of interment would not invariably be either airtight or waterproof, eternally or for 50 years or any other fixed period of time, and that if the concrete happened to be of poor quality or the vault interred under unfavorable conditions it might easily fail and permit the entrance of water, as is shown to have actually occurred, within a period of a few years or less.

It is further found that the Wilbert vault has no distinctive feature making it sweatproof, in that the condition referred to as sweating is caused by condensation of moisture to as sweating is caused by condensation of moisture in the air upon a surface with which it is in contact as a result of changing temperatures. The metal parts of the Wilbert vault which protrude on the outside of said vault are, when interred, exposed to conditions which cause rusting and will rust, creating a tendency to permit the progressive passage of water between them and the concrete into the interior of the vault.

Respondents in their advertising and sales representations refer to the 3/8-inch inner lining made of asphalt and attached to the concrete portion of the Wilbert vault as an "inner" vault, and sometimes to the vault itself as a "dual" vault. The term "vault" in the connection used by respondents imports and implies a burial chamber suitable for the purpose intended. The 3/8-inch asphalt lining of the Wilbert vault is not separately suitable or adapted for use as a burial chamber and reference to it as an inner vault, or to the entire Wilbert vault as a dual vault, is misleading and has the capacity and tendency to mislead and deceive.

Respondents frequently in marking and designating the Wilbert vault use the phrase "Wilbert Asphalt Waterproof Inner Vault" in large letters with thereunder the words "United with Reinforced Concrete Outer Vault" in type so small as frequently to be illegible.

Respondents, in order to induce the purchase of Wilbert vaults, have advertised and represented such vaults as "Asphalt Waterproof Vaults" and such references are misleading and deceptive in that in substance the Wilbert vault is a concrete vault lined with asphalt, whereas the term "Asphalt Waterproof Vault" imports and implies

that the entire vault is in major part, if not entirely, made of asphalt, which is a substantially more expensive material than concrete.

PAR. 7. Respondent Wilbert W. Haase Co., Inc., in February 1938 entered into an arrangement with the Aetna Insurance Co. of Hartford, Conn., respecting indemnification for losses under a guarantee of Wilbert burial vaults and subsequently entered into contracts with its licensees under which a standard form of guarantee would be issued to purchasers of Wilbert vaults warranting:

* * * that said vault interred in said cemetery is Air Tight and Water Resisting, that earth weight will not crush it, and that no water from the outside will enter it after the cover has been properly placed and sealed. Should this vault, after proper installation, be crushed by earth weight, or if water should enter it, then the National Affiliation of Wilbert Vault Manufacturers will pay actual damages to repair or replace vault, casket, and clothing to a maximum gross cost not to exceed $500.00. The National Affiliation of Wilbert Vault Manufacturers hereby reserve the right to inspect and pass on all replacements made in accordance with its promise hereinbefore stated, * * *.

The contract between respondent Wilbert W. Haase Co., Inc., and Aetna Insurance Co., provided that the latter would indemnify the former, for the benefit of its licensees within the limits of the contract, for such sum or sums as they might be required to pay under the terms of the above guarantee. This contract of insurance contains a provision:

If at any time the losses paid hereunder should amount to more than 25% of the total paid premium, this Company retains the right to cancel any and all certificates of insurance issued hereunder (in accordance with the provisions thereof). Pro rata return premium, if any, shall be allowed the Assured on demand on all certificates cancelled by this Company.

The policy also contains a provision premitting cancelation by the assured.

The above-stated form of guarantee signed by respondent Wilbert W. Haase Co., Inc., and by the manufacturing licensee, accompanied by a so-called certificate of insurance under the master policy above mentioned, is issued to purchasers of Wilbert vaults and the licensee pays a premium of 1 percent of the sale price of each vault, except that the minimum in any event is 50 cents, and in addition the licensee pays certain costs in connection with each certificate so issued. The contract of insurance contains a provision permitting the insurer to pay any loss to the Wilbert W. Haase Co., Inc., or to the holder of the certificate with respect to which the loss occurred. Each certificate issued to a purchaser contains the statement that the insurer under the terms of the master policy "retains the right to cancel this Certificate by delivering or mailing sixty (60) days written notice of such cancellation to such Certificate holder."

An official of the Aetna Insurance Co. testified with respect to the considerations taken into account before the issuance of the policy to Wilbert W. Haase Co., Inc., in part as follows:

Q. Did you personally or any one in your company to your knowledge, believe the Wilbert vault would remain waterproof, air-tight and moisture proof for 50 years?

A. I do not know as I cannot speak for the others and not being an engineer, myself, I do not know as that was given a great deal of thought at the time.

Q. What was given the most thought with relation to the issuance of the policy?

A. That the chance of disinterment was rather remote and on the law of averages we could make a little money on them.

Q. That was true whether the vaults performed for 50 years or not?

A. Yes.

So far as respondents are concerned the arrangement for insuring against loss on the guarantee issued by the manufacturing licensee was considered primarily as a sales plan or means of inducing and promoting the sale of Wilbert vaults, and such insurance has been featured in the advertising representations of respondents. Certain advertising representations made or procured to be made by respondents to purchasers or prospective purchasers of Wilbert burial vaults refer to the above-described insurance as "Wilbert Vault Guarantees Insured for Fifty Years," "The Burial Vault with an Insured Guarantee"; and similar representations import and imply that the manufacturers' guarantee has been insured for the benefit of purchasers of Wilbert vaults, whereas the contract with the Aetna Insurance Co. provides for indemnification of respondent Wilbert W. Haase Co., Inc., for the benefit of its licensees, for any payments they are required to make as a result of the guarantees issued by them and, as aforesaid, any such payment may at the election of the insurer be made to Wilbert W. Haase Co., Inc., or to the certificate holder. Said advertising representations do not disclose the fact that the insurance may be canceled at any time by Wilbert W. Haase Co., Inc., or that upon certain contingencies it may be canceled by the insurer, and in either event the so-called certificates of insurance issued to purchasers may then be canceled; but such representations import and imply that the insurance is primarily for the benefit of purchasers of Wilbert vaults and is unqualified to the extent of the guarantee for the full period of 50 years.

Respondents further advertise and represent that "The Aetna Insurance Co. investigated every phase of the Wilbert organization

before accepting the responsibility of underwriting Wilbert Burial Vault guarantees. Their acceptance is a remarkable endorsement of the vault and the organization behind it." An official of the Aetna Insurance Co. testified that his company did not investigate "every phase of the Wilbert organization before accepting the responsibility of underwriting Wilbert burial vault guarantees." It is concluded from the above-quoted testimony and other evidence that the acceptance of the underwriting risk by the insurance company did not constitute "a remarkable endorsement of the vault" and such acceptance was based not upon the probable performance of the vault but principally upon the fact that in normal course relatively few disinterments might be expected to occur.

PAR. 8. The use by respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to Wilbert burial vaults 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 Wilbert burial vaults possess the qualities claimed and represented and cause a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase large numbers of said Wilbert burial vaults. As a result trade has been unfairly diverted to respondents from their competitors.

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 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 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 Wilbert W. Haase Co., Inc., a corporation, American Vault Works, Inc., a corporation, and Baltimore

Concrete Products Co., a corporation trading as Baltimore Wilbert Vault Co., their officers representatives, agents, and employees; and Lee A. Wolfkill, referred to in the caption hereof as Leo Wolfkill, an individual trading as Washington Vault Works, Wilbert W. Haase, an individual, and Sidney L. Schultz, an individual, and their representatives, agents, and employees, either jointly or severally, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of burial vaults designated as Wilbert vaults, or any substantially similar burial vaults, 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 such burial vaults composed in major part of concrete or materials other than asphalt are "asphalt" vaults.

2. That such burial vaults are "dual" vaults or that the asphalt inner lining of such vaults is an "inner vault" either by the use of the terms stated or any other term or terms of similar import or meaning.

3. That any such vault is "breakproof," or that "earth weight will not crush it," either by the use of the terms stated or any other term or terms importing or implying that such vaults are not subject to being broken or crushed under any conditions of interment.

4. That any such vault is "sweatproof"; or that any such vault constitutes an "eternal, dry underground mausoleum," either by the use of the terms stated or by in any manner representing, importing, or implying that such vault under any burial conditions will remain in sound waterproof condition, eternally or permanently, for 50 years or for any fixed or stated period of time.

5. That "the Aetna Insurance Co. investigated every phase of the Wilbert organization" before entering into a contract of insurance with respect to such vaults or that the issuance of the insurance "constitutes a remarkable endorsement of the vault," either by the use of the terms stated or any other term or terms of similar import or meaning.

6. That insurance of the guarantee of such vaults under which any protection to the vault purchaser may be terminated at the will of respondents or, upon certain contingencies, by the insurer constitutes insurance of such guarantee for 50 years or for any other fixed or stated period of time.

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

NATIONAL GRAIN YEAST CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SUBSECS. (a) AND (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 3903. Complaint, Sept. 29, 1939—Decision, July 16, 1941

Where a corporation engaged in the manufacture of bakers' yeast, and in the competitive interstate sale and distribution thereof—

(*a*) Discriminated in price between competing purchasers of its products of like grade and quality, by giving and allowing some purchasers different prices than those given and allowed other purchasers competitively engaged in the sale and distribution of bread and allied products, in thus selling its said product at differentials amounting, in some instances to 7 percent and upward, and conferring thereby upon favored customers substantial benefits, which were vital factors in competition;

(*b*) Discriminated in price between competing purchasers of its products by delivering to certain of them large quantities of yeast without specific charge, in addition to the yeast sold to them, while concurrently selling yeast to other purchasers at the same price for the product billed, but without delivering free additional quantities, so that the actual cost to those favored was less by 5 percent or more than the actual cost to non-favored customers; and favored customers were substantially and competitively benefited;

(*c*) Discriminated in price between competing purchasers by granting to certain of them cash discounts of 1 to 2 percent not granted to others who paid in the same manner and within the same time;

Result of which discriminations in price had been and might be substantially to lessen competition in the line of commerce concerned, and might be to injure, destroy, or prevent competition in the sale and distribution of bread and allied products between its purchasers who received the benefits of such discriminations and those who did not;

Held, That such discriminations in price violated subsection (a) of section 2 of an act of Congress approved October 15, 1914, as amended by an act of Congress approved June 19, 1936; and

Where said corporation, engaged as aforesaid—

(*d*) Made monthly payments to various bakers' associations upon sales to members, pursuant to its policy and practice of contracting with such associations for the sale of yeast to their members at fixed prices, and for payment of commission or brokerage thereon, which inured to the benefit of the members through dividends paid them by their associations, notwithstanding no services of any sort were rendered to it by them in connection with such sales or purchases of yeast:

Held, That said commission or brokerage payments, as above set forth, violated subsection (c) of section 2 of an act of Congress approved October 15, 1914, as amended by an act of Congress approved June 19, 1936; and

Where said corporation, engaged as aforesaid—

(e) Systematically gave and offered to give gratuities consisting of liquors, cigars, meals, money, and other personal property and entertainment of various kinds to employees of baker customers and prospective customers of it and of its competitors, secretly and without the knowledge and consent of their employers, with the purpose of inducing said employees themselves to purchase, or to induce them to influence their respective employers to purchase, its products, and to refrain, respectively, from purchasing those of its competitors;

With capacity and tendency to induce the purchase of its products by various bakers, and with effect of diverting trade from competitors to it, with resulting injury to competition in commerce:

Held, That said acts and practices in giving money and things of value, under the circumstances set forth, were all to the prejudice of the public and of its competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. P. C. Kolinski for the Commission.

Mr. Harold Goldman, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" (U. S. C. title 15, sec. 13 of the Clayton Act) as amended, and by virtue of said authority vested in it by said acts, the Federal Trade Commission, having reason to believe that National Grain Yeast Corporation, hereinafter referred to as respondent, has violated the provisions of said Federal Trade Commission Act and subsections (a) and (c) of section 2 of said Clayton Act as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Count 1

PARAGRAPH 1. National Grain Yeast Corporation 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 810 Mill Street, Belleville, N. J.

PAR. 2. Respondent, since June 19, 1936, has been and now is engaged in the manufacture, sale, and distribution of bakers' yeast. In the course and conduct of such sale and distribution it causes said yeast to be shipped and transported in commerce from its plant in the State of New Jersey to the purchasers thereof in and among the various States of the United States, and there is and has been at all times herein mentioned a current of trade and commerce in

respondent's yeast between the State wherein respondent's plant is located and various other States of the United States.

PAR. 3. Said respondent in the course and conduct of its business since June 19, 1936, has been and is now in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing bakers' yeast in commerce.

PAR. 4. In the course and conduct of its business as aforesaid the respondent has been and now is discriminating in price between different purchasers of its said product of like grade and quality, by giving and allowing certain purchasers of bakers' yeast used in the manufacture of bread and allied products, different prices than given or allowed other of its said purchasers competitively engaged one with the other, in the sale and distribution of bread and allied products within the various States of the United States. To illustrate, during the year of 1937 respondent sold 208,400 pounds of bakers' yeast to Krug Baking Co., 138 Ninety-fourth Avenue, Jamaica, Long Island, N. Y., at 11 cents per pound, and during the same period sold Dugan Brothers, Two Hundred and Twenty-second Street and Ninety-eighth Avenue, Queens, Long Island, N. Y., a competitor, 329,850 pounds of bakers' yeast at 10 cents per pound, less 1 percent, thus affording the last mentioned purchaser a saving of $3,628.35 during said period, upon the basis of the price charged the first-mentioned purchaser. Also during the same period respondent sold Mersels Darling Bread Co., 565 Barry Street, Bronx, N. Y., 23,420 pounds of bakers' yeast at 13 cents per pound, and sold Pechter Baking Co., One Hundred and Seventy-third Street and Park Avenue, Bronx, N. Y., a competitor, 40,927 pounds of bakers' yeast at 11 cents per pound, thus affording the last-mentioned purchaser a saving of $818.54 during said period, upon the basis of price charged to first-mentioned purchaser.

PAR. 5. Further discrimination in price between different competing purchasers of its products is brought about as a result of respondent delivering large quantities of bakers' yeast to certain of its purchasers for which no specific charge is made, in addition to yeast actually sold and delivered to these same purchasers for which a specific price is charged, thus reducing the cost to said favored customers of the yeast actually purchased, while at the same time other purchasers competitively engaged in the sale of bread and allied products with the said favored purchasers and paying the same price per pound for said product, are not furnished such additional yeast. To illustrate, during the month of November 1936, Saperstein, 676 Allerton Avenue, Bronx, N. Y., purchased 350 pounds of yeast at 13 cents

per pound and in addition to said purchased yeast respondent delivered 290 pounds of yeast for which no charge was made, while during the same period Lang's, 691 Allerton Avenue, Bronx, N. Y., a competitor, purchased 342 pounds of bakers' yeast at 13 cents per pound and respondent delivered no additional yeast to said purchaser without charge.

PAR. 6. Respondent further discriminates in price between competing purchasers by granting cash discounts of 1 percent to 2 percent to certain of its purchasers which are not granted to others who pay in the same manner and within the same time as those receiving such discounts.

PAR. 7. The effect of such discrimination in price as set forth in paragraphs 4, 5, and 6 hereof has been or may be substantially to lessen competition in the line of commerce in which respondent and its competitors are engaged, and may be to injure, destroy, or prevent competition in the sale and distribution of bread and allied products between those of respondent's purchasers who receive the benefits of such discriminations and competing purchasers who do not receive such benefits.

PAR. 8. The foregoing alleged acts and practices are in violation of subsection (a) of section 2 of the Clayton Act as amended.

Count 2

PARAGRAPH 1. The allegations of paragraphs 1, 2, and 3 of Count 1 are hereby incorporated as though fully set forth.

PAR. 2. In the course and conduct of its business as aforesaid, respondent pursues a policy and practice of contracting with various bakers' associations under the terms of which contracts the said respondent sells its bakers' yeast to the members of said associations at prices fixed in said contracts and makes monthly payments to said associations of a commission or brokerage upon the sale to said members; that said payments so made inure to the benefit of the members of said associations through the payment of dividends to the members by the associations; that no services of any sort or character are rendered by said associations to respondent in connection with such sale or purchase of said yeast.

PAR. 3. The foregoing alleged acts and practices are in violation of subsection (c) of section 2 of the Clayton Act, as amended.

Count 3

PARAGRAPH 1. The allegations of paragraphs 1, 2, and 3 of Count 1 are hereby incorporated as though fully set forth.

PAR. 2. In the course and conduct of its business respondent during a period of more than 3 years last past has systematically given and offered to give gratuities consisting of liquor, cigars, meals, money, and other personal property and entertainment of various kinds to employees of bakers, both its customers and prospective customers and its competitors' customers and prospective customers, secretly and without the knowledge and consent of their employers, with the design and purpose of inducing said employees to purchase respondent's product and to refrain from purchasing the product of its competitors or to induce said employees to influence their respective employers to purchase the product of respondent and to refrain from purchasing that of respondent's competitors.

PAR. 3. The acts and practices of respondent as herein set forth are calculated to and have the capacity and tendency to induce the purchase of respondent's product by various bakers and have tended to divert trade and have diverted trade from competitors of respondent, to the respondent herein.

PAR. 4. 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," 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 September 29, 1939, issued and on September 30, 1939, served its complaint in this proceeding upon the party respondent named in the caption hereof, charging it with violating the provisions of section 5 of the Federal Trade Commission Act, and with violating the provisions of subsection (a) and (c) of section 2 of said Clayton Act, as amended. 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 set forth in said complaint, with the exception of the illustrations therein set forth regarding specific price discriminations, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. There-

after, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and a stipulation as to certain facts, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that section 5 of the Federal Trade Commission Act and subsections (a) and (c) 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, National Grain Yeast Corporation, 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 810 Mill Street, Belleville, N. J.

PAR. 2. Respondent, since June 19, 1936, has been and now is engaged in the manufacture, sale, and distribution of bakers' yeast. In the course and conduct of such sale and distribution it causes its said yeast to be shipped and transported, in commerce, from its plant in the State of New Jersey to the purchasers thereof in and among the various States of the United States, and there is and has been at all times since the above date a current of trade and commerce in respondent's yeast between the State of New Jersey and various other States of the United States.

PAR. 3. Since June 19, 1936, respondent in the sale and distribution of its bakers' yeast has been, and now is, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing bakers' yeast, in commerce.

PAR. 4. Respondent, since June 19, 1936, has discriminated in price and is now discriminating in price between different competing purchasers of its products of like grade and quality by giving and allowing some purchasers of its bakers' yeast used in the manufacture of bread and allied products different prices from those given and allowed other of its said purchasers competitively engaged one with the other in the sale and distribution of bread and allied products. In some instances respondent sold bakers' yeast of like grade and quality and in like quantities to competing customers at different prices wherein the differential between such prices amounted to 7 percent and upwards.

Par. 5. Respondent has discriminated, and is further discriminating, in price between different purchasers of its products competitively engaged in the sale of bread and allied products by delivering large quantities of its bakers' yeast, without specific charge therefor, to

certain purchasers in addition to its bakers' yeast actually sold and delivered to these purchasers, thereby substantially reducing the average cost of its said yeast to such purchasers. Respondent concurrently sells its said yeast to other purchasers but does not deliver in addition to the quantities purchased yeast for which no specific charge is made, with the result that while both classes of purchasers may be charged the same price for yeast sold and billed, the actual cost to those who receive additional yeast without specific charge therefor, is less, by 5 percent or more, than the actual cost to the nonfavored customers.

PAR. 6. Respondent's acts and practices as set forth in paragraphs 4 and 5 constitute discriminations in price between its customers, and the benefits of such discriminations in price to the favored customers were substantial in nature and constituted material and vital factors of competition.

PAR. 7. Respondent has discriminated, and is now further discriminating, in price between competing customers by granting cash discounts of 1 percent to 2 percent to certain of its purchasers which are not granted to other purchasers who pay in the same manner and within the same time as those receiving such discounts.

PAR. 8. The effect of such discriminations in price described in paragraphs 4, 5, and 7 above has been and may be substantially to lessen competition in the line of commerce in which respondent and its competitors are engaged and may be to injure, destroy, or prevent competition in the sale and distribution of bread and allied products between those of respondent's purchasers who receive the benefits of such discriminations and competing purchasers who do not receive such benefits.

PAR. 9. In the course and conduct of its business as aforesaid, respondent pursues a policy and practice of contracting with various bakers' associations under the terms of which contracts the said respondent sells its bakers' yeast to the members of said associations at prices fixed in said contracts and makes monthly payments to said associations of a commission or brokerage upon the sales to said members. The payments made to said associations inure to the benefit of the members of such associations through the payment of dividends to the members by the associations. No services of any sort or character are rendered by said associations to respondent in connection with such sales or purchases of said yeast.

PAR. 10. In the course and conduct of its business, respondent, during a period of more than 3 years last past, has systematically given and offered to give gratuities consisting of liquors, cigars, meals, money, and other personal property and entertainment of various kinds to employees of bakers, both its customers and prospective customers,

and its competitors' customers and prospective customers, secretly and without the knowledge and consent of their employers, with the design and purpose of inducing said employees to purchase respondent's product and to refrain from purchasing the product of its competitors or to induce said employees to influence their respective employers to purchase the product of respondent and to refrain from purchasing that of respondent's competitors.

PAR. 11. The acts and practices of respondent as set forth in paragraph 10 are calculated to, and have the capacity and tendency to, induce the purchase of respondent's products by various bakers, and have tended to, and do, divert trade from competitors of respondent to the respondent, with resulting injury to competition in commerce between and among the various States of the United States.

CONCLUSION

The discriminations in price by respondent as hereinabove set out, and the commission or brokerage payments made under the conditions found, violate subsections (a) and (c), respectively, of section 2 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 an act of Congress approved June 19, 1936 (the Robinson-Patman Act); and the acts and practices of respondent in giving money and things of value under the circumstances found as aforesaid 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 substitute answer of the respondent, in which answer respondent admits all the material allegations of said complaint with the exception of the illustrations therein set forth regarding specific price discriminations and states that it waives all intervening procedure and further hearing as to said facts, and a stipulation of facts filed herein, and the Commission being of the opinion that said respondent has violated the provisions of the Federal Trade Commission Act and subsections (a) and (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), and having made its findings as to the facts and its conclusion, which findings as to the facts and its conclusion are hereby made a part hereof.

It is ordered, That the respondent, National Grain Yeast Corporation, its officers, representatives, agents, and employees, directly or in-

directly, in connection with the offering for sale, sale and distribution of bakers' yeast in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from the discriminations in price as found in paragraphs 4, 5, and 7 of the findings of fact or from otherwise discriminating in price between different purchasers of bakers' yeast of like grade and quality where the effect of such discriminations may be substantially to lessen competition or to injure, destroy, or prevent competition with respondent or any such purchaser unless the differential in price in any such discrimination makes only due allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such commodities are to such purchasers sold or delivered.

It is further ordered, That the respondent, National Grain Yeast Corporation, its officers, representatives, agents, and employees, in connection with the sale of bakers' yeast in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist:

1. From paying or allowing, directly or indirectly, in any manner or fashion or under any guise whatever, any commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, to associations of bakers or to any of their officers, representatives, agents, or employees upon or in connection with the purchase of bakers' yeast made by members of such associations.

2. From paying or granting anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof to any purchaser on purchases for such purchaser's account or to an agent, representative or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of such purchaser of respondent's goods.

It is further ordered, That respondent, National Grain Yeast Corporation, its officers, representatives, agents, and employees, directly or indirectly, in connection with the offering for sale, sale, and distribution of bakers' yeast in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from giving or paying money or other things of value to employees of its customers or prospective customers, without the knowledge or consent of such customers, as payments for having induced or recommended the use of respondent's yeast by their employers, or for the purpose of inducing such employees to purchase or to recommend the purchase of respondent's yeast for use by their employers.

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

IN THE MATTER OF

A. M. DRUCKMAN, DOING BUSINESS AS LINCOLN CHAIR & 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 4445. Complaint, Jan. 10, 1941—Decision, July 16, 1941

Where an individual engaged, as pretended manufacturer, in offer and interstate sale and distribution to retailers, of wooden furniture and allied items which he caused to be transported from the factories where made, bearing labels and shipping tags of Lincoln Chair & Novelty Co., trade name employed by him, and shipped to purchasers under his bill of lading;

In advertisements in trade magazines, catalogs, and circulars distributed to retailers, recognizing a preference on the part of purchasers for dealing directly with a manufacturer—

(*a*) Represented and implied that said Lincoln Chair & Novelty Co., made the merchandise in question, and that it maintained, controlled or operated factories for such purposes in Massachusetts, New York, Indiana, and Missouri, through such statements as "We make a complete line of: Sunroom Suites, Dinette Suites," etc., and "FACTORIES: Gardner, Mass., Jamestown, N. Y., Richmond, Ind., Springfield, Mo.," and "* * * shipped f. o. b. our New York State Plant" or "* * * our Missouri Plant"; and

(*b*) Represented that the offices for such factories were located at its business address in New York City, through such statements as "EXECUTIVE OFFICES. 146 West 46th Street, New York, N. Y." following or adjacent to enumeration of its supposed factories, and statements in catalogs and circulars that, while all merchandise was shipped f. o. b. factory, all correspondence and orders were to be directed to the executive offices in New York City;

Facts being the merchandise thus advertised was not made by such Lincoln Chair & Novelty Co., he did not own, operate, or control any furniture factories making it, and was not connected with any which maintained executive offices at his business address in New York City;

With effect of causing a substantial number of the purchasing public to believe that he was the manufacturer of the merchandise offered and sold by him, whereby many prospective purchasers had been and were likely to be influenced and induced to purchase from him the products so represented:

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

Mr. Eldon P. Schrup for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that A. M. Druckman, an individual, trading and doing business under the name and style

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

PARAGRAPH 1. Respondent A. M. Druckman, an individual, is a furniture distributor trading and doing business under the name and style of Lincoln Chair & Novelty Co., with his office and place of business located at 146 West Forty-sixth Street, New York, N. Y.

Respondent is now and for more than 1 year last past has been engaged in the business of the offering for sale and the sale to retail dealers of wooden furniture and allied items made in and obtained from factories not owned, controlled, or operated by the respondent.

Respondent's method of doing business is to offer such merchandise for sale under the name of the Lincoln Chair & Novelty Co. as the maker, in advertisements inserted in trade magazines having interstate circulation and in catalogs and circulars distributed through the mails by respondent, to retail dealers located throughout the various States of the United States and in the District of Columbia.

Respondent, in response to and in fulfillment of orders thereby obtained and caused to be transmitted to respondent's New York business address, causes such merchandise, when sold, to be transported from the factory or factories wherein made, to the purchasers of the same located in a State or States other than the State or States wherein such shipments originated or in the District of Columbia.

Merchandise so advertised, offered for sale, and sold by respondent and shipped to purchasers by said factories on respondent's order, bears the labels and shipping tags of the Lincoln Chair & Novelty Co. and is shipped under respondent's bill of lading. Said merchandise, upon shipment, is billed to the respondent by said factories and the respondent in turn then bills his customers.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said wooden furniture and allied items in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent in the conduct of his business in the course of trade in commerce as aforesaid, has inserted and caused to be inserted in trade magazines having interstate circulation various advertisements containing, among other things, with reference to the merchandise offered for sale and sold by the Lincoln Chair & Novelty Co., the following statements:

* * * * * * *

We make a complete line of:

Sunroom Suites	Boudoir Chairs
Dinette Suites	Cricket Chairs
Bedroom Suites	Juvenile Chairs
Tables	Novelties

(Picture of Table and specifications)

* * * * * * *

Write for our complete catalog and advise if we should place you on our mailing list for monthly circulars.

FACTORIES:
Gardner, Mass.
Jamestown, N. Y.
Richmond, Ind.
Springfield, Mo.

LINCOLN CHAIR & NOVELTY CO.
EXECUTIVE OFFICES.
146 West 46th Street, New York, N. Y.

PAR. 3. Respondent, in the conduct of his business in the course of trade in commerce as aforesaid, has distributed and caused to be distributed through the mails and otherwise to retail dealers located throughout the various States of the United States and in the District of Columbia certain catalogs and circulars advertising the merchandise offered for sale and sold by the Lincoln Chair & Novelty Co., and containing, among others, with reference to said merchandise, the following statements:

Most of the numbers in this circular are made at our plant at Gardner, Mass., although we are illustrating a few numbers that are made at our associate plants located in Missouri and New York States.

* * * * * * *

These items are shipped f. o. b., our New York State Plant.

* * * * * * *

These items are shipped f. o. b., our Missouri Plant.

Said catalogs and circulars also state that while all merchandise is shipped f. o. b., factory, all correspondence and orders are to be directed to our executive offices in New York City.

PAR. 4. Respondent through and by the use of the statements hereinabove set forth in paragraphs 2 and 3, supra, and by means of other statements similar thereto not specifically set out herein, represents and implies and causes to be represented and implied to prospective purchasers and purchasers of the merchandise so advertised, offered for sale and sold by respondent, that the Lincoln Chair & Novelty Co. makes such merchandise; that said company maintains, controls, or operates factories for such purpose in Massachusetts, New York, Indiana, and Missouri, and that the executive offices for said factories are located at the respondent's business address, 146 West Forty-sixth Street, New York, N. Y.

The statements, representations, and implications made and caused to be made by respondent as aforesaid, are grossly exaggerated, false, misleading, and untrue. In truth and in fact the merchandise so advertised, offered for sale and sold by respondent is not made by the Lincoln Chair & Novelty Co., nor does respondent or said company own, operate, or control any furniture factories wherein the said merchandise is made. Further, the respondent or the Lincoln Chair & Novelty Co. is not connected with nor are there any furniture factories who maintain their executive offices at respondent's business address at 146 West Forty-sixth Street, New York, N. Y., for respondent has at such address only a small office or offices wherein respondent's business transactions are carried on in the manner and method as hereinbefore described.

PAR. 5. Respondent's aforesaid statements, representations, and implications made and disseminated as aforedescribed have had, and now have, the capacity and tendency to, and do, mislead and deceive a substantial number of prospective purchasers and purchasers into the erroneous and mistaken belief and impression that the statements, representations, and implications as contained in respondent's said advertisments in trade magazines and in respondent's said catalog and circular advertisements are true, and many of such prospective purchasers and purchasers have been and are likely to be thereby influenced and induced, both directly and indirectly, to purchase from respondent the merchandise so advertised.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the respondent 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 10, 1941, issued and subsequently served its complaint in this proceeding upon respondent, A. M. Druckman, an individual, trading and doing business under the name and style of Lincoln Chair & Novelty Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint the respondent filed his answer thereto, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, A. M. Druckman, an individual, is a furniture distributor trading and doing business under the name and style of Lincoln Chair & Novelty Co., with his office and place of business formerly located at 146 West Forty-sixth Street, New York, N. Y., but now at 142 East Thirty-second Street, New York, N. Y.

Respondent is now and for more than 1 year last past has been engaged in offering for sale and selling wooden furniture and allied items to retail dealers located throughout the United States. Respondent offers such merchandise for sale as a manufacturer thereof under the name Lincoln Chair & Novelty Co. In response to and in fulfillment of orders obtained, respondent causes such merchandise when sold to be transported from the factory or factories where such merchandise is manufactured to the purchasers thereof located in States other than the State wherein such shipments of merchandise originate and in the District of Columbia.

Merchandise so advertised, offered for sale, and sold by respondent and shipped to purchasers by said factories on respondent's order, bears the labels and shipping tags of the Lincoln Chair & Novelty Co. and is shipped under respondent's bill of lading. Said merchandise, upon shipment, is billed to the respondent by said factories and the respondent in turn then bills his customers.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said wooden furniture and allied items in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in the conduct of his said business in commerce as aforesaid, has inserted in trade magazines circulated among retailers various advertisements containing, among other things, the following representations and statements:

* * * * * * *

We make a complete line of:

Sunroom Suites	Boudoir Chairs
Dinette Suites	Cricket Chairs
Bedroom Suites	Juvenile Chairs
Tables	Novelties

(Picture of Table and specifications)

* * * * * * *

Write for our complete catalog and advise if we should place you on our mailing list for monthly circulars.

FACTORIES:
Gardner, Mass.
Jamestown, N. Y.
Richmond, Ind.
Springfield, Mo.

LINCOLN CHAIR & NOVELTY CO.
EXECUTIVE OFFICES.
146 West 46th Street, New York, N. Y.

PAR. 3. Respondent, in the conduct of his said business in said commerce as aforesaid, has distributed and caused to be distributed through the mails and otherwise to retail dealers located at various points in the several States of the United States and in the District of Columbia certain catalogs and circulars advertising said merchandise which contain, among others, the following representations and statements:

Most of the numbers in this circular are made at our plant at Gardner, Mass., although we are illustrating a few numbers that are made at our associate plants located in Missouri and New York states.

These items are shipped f. o. b., our New York State Plant.
These items are shipped f. o. b., our Missouri Plant.

Said catalogs and circulars also state that while all merchandise is shipped f. o. b. factory, all correspondence and orders are to be directed to the executive offices in New York City.

PAR. 4. Respondent through and by the use of the statements hereinabove set forth, and by means of other statements similar thereto not specifically set out herein, represents and implies to prospective purchasers and purchasers of the merchandise so advertised, offered for sale, and sold by respondent, that the Lincoln Chair & Novelty Co. makes such merchandise; that said company maintains, controls, or operates factories for such purpose in Massachusetts, New York, Indiana, and Missouri, and that the executive offices for said factories are located at the respondent's business address in New York City.

The statements, representations, and implications made and caused to be made by respondent as aforesaid are deceptive, false, and misleading. In truth and in fact the merchandise so advertised, offered for sale, and sold by respondent is not made by the Lincoln Chair & Novelty Co., nor does respondent or said company own, operate, or control any furniture factories wherein the said merchandise is made. The respondent is not connected with any furniture factory which maintains executive offices at respondent's business address in New York City.

PAR. 5. The Commission concludes from the elaborate plan followed by respondent to conceal from his customers the fact that he is not the manufacturer of products offered for sale and sold by him that he recognizes a preference on the part of purchasers for dealing directly with a manufacturer and, therefore, the inducing value of his false representations that he is the manufacturer of the products offered for sale and sold by him. The acts and practices of respondent have had, and now have, the capacity and tendency to, and do, mislead a substantial number of the purchasing public and cause them to believe that respondent is the manufacturer of the merchandise offered for sale and sold by him. As a result of such erroneous and mistaken belief many prospective purchasers and purchasers have been, and are likely to be, influenced and induced thereby to purchase from respondent the products so advertised and represented.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent A. M. Druckman, an individual, trading and doing business under the name and style of Lincoln Chair & Novelty 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 furniture 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 is the manufacturer of products which are not made or manufactured in a plant owned and operated or directly and absolutely controlled by him.

2. That respondent's business address is the executive office of factories located elsewhere.

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

REPUBLIC YEAST 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 4367. Complaint, Oct. 30, 1940—Decision, July 18, 1941

Where a corporation engaged in the manufacture of bakers' yeast, and in the competitive interstate sale and distribution thereof—

(*a*) Discriminated in price between competing purchasers of its said product of like grade and quality, through different prices allowed or extended, making use, among other things, of a pricing policy under which its said yeast was sold to customers competitively engaged in the sale and distribution of bread and allied products, who purchased approximately equivalent quantities and at concurrent periods of time, at prices of 10, 11, 12, 13, and 14 cents per pound;

(*b*) Discriminated in price between purchasers by furnishing to certain of them free of charge with their purchases, large quantities of its yeast in varying amounts, so that customers purchasing quantities ranging from 78 pounds to 1,554 pounds at prices ranging from 12 to 10 cents secured their yeast at actual costs ranging from 3.4 to 5.8 cents; while contemporaneously selling its yeast to other customers, competitively engaged with those thus favored, at prices of 10, 11, and 12 cents a pound, but with no free product furnished therewith; and

(*c*) Discriminated between competing purchasers by granting to certain of them cash discounts of 1 or 2 percent, which it did not grant to others who paid in the same manner and within the same time as those so favored;

Result of which discriminations in price, under which beneficiaries were given substantial advantages constituting vital factors in competition, and not falling within the saving provisos of the Act in question, might be substantially to injure competition in the line of commerce involved, and also to injure competition between those of its purchasers in the baking industry who received the discriminatory benefits and those who did not:

Held, That said corporation, by so discriminating in price between different competing purchasers of its said bakers' yeast of like grade and quality violated the provisions of section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. P. C. Kolinski for the Commission.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (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), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Republic Yeast Corporation is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having its principal office and plant located at 740 Frelinghuysen Avenue, Newark, N. J. Prior to December 1, 1939, respondent's corporate name was Brass Yeast Corporation.

PAR. 2. Respondent since June 19, 1936, has been and is now engaged in the manufacture, sale, and distribution of bakers' yeast. In the course and conduct of such sale and distribution it causes said yeast to be shipped and transported in commerce from its plant in the State of New Jersey to purchasers thereof in and among the various States of the United States and there has been at all times herein mentioned a current of trade and commerce in respondent's yeast between the State wherein respondent's plant is located and various other States of the United States.

PAR. 3. Said respondent in the course and conduct of its business since June 19, 1936, has been and is now in substantial competition with other corporations, partnerships, firms, and individuals engaged in manufacturing, selling, and distributing bakers' yeast in commerce.

PAR. 4. In the course and conduct of its business as aforesaid the respondent has been and now is discriminating in price between different purchasers of its said product, of like grade and quality, by giving and allowing certain purchasers of bakers' yeast used in the manufacture of bread and allied products, different prices than given or allowed other of its said purchasers competitively engaged with such favored purchasers in the sale and distribution of bread and allied products within the various States of the United States. Among the methods used by respondent in accomplishing such discrimination has been a pricing policy under which its product has been sold to customers competitively engaged, in approximately equivalent quantities and at concurrent periods of time at prices of 10, 11, 12, 13, and 14 cents per pound.

PAR. 5. Further discrimination in price between different competing purchasers of its product is brought about as a result of respondent making free delivery of large quantities of bakers' yeast to certain of its purchasers. Such receipt of free yeast reduces the cost to such favored purchasers of the yeast purchased by them, while at the same time other purchasers competitively engaged with said favored purchasers and paying the same price per pound for said product are not furnished such additional free yeast. In accomplishing this discrimination respondent has made free deliveries of yeast ranging in amount per customer from 20 pounds to 1,121 pounds per month. In the case of some of these free deliveries, the cost of yeast

has been reduced to favored purchasers in this manner: One customer purchasing 247 pounds of yeast at 12 cents per pound received 316 additional pounds of yeast free of charge, reducing the cost per pound of yeast actually purchased to 5.2 cents; another customer purchasing 1,554 pounds of yeast at 10 cents per pound received 1,121 additional pounds of yeast free of charge, reducing the cost per pound of yeast actually purchased to 5.8 cents; another customer purchasing 78 pounds of yeast at 12 cents per pound received 193 additional pounds of yeast free of charge, reducing the cost per pound of yeast actually purchased to 3.4 cents; and another customer purchasing 158½ pounds of yeast at 11 cents per pound, received 248 additional pounds of yeast free of charge, reducing the cost per pound of yeast actually purchased to 4.2 cents. At the time of these free deliveries of yeast, respondent sold yeast to other of its customers competitively engaged with those receiving free deliveries of yeast at price of 10, 11, and 12 cents per pound, and did not accompany such sales with deliveries of free yeast.

PAR. 6. Respondent further discriminates in price between competing purchasers by granting cash discounts of 1 percent and 2 percent to certain of its purchasers which are not granted to other purchasers who pay in the same manner and within the same time as those receiving such discounts.

PAR. 7. The effect of such discriminations in price as set forth in paragraphs 4, 5, and 6 hereof may be substantially to injure competition in the line of commerce in which respondent and its competitors are engaged, and also to injure competition with those of respondent's purchasers in the baking industry who receive the benefits of such discriminations.

PAR. 8. The foregoing alleged acts and practices are in violation of subsection (a) 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 approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"—the Clayton Act—as amended by an act of Congress approved June 19, 1936—the Robinson-Patman Act—(U. S. C. title 15, sec. 13), the Federal Trade Commission, on the 30th of October 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Republic Yeast Corporation, charging it with violation of the provisions of subsection (a) of section 2 of the said act as amended. After the issuance and service of said complaint the respondent filed its answer, in which it admitted all the material allegations of fact

set forth in said complaint and waived all intervening procedure and further hearing as to said facts.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Republic Yeast Corporation, 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 740 Frelinghuysen Avenue, Newark, N. J.

PAR. 2. Respondent, since June 19, 1936, has been and now is engaged in the manufacture, sale, and distribution of bakers' yeast. In the course and conduct of its said business it causes its said yeast to be shipped and transported in commerce from its plant in the State of New Jersey to purchasers thereof located in various States of the United States, and there is, and has been at all times since the above date, a current of trade and commerce in respondent's yeast between the State of New Jersey and various other States of the United States.

PAR. 3. Respondent, since June 19, 1936, in the sale and distribution of its bakers' yeast, has been and now is in substantial competition with other corporations and with individuals and partnerships engaged in the business of manufacturing bakers' yeast and selling and distributing same to the purchasers thereof located in States of the United States other than the State of origin of such shipments.

PAR. 4. In the course and conduct of its business as aforesaid, the respondent has been, and now is, discriminating in price between different purchasers of its said product of like grade and quality, by giving and allowing certain purchasers of its bakers' yeast, used in the manufacture of bread and allied products, different prices than given or allowed other of its said purchasers competitively engaged with such favored purchasers in the sale and distribution of bread and allied products within the various States of the United States. Among the methods used by respondent in accomplishing such discrimination has been a pricing policy under which its product has been sold to customers competitively engaged, in approximately equivalent quantities and at concurrent periods of time, at prices of 10, 11, 12, 13, and 14 cents per pound.

PAR. 5. Respondent, since June 19, 1936, has further discriminated and now discriminates in price between purchasers of its products, by furnishing to certain of its customers referred to in paragraph 4 hereof, free of charge with their purchases, large quantities of its yeast; such receipt of free yeast reduces the cost to such favored purchasers of the yeast purchased by them, while at the same time other purchasers, competitively engaged with said favored purchasers and paying the same price per pound for said product, are not furnished such additional free yeast. In accomplishing this discrimination, respondent has furnished, free of charge to its favored customers, yeast ranging in amounts per customer from 20 pounds to 1,121 pounds per month, and the cost of yeast to customers so favored has been reduced in the following manner:

One customer purchasing 247 pounds of yeast at 12 cents per pound, received 316 additional pounds of yeast free of charge, reducing the cost per pound of yeast actually purchased to 5.2 cents;

Another customer purchasing 1,554 pounds of yeast at 10 cents per pound, received 1,121 additional pounds of yeast free of charge, reducing the cost of yeast actually purchased to 5.8 cents;

Another customer purchasing 78 pounds of yeast at 12 cents per pound received 193 additional pounds of yeast free of charge, reducing the cost of yeast actually purchased, per pound to 3.4 cents;

Another customer purchasing 158½ pounds of yeast at 11 cents per pound, received 248 additional pounds of yeast free of charge, reducing the cost per pound of yeast actually purchased to 4.2 cents.

At the time of furnishing yeast free of charge, respondent sold yeast to other of its customers referred to in paragraph 4 hereof, who were competitively engaged with those receiving the free yeast, at prices of 10, 11, and 12 cents per pound, and did not furnish free yeast with such sales.

PAR. 6. Respondent has further discriminated and now discriminates between purchasers referred to in paragraph 4 hereof, by granting cash discounts of 1 percent or 2 percent to certain of said purchasers which it does not grant to other of its said purchasers who pay in the same manner and within the same time as those receiving such discounts.

PAR. 7. Respondent's acts and practices as set forth in paragraphs 4, 5, and 6 hereof, constitute discriminations in price between its said customers and the advantages given the beneficiaries of such discriminations were and are substantial in nature and constitute material and vital factors in competition.

PAR. 8. The effect of such discrimination in price as set forth in paragraphs 4, 5, and 6 hereof, may be substantially to injure com-

petition in the line of commerce in which the respondent and its competitors are engaged, and also to injure competition between those of respondent's purchasers in the baking industry who receive the benefits of such discriminations and those purchasers who are not so favored.

PAR. 9. The respondent does not contend, either in its answer or otherwise, that the discrimination charged in the complaint and admitted in its answer come within any of the provisos or exceptions contained in said act of Congress (title 15, sec. 13, of the Clayton Act as amended).

CONCLUSION

The respondent, Republic Yeast Corporation, having by its answer admitted the material facts charged in the complaint, the Commission concludes that said respondent, by discriminating in price between different competing purchasers of its bakers' yeast of like grade and quality, in the manner set forth in paragraphs 4, 5, and 6 hereof, has violated and is violating the provisions of section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

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 hearings as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That the respondent Republic Yeast 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 bakers' yeast in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist:

From the discriminations in price as found in paragraphs 4, 5 and 6 of the findings of fact, or otherwise discriminating in price between different purchasers of its bakers' yeast of like grade and quality, where the effect of such discrimination may be substantially to lessen competition, or to injure, destroy, or prevent competition with respondent or any such purchaser, unless the differential in price in any

such discrimination makes only due allowance for difference in the cost of manufacture, sale, or delivery resulting from different methods or quantities in which said commodities are to such purchasers sold or delivered.

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

IN THE MATTER OF

EDUCATORS ASSOCIATION, INC., ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3139. Order, July 23, 1941

Modified order, pursuant to provisions of section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which (1) Commission, on March 9, 1939, 28 F. T. C. 1006, made its findings and conclusion, and issued cease and desist order, and (2) Circuit Court of Appeals for the Second Circuit, on March 24, 1941, in *Educators Association, Inc., et al.* v. *Federal Trade Commission*, 118 F. (2d) 562, 32 F. T. C. 1870, issued its decree modifying paragraph (1) of said order and affirming all other paragraphs thereof, and directed Commission to modify its order accordingly—

Requiring respondent corporation, its officers, etc., and various other individuals, individually and trading under trade name and style of Educators Association, their representatives, etc., in connection with offer, etc., in commerce, of a students' reference book entitled "The Volume Library," forthwith to cease and desist from (1) using the words "Educators Association" as a corporate or trade name, or otherwise in aforesaid connection, etc., except when qualified as in said order set forth; (2) representing to prospective representatives that they will refund deposits or pay any specific sums of money or salaries to them without adequately and fully disclosing all terms and conditions; and (3) representing or implying that they or their representatives, etc., are connected in any manner with public schools, etc., or that said or other similar publication is prescribed as a textbook or required to be used in connection with school work.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding is coming on for further hearing before the Federal Trade Commission, and it appearing on March 9, 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 March 24, 1941, the United States Circuit Court of Appeals for the Second Circuit issued its decree modifying paragraph 1 of the aforesaid order of the Commission, and affirming all other paragraphs of the aforesaid order, and directed the Commission to modify its aforesaid order to cease and desist in accordance with the aforesaid 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, Educators Association, Inc., its officers, representatives, agents, and employees, and the respondents, Leo L. Tully, Oron E. Richards, and Donald W. Henry, individ-

ually and as officers of Educators Association, Inc., Miss Marian A. Miller, Mrs. B. M. Gambert, Mrs. Marie C. Hostler, Mr. J. E. Stronks, Mr. H. Lyle Goldsberry, Mr. J. R. Hostler, Mr. J. P. Tully, Mrs. M. W. Lees, Mrs. Bessie Morrell, each individually, and trading under the trade name and style of Educators Association, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a students' reference book entitled "The Volume Library," in commerce, as commerce is defined in the Federal Trade Commission Act, forthwith cease and desist:

1. From using the words "Educators Association" as a corporate or trade name, or otherwise, in connection with the offering for sale or sale of "The Volume Library" or other books distributed for profit: *Provided however*, That the petitioners may continue to offer for sale and sell said book or books under the trade-name "Educators Association" so long only as they shall in each instance of the use of said trade-name in spoken, written, or printed form, or by radio broadcast, accompany said trade-name with a statement of equal conspicuousness and in immediate connection and conjunction therewith in the following words, to wit: "Commercial Distributors of The Volume Library": *And Provided Further*, That in each instance of the use of the corporate name "Educators Association, Inc." in carrying on its said corporate business, whether in spoken, written, or printed form, or by radio broadcast, said corporate name shall be accompanied with a statement of equal conspicuousness and in immediate connection and conjunction therewith in the following words, to wit: "Commercial Publishers of The Volume Library."

2. Representing to prospective representatives that they will refund deposits or pay any specific sums of money or salaries to such representatives until and unless they fully and adequately disclose all of the terms and conditions upon which refunds or payments are actually made.

3. From representing or implying that they or their representatives, agents, or canvassers are connected in any manner with public schools or other educational institutions, or that said Volume Library, or any other and similar publication, is prescribed as a text book or required to be used in connection with school work.

IN THE MATTER OF

DAVID S. WRIGHT, DOING BUSINESS AS LAKE SHORE SEED COMPANY

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

Docket 3994. Complaint, Jan. 19, 1940—Decision, July 23, 1941

Where an individual engaged in packaging, and in competitive interstate sale and distribution of, vegetable and garden seeds, in the course of which he required from leading supplier-growers, from which he purchased, invoices showing high laboratory tests in all cases and, in addition, submitted seeds to the National Seed Laboratory for testing and made tests himself in mechanical germinators and in the fields, all of which tests showed high germinal powers; reselling, along with new seed, seed which he had theretofore sold to dealers and which he took off their hands at the end of the season—

(*a*) Represented that seeds contained in certain packages would germinate in approximate percentages through causing to be stamped upon or attached thereto statements of their germination percentage and the month and year of the test on which such percentage was based; and

(*b*) Represented also that his seeds would meet or exceed the published standard percentage of germination established by certain States in which he sold the same;

When in fact many of his said packages contained seeds of a much lower percentage of germination than that represented on packages or otherwise, as disclosed by various tests conducted by the States in question over a period of years, and action taken by said States with respect thereto;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that his seeds would germinate in the percentages represented, and into purchase thereof, in consequence of such belief, to the injury and prejudice of the public, whereby trade was unfairly diverted to him from his competitors who do not misrepresent the germination percentages of their seeds; to their substantial injury:

Held, That such acts and practices constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Randolph Preston*, trial examiner.
Mr. Morton Nesmith for the Commission.
Woodin & Woodin, of Dunkirk, 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 David S. Wright, an individual, doing business as Lake Shore Seed Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appear-

ing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, David S. Wright, is an individual doing business as Lake Shore Seed Co., with his principal office and place of business located in the city of Dunkirk, State of New York.

PAR. 2. The respondent is now, and for several years last past has been, engaged in packing and distributing vegetable and garden seed. Respondent causes said vegetable and garden seed, 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. At all times mentioned herein, respondent 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.

Other persons, firms, associations, and corporations have been and are engaged in offering for sale and selling, and transporting in commerce between and among the various States of the United States, like and competitive seed, and respondent is engaged in substantial competition with such concerns in the sale and distribution of such seed in commerce, as herein set forth.

PAR. 3. Respondent purchases vegetable and garden seed from various growers and, at his place of business in New York, packs such seed in small paper packages. The packages are then placed on wooden racks owned by respondent and are distributed to various local merchants in States other than the State of New York.

Certain of the States of the United States, including some of those in which respondent distributes and sells his seed, require by statute or statutes that vegetable seed sold in such States in addition to other requirements must contain a statement on the package as to the approximate percentage of germination and the month and year of the test on which the percentage is based, unless the germination percentage is equal to or higher than the percentage established for that particular variety of seed by the State authorities. A seed is considered to have germinated when it has developed into a normal seedling which might be expected to continue its development in soil under favorable conditions.

Respondent has caused to be stamped upon or attached to certain of the packages of seed distributed by him statements as to the germination percentage thereof and the month and year of the test on which such percentage is based. This stamping, or affixing, of such statement on the packages, constitutes a representation by the respondent that the seed will meet or exceed the published standard

percentage of germination permitted by the respective States for that particular year. Further, the stamping, or affixing, of such statement on the package is a representation by the respondent that the seed contained therein will germinate in the approximate percentages as stamped thereon.

PAR. 4. In truth and in fact many packages of respondent's seed sold by him as aforesaid, do not, and did not, possess the percentage of germination stated on the packages, but contained seed of a much lower percentage of germination.

PAR. 5. The acts and practices of the respondent, as herein set forth, have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's seed will germinate in the percentages as represented, and that his seed has a higher percentage of germination than the actual germination of the seed under recognized tests and within recognized tolerances or allowances. As a result of such erroneous and mistaken belief so engendered, a substantial portion of the purchasing public have been, and are, induced to purchase respondent's seed, thereby unfairly diverting trade to the respondent from his aforesaid competitors who do not make false or misleading statements and representations concerning the germination percentage of their seed. As a result substantial injury has been done by respondent to such competitors in commerce among and between the various States of the United States and in the District of Columbia.

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 19th day of January, A. D. 1940, issued and thereafter served its complaint in this proceeding upon the respondent, David S. Wright, an individual doing business as Lake Shore Seed Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and prac-

tices in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, testimony, and other evidence in support of the allegations of the complaint were introduced by Morton Nesmith, attorney for the Commission, and evidence in opposition to the allegations of the complaint was introduced by G. W. Wooding, attorney for respondent, before Randolph Preston, duly appointed trial examiner of the Commission designated by it to serve in this proceeding; and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceedings regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, the report of the trial examiner thereon, 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 S. Wright is an individual, doing business as Lake Shore Seed Company, with his principal place of business located in the city of Dunkirk, in the State of New York.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of packing, selling, and distributing vegetable and garden seeds, and causes his products, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent, at all times mentioned herein, has maintained a course of trade and commerce in said products between and among various States of the United States and in the District of Columbia.

PAR. 3. During all of the time referred to herein, respondent has been in substantial competition with other persons, firms, associations, and corporations engaged in the offering for sale and the sale and distribution in commerce between and among various States of the United States of products of a similar nature to those sold by the respondent.

PAR. 4. Respondent purchases the vegetable and garden seeds sold by him from various growers, and packs such seed in small paper packages, some of which are placed on wooden racks owned by respondent, and when so packed are transported to various local mer-

chants throughout the State of New York. Respondent also sells and distributes his products to purchasers thereof located in various other States of the United States.

At the close of the planting season, respondent's dealer customers are authorized to return the unsold seeds to respondent and receive credit therefor, and more than 50 percent of each year's sales of seed are picked up by respondent's salesmen and returned to respondent, who cleans the seeds and separates them from the chaff, and the same seed, together with new seed, are resold the next season.

PAR. 5. A number of the States into which respondent ships his products, during all the time herein referred to, have had statutes relating to the sale and distribution of vegetable and garden seeds, which require the authorities of such States to establish standards as to the percentage of germination of the seeds sold in such States. Said statutes also provided that each package of seeds sold within the State shall contain thereon the approximate percentage of germination and the month and year of the test on which the percentage is based, unless the germination percentage is equal to, or higher than, the percentage established for that particular variety of seed by the State authorities.

PAR. 6. Respondent purchases the seeds sold by him from the leading growers of the world, and requires invoices showing that the laboratory tests were in all cases high; in addition, respondent has submitted such seeds to the National Seed Laboratory for testing, and report from this Laboratory shows that the seeds have high germinal powers. Respondent has also tested seed sold by him in mechanical germinators and also in the field. Such tests showed the seed to have high germinal powers.

PAR. 7. Respondent in certain instances has caused to be stamped upon, or attached to, the packages of seed distributed by him, statements of the germination percentage thereof and the month and year of the test on which such percentage is based. The stamping or affixing of such statement on the packages constitutes a representation by respondent that the seeds contained in such packages will germinate in the approximate percentages stated on such packages. The respondent has also represented that his seeds will meet or exceed the published standard percentage of germination established by certain States in which he has sold such seeds. In fact, many packages of respondent's seeds sold by him as aforesaid did not and do not possess the percentage of germination represented on the packages thereof, or otherwise, but contained seeds of a much lower percentage of germination.

Findings

PAR. 8. The Department of Agriculture of the State of Virginia, in the year 1933, secured 128 samples of respondent's products from retail dealers located in said State, and after testing same found that 71.09 percent of the seed was equal to or better than the Virginia standard; 22.6 percent was more than 10 percent below the Virginia standard, and 2.34 percent showed less than 20 percent of germination.

The following table shows the results of tests made for the years 1935 to 1940, inclusive by the Department of Agriculture of the State of Virginia:

Year	Number of samples	Equal to or better than Virginia standards	More than 10 percent below Virginia standards	Less than 20 percent germination
		Percent	*Percent*	*Percent*
1935	649	67.95	28.35	9.09
1936	233	12.88	83.69	13.73
1937	258	61.63	36.82	3.49
1938	114	73.68	24.56	2.63
1939	287	50.17	48.08	10.45
1940	105	19.05	80.00	13.33

As the result of these tests, the Department wrote respondent:

> It is our sincere hope that if it is your policy to continue to attempt to put out seed of this quality, that you forego any further effort in this State.

The Department seized a number of packages of respondent's seeds, because of their consistently poor showing as to germination.

The Department of Agriculture of the State of Michigan, in 1938, tested 245 samples of respondent's seeds, to determine their germinal power. The tests showed that in but 16.8 percent were the samples up to the standard of germination set by said department. It was also shown that respondent's seeds were inferior to the seeds of the 34 other concerns which were tested at the same time. The other tests ranged in results from 100 percent to 35.3 percent.

The said department, in the year 1938, seized certain seed distributed by respondent, because they did not comply with the State's requirement as to standard percentage of germination.

The Department of Agriculture of the State of West Virginia, during the years 1934 to and including 1939, made numerous tests of respondent's seeds to determine their germinal power. A test, made in 1939, showed that seed represented by respondent as of 90 percent germination had only 18 percent. In another instance, the claim made by respondent was 70 percent and the test showed only 31 percent; another test showed that for a claim of 72 percent there was only 31 percent.

In 1939, the testing of 65 samples of respondent's product showed that 70 percent were low in the germination stated on the packages, and 30 percent showed the germination claimed. In the year 1934–35, tests showed that of the 70 percent claimed in the case of respondent's seeds, only 31 percent was shown by the tests. In the year 1936–37, 250 samples of respondent's seeds were tested, and in 67 percent of the tests it was shown that the germination was lower than that stated on the packages. Tests made in 1937–38 showed that the germination was lower than that stated on respondent's packages in 83.33 percent of the product tested, and that in 13.6 percent the correct germination was stated on the package. In 1939, 67.69 percent of respondent's products were found to be lower in germination than as stated on the packages, and on only 32.31 percent of the packages was the true germination stated.

As a result of the tests made by the State of West Virginia, the Commissioner of Agriculture of that State, on April 15, 1938, addressed a letter to the respondent which reads:

> Regarding my letter of April 2, 1938, our Laboratory reports, having completed 46 germination tests on Lake Shore Seed Company's seed collected from dealers throughout the State, show the percentage of germination so low and, in fact, so much below the guarantee of germination as represented in your sworn statement making application for registration, and the labels on seeds placed on sale in the State of West Virginia, as to clearly render a misstatement and to be worthless for seeding purposes. * * *
>
> By virtue of the authority vested in me as Commissioner of Agriculture of the State of West Virginia, by Chapter XIX, Article XVI of the Code of West Virginia, it becomes my duty to cancel and withdraw all Certificates of registration of the Lake Shore Seed Company. You will take due notice thereof and govern yourself accordingly.
>
> This order made effective this the 15th day of April, 1938.

PAR. 9. The acts and practices of the respondent as herein set forth have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the respondent's seeds will germinate in the percentages as represented, and that his seeds have a higher percentage of germination than the actual germination of the seed under recognized tests and within recognized tolerances or allowances and as a result of such erroneous and mistaken belief so engendered, a substantial portion of the purchasing public have been and are induced to purchase respondent's seed, to the injury and prejudice of the public. As a further result of said acts and practices of the respondent, trade has been unfairly diverted to the respondent from his competitors who do not make false or misleading statements and representations concerning the germination percentage of their seeds,

and respondent's said acts and practices have resulted in substantial injury to such competitors 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 constitute unfair methods 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 introduced before Randolph Preston, duly appointed trial examiner of the Commission designated by it to serve in this proceeding, the report of the trial examiner thereon, and briefs filed on behalf of the Commission and of the respondent; and the Commission having made its findings as to the facts and its conclusion that the respondent, David S. Wright, an individual doing business as Lake Shore Seed Co., has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, David S. Wright, individually, or doing business or trading under the name Lake Shore Seed Co., or any other name or style, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of vegetable and garden seed, in commerce as "commerce" is defined by the Federal Trade Commission Act, do forthwith cease and desist from representing by means of statements appearing on, or attached to, the paackages containing his seed, that the germination percentage of such seed is greater than the actual germination percentage, or making such representation by means of letters, circulars, or other advertising matter, or by any other means.

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

NASSIF 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 4025. Complaint, Feb. 7, 1940—Decision, July 23, 1941

Where a corporation engaged in competitive interstate sale and distribution of candy and confectionery products, including certain candy assortments so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, a typical assortment consisting of small pieces of caramel candy of uniform size and shape, medium sized candy bars, and a three-section push card, for use in sale and distribution thereof under a plan, as explained thereon, by which person securing by chance one of certain numbers in each section, for cent paid, was entitled to one of said candy bars, person making last punch in each section receiving two of said bars, and all others received a caramel—

Sold such assortments to wholesalers, jobbers, and directly or indirectly to retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan involving chance to procure without additional cost, additional or larger pieces of candy, and thereby supplied to and placed in the hands of others the means of conducting lotteries in sale of its products, 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 any method involving a game of chance to win by chance, or one contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell its candy in preference to that of aforesaid competitors, thereby unfairly diverting trade in commerce to it from said competitors; to the substantial injury of competition in commerce:

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

Mr. J. V. Mishou 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 Nassif Candy Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a pro-

ceeding 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 Nassif Candy Co. is a corporation organized and doing business under the laws of the State of West Virginia, with its principal office and place of business located at 2004 Main Street, Wheeling, W. Va. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of candy and confectionery products 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 Wheeling, W. Va., to purchasers thereof, at their respective points of location, in the various States of the United States other than West Virginia, 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 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 pieces of caramel candy of uniform size and shape and medium sized candy bars, the latter to be given as premiums, together with a device commonly called a push card. The push card is divided into three sections and each of said sections contains 50 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 and larger pieces of candy 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 additional bars of candy. The sales are 1 cent each and those not securing a winning

number receive one of the smaller pieces of caramel candy. The said card bears a legend or statement as follows:

1¢	JOBBER'S ADVERTISER	1¢
PER SALE	Nos. 2, 5, 8, 11, 16, 19, 24, 27, 30, 33, 36, 39, 42, 45, 48, 51	PER SALE

Each Receive ONE CANDY BAR

ALL OTHER NUMBERS RECEIVE ONE CARAMEL

LAST PUNCH IN EACH SECTION RECEIVES 2 CANDY BARS.

Notice—This is not a gambling device. Every punch receives full value. Extra awards for advertising

Sales of respondent's candy by means of said push cards are made in accordance with the above legend. The numbers aforesaid are effectively concealed until a purchase has been made and the disk separated or removed from said card. The said larger pieces of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various 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 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 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 additional or larger pieces of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of 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 February 7, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Nassif Candy Co., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, 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 Nassif Candy Co. is a corporation organized and doing business under the laws of the State of West Virginia, with its principal office and place of business located at 2004 Main Street, Wheeling, W. Va. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of candy and confectionery products to wholesale dealers, job-

bers 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 Wheeling, W. Va., to purchasers thereof, at their respective points of location, in the various States of the United States other than West Virginia, 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 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 now, 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 said 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 pieces of caramel candy of uniform size and shape and medium sized candy bars, the latter to be given as premiums, together with a device commonly called a push card. The push card is divided into three sections and each of said sections contains 50 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 and larger pieces of candy 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 additional bars of candy. The sales are 1 cent each and those not securing a winning number receive one of the smaller pieces of caramel candy. The said card bears a legend or statement as follows:

1¢ PER SALE	JOBBER'S ADVERTISER	1¢ PER SALE
	Nos. 2, 5, 8, 11, 16, 19, 24, 27, 30, 33, 36, 39, 42, 45, 48, 51	
	Each Receive ONE CANDY BAR	
	ALL OTHER NUMBERS RECEIVE ONE CARAMEL	
	LAST PUNCH IN EACH SECTION RECEIVES 2 CANDY BARS	

Notice—This is not a gambling device. Every punch receives full value. Extra awards for advertising

Sales of respondent's candy by means of said push cards are made in accordance with the above legend. The numbers aforesaid are effectively concealed until a purchase has been made and the disk separated or removed from said card. The said larger pieces of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various 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 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 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 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 or larger pieces of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with respondent, as above described, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method which is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its 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.

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 Nassif Candy Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy and confectionery products or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing 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 cards or other devices, which said push cards or other devices are to be used or may be used in selling or distributing said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

3. Supplying to, or placing in the hands of, others push cards or other devices, which said push cards or other devices are to be used or may be used in the sale or distribution of said merchandise to the public at retail.

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

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

Syllabus

IN THE MATTER OF

AMERICAN INSTITUTE OF BUSINESS ADMINISTRATION, INC., AND PAUL KLINE

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

Docket 4195. Complaint, July 25, 1940—Decision, July 24, 1941

Where a corporation and an individual, who was its principal stockholder and managed and controlled its business, engaged in the interstate sale and distribution of correspondence courses in accounting and business law under a plan by which it circularized public accountants throughout the country with a view to having an accountant in each locality secure names of prospective students, to whom it sent advertising matter, employing the accountants to assist groups of its students and compensating them according to the number of students in the respective group—

(*a*) Made use of corporate name including words "American Institute of Business Administration, Inc.", on its letterheads and in advertising matter circulated to prospective students, accountants, and others, when in fact it was not an Institute, but was engaged in a private commercial enterprise;

With effect of creating the erroneous impression that it was a national organization of business executives, administrators, accountants, or other special groups of representative business, or the medium of an organization through which instruction or training was given as a public service;

(*b*) Augmented aforesaid misleading impression through such statements, on letterheads and printed matter as "Local chapters in principal cities of the United States * * *,"

(*c*) Further increased said misleading impression through describing its form of application for instruction as "Application for Membership," designating its enrolled students as "members" and its study groups as "local chapters"; and

(*d*) Represented that its activities were national and international in scope, through such statements as aforesaid, and "Representatives in principal cities of the United States, Canada, Porto Rico, Cuba, Philippine Islands," "* * * during the twelve years it has been in operation several thousand accountants throughout the United States, Canada, Porto Rico, Hawaii and the Philippine Islands have participated," and "* * * students all over the United States and Canada," facts being it had less than 100 pupils in the spring of 1938, and, some 2½ years later, about 21 located in six States and Porto Rico.

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* and *Mr. William C. Reeves*, trial examiners.

Mr. William L. Pencke for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that American Institute of Business Administration, Inc., a corporation, and Paul Kline, individually and as President of American Institute of Business Administration, Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Institute of Business Administration, 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 126 Liberty Street in the city of New York, State of New York. Respondent, Paul Kline, is president and principal stockholder of the respondent corporation with his principal office and place of business at the aforesaid address, and he formulates, controls, and directs the policies and practices of said corporation.

PAR. 2. Respondent, American Institute of Business Administration, Inc., 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 accounting, business law, and Federal taxation, which are pursued by correspondence through the medium of the United States mails. The respondent corporation, in the course and conduct of said business during the time aforesaid, causes its said courses of study and instruction to be transported from its said place of business in New York to purchasers thereof located in various States of the United States other than the State of New York. There is now, and has been at all times hereinafter mentioned, a course of trade in said courses of instruction so sold and distributed by said corporate respondent in commerce between and among various States of the United States.

PAR. 3. Said corporate respondent, in soliciting the sale of and in selling its said courses of study and instruction, makes use of its corporate name "American Institute of Business Administration, Inc.," on letterheads and on advertising and printed matter circulated to students, prospective students, public accountants and other members of the general public in various States of the United States. The use of said name in such connection is misleading in that it has the tendency and capacity to create the erroneous impression that

said respondent is a national organization of business executives, administrators, accountants, or other special group of representatives of business or that said respondent is the medium of such an organization through which instruction or training is given as a public service. Said misleading impression is further augmented by statements and phrases on letterheads and printed matter circulated as aforesaid of which the following is an example:

LOCAL CHAPTERS
In Principal Cities
of the United States,
Puerto Rico, Cuba

which import or imply that said corporate respondent is the parent head of nationally organized local groups of business executives, administrators, accountants, or other special representatives of business and that the whole comprises an organized "Institute" of such groups for the promotion of instruction as a means of improving the standards of such business groups and the qualifications of the members thereof.

Such misleading impression is further increased by the description of said respondent's application for instruction as an "Application for Membership" and of the enrolled students as "members" and the study groups as "Local Chapters," as well as by other means and descriptive phrases indicating an organization of members of a particular phase of business.

PAR. 4. Said corporate respondent further represents or has represented in the connection and by the means aforesaid that its activities are national in extent, that it has organized groups of students in all parts of the United States, and that they are international in scope with students in various foreign countries, by statements and phrases of which the following are examples:

Local Chapters in Principal Cities of United States, Puerto Rico, Cuba.

Representatives in the principal cities of the United States, Canada, Puerto Rico, Cuba, Philippine Islands.

* * * The plan operates through an international organization * * * * * * during the twelve years it has been in operation several thousand accountants throughout the United States, Canada, Puerto Rico, Cuba, Hawaii and Philippines have participated.

* * * students all over the United States and Canada.

PAR. 5. In truth and in fact respondent corporation is not a national organization of business executives, administrators, accountants, or other special group of representatives of business and neither is said respondent the medium of such an organization through which instruction or training is given as a public service. The so-called "Local Chapters" consist of groups of students who have contracted for the

instruction offered by said respondent and who meet at certain times to consult with a paid so-called "Local Advisor." The relations of such students with each other and with said respondent and with the so-called "Local Advisor" have none of the characteristics or features of membership in an organization as usually understood. The so-called "Application for Membership," when executed and accepted is merely a contract for instruction and for the payment of money therefor. Said individual respondent, Paul Kline, is the sole active participant in the activities of said corporate respondent. When local study groups are formed, a local accountant or other person is employed to meet occasionally with such students and assist and advise them in their studies. The instruction is given entirely by correspondence by said corporate respondent. Said local representatives also assist in the enrollment of students. Said corporate respondent is not an organized "Institute" of representatives of business executives, administrators, accountants, or other special representatives of business or of local groups of such representatives for the purpose of promoting instruction as a means of improving the standards of such business groups and the qualifications of the members thereof, but is purely and solely a commercial undertaking operated by the said respondent, Paul Kline, through the medium of said corporate respondent, American Institute of Business Administration, Inc.

The representations in regard to the extent of said business as set forth in paragraph 4 hereof are and have been misleading in that they are or were greatly exaggerated or not true and accurate statements of fact at the time they were made and used as aforesaid. At no single period of time during the existence of said school were students enrolled in all principal cities of the United States or in the majority of such cities. The activities of said school have not been national in extent nor have groups of students been organized in all parts of the United States at any one time. Neither have such activities been international in scope with students in various foreign countries, but the number of students in foreign countries have been comparatively few and at times there have been no students in foreign countries.

PAR. 6. The foregoing acts and practices used by respondents in connection with the offering for sale and sale of said course of study and instruction have had 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 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 July, A. D. 1940, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, 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 answers by the respondents, 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 respondent Paul Kline, attorney for respondents, before duly appointed trial examiners of the Commission designated by it to serve in this proceeding; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answers thereto, the testimony and other evidence, the report of the trial examiner and exceptions thereto, 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 American Institute of Business Administration, Inc., is a corporation organized under the laws of the State of New York on June 13, 1928. Its principal office was located at 126 Liberty Street, in the city and State of New York. Respondent Paul Kline is president of said corporation, its principal stockholder and, while it was carrying on the business for which it was organized, was in active management and control of said business. His office and principal place of business is located at 126 Liberty Street, in the city and State of New York.

PAR. 2. The corporate respondent, from the date of its incorporation until May 19, A. D. 1940, was engaged in the business of selling courses of instruction in accounting and business law intended for home study under the direction of said respondent, by correspond-

ence, and during the period in which it was so engaged it caused the courses of instruction and lesson materials 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.

PAR. 3. The practice of said respondent in the conduct of its business as a correspondence school differs from the methods usually employed by such schools in that students were not solicited directly, but public accountants throughout the country were circularized by respondent, with the view of having an accountant in each locality secure the names of prospective students, to whom advertising matter was then sent by the respondent. Tuition fees of students thus secured were paid directly to the corporate respondent, and the necessary lesson materials were furnished by said respondent. Accountants were employed by respondent in various States of the United States where groups of students designated by it as "chapters" were respectively located, to assist and counsel such students. The services of accountants so employed were paid for by respondent according to the number of students in the respective groups.

PAR. 4. The corporate respondent, in soliciting the sale of and in selling its said courses of study and instruction, made use of its corporate name "American Institute of Business Administration, Inc.," on its letterheads and in advertisements and other advertising matter circulated to students and prospective or potential students, accountants, and other members of the general public located in various States of the United States. The use of said name in such connection is misleading, and has had the tendency and capacity to create, and did create, the erroneous impression that said respondent is a national organization of business executives, administrators, accountants, or other special group of representative business, or that said respondent is the medium of an organization through which instruction or training is given as a public service. Such misleading impression induced by the respondent is further augmented by its statements and by various letterheads and printed matter circulated by it, of which the following is an example: "Local chapters in principal cities of the United States, Porto Rico, Cuba"—and which import or imply that said corporate respondent is the parent head of nationally organized local groups of business executives, administrators, accountants, or other special representatives of business, and that the whole comprises an organized "institute" of such groups for the promotion of intruction as a means of improving the standards of such business groups and the qualifications of the members thereof. Said respondent was not an Institute, but was engaged in a private commercial enterprise.

Such misleading impression was further increased by the description of its form of application for instructions as an "Application for

Membership," and the designation of its enrolled students as "members" and the study groups as "local chapters."

PAR. 5. The respondent corporation has further represented by the means aforesaid, that its activities were national in extent and that it had organized groups of students in all parts of the United States; that such groups were international in scope, with students in various foreign countries; and said respondent has made statements and phrases of which the following are examples:

Local chapters in principal cities of the United States, Porto Rico, Cuba;
Representatives in principal cities of the United States, Canada, Porto Rico, Cuba, Philippine Islands;
* * * the plan operates through an international organization * * *;
* * * during the twelve years it has been in operation several thousand accountants throughout the United States, Canada, Porto Rico, Hawaii, and the Philippine Islands have participated;
* * * students all over the United States and Canada.

In the spring of 1938 the corporate respondent had less than 100 pupils; in the latter part of 1940 it had about 21 pupils, who were located in Florida, New Hampshire, Washington, Oregon, Pennsylvania, Nevada, and Porto Rico.

PAR. 6. Under the laws of the State of New York, the corporate respondent was required to obtain a Certificate of Approval from the University of the State of New York before doing business in the State, and such certificates have to be renewed annually. Approval was withheld from the corporate respondent until the word "Institute" was deleted from its name, and on May 19, 1940, this was done and the word "School" was substituted for the word "Institute," since when said respondent has been known as the "American School of Business Administration.

On the 31st day of July 1938, all of the material, supplies, and equipment of the corporate respondent were destroyed by fire, since which time respondent has been inactive except for the attempt to service existing courses.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of re-

spondents, the testimony and other evidence introduced before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, the report of the trial examiners thereon and exceptions to said report, and briefs filed in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that respondents, American Institute of Business Administration, Inc., and Paul Kline, individually and as president of American Institute of Business Administration, Inc., have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent American Institute of Business Administration, Inc., a corporation, its officers, directors, agents, representatives, and employees, and respondent Paul Kline, individually and as president of American Institute of Business Administration, Inc., his agents, representatives, and employees, directly or indirectly or through any corporate or other device, in connection with the business of selling courses of instruction in accountancy and business law, or other educational course or courses intended for home study under the direction of said respondents or either of them, by correspondence or otherwise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Institute" as a part of the name of the corporate respondent, or using such term in any other manner to describe or refer to the aforesaid business activities of respondents or either of them.

2. Representing, by use of the word "chapters," or by any other designation, that the corporate respondent is the parent head of nationally organized local groups of business executives, administrators, accountants, or other special representatives of business.

3. Representing, in any manner, that their activities are national, or international, in scope, or conducted through a national or an international organization, or that students of their courses of instruction are enrolled throughout the United States and Canada, or that they have representatives in the principal cities of the United States, Canada, Porto Rico, Cuba, and the Philippine Islands.

4. Designating the application form for the enrollment of students as "Application for Membership" and the students as "members."

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

Syllabus

IN THE MATTER OF

D. STEFAN WROBLEWSKI 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 4196. Complaint, July 25, 1940—Decision, July 24, 1941

Where an individual and three corporations, which he used to carry on his business activities, engaged in the competitive interstate sale and distribution of various medicinal, toilet, and cosmetic preparations; sold under variety of designations such as "Kalwaryjskie Wino Lecznicze," "Ampo-Lin," "Reginol," etc., by means of advertisements disseminated through the mail, in newspapers and periodicals, radio continuities, circulars, leaflets, pamphlets, and other advertising literature—

(a) Falsely represented that its "Kalwaryjskie Wino Lecznicze," so-called medicinal wine, was a cure or remedy and a competent and effective treatment for stomach ailments and disorders, including sour stomach, gas on stomach and indigestion, headaches, constipation, listlessness, general weakness of the human system, sluggishness, skin eruptions and blemishes, wrinkles, bad breath, loss of energy, sallow skin, dizziness, colds, fever and chills; and that it would eliminate poisons from the system and serve as a tonic to build up the general health; the facts being that it would not do more than serve as a bitter tonic and appetizer, the laxative properties of which might assist in the temporary relief of constipation;

(b) Represented that its "Ampo-Lin" liniment constituted a competent and effective treatment for rheumatism, neuralgia, lumbago, arthritis, sciatica, strained and aching muscles, bruises, and swellings, and that its "Reginol" was a cure or remedy for corns and would prevent their return; facts being the former had no therapeutic value in excess of that of a local counterirritant tending to decrease pain in simple neuralgia and muscular aches and pains, and, while use of the latter might assist in the removal of corns, it would not prevent their return;

(c) Represented that "Masc Ratunek" or "Ratunek Salve" was a competent and effective treatment for sharp pains in the back and in the bones and body generally; and that their "Kalwa" was such a treatment for coughs, hoarseness, catarrh of the throat, smoker's cough, grippe, whooping cough, and other similar ailments; facts being the former had no therapeutic value other than as a local counterirritant tending to decrease simple neuralgia and muscular aches and pains, and the latter was not a treatment for the conditions set forth, in excess of constituting an expectorant which might aid in the removal of phlegm in coughs due to colds and mild throat irritations and in smoker's cough;

(d) Represented that their "Wuzi-Wuzi" was a competent and effective treatment for all headaches and for fever, and was safe and harmless, and that their "Krople-Kobiece" or "Women's Drops" was of substantial therapeutic value in the treatment of ailments and disorders peculiar to women; the facts being former was not a treatment for fever, possessed no therapeutic value in the treatment of headaches in excess of such temporary relief as might be afforded by its analgesic properties, and was not safe or harmless by virtue of containing drugs which are habit forming, and were

present in quantities sufficient to cause injury to health if taken in excessive or too frequent doses or over extended periods of time, and said "Drops" possessed no therapeutic value in treatment of women's ailments and would not accomplish more than to serve as a bitter appetizer;

(e) Represented that their said "Sparoton Tablets" were a cure or remedy for grippe, colds and chills, and fever; and that their "Dunski Wyskok" would cure dandruff, stop and prevent falling hair and cause it to grow; the facts being that neither product constituted such a cure or remedy or accomplished the results claimed;

(f) Falsely represented that their said "Krem Mlodosci No. 1" would prevent and heal sunburn, roughness of the face, neck and hands, and eliminate perspiration odors; that their "Krem Mlodosci No. 2" would remove pimples, blemishes, freckles, and all impurities from the complexion; that their "Vitamin F Krem" would remove wrinkles and blemishes from the face, rejuvenate fading, worn skin, renew complexions, regardless of their condition, and revive the skin; and that their "Puder Ksiazecy" protected the skin against atmospheric changes; and

(g) Failed to reveal in their said advertisements that use of their "Wuzi-Wuzi" headache and fever treatment under prescribed, customary, or usual conditions might cause injury to health of the user; and

Where said individual and corporations, engaged as aforesaid—

(h) Falsely represented through use of the word "laboratories" in their trade names and advertisements that they owned or operated a laboratory wherein their products were compounded and tested;

(i) Implied that said individual was a physician and that their preparations were compounded by one possessing training and experience in the medical profession; facts being he had had no training or experience in the practice of medicine, held no medical degree, and was not licensed to practice; and

(j) Made use in their advertisements of testimonials represented as having been supplied by persons who had received benefits from use of their preparations; when in fact such purported testimonials were prepared by themselves or by their employees;

With effect of misleading and deceiving members of the purchasing public into the mistaken belief that such representations were true, and into purchase of substantial quantities of said products by reason thereof, whereby trade was diverted unfairly 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 of their competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. R. P. Bellinger for the Commission.

Evans & Evans, of New York City, for Margie Wroblewski Hartman and Norman Hartman.

COMPLAINT

Pursuant to the provisions of the Federal 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. Stefan Wroblewski, Margie Wroblewski, and Norman Hartman, individually,

and trading as D. Wroblewski & Co., and as D. S. Wroblewski, Inc., and as Daferu Drug Co., Ltd., and as Wroblewski Drug Co., Inc., and as Kalwaryjskie Laboratories, Inc., and as D. Wroblewski & Co., Ltd.; and D. Wroblewski & Co., a corporation; D. S. Wroblewski, Inc., a corporation; Daferu Drug Co., Ltd., a corporation; Wroblewski Drug Co., Inc., a corporation; Kalwaryjskie Laboratories, Inc., a corporation; and D. Wroblewski & Co., 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 D. Stefan Wroblewski, Margie Wroblewski, and Norman Hartman are individuals trading as D. Wroblewski & Co., and as D. S. Wroblewski, Inc., and as Daferu Drug Co., Ltd., and as Wroblewski Drug Co., Inc., and as Kalwaryjskie Laboratories, Inc., and as D. Wroblewski & Co., Ltd.

Respondents D. Wroblewski & Co., D. S. Wroblewski, Inc., Daferu Drug Co., Ltd., Wroblewski Drug Co., Inc., Kalwaryjskie Laboratories, Inc., and D. Wroblewski & Co., Ltd., are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York.

All of the respondents have their office and principal place of business at 55 Keap Street, Brooklyn, N. Y.

Respondent D. Stefan Wroblewski, is an officer of, and the principal stockholder in, all of the corporate respondents and directs, dominates, and controls their acts, practices, and policies. Said corporate residents are in effect the property of the said individual respondent and are used by him as a means to carry on his business activities.

PAR. 2. Respondents are now, and for more than 5 years last past have been, engaged in the sale and distribution of various medicinal and cosmetic preparations, causing said preparations, 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 between and among the various States of the United States and in the District of Columbia. Among the preparations sold and distributed by the respondents as aforesaid are the following:

A so-called medicinal wine designated as "Kalwaryjskie Wino Lecznicze"; a liniment designated "Ampo-Lin"; a preparation for corns designated as "Reginol"; a salve called "Masc Ratunek"; a

cough syrup called "Kalwa"; a so-called fever reducer and headache powder designated "Wuzi-Wuzi"; a preparation purported to be a remedy for ailments peculiar to women, designated as "Krople-Kobiece" or "Women's Drops"; a tablet known as "Sparoton," represented as a treatment for fever and the grippe; a preparation known as "Dunski Wyskok," intended to be used as a shampoo and for various scalp diseases; facial creams called "Krem Mlodosci No. 1," "Krem Mlodosci No. 2," and "Vitamin F Krem"; and a face powder called "Puder Ksiazecy."

PAR. 3. Respondents are now, and at all times mentioned herein have been, in substantial competition with other individuals and corporations and with firms and partnerships, 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 medicinal and cosmetics preparations designed and intended for the same purposes as those for which the respondents' preparations are recommended.

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 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 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 their said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among 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:

(a) That said produce, "Kalwaryjske Wino Lecznize," is a cure or remedy and a competent and effective treatment for stomach ailments and disorders including sour stomach, gas on stomach and indigestion, headaches, constipation, listlessness, general weakness of the human system, sluggishness, skin eruptions and blemishes, wrinkles, bad breath, loss of energy, sallow skin, dizziness, colds, fever and chills; that said product will eliminate poisons from the system, and will serve as a tonic to build up the general health;

(b) That said product, "Ampo-Lin," is a competent and effective treatment for rheumatism, neuralgia, lumbago, arthritis, sciatica, strained and aching muscles, bruises, and swellings;

(c) That said product, "Reginol," is a cure or remedy for corns, and that the use of said product will prevent the return of the corn;

(d) That said product, "Masc Ratunek" or "Ratunek Salve," is a competent and effective treatment for sharp pains in the back and in the bones and body generally;

(e) That said product, "Kalwa," is a competent and effective treatment for coughs, hoarseness, catarrh of the throat, smoker's cough, grippe, whooping cough, and other similar ailments;

(f) That said product, "Wuzi-Wuzi," is a competent and effective treatment for all headaches and for fever, and that said preparation is safe and harmless;

(g) That said product, "Krople-Kobiece" or "Women's Drops," is of substantial therapeutic value in the treatment of ailments and disorders peculiar to women, and the pains and nervousness caused by such ailments;

(h) That said product, "Sparoton Tablets" is a cure or remedy for grippe, colds and chills and fever;

(i) That said product, "Dunski Wyskok," will cure dandruff, will stop and prevent falling hair and will cause the growth of hair;

(j) That said product, "Krem Mlodosci No. 1," will prevent and heal sunburn, roughness of the face, neck and hands, and will eliminate odors resulting from perspiration; that "Krem Mlodosci No. 2" will remove pimples, blemishes, freckles, and other imperfections, and remove all impurities from the complexion, and that "Vitamin F Krem" will remove wrinkles and blemishes from the face, rejuvenate fading, worn skin, renew complexions, regardless of their condition, and will revive the skin;

(k) That said product, "Puder Ksiazecy," protects the skin against atmospheric changes.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondents' preparations do not possess the properties and qualities, and are not capable of producing the results, claimed by respondents.

(a) Said product designated "Kalwaryjskie Wino Lecznicze" is not a cure or remedy, or a competent or effective treatment for stomach ailments or disorders, sour stomach, gas on stomach, indigestion, headaches, listlessness, general weakness of the human system, sluggishness, skin eruptions or blemishes, wrinkles, bad breath, loss of energy, sallow skin, dizziness, colds, fever, or chills. Said preparation is not a cure or remedy for constipation, nor has it any therapeutic value in the treatment of constipation, except insofar as its laxative properties may assist in the temporary evacuation of the bowels. Said preparation will not eliminate poisons from the system, nor will it serve as a tonic to build up the general health.

(b) Said product designatel "Ampo-Lin" does not constitute a competent or effective treatment for rheumatism, neuralgia, lumbago, arthritis, sciatica, strained or aching muscles, bruises or swellings.

(c) Said product designated "Reginol" is not a cure or remedy for corns. While the use of said product may assist in the removal of corns, said product will not prevent the return of the corn.

(d) Said product designated "Masc Ratunek" or 'Ratunek Salve" does not constitute a competent or effective treatment for pains in the back or in the bones or in the body generally.

(e) Said product designated "Kalwa" is not a competent or effective treatment for coughs, hoarseness, catarrh of the throat, smoker's cough, grippe, whooping cough or other similar ailments.

(f) Said product designated "Wuzi-Wuzi" is not a competent or effective treatment for fever, nor does it possess any therapeutic value in the treatment of headaches in excess of such temporary and palliative relief as may be afforded by its analgesic properties. Moreover said preparation is not safe or harmless, as it contains the drugs acetanilid and acetphenetidin, which are habit-forming, and which are present in said preparation in quantities sufficient to cause injury to health if taken in excessive doses, or in too frequent doses, or over extended periods of time.

(g) Said product designated "Krople-Kobiece" or "Women's Drops" possesses no therapeutic value in the treatment of ailments or disorders peculiar to women, nor will the use of said product afford relief from any pains or nervousness caused by such ailments.

(h) Said product designated "Sparoton Tablets" is not a cure or remedy for grippe, colds, chills or fever.

(i) Said product designated "Dunski Wyskok" is not a cure or remedy for dandruff nor will it stop or prevent falling hair nor will it cause the growth of hair.

(j) Said product designated "Krem Mlodosci No. 1" will not prevent or heal sunburn or roughness of the face, neck, or hands, nor will it eliminate odors resulting from perspiration. The product designated "Krem Mlodosci No. 2" will not remove pimples, blemishes, freckles, or other skin imperfections, nor will it remove any impurities from the complexion. The product "Vitamin F Krem" will not remove wrinkles or blemishes from the face, nor will it rejuvenate fading, worn skin, nor will it renew the complexion or revive the skin.

(k) Said product designated "Puder Ksiazecy" will not protect the skin against atmospheric changes.

PAR. 6. Said advertisements with respect to the product "Wuzi-Wuzi" are false also in that they fail to reveal that the use of said product under the conditions prescribed in said advertisement or under such conditions as are customary or usual may cause injury to the health of the user.

PAR. 7. The respondents also represent, by the use of the word "Laboratories" in certain of their trade and corporate names and through advertisements disseminated as aforesaid, that they own or operate a laboratory in connection with their said business and that their products are compounded and tested in such laboratory. In truth and in fact the respondents do not own or operate any laboratory in connection with their business.

PAR. 8. The use by the respondents of the word "Laboratories" in certain of their trade and corporate names as aforesaid, constitutes within itself a false and misleading representation that the respondents own or operate a laboratory in connection with their said business.

PAR. 9. In their advertisements as aforesaid the respondents refer to the respondent D. Stefan Wroblewski as "Doctor" Wroblewski, thus implying that said respondent is a physician and that respondents' preparations are compounded by one possessing knowledge, training, and experience in the medical profession. In truth and in fact said respondent is not a physician and has had no special training or experience in the practice of medicine, nor does said respondent hold any medical degree, or any license to practice medicine.

PAR. 10. In their said advertisements the respondents have also used purported testimonials represented as having been supplied by persons who had received benefit from the use of respondents' preparations. In truth and in fact said purported testimonials were prepared by respondents or by their employees and did not originate with members of the public who had used such preparations.

PAR. 11. The use by the respondents of the aforesaid false and misleading statements and representations, disseminated as aforesaid, has the tendency and capacity to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and into the purchase of substantial quantities of respondents' products because of such erroneous and mistaken belief. As a result trade has been diverted unfairly to the respondents from their said competitors, and in consequence substantial injury has been done and is being done by the respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 12. 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 25th day of July, A. D. 1940, issued and thereafter served its complaint in this proceeding upon the respondents, D. Stefan Wroblewski, Margie Wroblewski Hartman (referred to in the complaint as Margie Wroblewski), and Norman Hartman, individually and trading as D. Wroblewski & Co., and as D. S. Wroblewski, Inc., and as Daferu Drug Co., Ltd., and as Wroblewski Drug Co., Inc., and as Kalwaryjskie Laboratories, Inc., and as D. Wroblewski & Co., Ltd., and D. Wroblewski & Co. of America, Inc., a corporation (referred to in the complaint as D. Wroblewski & Co.), D. S. Wroblewski, Inc., a corporation, Daferu Drug Co., Inc., a

corporation (referred to in the complaint as Daferu Drug Co., Ltd.), The Wroblewski Drug Co., Limited, a corporation (referred to in the complaint as Wroblewski Drug Co., Inc.), Kalwaryjskie Laboratories, Inc., a corporation, and D. Wroblewski & Co., Ltd., a corporation (referred to in the complaint as D. Wroblewski & Co., 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. On August 31, 1940, the individual respondent, Norman Hartman, filed his answer, on September 3, 1940, the individual respondent named in the complaint as Margie Wroblewski filed her answer, and on September 19, 1940, all other 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 respondent D. Stefan Wroblewski, individually and as president of the corporate respondents D. S. Wroblewski, Inc., Daferu Drug Co., Inc., and D. Wroblewski & Co., Ltd., 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. The respondents therein specifically 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, 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 D. Stefan Wroblewski is an individual who is now or has been trading as D. Wroblewski & Co., and as D. S. Wroblewski, Inc., and as Daferu Drug Co., Ltd., and as Wroblewski Drug Co., Inc., and as Kalwaryjskie Laboratories, Inc., and as D. Wroblewski & Co., Ltd.

The correct corporate name of the respondent named in the complaint as D. Wroblewski & Co. was D. Wroblewski & Co. of America, Inc., and this corporation was legally dissolved by the Secretary of State of the State of New York on December 15, 1937, since which

time it has not been in existence. The correct corporate name of the respondent named in the complaint as Wroblewski Drug Co., Inc., was The Wroblewski Drug Co., Ltd., and this corporation was legally dissolved by the Secretary of State of the State of New York on December 15, 1938, since which time it has not been in existence. The corporation, Kalwaryjskie Laboratories, Inc., named in the complaint as a respondent, was legally dissolved by the Secretary of State of the State of New York on December 15, 1939, since which time it has not been in existence. The correct corporate name of the respondent named in the complaint as Daferu Drug Co., Ltd., is Daferu Drug Co., Inc. The correct corporate name of the respondent named in the complaint as D. Wroblewski & Co., Ltd., is D. Wroblewski & Co., Ltd. The respondent Dafer Drug Co., Inc., D. Wroblewski & Co., Ltd., and D. S. Wroblewski, Inc., are corporations, organized, existing and doing business under and by virtue of the laws of the State of New York. The said corporate respondents and the individual respondent, D. Stefan Wroblewski, have their office and principal place of business at 55 Keap Street, Brooklyn, N. Y. Respondent D. Stefan Wroblewski is an officer of and the sole stockholder in and owner of the said corporate respondents, and directs, dominates, and controls their acts, practices, and policies. The said corporate respondents are in fact the property of the said individual respondent and are or have been used by him as a means to carry on his business activities.

The correct name of the individual respondent Margie Wroblewski is Margie Wroblewski Hartman; she is the wife of the individual respondent Norman Hartman, and the sister of the individual respondent D. Stefan Wroblewski. The said respondents Margie Wroblewski Hartman and Norman Hartman allowed their names to be used by the respondent D. Stefan Wroblewski in the formation and organization of the corporate respondent D. Wroblewski & Co., Ltd., on March 21, 1938, but such action by them was merely as an accommodation to the said D. Stefan Wroblewski, and the said respondents, Margie Wroblewski Hartman and Norman Hartman, have never at any time had any business relationship or connection with the said D. Stefan Wroblewski or any of the corporate respondents herein, other than in the use of their names at the time and in the manner mentioned above, and they do not now have nor have they ever had any voice in the control, management, conduct, or operation of the advertising or other business methods and activities of the individual respondent D. Stefan Wroblewski or any of the corporate respondents named herein; and they do not now have and have never had any interest, either financial or otherwise, in the said business or businesses.

PAR. 2. The said respondents D. Stefan Wroblewski, D. S. Wroblewski, Inc., Daferu Drug Co., Inc., and D. Wroblewski & Co., Ltd., are now, and for several years last past have been engaged in the sale and distribution of various medicinal and cosmetic preparations, causing said preparations, 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. Said respondents maintain and at all times mentioned herein have maintained a course of trade in their said products in commerce between and among the various States of the United States and in the District of Columbia. Among the preparations sold and distributed by the respondents as aforesaid are the following:

A so-called medicinal wine designated as "Kalwaryjskie Wino Lecznicze"; a liniment designated "Ampo-Lin"; a preparation for corns designated as "Reginol"; a salve called "Masc Ratunek"; a cough syrup called "Kalwa"; a so-called fever reducer and headache powder designated "Wuzi-Wuzi"; a preparation purported to be a remedy for ailments peculiar to women, designated as "Krople-Kobiece" or "Women's Drops"; a tablet known as "Sparoton," represented as a treatment for fever and the grippe; a preparation known as "Dunski Wyskok," intended to be used as a shampoo and for various scalp diseases; facial creams called "Krem Mlodosci No. 1," "Krem Mlodosci No. 2," and "Vitamin F Krem"; and a face powder called "Puder Ksiazecy."

PAR. 3. The said respondents are now, and at all times mentioned herein have been, in substantial competition with other individuals and corporations and with firms and partnerships, 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 medicinal and cosmetic preparations designed and intended for the same purposes as those for which the said respondents' preparations are recommended.

PAR. 4. In the course and conduct of their aforesaid business the said respondents have disseminated and have caused the dissemination of false advertisements concerning their said products by means of 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 were likely to induce, directly or indirectly, the purchase of said products; and said respondents have also disseminated and have caused the dissemination of, false advertisements concerning their said products by various means for the purpose of inducing and which were likely to induce and have in-

duced, directly or indirectly, the purchase of their said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by means of 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:

(a) That said product, "Kalwaryjskie Wino Lecznicze," is a cure or remedy and a competent and effective treatment for stomach ailments and disorders including sour stomach, gas on stomach and indigestion, headaches, constipation, listlessness, general weakness of the human system, sluggishness, skin eruptions and blemishes, wrinkles, bad breadth, loss of energy, sallow skin, dizziness, colds, fever and chills; that said product will eliminate poisons from the system, and will serve as a tonic to build up the general health;

(b) That said product, "Ampo-Lin" is a competent and effective treatment for rheumatism, neuralgia, lumbago, arthritis, sciatica, strained and aching muscles, bruises and swellings;

(c) That said product, "Reginal," is a cure or remedy for corns, and that the use of said product will prevent the return of the corn;

(d) That said product, "Masc Ratunek" or "Ratunek Salve," is a competent and effective treatment for sharp pains in the back and in the bones and body generally;

(e) That said product, "Kalwa" is a competent and effective treatment for coughs, hoarseness, catarrh of the throat, smoker's cough, grippe, whooping cough, and other similar ailments;

(f) That said product, "Wuzi-Wuzi," is a competent and effective treatment for all headaches and for fever, and that said preparation is safe and harmless;

(g) That said product, "Krople-Kobiece" or "Women's Drops," is of substantial therapeutic value in the treatment of ailments and disorders peculiar to women, and the pains and nervousness caused by such ailments;

(h) That said product, "Sparoton Tablets" is a cure or remedy for grippe, colds and chills and fever;

(i) That said product, "Dunski Wyskok," will cure dandruff, will stop and prevent falling hair and will cause the growth of hair;

(j) That said product, "Krem Mlodosci No. 1," will prevent and heal sunburn, roughness of the face, neck and hands, and will eliminate odors resulting from perspiration; that "Krem Mlodosci No. 2" will remove pimples, blemishes, freckles, and other imperfections, and remove all impurities from the complexion, and that "Vitamin F Krem" will remove wrinkles and blemishes from the face, rejuvenate fading, worn skin, renew complexions, regardless of their condition, and will revive the skin;

(k) That said product, "Puder Ksiazecy," protects the skin against atmospheric changes.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondents' preparations do not possess the properties and qualities, and are not capable of producing the results claimed by respondents.

(a) Said product designated "Kalwaryjskie Wino Lecznicze" is not a cure or remedy, or a competent or effective treatment for stomach ailments, or disorders, sour stomach, gas on the stomach, indigestion, headaches, listlessness, general weakness of the human system, sluggishness, skin eruptions or blemishes, wrinkles, bad breath, loss of energy, sallow skin, dizziness, colds, fever, or chills. Said preparation will not eliminate poisons from the system, nor will it serve as a tonic to build up the general health, but only as a bitter tonic and appetizer, the laxative properties of which may assist in the temporary relief of constipation by the evacuation of the bowels.

(b) Said product designated "Ampo-Lin" does not constitute a competent or effective treatment for rheumatism, neuralgia, lumbago, arthritis, sciatica, strained or aching muscles, bruises or swellings, and has no therapeutic value, in excess of that of a local counter-irritant, tending to decrease pain in simple neuralgia and muscular aches and pains.

(c) Said product designated "Reginol" is not a cure or remedy for corns. While the use of said product may assist in the removal of corns, said product will not prevent the return of the corn.

(d) Said product designated "Masc Ratunek" or "Ratunek Salve" does not constitute a competent or effective treatment for pains in the back or in the bones or in the body generally, and has no therapeutic value, other than as a local counter-irritant, tending to decrease pain in simple neuralgia and muscular aches and pains.

(e) Said product designated "Kalwa" is not a competent or effective treatment for coughts, hoarseness, catarrh of the throat, smoker's cough, grippe, whooping cough or other similar ailments, in excess of constituting an expectorant which might aid in the removal of phlegm, in coughs due to colds and mild throat irritations, and in smoker's cough.

(f) Said product designated "Wuzi-Wuzi" is not a competent or effective treatment for fever, nor does it possess any therapeutic value in the treatment of headaches in excess of such temporary and palliative relief as may be afforded by its analgesic properties. Moreover, said preparation is not safe or harmless, as it contains the drugs acetanilid and acetphenetidin, which are habit-forming, and which are present in said preparation in quantities sufficient to otherwise cause injury to health if taken in excessive doses, or in too frequent doses, or over extended periods of time.

(g) Said product designated "Kropel-Koblece" or "Women's Drops" possesses no therapeutic value in the treatment of ailments or disorders peculiar to women, nor will the use of said product afford relief from any pains or nervousness caused by such ailments, nor accomplish more in any case than to serve as a bitter appetizer.

(h) Said product designated "Sparoton Tablets" is not a cure or remedy for grippe, colds, chills or fever.

(i) Said product designated "Dunski Wyskok" is not a cure or remedy for dandruff, nor has it any therapeutic value in the treatment of dandruff in excess of the removal of loose dandruff scales. It will not stop or prevent falling hair, nor will it cause the growth of hair.

(j) Said product designated "Krem Mlodosci No. 1" will not heal sunburn or roughness of the face, neck of hands, nor will it eliminate odors resulting from perspiration. The product designated "Krem Mlodosci No. 2" will not remove pimples, blemishes, freckles, or other skin imperfections, nor will it remove any impurities from the complexion. The product "Vitamin F Krem"

will not remove wrinkles or blemishes from the face, nor will it rejuvenate fading, worn skin, nor will it renew the complexion or revive the skin.

(k) Said product designated "Puder Ksiazecy" will not protect the skin against atmospheric changes.

PAR. 6. Said advertisements with respect to the product "Wuzi-Wuzi" are false also in that they fail to reveal that the use of said product under the conditions prescribed in said advertisements or under such conditions as are customary or usual may cause injury to the health of the user.

PAR. 7. The said respondents also represent, by the use of the word "Laboratories" in certain of their trade names and through advertisements disseminated as aforesaid, that they own or operate a laboratory in connection with their said business and that their products are compounded and tested in such laboratory. In truth and in fact the said respondents do not own or operate any laboratory in connection with their business.

PAR. 8. The use by the said respondents of the word "Laboratories" in certain of their trade names as aforesaid, constitutes within itself a false and misleading representation that the said respondents own or operate a laboratory in connection with their said business.

PAR. 9. In their advertisements as aforesaid the said respondents refer to the respondent D. Stefan Wroblewski as "Doctor" Wroblewski, thus implying that said respondent is a physician and that respondents' preparations are compounded by one possessing knowledge, training, and experience in the medical profession. In truth and in fact said respondent is not a physician and has had no special training or experience in the practice of medicine, nor does said respondent hold any medical degree, or any license to practice medicine.

PAR. 10. In their said advertisements the said respondents have also used purported testimonials represented as having been supplied by persons who had received benefit from the use of respondents' preparations. In truth and in fact said purported testimonials were prepared by said respondents or by their employees and did not originate with members of the public who had used such preparations.

PAR. 11. The use by the said respondents of the aforesaid false and misleading statements and representations, disseminated as aforesaid, had the tendency and capacity to, and did, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and into the purchase of substantial quantities of respondents' products because of such erroneous and mistaken belief. In consequence thereof trade has been diverted unfairly to said respondents from their competitors.

CONCLUSION

The aforesaid acts and practices of said 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 answers of the respondents, and a stipulation as to the facts entered into between the individual respondent D. Stefan Wroblewski and the corporate respondents D. S. Wroblewski, Inc., Daferu Drug Co., Inc. (referred to in the complaint as Daferu Drug Co., Ltd.), and D. Wroblewski & Co., Ltd. (referred to in the complaint as D. Wroblewski & Co., Ltd.) 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 said respondents findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent D. Stefan Wroblewski, individually and trading as D. Wroblewski & Co., and as D. S. Wroblewski, Inc., and as Daferu Drug Co., Inc., and as Wroblewski Drug Co., Inc., and as Kalwaryjskie Laboratories, Inc., and as D. Wroblewski & Co., Ltd., or trading under any other name or names or through any corporate or other device, and the respondents D. S. Wroblewski, Inc., a corporation, Daferu Drug Co., Inc., a corporation, and D. Wroblewski & Co., 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 respondents' medicinal and cosmetic preparations designated as "Kalwaryjskie Wino Lecznicze," "Ampo-Lin," "Reginol," "Masc Ratunek" or "Ratunek Salve," "Kalwa," "Wuzi-Wuzi," "Krople-Kobiece" or "Women's Drops," "Sparoton Tablets," "Dunski Wyskok," "Krem Mlodosci No. 1," "Krem Mlodosci No. 2," "Vitamin F. Krem," and "Puder Ksiazecy," 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 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 by implication:

(*a*) That said preparation "Kalwaryjskie Wino Lecznicze" is a cure or remedy or a competent or effective treatment for stomach ailments or disorders, sour stomach, gas on stomach, indigestion, headaches, listlessness, general weakness of the human system, sluggishness, skin eruptions or blemishes, wrinkles, bad breath, loss of energy, sallow skin, dizziness, colds, fever, or chills; that said preparation will eliminate poisons from the system; that it serves as a tonic to build up the general health, or that it has any value as a tonic other than as a bitter and appetizer, the laxative properties of which may assist in the temporary relief of constipation by the evacuation of the bowels;

(*b*) That said preparation "Ampo-Lin" constitutes a competent or effective treatment for rheumatism, neuralgia, lumbago, arthritis, sciatica, strained or aching muscles, bruises or swellings; that it has any therapeutic value except insofar as its properties as a local counter-irritant may tend to decrease pain in simple neuralgia and in muscular aches and pains;

(*c*) That said preparation "Reginol" is a cure or remedy for corns or will prevent the return of corns; that it has any therapeutic value in the treatment of corns in excess of assisting in the temporary removal thereof;

(*d*) That said preparation "Masc Ratunek" or "Ratunek Salve" constitutes a competent or effective treatment for pains in the back or in the bones or in the body generally; that it has any therapeutic value except insofar as its properties as a local counter-irritant may tend to decrease pain in simple neuralgia and in muscular aches and pains;

(*e*) That said preparation "Kalwa" possesses any therapeutic value in the treatment of coughs, hoarseness, catarrh of the throat, smokers' cough, grippe, whooping cough, or other similar ailments, except insofar as its expectorant properties may aid in the removal of phlegm in coughs due to colds and mild throat irritations, and in smokers' cough;

(*f*) That said preparation "Wuzi-Wuzi" is a competent or effective treatment for fever, or that it possesses any therapeutic value in the treatment of headaches in excess of such temporary and palliative relief as may be afforded by its analgesic properties; that said preparation is safe or harmless; or which advertisement with respect to said preparation fails to contain a warning against the frequent and continued use of said preparation and against excessive dosage

(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 against the frequent and continued use of said preparation and against excessive dosage);

(*g*) That said preparation "Krople-Kobiece" or "Women's Drops" possesses any therapeutic value in the treatment of ailments or disorders peculiar to women, or that it will afford relief from any pains or nervousness caused by such ailments or disorders; that said preparation possesses any therapeutic value in excess of that of a bitter appetizer;

(*h*) That said preparation "Sparoton Tablets" is a cure or remedy for grippe, colds, chills, or fever;

(*i*) That said preparation "Dunski Wyskok" is a cure or remedy for dandruff, or that it has any therapeutic value in the treatment of dandruff in excess of the removal of loose dandruff scales; that it will stop or prevent falling hair or cause the growth of hair;

(*j*) That said preparation "Krem Mlodosci No. 1" will heal sunburn or roughness of the face, neck, or hands, or that it will eliminate odors resulting from perspiration; that said preparation "Krem Mlodosci No. 2" will remove pimples, blemishes, freckles, or other skin imperfections, or that it will remove any impurities from the complexion; that said preparation "Vitamin F Krem" will remove wrinkles or blemishes from the face, that it will rejuvenate fading, worn skin, or that it will renew the complexion or revive the skin.

(*k*) That said prepartion "Puder Ksiazecy" will protect the skin against atmospheric 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 any of said preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof; or which advertisement with respect to said preparation "Wuzi-Wuzi" fails to contain a warning against the frequent and continued use of said preparation and against excessive dosage (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 against the frequent and continued use of said preparation and against excessive dosage).

It is further ordered, That said respondents, their officers, representatives, agents, and employees, as aforesaid, in connection with the offering for sale, sale and distribution of their said preparations

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

(*a*) Using the word "Laboratories" or any other word of similar import, as a part of any of respondents' trade or corporate names, or otherwise representing that respondents own or operate a laboratory;

(*b*) Using the word "Doctor" or the abbreviation "Dr." or any other word or abbreviation of similar import, to designate, describe or refer to said individual respondent D. Stefan Wroblewski, or otherwise representing that said respondent is a physician;

(*c*) Using testimonials purporting to have been received from purchasers of respondents' preparations, but which in fact were prepared by the respondents, their employees, representatives, or agents.

It is further ordered, That this proceeding be closed as to the individual respondents Margie Wroblewski Hartman (referred to in the complaint as Margie Wroblewski) and Norman Hartman, and the corporate respondents The Wroblewski Drug Co., Limited (referred to in the complaint as Wroblewski Drug Co., Inc.), and Kalwaryjskie Laboratories, Inc., and D. Wroblewski & Co. of America, Inc., referred to in the complaint as D. Wroblewski & Co.), without prejudice to the right of the Commission, should the facts so warrant, to reopen the proceeding and resume trial thereof in accordance with the Commission's regular procedure.

It is further ordered, That respondents D. Stefan Wroblewski, D. S. Wroblewski, Inc., Daferu Drug Co., Inc., and D. Wroblewski & Co., Ltd., shall within 10 days after the 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

THERMALAID METHOD, INC., AND CHARLES H. McFARLAND

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

Docket 4078. Complaint, Apr. 2, 1940—Decision, July 25, 1941

Where a corporation and an individual, who was its president and manager, engaged in the manufacture and interstate sale and distribution of their "Thermalaid" electrical device for ailments of the prostate gland by the application of heat to adjacent areas; by means of advertisements disseminated through the mails, in newspapers and periodicals, circulars, pamphlets, and other advertising literature—

Represented, directly and by implication, that use of their device provided a cure or remedy for all prostate gland disorders, ranging from milder forms of prostatitis due to irritation to a complete state of hypertrophy (enlargement), or atrophy (hardening) of the gland, that use of said device constituted a competent and effective treatment for such conditions, and would prolong vigorous years of life and recuperate vitality and sex virility;

Facts being, it did not provide a cure for such disorders, or an effective treatment therefor in excess of the benefit that might be expected from local application of heat in cases of acute or chronic prostatitis in its milder forms, and was of no value in prolonging vigorous life or recuperating virility;

With effect of misleading 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 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. Morton Nesmith 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 Thermalaid Method, Inc., a corporation, and Charles H. McFarland, 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 Thermalaid Method, Inc., is a corporation organized, existing and doing business under and by virtue of

the laws of the State of Ohio. Respondent Charles H. McFarland is the president of respondent corporation Thermalaid Method, Inc., and is actively engaged in the management and conduct of its business. Both respondents have their principal office and place of business at Franklin and Morris Avenues in the city of Steubenville, State of Ohio. The respondent Thermalaid Method, Inc., is a successor corporation to the Electro Thermal Co., having acquired by purchase or lease all of the assets, including inventories, accounts receivable, patents, trade-marks, plant, and building previously occupied by the Electro Thermal Co.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the business of manufacturing, offering for sale and selling an electrical device designated as Thermalaid for the treatment of the prostate gland and ailments or debilities arising therefrom by the application of heat to the area adjacent to said prostate gland. Respondents have caused and still cause said device when sold to be transported from their place of business in the State of Ohio to purchasers thereof located at various points 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 device 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 periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are, among others, the following:

There is no question that is more universally occupying the attention of the middle-aged man of today than this: "How may I prolong the vigorous years

of my life and recuperate the vitality and sex virility I feel gradually slipping away?"

So little is known by the average man regarding sex-hygiene and the biologic laws governing his sex-life, that when he begins to be harassed with annoying symptoms of distress in the pelvic region or lower extremities, he adds to his physical debility the mental torture engendered by fear of "lost manhood."

The statement that "A man is just as old as his Prostate" is literally as well as figuratively true, for the prostate, like the other pelvic glands of the body, is an organ of internal as well as external secretion.

Due to the erroneous impression caused by innumerable advertisements of patent medicines, many men attribute backache, frequency or difficulty of urination, pain in the lower extremities, and many other symptoms of pelvic disorders to a disturbance in the kidneys or bladder or to sciatica when frequently the seat of trouble is in the prostate gland. And even though the effects are manifested in one of many forms, treatment applied at the point of manifestation often effects no results, simply because the source of the difficulty goes unattended, and to eradicate any disorder, one must treat it at its source.

The fact that many reliable medical authorities tell us that over 65% of all men past fifty years of age suffer from some form of prostatic trouble is sufficient reason for our having dwelt so at length regarding this part of the pro-genital system. And with the proper exercise of personal hygiene and immediate attention of any symptoms of distress, many acute conditions of this gland may be completely remedied before they become chronic.

Do you know that over 40%, yes, nearly 50%, of the American men past forty cannot even reproduce their kind?

Prostatitis covers a wide field, ranging from the milder forms of irritation to a complete state of hypertrophy (enlargement) or atrophy (hardening). In fact, many men do not even know that they have a prostate gland until they are almost ready for a prostatectomy (the removal of the prostate gland by excision), having misread the symptoms of the disordered gland and taken treatments for bladder or kidney trouble instead.

Sex weaknesses and lost manhood, when due to prostate trouble, have been found to respond beautifully to application of the infra-red radiation and thermal-energy when applied directly in the area of the prostate by the "Thermalaid".

Much is said about glands these days. Experimenters are taking the glands of animals and feeding them to patients with the hope of doing for the patients what the patient's own glands should have done.

But isn't it much more desirable to have our own glands in health and working properly than to depend upon the glands of the lower animals?

So we come to you with Thermalaid, a convenient means of applying vitalizing, dry, electrically generated, thermic energy, directly in the area of the inflamed prostate, in a continuous manner, correctly.

The late forties and fifties are approached by many men with a more or less certain uneasiness. Rather unconsciously they become aware of shortcomings—resistance may be lowered; little incidents are magnified; we find ourselves cross and irritable; things at home are no longer just right, the coffee isn't good, things we once cherished and looked forward to with high anticipation become more like a duty and even then are attempted with uncertainty.

Just think how good you would feel if the frequency of urination was relieved—if the backache that has bothered you for a long time was more comfortable—if you could do your work without that tired listless feeling, so often resulting from

broken rest. Only a safe, convenient and comfortable method would appeal to your good judgment. THERMALAID is just that method. Thermalaid releases to the prostate through the rectum wall those long rays of infra-red radiation so soothing and comforting. This type of therapy is strikingly successful with inflammatory conditions of the prostate.

The potency, logic, simplicity and economy of the THERMALAID are among its highest endorsements and warrant your immediate trial. Much of life's happiness may often be restored in the Autumn and much of your lost confidence may often be regained. * * *

PAR. 4. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents represent, directly and by implication, that the use of their device "Thermalaid" provides a cure or remedy for all prostate gland disorders ranging from milder forms of prostatitis due to irritation, to a complete state of hypertrophy (enlargement) or atrophy (hardening) of the gland, and that the use of such device constitutes a competent and effective treatment therefor. By said means the respondent further represents that the use of said device "Thermalaid" will prolong vigorous years of life and recuperate the vitality and sex virility.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading, and untrue. In truth and in fact, the use of respondents' device "Thermalaid" does not provide a cure or remedy for prostate gland disorders, or provide a competent and effective treatment therefor in excess of the benefit that might be expected through the local application of heat in cases of acute or chronic prostatitis in its milder forms. Said device has no therapeutic value in the treatment of the state of hypertrophy or atrophy of the prostate gland. Such device is of no value in prolonging vigorous years of life, and will not recuperate vitality or sex virility.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their device and those not specifically set out herein has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the 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 said device.

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 2d day of April 1940, issued and subsequently served its complaint in this proceeding upon the said respondents' Thermalaid Method, Inc., a corporation, and Charles H. McFarland, an individual, 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 no answer. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and Richard P. Whiteley, Assistant Chief Council 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 matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Thermalaid Method, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio. Respondent Charles H. McFarland is the president of said corporation and has been actively engaged in the management and conduct of its business. Both Thermalaid Method, Inc., and Charles H. McFarland have as their principal office and place of business a factory or plant at Franklin and Morris Avenues, in the city of Steubenville, State of Ohio. Thermalaid Method, Inc., is a successor corporation to The Electric Thermal Co., having acquired by purchase or lease all of the assets, including inventories, accounts receivable, patents, trade-marks, and plant and building previously occupied by The Electro Thermal Co.

PAR. 2. Both the Thermalaid Method, Inc., and Charles H. McFarland have been for more than 1 year last past engaged in the business of manufacturing, offering for sale, and selling an electrical device designated as "Thermalaid" for the treatment of the prostate gland

and ailments or debilities arising therefrom, by the application of heat to the area adjacent to the prostate gland. Said respondents have caused said device when sold to be transported from their place of business in the State of Ohio to purchasers thereof located at various points in various other States of the United States and in the District of Columbia. At all times mentioned herein they have maintained a course of trade in said device in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business the respondents have disseminated and have caused the dissemination of false advertisements concerning the product Thermalaid by United States mails, and by various other means in commerce as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of this device; and they have also disseminated and caused the dissemination of false advertisements concerning this device by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of this device 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, pamphlets, and other advertising literature, are, among others, the following:

There is no question that is more universally occupying the attention of the middle-aged man of today than this: "How may I prolong the vigorous years of my life and recuperate the vitality and sex virility I feel gradually slipping away?"

So little is known by the average man regarding sex-hygiene and the biologic laws governing his sex-life, that when he begins to be harassed with annoying symptoms of distress in the pelvic region or lower extremities, he adds to his physical debility the mental torture engendered by fear of "lost manhood."

The statement that "A man is just as old as his Prostate" is literally as well as figuratively true, for the prostate, like the other pelvic glands of the body, is an organ of internal as well as external secretion.

Due to the erroneous impression caused by innumerable advertisements of patent medicines, many men attribute backache, frequency or difficulty of urination, pain in the lower extremities, and many other symptoms of pelvic disorders to a disturbance in the kidneys or bladder or to sciatica when frequently the seat of trouble is in the prostate gland. And even though the effects are manifested in one of many forms, treatment applied at the point of manifestation often effects no results, simply because the source of the difficulty goes unattended, and to eradicate any disorder, one must treat it at its source.

The fact that many reliable medical authorities tell us that over 65% of all men past fifty years of age suffer from some form of prostatic trouble is suffi-

cient reason for our having dwelt so at length regarding this part of the progenital system. And with the proper exercise of personal hygience and immediate attention of any symptoms of distress, many acute conditions of this gland may be completely remedied before they become chronic.

Do you know that over 40%, yes, nearly 50%, of the American men past forty cannot even reproduce their kind?

Prostatitis covers a wide field, ranging from the milder forms of irritation to a complete state of hypertrophy (enlargement) or atrophy (hardening). In fact, many men do not even know that they have a prostate gland until they are almost ready for a prostatectomy (the removal of the prostate gland by excision), having misread the symptoms of the disordered gland and taken treatments for bladder or kidney trouble instead.

Sex weaknesses and lost manhood, when due to prostate trouble, have been found to respond beautifully to application of the infra-red radiation and thermal-energy when applied directly in the area of the prostate by the "Thermalaid."

Much is said about glands these days. Experimenters are taking the glands of animals and feeding them to patients with the hope of doing for the patients what the patient's own glands should have done.

But isn't it much more desirable to have our own glands in health and working properly than to depend upon the glands of the lower animals?

So we come to you with Thermalaid, a convenient means of applying vitalizing, dry, electrically generated, thermic energy, directly in the area of the inflamed prostate in a continuous manner, correctly.

The late forties and fifties are approached by many men with a more or less certain uneasiness. Rather unconsciously they become aware of shortcomings—resistance may be lowered; little incidents are magnified; we find ourselves cross and irritable; things at home are no longer just right, the coffee isn't good, things we once cherished and looked forward to with high anticipation become more like a duty and even then are attempted with uncertainty.

Just think how good you would feel if the frequency of urination was relieved—if the backache that has bothered you for a long time was more comfortable—if you could do your work without that tired listless feeling, so often resulting from broken rest. Only a safe, convenient and comfortable method would appeal to your good judgment. THERMALAID is just that method. Thermalaid releases to the prostate through the rectum wall those long rays of infra-red radiation so soothing and comforting. This type of therapy is strikingly successful with inflammatory conditions of the prostate.

The potency, logic, simplicity and economy of the THERMALAID are among its highest endorsements and warrant your immediate trial. Much of life's happiness may often be restored in the Autumn and much of your lost confidence may often be regained. * * *

PAR. 4. By the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the Thermalaid Method, Inc., and Charles H. McFarland, respondents, represent directly and by implication that the use of their device "Thermalaid" provides a cure or remdy for all prostate gland disorders ranging from milder forms of prostatitis due to irritation to a complete state of hypertrophy (enlargement), or atrophy (hardening) of the gland, and that use of such device constitutes a

competent and effective treatment therefor. By said means the respondents further represent that the use of said device "Thermalaid" will prolong vigorous years of life and recuperate the vitality and sex virility.

PAR. 5. The foregoing statements and representations used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading, and untrue. In truth and in fact, the use of respondents' device "Thermalaid" does not provide a cure or remedy for prostate gland disorders, or provide a competent and effective treatment therefor in excess of the benefit that might be expected through the local application of heat in cases of acute or chronic prostatitis in its milder forms. This device has no therapeutic value in the treatment of the state of hypertrophy or atrophy of the prostate gland. Such device is of no value in prolonging vigorous years of life, and will not recuperate vitality or sex virility.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their device, and those not specifically set out herein, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the 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 this device.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein set out, are all to the prejudice and injury 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 respondents herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which provides among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the 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, Thermalaid Method, Inc., a corporation and its officers, and respondent, Charles H. McFarland, an individual, and the aforesaid respondents' respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a therapeutic device sold under the name, Thermalaid, or any device 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:

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,

(1) That the use of Thermalaid will prolong the vigorous years of one's life and recuperate one's vitality or sex virility.

(2) That the use of Thermalaid will provide a competent and effective cure or remedy for prostatic gland disorders.

(3) That the use of Thermalaid will provide a cure for all types of prostatic trouble.

(4) That the use of Thermalaid constitutes a competent or effective treatment for hypertrophy (enlargement or added growth) or atrophy (hardening) of the prostate gland.

(5) That sex weaknesses and loss of manhood, when due to prostate trouble, will be benefited by the use of Thermalaid.

(6) That the use of Thermalaid will provide any relief from prostate gland disorders in excess of the benefit that might result from the local application of heat in cases of acute or chronic prostatitis in its milder forms.

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 Thermalaid, 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.

Syllabus

IN THE MATTER OF

ORGANIZATION SERVICE CORPORATION, HERBERT S. BLAKE, THOMAS B. JORDAN, 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 4351. Complaint, Oct. 17, 1940—Decision, July 25, 1941

Where five corporations constituting the largest manufacturers in the United States of pins, metal paper clips, and fasteners used as office supplies, and occupying, together, a predominant position in the interstate sale and distribution thereof, and which were members of the Metal Paper Fasteners Institute and the Pin Manufacturers' Institute (membership of which in 1938 made and sold approximately 64.76 percent of all the paper clips manufactured and sold in the United States, 96.18 percent of the fasteners, and 100 percent of the pins used as office supplies), and made bids and secured orders from various governmental agencies, and were in competition among themselves and with other manufacturers of similar products except as below set forth;

Acting between and among themselves and by means of said so-called institutes of a corporation (1) which was engaged in the business of organizing such trade groups under the announced policy of improving the articles made by the members, improving use and consumption of such articles, and disseminating useful market and other legal information, (2) president and general counsel of which issued instructions to the secretaries of such institutes as to procedure to be followed by them, (3) vice president of which was secretary of the institutes in question, and (4) expenses of which corporation were paid by assessments levied against the members of the institutes, based on business done; and with the aid and cooperation of aforesaid individuals, acting individually and as president and vice president of said Organization Service Corporation, and with the latter acting also as secretary of the two institutes—

Entered into and carried out an understanding, agreement, or combination among themselves to fix and maintain, and to adhere to, uniform prices to be charged for the sale of said manufacturers' office pins, paper clips, and fasteners; and, pursuant thereto and in furtherance thereof—

(*a*) Agreed to, and did, maintain and adhere to substantially uniform price lists on comparable pins, paper clips, and fasteners made by them, and to change, and did change, simultaneously, prices at which such products were sold or offered by themselves, directly, or as principals of their respective distributing agents;

(*b*) Sponsored, called and held conferences of representatives of the members in question and of other members, at the time of the quarterly meetings of the institutes of said corporation, shortly after which they issued price lists containing substantially uniform prices for their products, to become effective on approximately the same dates for the following quarterly period, exchanged price lists freely as a common practice, and in the majority of instances sold their products at the prices stated therein; with intent and effect of carrying out and making effective such agreement, etc.; and

(c) Employed and made use of said institutes and secretary thereof, through practice of addressing to said secretary, on form prepared and furnished by said Organization Service Corporation, inquiry to ascertain whether or not a suspected low price which had come to the attention of the inquiring member as being not in conformity with the members' substantially uniform price lists, had in fact been quoted, and, if so, by whom, following which the various members were circularized on similarly prepared forms and inquiring member was advised as to results of the inquiry thus initiated by him; and

Where said corporation and its aforesaid officers, acting through its said institutes—

Aided and abetted aforesaid members of such institutes in the enforcement of such agreement, by having the members report to the corporation, which thereupon compiled and disseminated among them statistical information concerning prices charged by members on consummated sales, including information showing members' shipments for a specific period, and advising each member as to his relative position to the whole industry, and by making inquiries pertaining to prices, conditions or terms of completed sales, and also inquiries for members with respect to sales made at, or suspected as having been made at, unusually low prices;

Capacity, tendency, and effect of which acts and practices were to fix and maintain prices at, and conditions under which the products in question were sold or offered for sale throughout the United States; to unreasonably eliminate and restrain competition in said products, thus depriving the consuming public of advantages in price, service, and other considerations which they would receive under conditions of normal unobstructed and fair competition; and to interfere with the normal flow of trade and commerce in pins, paper clips, and fasteners used as office supplies:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and had a tendency to unduly hinder and prevent competition in the sale and distribution of such products in commerce, to place in said manufacturing members the power to control the prices at which they were thus sold, and to unduly restrict and restrain their sale and distribution therein, and constituted unfair methods of competition.

Mr. Fletcher G. Cohn for the Commission.

Tibbetts, Lewis, Lazo & Welch, of New York City, for Organization Service Corporation, Herbert S. Blake, Thomas B. Jordon, Noesting Pin Ticket Co., Inc., and Vail Manufacturing Co.

Mr. Francis T. Reeves and *Mr. Mark L. Sperry, 2d*, of Waterbury, Conn., for Scovill Manufacturing Co.

Davis, Polk, Wardwell, Gardiner & Reed, of New York City, for F. Kelly Co.

Mr. A. Lewis Spitzer, of New York City, for William Prym, Inc.

COMPLAINT

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

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

PARAGRAPH 1. Respondent Organization Service Corporation is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 74 Trinity Place, New York, N. Y.

Respondent Herbert S. Blake, an individual, is an attorney at law in whose offices, situated at 74 Trinity Place, New York, N. Y., is located the office and principal place of business of respondent Organization Service Corporation, of which respondent he is the president and counsel.

Respondent Thomas B. Jordan, an individual whose place of business is likewise located at 74 Trinity Place, New York, N. Y., is vice president of respondent Organization Service Corporation, and also is secretary of the Metal Paper Fastener Institute and the Pin Manufacturers' Institute of respondent Organization Service Corporation, the nature and purpose of which institutes will be set forth more fully hereinafter.

Among the members of said respondent Organization Service Corporation, who are also members of either or both of the aforementioned "Institutes" of respondent Organization Service Corporation, and all of whom are engaged in the manufacture, sale, and distribution of pins, paper clips, and fasteners which are used as office supplies, are the following respondents:

Scovill Manufacturing Co., a corporation organized and existing under the laws of the State of Connecticut, with its principal office and place of business located at 109 Mill Street, Waterbury, Conn.; the said respondent operates as one of its divisions, The Oakville Co., which is located at Oakville, Conn., and which is engaged in the manufacture, sale, and distribution of pins, paper clips, and fasteners which are used as office supplies;

Noesting Pin Ticket Co., Inc., a corporation organized and existing by virtue of the laws of the State of New York, with its principal office and place of business being located at 728 East One Hundred and Thirty-sixth Street, New York, N. Y.;

Vail Manufacturing Co., a corporation existing and doing business by virtue of the laws of the State of Illinois, with its principal office and place of business being located at 900 East Ninety-fifth Street, Chicago, Ill.;

F. Kelly Co., a corporation organized and existing by virtue of the laws of the State of Connecticut, with its principal office and place of business being located at Derby, Conn.;

William Prym, Inc., 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 being located at 2102 Forty-fourth Street, Long Island City, N. Y.

The above-named respondents, Scovill Manufacturing Co., operating a division known as the Oakville Co., Noesting Pin Ticket Co., Inc., Vail Manufacturing Co., F. Kelly Co. and William Prym, Inc., hereinafter referred to as "respondent members," do not constitute the entire membership of the Metal Paper Fastener Institute and the Pin Manufacturers' Institute of respondent Organization Service Corporation, but are the largest manufacturers of pins, paper clips, and fasteners used as office supplies, who are members of said respondent Organization Service Corporation, and dominate and control, in conjunction with respondents Herbert S. Blake and Thomas B. Jordan, the affairs and policies of said institutes.

PAR. 2. Respondent Organization Service Corporation is engaged in the business of organizing trade groups, which it calls "Institutes," with the announced policy of said respondent being to improve the articles manufactured by the members of said Institutes through the improving of the standards of said articles, etc., to improve the use and consumption of said articles and to disseminate useful market and other legal information.

The Metal Paper Fastener Institute of respondent Organization Service Corporation, to which respondent members belong, is comprised of manufacturers of paper clips and fasteners; the Pin Manufacturers' Institute of respondent Organization Service Corporation, to which respondent members belong, is comprised of manufacturers of pins. The members of these two Institutes of respondent Organization Service Corporation represent approximately 100 percent of all the pin manufacturers in the United States, 90 percent of the manufacturers of fasteners, and 70 percent of the manufacturers of clips.

PAR. 3. The salaries of Herbert S. Blake and Thomas B. Jordan and the expenses of respondent Organization Service Corporation are paid by means of assessments levied against the members of the Institutes comprising respondent Organization Service Corporation, based on the amount of business done by each manufacturing member of said Institutes, each such member, including respondent members of the Metal Paper Fastener Institute and the Pin Manufacturers' Institute of respondent Organization Service Corporation, reports to said re-

spondent, the dollar value and the number of thousands of the different articles made by each of said respondent members.

PAR. 4. The Institutes of respondent Organization Service Corporation, to which respondent members belong, meet every 3 months, the meetings being held at either the Biltmore or Commodore Hotels of New York City in the winter and the Westchester Country Club of Rye, N. Y., in the summer.

PAR. 5. In the course and conduct of their respective businesses, each of the respondent members manufacture pins, paper clips, and fasteners, used as office supplies, and sells and distributes said products to the purchasers thereof located in the various States of the United States and in the District of Columbia, and as part of said sales, ships or causes to be shipped, said products to said purchasers thereof located in States of the United States other than the States of origin of said shipments, and in the District of Columbia. All of said respondent members have maintained, and still maintain, a current of trade and commerce in the said pins, paper clips, and fasteners manufactured by them, between and among the various States of the United States and in the District of Columbia.

PAR. 6. Respondent Organization Service Corporation, its officers and employees, and respondents Herbert S. Blake and Thomas B. Jordan aided, abetted, furthered, cooperated with, and were instrumentalities of and parties to the understanding, agreement, combination and conspiracy hereinafter set out, and actively participated in the performance of the acts and things set forth herein in paragraphs 10 and 11.

PAR. 7. All of said respondent members, in the course and conduct of their respective businesses, request, secure, and make bids and secure orders from various governmental agencies, national, State, and local, through and by means of distributing agents, for the pins, paper clips, and fasteners manufactured by said respondent members; the offers, for the sale of the pins, paper clips, and fasteners used as office supplies in compliance with the bids so received by said agents, are made by these distributing agents solely and entirely upon instructions received and given them by said respondent members concerning the prices to be offered in compliance with said bids, with the respondent members acting as the undisclosed principals of said agents.

PAR. 8. All of said respondent members are in competition between and among themselves and with other manufacturers of pins, paper clips, and fasteners used as office supplies in making, and seeking to make, sales of the pins, paper clips, and fasteners manufactured by

said respondents to the purchasers thereof, either directly or through and by means of the aforementioned agents, except insofar as this competition has been hindered, lessened, restricted, restrained, or forestalled by their acts, practices, and methods hereinafter particularly described and set forth.

PAR. 9. Respondent members, acting between and among themselves, or through and by means of the Metal Paper Fastener Institute or the Pin Manufacturers' Institute of respondent Organization Service Corporation, and by other means and methods, have, since about 1936, entered into and thereafter carried out, and are still carrying out, an understanding, agreement, combination and conspiracy, for the purpose and intent, and with the effect, of unlawfully restricting, restraining, monopolizing and suppressing, and eliminating, competition in the sale and offers of sale, of pins, paper clips, and fasteners used as office supplies, in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 10. Pursuant to said understanding, agreement, combination, and conspiracy, and in furtherance thereof, said respondent members, acting in this manner and by the methods herein set out, have done and performed, and still do and perform, among other acts and things, the following:

1. Agreed to fix and maintain, and have fixed and maintained, uniform prices for the sale of pins, paper clips, and fasteners used as office supplies, which are manufactured by said respondent members;

2. Agreed to maintain, and have maintained, identical price lists on comparable pins, paper clips, and fasteners used as office supplies, which are manufactured by said respondent members;

3. Agreed to change, and have changed, simultaneously the prices at which comparable pins, paper clips, and fasteners used as office supplies, which are manufactured by said respondent members, are sold and are to be offered for sale, either by themselves directly, or as undisclosed principals through their respective distributing agents;

4. Agreed to submit, and have submitted, as undisclosed principals acting through their respective distributing agents, or by other means or methods, identical or uniform bids for the sale of pins, paper clips, and fasteners used as office supplies, to various governmental purchasing agencies including those of the United States Government;

5. Used, and are now using, other unlawful means and methods in restricting, suppressing, preventing, and eliminating competition in the sale, bids for the sale, and offers of sale of pins, paper clips, and fasteners used as office supplies, in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 11. For the purpose of making effective the aforementioned understanding, agreement, combination, and conspiracy, and of requiring compliance therewith and observance thereof by all of the respondent members, the other members of the aforementioned Institutes of respondent Organization Service Corporation and other competitive manufacturers of pins, paper clips, and fasteners used as office supplies, said respondent members, among other acts and things, have done the following:

1. Investigated and consulted with each other, with other members of the aforesaid Institutes of respondent Organization Service Corporation and with other competitive manufacturers of pins, paper clips, and fasteners used as office supplies, through and by means of respondent Organization Service Corporation, the Pin Manufacturers' Institute, and Metal Paper Fastener Institute of respondent Organization Service Corporation, respondent Thomas B. Jordan or by other means or methods, for the purpose and intent, and with the result, of determining the prices charged or to be charged by said respondent members, acting either directly or as undisclosed principals of their distributing agents, by the other members and by other competing manufacturers, for the pins, paper clips, and fasteners used as office supplies, which are manufactured by said respondent members and their competitors;

2. Interchanged, through and by means of respondent Organization Service Corporation, Metal Paper Fastener Institute, and the Pin Manufacturers' Institute of said respondent, and through and by means of respondent Thomas B. Jordan and through other means and methods, monthly statistics showing the value of the shipments of pins, paper clips, and fasteners used as office supplies manufactured by members of said Institutes;

3. Supervised, through and by means of respondent Organization Service Corporation, Metal Paper Fastener Institute, and the Pin Manufacturers' Institute of said respondent, and through and by means of respondent Thomas B. Jordan and by other means and methods, the activities of the members of said Institutes and competing manufacturers of pins, paper clips, and fasteners used as office supplies, for the purpose and intent, and with the effect, of securing adherence by the respondent members and their competitors, to prices, terms, and conditions of sale agreed upon by said respondent members in the manner hereinbefore described, and more particularly to prevent and prohibit the quotation and sale by respondent members or their competitors, regardless of whether or not they are members of said Institutes, of lower competitive prices for the sale of pins, paper clips, and fasteners used as office supplies;

4. Offered uniform bids to governmental agencies, including those of the United States Government, and to other prospective purchasers, either directly or as undisclosed principals through and by means of their distributing agents.

PAR. 12. Each of said respondent members has acted, and now acts, in concert and in cooperation with one or more of the other respondent members by means of and through respondent Organization Service Corporation, Metal Paper Fastener Institute, the Pin Manufacturers' Institute of respondent Organization Service Corporation, the officers, representatives, and agents of said respondent Organization Service Corporation, or by and through other means and methods, in doing and performing the acts and practices hereinabove alleged, in furtherance of said understanding, agreement, combination, and conspiracy.

PAR. 13. The capacity, tendency, and effect of said understanding, agreement, combination and conspiracy, and the acts and practices of respondents in pursuance thereof, are and have been:

1. To monopolize in respondent members and the other members of the aforementioned Institutes the business of selling and distributing pins, paper clips, and fasteners used as office supplies, throughout the United States;

2. To fix and maintain the prices at, and the conditions under, which said pins, paper clips, and fasteners are sold or offered for sale, either directly by the manufacturers thereof or by undisclosed distributing agents, throughout the United States;

3. To prevent competitive manufacturers of said pins, paper clips, and fasteners used as office supplies, who are not members of the aforementioned Institutes, from selling said products throughout the United States;

4. To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the sale and offering for sale of said products throughout the United States, and thus deprive the purchasing and consuming public of the advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed and free and fair competition in the sale and offering for sale of said products, and to otherwise operate as a restraint upon, obstruction and deterrent to, the freedom of fair and legitimate competition in such trade and industry;

5. To suppress, eliminate, and discriminate against competing manufacturers of said products who are not members of respondent Organization Service Corporation, but who are and have been engaged in, or desire to be engaged in, the selling of said products throughout the United States;

6. To obstruct and prevent the establishment of new manufacturers of said products throughout the United States;

7. To suppress and eliminate price competition among distributing agents in the sale and offers for sale of said products throughout the United States;

8. To burden, hamper, and interfere with the normal and natural flow of trade and commerce in pins, paper clips, and fasteners used as office supplies, into, through and from the various States of the United States, and to injure the competitors of the members of the aforementioned Institutes by unfairly diverting business and trade from them, depriving them of trade, and otherwise oppressing them;

9. To prejudice and injure manufacturers of pins, paper clips, and fasteners used as office supplies, who do not conform to respondent members' program or those of respondent Organization Service Corporation and the Metal Paper Fastener Institute, and the Pin Manufacturers' Institute of said respondent Organization Service Corporation, or who do not desire to conform with them, but are compelled to do so by the concerted action of the respondents hereinabove alleged.

PAR. 14. The above alleged acts, practices, methods, and things done by respondents are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented price competition, between and among members of the aforesaid Institutes of respondent Organization Service Corporation and other manufacturers of pins, paper clips, and fasteners used as office supplies, in the sale of said products in commerce between and among the several States of the United States and in the District of Columbia; have placed in the members of the aforesaid Institutes the power to control and enhance prices for pins, paper clips, and fasteners used as office supplies; have unreasonably restrained said commerce in such products, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 17th day of October 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, as "commerce" is defined in the Federal Trade Commission Act, in violation of the provisions of said act. All of said respondents have duly filed their answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, signed and executed by the respective respondents, 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 to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument, the filing of briefs or the filing of a report on the evidence by a trial examiner for the Commission. 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 Organization Service Corporation is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 74 Trinity Place, New York, N. Y.

Respondent Herbert S. Blake, an individual, is an attorney at law, whose offices, situated at 74 Trinity Place, New York, N. Y., are located in the office and principal place of business of respondent Organization Service Corporation, of which respondent, he is the president and counsel.

Respondent Thomas B. Jordan, an individual whose place of business is likewise located at 74 Trinity Place, New York, N. Y., is vice president of respondent Organization Service Corporation, and also is secretary of the Metal Paper Fastener Institute and the Pin Manufacturers' Institute of respondent Organization Service Corporation, the nature and purpose of which Institutes will be set forth more fully hereinafter.

Among the members of either or both of the aforementioned "Institutes" of respondent Organization Service Corporation, and all of whom are engaged in the manufacture, sale, and distribution of pins, paper clips, and fasteners which are used as office supplies, as hereinafter set out in paragraph 7, are the following respondents:

Scovill Manufacturing Co., a corporation organized and existing under the laws of the State of Connecticut, with its principal office and place of business located at 99 Mill Street, Waterbury, Conn.; the said respondent operates as one of its divisions, The Oakville Co.,

which is located at Oakville, Conn., and which is engaged in the manufacture, sale, and distribution of pins, paper clips, and fasteners which are used as office supplies;

Noesting Pin Ticket Co., Inc., a corporation organized and existing by virtue of the laws of the State of New York, with its principal office and place of business being located at 728 East One Hundred and Thirty-sixth Street, New York, N. Y.;

Vail Manufacturing Co., a corporation existing and doing business by virtue of the laws of the State of Illinois, with its principal office and place of business being located at 900 East Ninety-fifth Street, Chicago, Ill.;

F. Kelly Co., a corporation organized and existing by virtue of the laws of the State of Connecticut, with its principal office and place of business being located at Derby, Conn.;

William Prym, Inc., 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 being located at 50 East Forty-second Street, New York, N. Y.

The above-named respondents, Scovill Manufacturing Co., hereinafter referred to as respondent "Scovill," operating a division known as the Oakville Co., hereinafter referred to as respondent "Oakville," Noesting Pin Ticket Co., Inc., hereinafter referred to as respondent "Noesting," Vail Manufacturing Co., hereinafter referred to as respondent "Vail," F. Kelly Co., hereinafter referred to as respondent "Kelly," and William Prym, Inc., hereinafter referred to as respondent "Prym," all of which respondents are hereinafter referred to as "respondent members," do not constitute the entire membership of the Metal Paper Fastener Institute and the Pin Manufacturers' Institute of respondent Organization Service Corporation.

Said respondent members are the largest manufacturers in the United States of pins, metal paper clips, and fasteners used as office supplies, and combined together, they occupy a predominant position in the sale and distribution of such products in commerce between and among the several States of the United States and in the District of Columbia.

The respondent members also are engaged in the manufacture and sale of products other than pins, paper clips, and fasteners used as office supplies.

PAR. 2. Respondent Organization Service Corporation is engaged in the business of organizing trade groups, which it calls "Institutes," with the announced policy of said respondent being to improve the articles manufactured by the members of said Institutes

through the improving of the standards of said articles, etc., to improve the use and consumption of said articles and to disseminate useful market and other legal information.

The Metal Paper Fastener Institute of respondent Organization Service Corporation, to which respondent members belong, is comprised of manufacturers of paper clips and fasteners; the Pin Manufacturers' Institute of respondent Organization Service Corporation, to which respondent members belong, is comprised of manufacturers of pins.

In the year 1938 the members of the two Institutes manufactured and sold approximately 64.76 percent of all the paper clips manufactured and sold in the United States; 96.18 percent of the fasteners, and 100 percent of the pins, used as office supplies.

The said Metal Paper Fastener Institute and Pin Manufacturers' Institute were organized by respondent Organization Service Corporation. A form of the contract entered into and carried out by and between each and all of respondent members and respondent Organization Service Corporation reads as follows:

AGREEMENT, made in duplicate this 14th day of September, 1936, between:

OAKVILLE COMPANY DIVISION

SCOVILL MANUFACTURING COMPANY

a corporation, having its principal place of business at:

Waterbury, Connecticut

hereinafter called the Subscriber, and

ORGANIZATION SERVICE CORPORATION

a New York corporation, having its principal place of business at No. 74 Trinity Place, New York, N. Y., hereinafter called the Corporation.

WHEREAS, the Corporation is engaged in managing trade organizations; in serving industrial groups through collecting, compiling and furnishing to its Subscribers industrial statistics; in planning and supervising simplification and standardization of manufactured products; and in directing economic research, and

WHEREAS, the Subscriber is engaged in the business of manufacturing and selling one or more of the following products: Paper Clips and Paper Fasteners, and together with other manufacturers of similar products, is desirous of securing from the Corporation its services, as above described, in connection with the METAL PAPER FASTENER INDUSTRY,

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto agree as follows:

(1) The Corporation will establish and maintain a department to collect, compile and furnish to the Subscriber such weekly and monthly statistical reports, tables and charts as may be desired by the Subscriber, pertaining to

the Subscriber's business as may be required by the Corporation for the compilation of such statistical reports.

(2) The Corporation will cause to be established an "Institute" to be constituted of the several Subscribers hereto, to be known as the "METAL PAPER FASTENER INSTITUTE," and will manage such Institute under the direction of its members.

(3) The Corporation will hold at designated times and places in New York City, meeting of such Institute for the purpose of discussing economic subjects, statistical tabulations and other matters of interest to the Subscribers, and will have its representative present at all such meetings.

(4) The Corporation will employ the services of MR. THOMAS B. JORDAN to serve as Secretary of the Institute, who will devote all required time and attention to the interests of the members of the Institute in connection with such office.

(5) The Charge of the Corporation to each of the Subscribers for its aforesaid services shall be on the basis of one-half (½) of 1 percent upon the Subscriber's total shipments, expressed in dollar value, of Paper Clips, Paper Fasteners and related products as reported to the Institute each calendar month during the life of this Agreement.

Within the first ten days of each month, the Subscriber shall pay to the Corporation the amount billed to the Subscriber in accordance with the foregoing, and the record of shipments for the second month previous to the date of each bill rendered, shall be used as the basis for billing. For initial billing, prior to the inauguration of a statistical reporting plan, the reports made on past sales shall be used.

It is understood, however, that the total monthly charge of the Corporation to all the Subscribers shall not be less than Four Hundred and Sixteen and 66/100 ($416.66) Dollars and the Corporation shall vary the base charge of one-half (½) of one (1) percent to the extent necessary to keep the total charge to all Subscribers within the aforesaid minimum limit.

(6) The service charge provided for in Paragraph 5 shall not cover extraordinary expenses of the Institute; such as, actual out-of-pocket disbursements of any of the Corporation's representatives when outside New York City on business for the Subscribers, long distance telephone calls, telegrams, luncheon expenses at meetings of the Institute, nor other special expenses that may be authorized or directed by a general meeting of the Members.

Such extraordinary expenses may be incurred by the Corporation only when authorized or directed at a general meeting of the Institute, and when so authorized or directed they shall be paid by the members ratably, to reported sales, upon presentation by the Corporation of proper bills of account.

(7) The term of the Agreement shall be one (1) year, commencing the first day of February 1936, and shall be extended automatically from year to year after January 31, 1937, unless thirty days prior to January 31, 1937 and/or each January 31st thereafter, the Subscriber shall give notice in writing to the Corporation of intention to terminate the agreement at the end of the then year of subscription.

It is agreed, however, that the Subscriber may resign from the Institute at any time, upon presentation in writing of good and sufficient reasons for such action, and from and after the date of such resignation, all obligations of the Subscriber hereunder shall cease, except the obligation to pay the Subscriber's proportionate part of the charges and expenses defined in this Agreement for the period ending January 31, 1937, or any extended period.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, this 14th day of September, 1936.

OAKVILLE COMPANY DIVISION
SCOVILL MANUFACTURING COMPANY
By: BENNETT BRONSON, *Vice Pres.*
ORGANIZATION SERVICE CORPORATION
By: HERBERT S. BLAKE, *Pres.*

PAR. 3. The Secretary of both the said Institutes, respondent Thomas B. Jordan, is also vice president of the respondent Organization Service Corporation. Respondent Herbert S. Blake, an individual, is an attorney at law, whose offices, situated at 74 Trinity Place, New York, N. Y., are located in the office and principal place of business of respondent Organization Service Corporation, of which respondent he is the president and counsel. The said Institutes have no separate and distinct letterheads so that letters from the said respondent Thomas B. Jordan, as Secretary of said Institutes, are written on the letterheads of respondent Organization Service Corporation. Respondent Herbert S. Blake as president and counsel of respondent Organization Service Corporation, issues instructions to the secretaries of the said Institutes regarding the procedure to be followed by them in the conduct of the operations of said Institutes of respondent Organization Service Corporation. Substantially all of the various forms used or employed by said Institutes are prepared and are furnished by said respondent Organization Service Corporation.

PAR. 4. The said Institutes are managed and directed by respondent Organization Service Corporation, acting through and by means of respondents Herbert S. Blake and Thomas B. Jordan, and said respondents, Organization Service Corporation, Herbert S. Blake, and Thomas B. Jordan are responsible for the acts and practices hereinafter found, which were, and are, performed by said Institutes.

PAR. 5. Part of the salaries of respondents Herbert S. Blake and Thomas B. Jordan and the expenses of respondent Organization Service Corporation are paid by means of assessments levied against the members of the Institutes, based on the amount of business done by each member of said Institutes. The assessments levied against respondent members are based upon the business each does in the manufacture of pins, paper clips, and fasteners used as office supplies.

PAR. 6. The Institutes of respondent Organization Service Corporation, to which respondent members belong, meet every 3 months, the meetings being held at either the Biltmore or Commodore Hotels of New York City in the winter and the Westchester Country Club of Rye, N. Y., in the summer.

PAR. 7. In the course and conduct of their respective businesses, respondents Scovill, Vail, and Noesting manufacture pins, paper clips, and fasteners used as office supplies, respondent Prym manufactures such pins and paper clips, and respondent Kelly such fasteners, and each sells and distributes said products to the purchasers thereof located in the various States of the United States and in the District of Columbia, and as part of said sales, ships or causes to be shipped, said products to said purchasers thereof located in States of the United States other than the States of origin of said shipments, and in the District of Columbia. All of said respondent members have maintained, and still do maintain, a current of trade and commerce in the said pins, paper clips, and fasteners manufactured by them, between and among the various States of the United States and in the District of Columbia.

PAR. 8. All of said respondent members, in the course and conduct of their respective businesses, request, secure, and make bids and secure orders, from various governmental agencies, national, State, and local, through and by means of distributing agents, for the pins, paper clips, and fasteners manufactured by said respondent members; the offers, for the sale of the pins, paper clips, and fasteners used as office supplies, in compliance with the bids so received by said agents, are made by these distributing agents, in most instances, upon instructions received and given them by said respondent members concerning the prices to be offered in compliance with said bids, with the respondent members acting as the undisclosed principals of said agents.

Said respondent members have never presented bids to the United States Government through the medium of any agents, to the end and purpose that there should be no disclosure to the Government of the agency relationship existing between said respondent members and their respective agents.

PAR. 9. All of said respondent members are in competition between and among themselves and with other manufacturers of pins, paper clips, and fasteners used as office supplies, in making, and seeking to make, sales of said products manufactured by them to purchasers thereof, either directly or through and by means of their respective agents, except insofar as this competition has been hindered, lessened, restricted, restrained, or forestalled by the acts, practices, and methods hereinafter found.

PAR. 10. Since about the year 1936, representatives of respondent members have, during, or at the time of the quarterly meetings of the Metal Paper Fastener Institute and the Pin Manufacturers' Institute of respondent Organization Service Corporation, discussed among

themselves and with representatives of other members of said Institutes, ways and means of stabilizing the prices for pins, paper clips, and fasteners used as office supplies, and in the course of said discussions, these representatives have exchanged information as to the prices, terms, and conditions of sales which have been made or were to be made by the members of said Institutes, for such products. Within a short time after such quarterly meetings of said Institutes, respondent members have issued price lists, containing substantially uniform prices for such products, which prices were to become effective in each instance approximately on the same dates, for the following quarterly period of the year. Respondent members have exchanged freely, as a common practice, their respective price lists for such products, and in a majority of instances, the respondent members have sold such products at the prices stated in their respective price lists.

PAR. 11. Since about the year 1936, respondent members, acting cooperatively and as members of the Metal Paper Fastener Institute and the Pin Manufacturers' Institute of respondent Organization Service Corporation, have employed and used said Institutes and respondent Thomas B. Jordan, as the secretary of said Institutes for the performance of the following acts to aid them in carrying out and enforcing the agreement, understanding, and combination among them, hereinafter found in paragraph 12:

In many instances, when it comes to the attention of one of respondent members that pins, paper clips, or fasteners have been sold by a member of one of said Institutes at a price which such respondent member believes is not in conformity with the price lists of the members, which price lists in general are substantially uniform, the respondent member sends, on a form prepared and furnished by respondent Organization Service Corporation, to respondent Thomas B. Jordan, as the secretary of said Institutes, an inquiry to ascertain whether or not such a low price was quoted, and, if so, by whom; respondent Thomas B. Jordan, as secretary of the Institutes, then circularizes, on forms prepared and furnished by respondent Organization Service Corporation, the various manufacturers of such products who are members of the Institutes, including the other respondent members, for the purpose of securing this information and reporting it back, on a form prepared and furnished by respondent Organization Service Corporation, to the inquiring member. This same procedure was followed, in many instances, prior to 1939, when one of the respondent members learned of an unusually low price or prices having been paid by the various governmental agencies, and also, in many instances, prior to 1939, when a respondent

member learned that a bid has been accepted from an agent for such products whose principal was unknown which bid such respondent member believed was unusually low. In the latter instance, the various manufacturers of the particular product involved, who were members of the said Institutes, were circularized by respondent Thomas B. Jordan, as secretary of the said Institutes of respondent Organization Service Corporation, for the purpose of finding out the identity of the principal of said agent.

Respondent Organization Service Corporation collects, on forms furnished and prepared by said respondent, figures showing shipments made for a specific prior period by all members of the two Institutes, which enables the said respondent Organization Service Corporation to furnish each member of the said Institutes information as to the relative position of the particular member to the whole industry, but without telling the member of the relative positions of the other members of the industry.

PAR. 12. It follows from the foregoing facts, heretofore found in paragraphs 10 and 11, that respondent members, acting between and among themselves and through and by means of the Metal Paper Fastener Institute and the Pin Manufacturers' Institute of respondent Organization Service Corporation, and with the aid and cooperation of respondents Herbert S. Blake and Thomas B. Jordan, acting both individually, and as president and vice president, respectively, of respondent Organization Service Corporation, and respondent Thomas B. Jordan, acting as secretary of the aforesaid Institutes, have, since about 1936, entered into, and thereafter carried out, and still are carrying out, an understanding, agreement or combination between and among themselves to fix and maintain and to adhere to, uniform prices to be charged for the sale of the pins, paper clips, and fasteners used as office supplies, which are manufactured by said respondent members; that pursuant to, and in furtherance of, such an agreement, understanding, or combination, said respondent members have agreed to maintain, and have maintained, and still do maintain and adhere to substantially uniform price lists on comparable pins, paper clips, and fasteners used as office supplies which are manufactured by them, and likewise have agreed to change, and have changed, and still do change simultaneously, the prices at which said products are sold, or offered for sale, by themselves directly or as principals of their respective distributing agents.

PAR. 13. Further, it follows from the foregoing facts, heretofore found in paragraphs 10 and 11, that, pursuant to, and in furtherance of the said agreement, understanding and combination heretofore found in paragraph 12, said respondent members, in conjunc-

tion, and in cooperation, with, and by means of, respondents, Organization Service Corporation, Herbert S. Blake and Thomas B. Jordan, acting as president and vice president, respectively, of respondent Organization Service Corporation, and respondent Thomas B. Jordan, acting as Secretary of the aforesaid Institutes, have sponsored, called and held, formal and informal meetings or conferences, during, or at the times of the quarterly meetings of the aforesaid Institutes of respondent Organization Service Corporation, at which there were discussions among the representatives of respondent members and those of other members of said Institutes, with the intent, purpose, and effect, of carrying out, and making effective, said agreement, understanding and combination.

PAR. 14. It still further follows from the foregoing facts, especially those heretofore found in paragraph 11, that respondents, Organization Service Corporation, Herbert S. Blake and Thomas B. Jordan, acting through and by means of the aforesaid Institutes of respondent Organization Service Corporation, aided and abetted, respondent members in the enforcement of, and in an effort to make effective, the said agreement, understanding and combination heretofore found in paragraph 12, by having respondent members report, as aforesaid to respondent Organization Service Corporation, and then having said respondent collect, audit, compile, disseminate and exchange among the members of said Institutes, statistical information or data concerning prices which had been charged by the members of these Institutes on consummated sales by said members of pins, paper clips, and fasteners used as office supplies, and also by making inquiries pertaining to prices, conditions, or terms of completed sales and by making the inquiries for members of said Institutes pertaining to prices, conditions or terms of completed sales, in the manner heretofore found in paragraph 11.

PAR. 15. The capacity, tendency, and effect of the acts and practices of all the respondents, as hereinbefore found and described, were, and are, to fix and maintain the prices at, and the conditions under which, pins, paper clips, and fasteners used as office supplies are sold, or are offered for sale, either directly by the manufacturers thereof or by the distributing agents of said manufacturers, throughout the United States; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the sale, and offering for sale, of the said products throughout the United States, and thus deprive the purchasing and consuming public of the advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal, unobstructed, free and fair competition in the sale, and offering for sale, of said products; and

to otherwise operate as a restraint upon, obstruction and deterrent to, the freedom of fair and legitimate competition in such trade and industry; and to burden, hamper, and interfere with the normal and natural flow of trade and commerce in pins, paper clips, and fasteners used as office supplies, into, through, and from, the various States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondents as hereinabove found are all to the prejudice of the public; have a tendency to unduly hinder and prevent competition in the sale and distribution of pins, paper clips, and fasteners used as office supplies in commerce as "commerce" is defined in the Federal Trade Commission Act; to place in respondent members the power to control the prices at which said products are sold in said commerce; to unduly restrict and restrain the sale and distribution of said products in said commerce; and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents and a stipulation entered into by and between the respondents herein and W. T. Kelley, Chief Counsel for the Federal Trade Commission, 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 respondents, Scovill Manufacturing Co., Noesting Pin Ticket Co., Inc., Vail Manufacturing Co., F. Kelly Co., and William Prym, Inc., separately and as members of the Metal Paper Fastener Institute and the Pin Manufacturers' Institute of respondent Organization Service Corporation, and each of them, and their respective successors and assigns, officers, agents, directors, and employees, directly and indirectly, or through or by means of respondent, Organization Service Corporation, or any other association or organization of like purport, its officers, representatives, agents, and employees, or through or by means of respondents, Herbert S. Blake or Thomas B. Jordan, or any other party or parties, or through or by any other means or method, and respondent Organization Service Corporation

its successors and assigns, officers, directors, agents, and employees, and respondent Herbert S. Blake, both individually and as president of respondent Organization Service Corporation, and respondent Thomas B. Jordan, both individually and as vice president of respondent Organization Service Corporation and as secretary of the Metal Paper Fastener Institute and the Pin Manufacturers' Institute of respondent Organization Service Corporation, shall all, and each of them in connection with the offering for sale, sale or distribution of pins, paper clips, or fasteners used as office supplies in commerce between and among the various States of the United States and in the District of Columbia, forthwith cease and desist, by agreement, combination, or understanding, express or implied, between or among themselves or with officers, or by concerted action which results from any such agreement, combination, or understanding:

1. From fixing, establishing, maintaining, or adhering to the prices to be charged for any or all of such products.

2. From changing simultaneously the prices to be charged for any or all of such products.

3. From sponsoring, calling, or holding any meeting or conference, formal or informal, or participating in any such meeting or conference when the intent, purpose, or effect of same is to fix, establish, maintain, or adhere to the prices to be charged for any or all of such products, or to engage in discussions to accomplish the same or similar results.

4. From reporting, collecting, auditing, compiling, disseminating, or exchanging statistical information or data concerning prices charged on consummated sales for any or all of such products, where the purpose or effect of same is to fix, establish, maintain, or adhere to, prices to be charged for any or all of such products.

5. From adopting, contributing to, or participating in, the dissemination of any information concerning, or relating to, prices charged or to be charged for any or all of such products when the purpose or effect of such dissemination is to effectuate the fixing, establishing, maintenance, or adherence to, prices to be charged for any or all of such products.

6. From employing, adopting, contributing to, or participating in, any inquiry or inquiries pertaining to prices, conditions, or terms of completed sales where the purpose, intent, or effect of same is to cause, or tend to cause, adherence to, or maintenance of, uniform prices to be charged by respondent members for any or all of such products.

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

Complaint

IN THE MATTER OF

EDWARD C. ROSE, INDIVIDUALLY AND TRADING AS ROSSE 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 4428. Complaint, Dec. 20, 1940—Decision, July 25, 1941

Where an individual engaged in interstate advertisement, sale, and distribution of his "Rosse Rheuma Tabs" medicinal preparation; by means of advertisements disseminated through the mails and otherwise, including numerous purported quotations from testimonials—

Represented, directly and by implication, that his said product was a cure or remedy for rheumatism, rheumatic pains, and sensitive joints and constituted a competent and effective treatment therefor, and that it would relieve the pain attendant upon such conditions for a longer period of time than any other preparation;

Facts being it was nothing more than a laxative and diuretic with mild analgesic properties, had no therapeutic value in the treatment of said ailments and conditions, in excess of furnishing temporary relief from the symptoms of pain, and had no special properties which would permit it to relieve pain more quickly or for a longer period of time than many other similar preparations;

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 such belief, to purchase his said preparation:

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

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 Edward C. Rose, individually and trading under the style and firm name of Rosse Products Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Edward C. Rose is an individual trading under the style and firm name of Rosse Products Co. with his principal place of business located at 2708 West Farwell Avenue, Chicago, Ill.

PAR. 2. Acting in his individual capacity and trading under the style and firm name of Rosse Products Co., respondent is now, and for more than 1 year last past has been, engaged in the advertising, sale and distribution of a medicinal preparation designated as "Rosse Rheuma Tabs," in commerce among and between the various States of the United States."

Respondent causes said medicinal preparation, designated as aforesaid, when sold, to be transported from respondent's place of business in the State of Illinois 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 the said medicinal preparation in commerce between and among the various States of the United States.

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 preparation "Rosse Rheuma Tabs" by the United States mails and by various other means in commerce, as commerce is defined by 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 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 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 as aforesaid, are the following:

My rheumatism disappeared, and I am deeply grateful to you, even though I was very dissatisfied at first; I felt it would not help, but after three weeks I learned the value of the tablets * * *. I can now do all my work and I am well satisfied and happy.

It is three years since your tablets rid me of rheumatism.

My rheumatism, God be praised, never returned. It is all of nine or ten years. I am 78 now, do my own house and garden work. I will feel thankful to you as long as I live.

I wish to write in regard to your Rheuma Tabs. They have relieved me entirely and I don't feel a sign of rheumatism. I am able to work every day and sleep then at night. Your tablets are wonderful and surely worth the money I paid for them.

I am glad and thankful that I used your good tablets. I could not walk up or down the church stairs, but now I am able to do it without difficulty.

If you have pains in your limbs, or, if your joints are very sensitive, if you have suffered torture with the change of the weather, now you have an

opportunity to obtain this simple and cheap remedy which brought relief to hundreds of other people.

It is all of 14 years ago that I had a bad case of rheumatism. I doctored and spent a lot of money, but it grew worse. I was so bad and my pains so great that my wife had to dress and undress me like a child. I heard of your Rosse Rheuma Tabs. You sent me a package and in two weeks I had lost my pains. I am deeply grateful and consider yours an excellent remedy for rheumatism.

PAR. 4. 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 said preparation, respondent represents, directly and by implication, that his said product "Rosse Rheuma Tabs" is a cure or remedy for rheumatism, rheumatic pains, and sensitive joints and constitutes a competent and effective treatment therefor, and that it will relieve the pain attendant upon such conditions for a longer period of time than any other preparation.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's product "Rosse Rheuma Tabs" is nothing more than a laxative and diuretic having mild analgesic properties. Such product has no curative action on the underlying factors that cause rheumatic pains. Respondent's product is not a cure or remedy for rheumatism, rheumatic pains, or sensitive joints and has no therapeutic value in the treatment of such conditions in excess of furnishing temporary relief from the symptoms of pain. The ingredients of this preparation are similar to those found in many other like preparations and this preparation has no special therapeutic properties which would permit it to relieve pain more quickly or for a longer period of time than many other preparations of a similar nature now on the market.

PAR. 6. The use by the respondent 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 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 December 20, 1940, issued, and on December 21, 1940, served its complaint in this proceeding upon respondent Edward C. Rose, charging the said Edward C. Rose, individually and trading under the style and firm name of Rosse Products Co., with unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After issuance of said complaint and the filing of 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, Edward C. Rose, is an individual trading under the style and firm name of Rosse Products Co., with his principal place of business located at 2708 West Farwell Avenue, Chicago, Ill.

PAR. 2. Acting in his individual capacity and trading under the style and firm name of Rosse Products Co., respondent is now, and for more than 1 year last past has been, engaged in the advertising, sale, and distribution, in commerce between and among the various States of the United States, of a medicinal preparation designated as "Rosse Rheuma Tabs." Respondent causes said medicinal preparation, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and he maintains, and at all times mentioned herein has 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 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 preparation, "Rosse Rheuma Tabs," by the United

States mails and by various means in commerce, as commerce is defined by 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 medicinal preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said medicinal preparation in commerce, as commerce is defined 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 as aforesaid, by the United States mails, and by various other means in commerce, are the following:

My rheumatism disappeared, and I am deeply grateful to you, even though I was very dissatisfied at first; I felt it would not help, but after three weeks I learned the value of the tablets * * *. I can now do all my work and I am well satisfied and happy.

It is three years since your tablets rid me of rheumatism.

My rheumatism, God be praised, never returned. It is all of nine or ten years. I am 78 now, do my own house and garden work. I will feel grateful to you as long as I live.

I wish to write in regard to your Rheuma Tabs. They have relieved me entirely and I don't feel a sign of rheumatism. I am able to work every day and sleep then at night. Your tablets are wonderful and surely worth the money I paid for them.

I am glad and thankful that I used your good tablets. I could not walk up or down the church stairs but now I am able to do it without difficulty.

If you have pains in your limbs, or, if your joints are very sensitive, if you have suffered torture with the change of the weather, now you have an opportunity to obtain this simple and cheap remedy which brought relief to hundreds of other people.

It is all of 14 years ago that I had a bad case of rheumatism. I doctored and spent a lot of money, but it grew worse. I was so bad and my pains so great that my wife had to dress and undress me like a child. I heard of your Rosse Rheuma Tabs. You sent me a package and in two weeks I had lost my pains. I am deeply grateful and consider yours an excellent remedy for rheumatism..

PAR. 4. Through the use of the statements and representations hereinabove set forth, and in other statements and representations similar thereto but not specifically set out herein, all purporting to be descriptive of the therapeutic properties of the aforesaid medicinal preparation, respondent represents, directly and by implication, that his said product, "Rosse Rheuma Tabs," is a cure or remedy for rheumatism, rheumatic pains, and sensitive joints and constitutes a competent and effective treatment therefor, and that it will relieve the pain attendant upon such conditions for a longer period of time than any other preparation.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's products, "Rosse Rheuma Tabs," is nothing more than a laxative and diuretic having mild analgesic properties. Such product has no curative action on the underlying factors that cause rheumatic pains. Respondent's product is not a cure or remedy for rheumatism, rheumatic pains, or sensitive joints, and has no therapeutic value in the treatment of such conditions in excess of furnishing temporary relief from the symptoms of pain. The ingredients of this preparation are similar to those found in many other like preparations and this preparation has no special therapeutic properties which would permit it to relieve pain more quickly or for a longer period of time than many other preparations of a similar nature now on the market.

PAR. 6. The use by the respondent 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 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 of the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Edward C. Rose, individually or when trading under the style and firm name of Rosse Products Co., or 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, "Rosse Rheuma Tabs," 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 that respondent's medicinal preparation, "Rosse Rheuma Tabs":

(*a*) Is a cure or remedy for rheumatism, rheumatic pains, or sensitive joints;

(*b*) Has any curative action on the underlying factors which cause rheumatic pains;

(*c*) Constitutes a competent or effective treatment for rheumatism, rheumatic pains, or sensitive joints;

(*d*) Will relieve the pain attendant upon rheumatism or sensitive joints for a longer period of time than any other preparation of a similar nature; or

(*e*) Possesses any therapeutic value in the treatment of rheumatism, rheumatic pains, or sensitive joints, in excess of furnishing temporary relief from the symptoms of pain;

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, "Rosse Rheuma Tabs," 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

MAJESTIC CHINA COMPANY, INC., ART CHINA COMPANY, HERMAN SIEGEL, SIGMUND GLADSTONE AND JOHN LINDSEY, TRADING AS ART CHINA COMPANY, AND JOHN H. FEINNE, TRADING AS WINDSOR CHINA COMPANY

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

Docket 3748. Complaint, Mar. 29, 1939—Decision, July 29, 1941

Where two corporations and four individuals, who controlled and directed their policies and practices, engaged, incident to their offer and sale to retailers of a business or sales stimulator plan, in interstate sale of chinaware to be distributed by retailers as premiums, in substantial competition with others who do not misrepresent their business or disparage their competitors' products; orally and through stationery, contracts, correspondence, and advertising media circulated generally—

(*a*) Represented that they owned and operated or directly controlled a pottery plant or factory located at Sebring, Ohio, wherein they manufactured the chinaware they sold, and that one of said two corporations was a wholly owned subsidiary of a concern operating a pottery plant at said point;

When in fact none of them was engaged in manufacturing such chinaware, all of which they purchased from said Sebring concern, in which none of them had any financial or other interest, and of which corporation in question was not a wholly owned subsidiary, said Sebring concern having no interest therein or in the business of said corporations and individuals, other than sale of its products thereto, and its representations to the trade, made at their instance and in cooperation with them that some of individuals concerned were its direct salesmen being false; and, with intent of diverting business from a certain competitor to themselves, and well knowing falsity thereof—

(*b*) Represented that such competitor's representative was no longer in business, and that the competitor itself was in the hands of "finance concerns"; and

(*c*) Represented that said competitor had been selling inferior chinaware of second grade quality, while representing their own as of a superior grade, as a result whereof a customer canceled negotiations with such competitor, whose product was in fact of first quality;

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 causing it because of such mistaken belief, to purchase their sales stimulator plan and chinaware in preference to those of competitors, whereby trade was unfairly diverted from such competitors to them:

Held, That such acts and practices, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition 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. Harry Bell, of Chicago, Ill., for respondents, with the exception of John H. Feinne, who was represented by *Mr. Samuel Feiwell*, of South Bend, Ind.

COMPLAINT

Pursuant to the provisions of the Federal 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 Majestic China Co., Inc., a corporation, Art China Co., a corporation, Herman Siegel, Sigmund Gladstone, John Lindsey, sometimes known as Jack Lindsey and John H. Feinne, hereinafter referred to as respondent, 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 Majestic China Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business in the Building and Loan Tower Building in the city of South Bend, Ind.

Respondent Art China Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business in the Citizens Bank Building in the city of South Bend, Ind.

Respondent Herman Siegel is an individual and is an officer of the corporate respondents Majestic China Co., Inc., and Art China Co. Sigmund Gladstone is an individual and in the employment of the corporate respondent Majestic China Co., Inc., and is an officer of the corporate respondent Art China Co. John Lindsey, sometimes known as Jack Lindsey, is an individual and in the employment of the corporate respondent Majestic China Co., Inc., and is an officer of the corporate respondent Art China Co. Respondent John H. Feinne is an individual and an officer of the corporate respondent Majestic China Co., Inc.

Respondents Herman Siegel, Sigmund Gladstone, and John Lindsey, sometimes known as Jack Lindsey, also trade in their own right under the trade name Art China Co. Respondent John H. Feinne also trades in his own right under the trade name Windsor China Co.

The above-named individual respondents control and direct the acts, policies, and practices of said corporate respondents, and all of said respondents, in doing the acts and things hereinafter alleged, have acted together and in cooperation with each other. The individual respondents maintain their offices and place of business in the city of South Bend in the State of Indiana.

PAR. 2. All of said respondents are now, and for more than a year last past have been, engaged in the business of offering for sale and selling to retailers a so-called business or sales stimulator plan, a part of which consists of chinaware to be distributed by said retailers as premiums. Respondents cause said chinaware products, when sold in connection with said so-called sales or business stimulator plan to be transported from the factory where such products are manufactured located at Sebring, Ohio, to the purchasers thereof located at various points in the several States of the United States other than the State of Ohio and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a constant course of trade in said chinaware products so 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 in said commerce as aforesaid, respondents are in active and substantial competition with other corporations, partnerships, and individuals engaged in the sale and distribution of chinaware products in commerce between and among the various States of the United States and in the District of Columbia.

There are, among said competitors, many who do not in any way misrepresent the nature of their business or make any false or disparaging statements, concerning the products of their competitors.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of said so-called sales or business stimulator plan and the chinaware products used in connection therewith, respondents have, verbally and by means of their stationery, contracts, correspondence and through advertising media circulated generally throughout the United States, made many representations as to the nature of their business and said so-called sales or business stimulator plan and the chinaware products used in connection therewith, and concerning the business status and the products of their competitors.

Among and typical of the representations so made and used by the respondents are, in substance, the following:

1. That the respondents will distribute a designated number of circulars and coupons through house-to-house canvassers in the vicinity or locality of the retail dealer to whom they sell said so-called sales or business stimulator plan and the chinaware products used in connection therewith.

2. That respondents or some of them own and operate or directly control a pottery or factory located at Sebring, Ohio, wherein the

chinaware products offered for sale and sold by them are manufactured.

3. That respondent Majestic China Co., Inc., is a wholly owned and operated subsidiary of Royal China, Inc., a corporation operating a china pottery or factory at Sebring, Ohio, and that respondent Majestic China Co., Inc., maintains a branch warehouse in the City of South Bend, Ind.

4. That certain of respondents' competitors engaged in the sale and distribution of a similar sales or business stimulator plan, including chinaware products to be used in connection therewith as premiums, are no longer engaged in the sale and distribution of such plan but are engaged in an entirely different line of business.

5. That the chinaware products distributed by certain of respondents' said competitors, who are likewise engaged in the sale and distribution of a sales or business stimulator plan using chinaware products in connection therewith as premiums, are "seconds" and inferior in quality, and that the pottery or factory wherein such chinaware products are manufactured is not reliable.

PAR. 5. The representations so made and used by the respondents in connection with the offering for sale and sale of their said so-called sales or business stimulator plan and the chinaware products used in connection therewith are false, misleading, and deceptive and unfairly defame and disparge the products and businesses of certain of their competitors. In truth and in fact, in many instances where sales of said plan have been secured through the representation that circulars and coupons will be distributed in the vicinity or locality of the retailer purchasing same, respondents have failed and refused to distribute such circulars or coupons. None of said respondents has ever owned and operated, or directly or indirectly controlled, a pottery or factory located at Sebring, Ohio, or at any other point where the chinaware products offered for sale and sold by them are manufactured. Respondent Majestic China Co., Inc., has never been a subsidiary of, nor has it ever had any connection with, Royal China, Inc., of Sebring, Ohio, except as a purchaser of products from Royal China, Inc. The respondent Majestic China Co., Inc., has never owned, operated, or maintained a warehouse or branch warehouse in South Bend, Ind., or at any other point. In truth and in fact, the competitors referred to by the respondents as being no longer engaged in the sale and distribution of said so-called sales or business stimulator plan, and the chinaware products used in connection therewith as premiums, are still engaged in such business and are in active and direct competition with the respondents in offering for sale and selling said plan and said chinaware products. The products of

those competitors of the respondents, which are described and referred to by them as being "seconds" and inferior in quality, are not of the grade, class, or quality of chinaware products which are commonly referred to and described as "seconds" and are not inferior in quality to the products offered for sale and sold by the respondents but are of the same grade, class, and quality. The pottery or factory wherein the chinaware products which are sold by competitors in connection with the sales plan in competition with respondents, and which are described and referred to by the respondents as "seconds" or as inferior in quality to the products sold by the respondents, are made is a reliable pottery or factory which is so recognized by the industry.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and represenations in connection with the offering for sale, sale and distribution of their said plan and said products in said commerce as aforesaid, has had and now has a tendency and capacity to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false, deceptive, and misleading representations are true, and that respondents will distribute a designated number of circulars and coupons in the vicinity or locality of the retail dealer purchasing such plan; that respondents manufacture the chinaware products offered for sale and sold by them; that respondent Majestic China Co., Inc., is a subsidiary of Royal China, Inc., and operates a branch warehouse at South Bend, Ind.; that certain of respondents' competitors are no longer engaged in business, and that the chinaware products offered for sale and sold by said competitors are "seconds" or inferior in quality and that the manufacturer thereof is not reliable and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said plan and chinaware products.

As a result, trade has been diverted unfairly to respondents from their competitors in said commerce as described in paragraph 3 hereof who do not in any way misrepresent the nature of their business or make any false or disparaging statements concerning the products or businesses of their competitors, to the injury of said competitors and to the injury of the public.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and 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 March, A. D. 1939, issued and thereafter 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 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 answers by all respondents, testimony and other evidence in support of the allegations of the complaint were introduced by John M. Russell, attorney for the Commission, and in opposition to the allegations of the complaint by Harry Bell and Samuel Feiwell, attorneys for respondents, before Edward E. Reardon, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answers thereto, the testimony and other evidence, the report of the trial examiner, and brief in support of the complaint; and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Majestic China Co., Inc., is a corporation organized under the laws of the State of Indiana with its office and principal place of business in the city of South Bend, Ind.

Respondent Art China Co. is a corporation organized under the laws of the State of Indiana with its office and principal place of business in the city of South Bend, Ind.

Respondents Herman Siegel, John Lindsey, sometimes known as Jack Lindsey, and John H. Feinne are officers of the Majestic China Co., Inc., and respondent John H. Feinne was also engaged in trade under the trade name Windsor China Co. from some time in A. D., 1937 up to January, A. D. 1938.

Respondent Sigmund Gladstone is in the employ of respondent Majestic China Co., Inc., and is also an officer of the respondent Art China Co.

Respondent John Lindsey is an officer of respondent Art China Co. and also trades in his own right under the trade name Windsor China Co.

The individual respondents hereinbefore named control and direct the acts, policies, and practices of the corporate respondents and all of said individual respondents in doing the acts and things hereinafter set forth have acted together and in cooperation with each other.

PAR. 2. All of the respondents are now and were during the last past 3 years engaged in the business of offering for sale and selling to retailers, a so-called business or sales stimulator plan, a part of which consists of chinaware to be distributed by said retailers as premiums. Respondents cause and have caused said chinaware, when sold in connection with said so-called sales or business stimulator plan, to be transported from the factory where such products are manufactured, located at Sebring, Ohio, to the purchasers thereof located at various points in the several States of the United States other than the State of Ohio.

Respondents maintain and at all times mentioned herein have maintained a constant course of trade in said chinaware so sold and distributed by them in commerce between and among the various States of the United States.

PAR. 3. Respondents, in the course and conduct of their said business, are and have been in active and substantial competition with other corporations, partnerships, and individuals engaged in the sale and distribution of chinaware in commerce between and among the various States of the United States.

There are many of respondents' competitors who do not in any way misrepresent the nature of their business or make any false or disparaging statements concerning the products of their competitors.

PAR. 4. Respondents, for the purpose of inducing the purchase of their so-called sales or business stimulator plan and the chinaware used in connection therewith, have orally and by means of their stationery, contracts, correspondence, and through advertising media circulated generally throughout the United States made many false and misleading statements and representations as to the nature of their business, and concerning the business status and the products of their competitors. Among and typical of such statements and representations are the following:

1. That they or some of them own and operate or directly control a pottery plant or factory located at Sebring, Ohio, wherein the chinaware offered for sale and sold by them is manufactured.

2. That respondent Majestic China Co., Inc., is a wholly owned subsidiary of Royal China, Inc., a corporation operating a pottery plant at Sebring, Ohio.

3. They have made disparaging statements concerning the products of certain of their competitors and represented that such competitors were no longer engaged in business.

PAR. 5. None of the respondents is engaged in manufacturing chinaware sold by any of them and at no time has any of the respondents owned, operated, or controlled a factory or plant engaged in manufacturing chinaware. Respondents purchase all of the chinaware sold by them from Royal China, Inc., which company manufactures said chinaware at its plant located at Sebring, Ohio.

PAR. 6. None of the respondents own any stock in Royal China, Inc., or have any financial or other interest in said company. Respondent Majestic China Co., Inc., is not a wholly owned subsidiary of Royal China, Inc. Royal China, Inc., owns no stock of the respondent Majestic China Co., Inc., or of the respondent Art China Co. nor has it any financial or other interest in either of respondent corporations or in the business of any of the respondents other than selling its products to said respondents. Royal China, Inc., at the instance of respondents John H. Feinne, Herman Siegel, John Lindsey, and Sigmund Gladstone and in cooperation with said respondents, in soliciting the sale of chinaware to respondent's trade, represented to such trade that said respondents or some of them were its direct salesmen, when in fact neither of said respondents were ever salesmen for said company.

PAR. 7. Independent Merchants Guild, one of respondents' competitors, which is represented by Joseph C. Sommers, is engaged in selling a so-called business or sales stimulator plan and chinaware to be used in connection therewith to customers located in various States of the United States. The C. A. Pearson Co., located in St. Paul, Minn., for about 4 years used the so-called business or sales stimulator plan of the said Independent Merchants Guild and purchased from said Independent Merchants Guild the chinaware used in connection therewith. In May or June, A. D. 1937, respondent Sigmund Gladstone, acting on behalf of all of the respondents, called upon E. F. Cedarholm, president and general manager of the C. A. Pearson Co., and endeavored to sell said company respondents' so-called business or sales stimulator plan and chinaware to be used in connection therewith and, upon being told that the Pearson Co. was using the business or sales stimulator plan and chinaware of the Independent Merchants Guild, stated that Sommers was no longer in business and that the Independent Merchants Guild was in the hands of "finance concerns" and that Sommers and the Independent Merchants Guild had been selling inferior chinaware that was of second grade quality. At the time said statements were made and ever since

that time the Independent Merchants Guild and Joseph C. Sommers were actively engaged in their regular business as herein set forth, which fact was known to the respondent Sigmund Gladstone at the time he made the statements hereinabove referred to. The said statements were made by him for the purpose of diverting business from the Independent Merchants Guild to respondent Majestic China Co. Respondent Sigmund Gladstone's statement concerning the quality of the chinaware sold by the Independent Merchants Guild was untrue and said respondent well knew at the time he made said statement that same was untrue.

The Independent Merchants Guild purchases all of the chinaware used and sold by it from the manufacturer thereof, the Stetson China Co. Before any chinaware is shipped to the Independent Merchants Guild, it is examined by the superintendent of the Stetson China Co. and all of the chinaware so shipped is what is known as first grade or first class. The C. A. Pearson Co., during the 4 years it purchased chinaware from Independent Merchants Guild, never had any complaints from any of its customers concerning said chinaware and no flaws were ever found in any of same, which was always first grade. The general manager of the largest china company in the world examined the chinaware of the Independent Merchants Guild and found it to be of the first quality.

The Downer Grocery Co. conducts its wholesale grocery business in Parkersburg, W. Va. Respondent John H. Feinne, acting on behalf of all of the respondents, called upon this company for the purpose of selling it respondent Majestic China Co.'s so-called business or sales stimulator plan and chinaware to be used in connection therewith and stated that the Independent Merchants Guild's chinaware was of an inferior grade while that of his company was of a superior grade. As a result of these statements the Downer Grocery Co. canceled its contemplated negotiations with the Independent Merchants Guild.

PAR. 8. The use by the respondents 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 false, deceptive, and misleading representations are true and that respondents manufacture the chinaware offered for sale and sold by them, that respondent Majestic China Co., Inc., is a subsidiary of Royal China, Inc., that certain of respondents' competitors are no longer engaged in business and that the chinaware products offered for sale and sold by said competitors are "seconds" or inferior in quality and causes a substantial portion

of the purchasing public because of such erroneous and mistaken belief to purchase respondents' business or sales stimulator plan and chinaware used in connection therewith in preference to making such purchases from their competitors, and as a result thereof 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 and constitute unfair methods 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, testimony, and other evidence taken before Edward E. Reardon, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, in support of the allegations of the complaint and in opposition thereto, the report of the trial examiner thereon and brief in support of the complaint, 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 respondents Majestic China Co., Inc., and Art China Co., their officers, directors, representatives, agents, and employees, and respondents Herman Siegel, Sigmund Gladstone, and John Lindsey, sometimes known as Jack Lindsey, individually and as officers and employees of the Majestic China Co., Inc., and trading as Art China Co., or trading under any other trade name, and respondent John H. Feinne, individually and as an officer of Majestic China Co., Inc., and trading as Windsor China Co., or trading under any other trade name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their business or sales stimulator plan and chinaware in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner that respondents, or any one or more of them, own and operate or control a pottery or factory wherein chinaware products are manufactured unless and until such respond-

ent or respondents own and operate or directly and absolutely control the pottery or factory wherein such products are manufactured.

2. Representing that respondent Majestic China Co., Inc., is a wholly owned subsidiary or a subsidiary of Royal China, Inc., or has any connection therewith other than that of a purchaser and distributor of the products of Royal China, Inc.

3. Representing that competitors of respondents, or of any one or more of respondents, have discontinued certain business activities when such competitors are engaged in such business activities.

4. Representing that products of such competitors are "seconds" or are inferior to first quality merchandise, when such products are of first quality.

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

LOUIS ESTRIN, CHARLES ESTRIN, SIDNEY ESTRIN, ESTHER ESTRIN AND BELLE ESTRIN, TRADING AS HUDSON FUR DYEING COMPANY

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

Docket 3951. Complaint, Nov. 15, 1939—Decision, July 29, 1941

Where five partners engaged, in New Jersey, as successors to similarly named corporate business, in dyeing, for fur dealers, garment manufacturers, and others in New York City, rabbit furs or peltries under process which was intended to and did result in a product simulating genuine seal, and Hudson seal, or, as generally understood in the trade, seal-dyed muskrat—

Stamped each peltry dyed by them with the words "Hudseal Dyed Coney," unless otherwise directed, and supplied with each 50 peltry lot—the number usually required for a coat—to be attached to garments made therefrom, cloth labels bearing the inscription "HUDSEAL Seal-Dyed Coney Trade Mark Reg. * * * Super Quality," and cardboard tags similarly inscribed, for the better grade, and tags bearing the words "SATINSEAL Registered Seal Dyed Coney Hudseal Process" with similar lots of poorer quality;

With result that a substantial proportion of the purchasing public were caused to believe that such contraction of words "Hudson Seal" was intended to mean Hudson seal or muskrat fur dyed to resemble seal, and with tendency to cause members of the purchasing public, confused thereby, to call upon the sales person for an explanation of the terms used, thus placing in the hands of others an instrumentality whereby they might mislead and deceive members of the purchasing public into the erroneous belief that garments thus labeled were made from peltries of seal or muskrat or other animals more desirable than rabbit peltries, and that they were of greater value and better quality than rabbit 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.

Before *Mr. Lewis C. Russell*, trial examiner.
Mr. Joseph C. Fehr for the Commission.
Koehler, Angenblick & Freedman, 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 Louis Estrin, Charles Estrin, Sidney Estrin, Esther Estrin, and Belle Estrin, individuals, trading as Hudson Fur Dyeing Co. 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, Louis Estrin, Charles Estrin, Sidney Estrin, Esther Estrin, and Belle Estrin, are now and for more than 1 year last past have been engaged in the business of processing and dyeing rabbit peltries under the trade name of Hudson Fur Dyeing Co. with their principal office and place of business located at 29 Congress Street in the city of Newark, in the State of New Jersey.

PAR. 2. In the course and conduct of their business the respondents are engaged in the sale and distribution of rabbit peltries dyed to imitate seal in commerce among and between the various States of the United States, and also in the processing and dyeing of rabbit peltries to imitate natural seal for various customers. In the conduct of this business, the respondents cause said customers who are located in various States of the United States other than the State of New Jersey, to ship rabbit peltries from their various points of location to respondents for processing and dyeing. When rabbit peltries are processed and dyed by the respondents, said respondents attach to said peltries labels or tags of the Hudson Fur Dyeing Co. and also furnish labels or tags to be attached to the finished garments, which labels and tags so attached and furnished are hereinafter more fully described. When said peltries are so processed and dyed the respondents ship said peltries, together with such labels and tags from their place of business in the State of New Jersey to purchasers or customers 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 peltries processed by them and in labels to be attached to the finished 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 their business, as aforesaid, respondents furnish labels and tags to purchasers or customers for used on finished garments made from such peltries and also cause labels or tags to be placed on the peltries processed by them, as hereinabove described, upon which labels, and tags appear the following representations:

HUDSEAL
(Seal Dyed Coney)
Trade Mark Reg.
* * *
Super Quality

The word "HUDSEAL" is printed in type 6/16" to 10/16" high, while the term "Seal Dyed Coney" is printed in type 2/16" high, surrounded by a border. There is no difference in the color of the lettering of any of the lines.

Upon another tag or label furnished and used by respondents on many of their said peltries appear the following representations:

SATINSEAL
REGISTERED
Seal Dyed Coney
* * *
Hudseal Process

On this tag the words "Seal Dyed Coney" are also in substantially less conspicuous type than the word "SATINSEAL."

PAR. 4. There is a preference on the part of the purchasing public for fur products made from peltries of seal because of their superior qualities such as pliability, durability, and luster.

By the use of tags or labels as set out above which prominently display the word "HUDSEAL" with the term "Seal Dyed Coney" in substantially smaller letters, an impression is created in the minds of the purchasers and prospective purchasers of the finished products that said garments are "Hudson Seal" and are composed of seal peltries.

In the same manner the use of the word "SATINSEAL" in large, conspicuous letters with the qualifying term "Seal Dyed Coney" in substantially smaller letters, as well as the use of the words "Hudseal Process" on said labels or tags, creates an impression in the minds of the purchasing public that the finished garments so labeled and tagged are composed of seal peltries.

The term "Seal Dyed Coney" as used by the respondents in connection with the term "Hudseal" or "Satinseal" is not sufficiently known to the purchasing public to be readily recognized as describing rabbit peltries. The term "Satinseal" is a coined or trade name which is not known to the public and would have no special meaning other than that garments so designated were composed of seal peltries.

PAR. 5. In truth and in fact the peltries so dyed bearing the labels and designations, as hereinabove set out, are rabbit peltries dyed to imitate seal. Said rabbit peltries are inferior to the peltries of seal, in appearance, pliability, durability, and in the luster of the fur.

PAR. 6. By the use of this practice of furnishing false and misleading labels and tags to customers and causing them to be placed upon peltries, the respondents place in the hands of uninformed or unscrupulous retail dealers and manufacturers a means and instrumentality whereby said dealers and manufacturers may deceive or mis-

lead members of the purchasing public into the erroneous belief that fur garments made from rabbit peltries are in fact composed of seal peltries.

PAR. 7. The use by the respondents of the foregoing false and misleading statements and representations on their labels and tags, as above set out, 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 garments containing the labels or tags supplied by the respondents are composed of seal peltries. As a result of such erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of garments containing respondents' labels and tags.

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 November 15, 1939, issued and thereafter served its complaint in the above-entitled proceeding upon the respondents, Louis Estrin, Charles Estrin, Sidney Estrin, Esther Estrin, and Belle Estrin, individuals trading as Hudson Fur Dyeing 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 Joseph C. Fehr, attorney for the Commission, and in opposition to the allegations of the complaint by Bernard Freedman, attorney for the respondents, before Lewis C. Russell, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral argument 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. Respondents Louis Estrin, Charles Estrin, Sidney Estrin, Esther Estrin, and Belle Estrin have since April 1938 constituted a partnership doing business under the name Hudson Fur Dyeing Co., with their principal place of business at 29 Congress Street, Newark, N. J. This partnership succeeded to the business of Hudson Fur Dyeing, Inc., a New Jersey corporation which had its place of business at the same address. Respondents have been, and are now, engaged in the business of dyeing rabbit furs for various fur dealers, garment manufacturers, and others who have their places of business in New York, N. Y.

PAR. 2. Respondents' customers in New York in some instances deliver to respondents in New Jersey rabbit furs which they wish dyed, and in other instances respondents receive such furs from customers in New York and transport them to their place of business in New Jersey. After said peltries are dyed they, together with certain tags and labels furnished by respondents as hereinafter more fully set out, are transported by respondents from their place of business in New Jersey to the respective places of business of their customers in New York. Respondents maintain a constant course of trade in commerce in said peltries, tags, and labels between the States of New York and New Jersey.

PAR. 3. In the course and conduct of their business respondents stamp each peltry which they dye, unless the customer otherwise directs, with the words "Hudseal Dyed Coney." With each lot of 50 dyed peltries (50 peltries being the number usually necessary for the manufacture of a coat) respondents supply for the future use of their customers certain cardboard tags intended to be attached by their customers to garments when made from such peltries and a cloth label intended to be attached to such garment. The cloth label bears the following inscription:

HUDSEAL
Seal-Dyed Coney
Trade Mark Reg.
* * *
Super Quality

The word "Hudseal" appears in large letters and the remainder of the words on such label are in letters of much smaller size. The cardboard tag is similarly inscribed except the word "Registered" appears thereon instead of the term "Trade Mark Reg." Upon receipt by respondents peltries are graded and the better grade, when dyed, are segregated into lots, usually of 50 each, and with each such lot respondents furnish one each of the above-described tags and labels. The poorer quality

peltries when dyed are also segregated into similar lots and with each such lot is furnished a cardboard tag bearing the words:

SATINSEAL
Registered
Seal Dyed Coney
Hudseal Process

Some of the manufacturers who make garments from peltries dyed by respondents attach the above-described labels and tags to completed garments which are subsequently sold to members of the purchasing public. There is no separate specific charge made by respondents for the tags and labels, the charge therefor being included in the respondents' charges for dyeing the peltries.

PAR. 4. Respondents' process of dyeing rabbit peltries is intended to, and does, result in a product which when made into a garment for sale to members of the purchasing public simulates in appearance genuine seal and Hudson seal. Hudson seal is a term generally understood in the fur trade to mean seal-dyed muskrat fur. This term is understood by a substantial portion of the purchasing public to mean genuine seal or muskrat fur dyed to resemble seal. Rabbit peltries dyed to simulate genuine seal or Hudson seal (seal-dyed muskrat) are considered by the fur trade and by the consuming public generally to be inferior to either of the products which such seal-dyed rabbit peltries simulate, and there is a preference on the part of the purchasing public for genuine seal or Hudson seal (seal-dyed muskrat) as compared with seal-dyed coney.

Many members of the purchasing public are not sufficiently familiar with furs to rely upon their own judgment with respect thereto, and consequently must, and do, rely upon the representations of manufacturers of or dealers in the fur garments offered for sale. The word "Hudseal" is a contraction of the words "Hudson Seal," and when used on tags and labels attached to fur garments simulating genuine seal and Hudson seal (seal-dyed muskrat) causes a substantial proportion of the members of the purchasing public to believe that it is intended to mean Hudson seal. The term "Hudseal" as used by respondents in connection with the words "Seal Dyed Coney" is contradictory and creates confusion and uncertainty in the minds of members of the purchasing public as to whether the garment so designated is seal, Hudson seal (seal-dyed muskrat), or in fact seal-dyed coney. This confusion and uncertainty tends to cause such members of the purchasing public to call upon the sales person displaying such garment for an explanation of the terms used and thus places in the hands of others an instrumentality whereby they may mislead and deceive members of the purchasing public into the erroneous belief that the garments thus labeled

are made from seal peltries, muskrat peltries, or peltries of other animals more desirable than rabbit peltries, and that they are of greater value and better quality than rabbit furs.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony, and other evidence 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 and exceptions thereto, briefs in support of the complant 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 Louis Estrin, Charles Estrin, Sidney Estrin, Esther Estrin, and Belle Estrin, individuals trading as Hudson Fur Dyeing Co., or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the dyeing or dressing, branding, labeling, tagging, or advertising in any manner of rabbit peltries distributed or transported by them in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Hudseal" as a trade name, trade-mark, or otherwise, or any other word or words signifying or connoting Hudson seal, either separately or in connection or conjunction with any other word or words, to designate or describe dyed rabbit peltries.

2. Describing peltries in any other way than by the use of the correct name of the fur as the last word of the description, and when any dye or blend is used simulating another fur, the true name of the fur so dyed or treated must appear as the last word of the description and must be immediately preceded by the word "dyed" or "blended" compounded with the name of the simulated fur.

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

IN THE MATTER OF

NATIONAL DISTILLERS PRODUCTS CORPORATION

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

Docket 4425. Complaint, Dec. 19, 1940—Decision, July 30, 1941

Where a corporation engaged in the manufacture, as a by-product from grain left after distillation of whiskey of a semisolid poultry feed supplement variously designated as "Produlac Brand Semi-Solid Distillers Grains Mash," "Semi-Solid Produlac," and "Produlac," and in interstate sale and distribution thereof; by means of letters, circulars, and reprints of testimonial letters, transmitted through the mail and otherwise—

Represented, directly or by implication, that poultry rations frequently are inadequate and must be supplemented by the addition of vitamins and nutritional factors represented as being contained in its said product, and that the use thereof as a supplement to a diet or ration, regardless of whether said diet or ration already contained a sufficient quantity of necessary food elements, would result in a substantial increase of egg production, healthier poultry, high percentage of hatchability of eggs, and a decrease in the mortality rate, as well as other advantages;

Facts being its said product was but one of a class of dried grain after-distillation remnants made as a by-product in whiskey distilleries and sometimes referred to as "stillage" or "distillery slop," and did not contain vitamins and other nutritional factors sufficient to assure aforesaid advantages, which are the result of many factors, such as breed of poultry, general care, feeding, and general health of the flock, in addition to diet; and there is no scientific or other basis for its claim that poultry rations are frequently inadequate or must be supplemented by the addition of vitamin and nutritional factors said to be contained in its product, or that its said product made an excellent replacement or substitute for green feeds or creates a better appetite;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that aforesaid representations were true, and to cause many members of the public, because of said belief thus engendered, to purchase 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. D. E. Hoopingarner for the Commission.

Breed, Abbott & Morgan, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that National Distillers Products Corporation, hereinafter referred to as respondent, has vio-

lated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, National Distillers Products Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its executive offices at 120 Broadway, New York, N. Y., and a distillery and factory at Cincinnati, Ohio, in which it prepares and from which it ships into various States of the United States a poultry feed supplement, hereinafter described. Respondent now is, and for more than 2 years last past has been, engaged in the sale and distribution of said poultry feed supplement variously designated as "Produlac Brand Semi-Solid Distillers Grains Mash," "Semi-Solid Produlac, and Produlac." Said product is a byproduct made from grain used in the distillation of whiskey commonly referred to as "distillery slop."

In the course and conduct of its said business, respondent causes its said product, when sold, to be transported from its plant and factory in the State of Ohio to the purchasers thereof located in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its 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 its said business, and for the purpose of inducing the purchase of its said product, respondent has made unwarranted, grossly exaggerated, and misleading representations with respect to the nature and efficacy of its said product. Such representations have been and are being made by means of letters, circulars and reprints of testimonial letters, transmitted by mail and otherwise throughout the various States of the United States (except into and in certain States where respondent has been compelled by requirement of statutes relating to poultry feeds to modify its said representations). Among and typical of such unwarranted, grossly exaggerated, and misleading representations are the following:

Semi-Solid Produlac is a most appetizing, supplementary feed with specific conditioning and stimulating values which are particularly valuable for poultry, ducks and turkeys. It assures greater egg production, increased hatchability, and decreased mortality. With chicks, poults and ducklings, quicker and better gains, improved quality, with better livability follow its feeding.

Semi-Solid Produlac is most appetizing and makes the balance of the ration more palatable. Its simulating factors cause the greater assimilation of the nutrients in the ration which naturally results in increased egg production, higher percentage of hatchability, and faster, more economical gains with increased vitality in growing birds. The improved health and increased vitality of the

flock is quite apparent. It possesses specifically acting properties which will restore to normal production birds producing at low levels.

PRODULAC is an appetizing supplementary feed with conditioning and stimulating properties which are valuable for poultry, ducks and turkeys. Greater egg production, increased hatchability and decreased mortality have resulted from its use. With chicks, turkey poults and ducklings, quicker and better gains, improved quality and better livability have followed its feeding.

PRODULAC is appetizing. It makes the balance of the ration more palatable. Its stimulating values have caused increased egg production, higher percentage of hatchability and faster, more economical gains and increased vitality in growing birds.

It can, therefore, be quickly appreciated that PRODULAC, not only due to its appetizing nutritional factors but particularly because of its important biological value, is an effective supplement to the basic feedstuffs. Bear in mind that its potency of Vitamins A, B, C, E, and the increasingly important Vitamin G, makes for the better health and vitality of the flock, decreased mortality, greater production and reproduction, thus producing better operating results and larger profits.

and the following representations respecting and claims for its said product:

Great Palatability which creates improved appetite.

Has invariably increased production of eggs.

Has increased hatches to over 90%.

Has maintained flocks in constant better health.

Place it before the birds twice daily for 10 to 15 minutes. An improvement in the health of the birds, increased egg production and larger hatches will soon be noted.

High biological value due to its content of Vitamins A, B, C, E and G.

Has produced broilers of more uniform weight and of superior quality at less cost.

Has increased hatchability—in some cases to over 90%.

Has maintained flocks in better health.

Great palatability which helps to create better appetite.

Makes an excellent replacement for green feeds.

Respondent also represents that its product is recommended by certain State authorities and experiment stations.

Through its said circulation and use of the foregoing representations and others of similar import and meaning not herein set out, respondent represents and implies that poultry rations generally are inadequate and must be supplemented by the vitamins and nutritional factors represented and implied as being contained in sufficient quantities or percentages in its said product; and represents and implies that the addition of its said product as a supplement to a diet or ration already containing the necessary food elements and vitamins results in substantially increased egg production, better health, hatchability of eggs, decreased mortality, and other advantages set forth in its said representations.

PAR. 3. The above and foregoing representations and implications are unwarranted, grossly exaggerated, and misleading. In truth and

in fact, respondent's said product is merely one of a class of dried grain after-distillation remnants, a byproduct of distillation, referred to and commonly called "distillery slop," and it does not have the qualities and efficacy claimed for it by said aforedescribed representations and implications, in that the quantity and percentage of vitamins contained therein are not sufficient to produce the results claimed. The claimed results are not produced by any one factor but are the result of many contributing factors, including breed, general care, general feeding, general health of flock, and many other factors in addition to diet. There is no scientific basis for the representation that respondent's product makes an excellent replacement for green feeds or a substitute therefor, and its use does not generally create better appetite or augment the desire for food. Said product is not recommended by any State authority or experiment station.

PAR. 4. The use by the respondent of the aforesaid acts, practices, and methods in connection with the sale and distribution of its said product 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 mistaken and erroneous belief, engendered as aforesaid, to purchase respondent's said product.

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 December 19, 1940, issued and thereafter served its complaint in this proceeding upon said respondent, National Distillers Products Corporation, charging it with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. 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, Breed, Abbott & Morgan, 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 pro-

ceeding 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 and stipulation, and 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 Distillers Products Corporation, is a corporation organized and existing under the laws of the State of Virginia, with its executive offices at 120 Broadway, New York, N. Y.

For more than 2 years last past respondent has been and is now engaged in the manufacture of various products prepared as byproducts from grain left after the distillation of whiskey manufactured by respondent. The product which is the subject matter of this action is a semisolid poultry feed supplement variously designated as "Produlac Brand Semi-Solid Distillers Grains Mash," "Semi-Solid Produlac, and Produlac." Said semisolid poultry feed supplement is prepared at a distillery and factory owned and maintained by respondent at Cincinnati, Ohio, from which said product is shipped into various States of the United States.

For more than 2 years last past in the course and conduct of its business, respondent has been and now is causing its said product to be transported from its said distillery and factory in the State of Ohio to the purchasers thereof located in various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product in commerce among and between various States of the United States.

PAR. 2. In the course and conduct of its said business, respondent has made, published, and caused to be published, by means of letters, circulars, and reprints of testimonial letters, transmitted by mail and otherwise throughout various States of the United States, certain advertising matter containing the following statements, claims, and representations, for the purpose of inducing and which are likely to induce the purchase of its said product:

Semi-Solid Produlac is a most appetizing, supplementary feed with specific conditioning and stimulating values which are particularly valuable for poultry, ducks and turkeys. It assures greater egg production, increased hatchability, and decreased mortality. With chicks, poults and ducklings, quicker and better gains, improved quality, with better livability, follow its feeding.

Semi-Solid Produlac is most appetizing and makes the balance of the ration more palatable. Its stimulating factors cause the greater assimilation of the

nutrients in the ration which naturally results in increased egg production, higher percentage of hatchability, and faster, more economical gains with increased vitality in growing birds. The improved health and increased vitality of the flock is quite apparent. It possesses specifically acting properties which will restore to normal production birds producing at low levels.

PRODULAC is an appetizing supplementary feed with conditioning and stimulating properties which are valuable for poultry, ducks and turkeys. Greater egg production, increased hatchability and decreased mortality have resulted from its use. With chicks, turkey poults and ducklings, quicker and better gains, improved quality and better livability have followed its feeding.

PRODULAC is appetizing. It makes the balance of the ration more palatable. Its stimulating values have caused increased egg production, higher percentage of hatchability and faster, more economical gains and increased vitality in growing birds.

It can, therefore, be quickly appreciated that PRODULAC, not only due to its appetizing nutritional factors but particularly because of its important biological value, is an effecive supplement to the basic feedstuffs. Bear in mind that its potency of Vitamins A, B, C, E, and the increasingly important Vitamin G, makes for the better health and vitality of the flock, decreased mortality, greater production and reproduction, thus producing better operating results and larger profits.

Great Palatability which creates improved appetite.

Has invariably increased production of eggs.

Has increased hatches to over 90%.

Has maintained flocks in constant better health.

Place it before the birds twice daily for 10 to 15 minutes. An improvement in the health of the birds, increased egg production and larger hatches will soon be noted.

High biological value due to its content of Vitamins A, B, C, E, G.

Has produced broilers of more uniform weight and of superior quality at less cost.

Has increased hatchability—in some cases to over 90%.

Has maintained flocks in better health.

Greater palatability which helps to create better appetite.

Makes an excellent replacement for green feeds.

PAR. 3. Through the aforesaid statements and others of similar import not set out herein, respondent has represented or implied that poultry rations frequently are inadequate and must be supplemented by the addition of the vitamins and nutritional factors represented as being contained in respondent's said product; that the use of respondent's product as a supplement to a diet or ration, regardless of whether the diet or ration already contains a sufficient quantity of the necessary food elements and vitamins, will result in a substantial increase of egg production, healthier poultry, higher percentage of hatchability of eggs, and a decrease in the mortality rate and will produce the other advantages mentioned in the aforesaid statements.

PAR. 4. Respondent's product is but one of a class of dried grain after-distillation remnants manufactured in whiskey distilleries as a

byproduct of whiskey distillation and sometimes referred to as "stillage" or "distillery slop." Said product does not, in and of itself, contain a quantity and percentage of vitamins and other nutritional factors sufficient in themselves to assure increased egg production, healthier poultry, higher percentage of hatchability of eggs, decreased mortality rate, and the other advantages set forth in respondent's said advertising matter.

Increased egg production, better health of poultry, higher percentage of hatchability of eggs and a decreased mortality rate, and the other advantages mentioned in said advertising matter as resulting from the use of respondent's product, are not the result of just one factor but are the result of many contributing factors, including breed of poultry, general care, feeding, and the general health of the flock and many other factors, in addition to diet.

There is no scientific or other basis for a claim, representation or implication by respondent that poultry rations are frequently inadequate, or that poultry rations in general must be supplemented by the addition of the vitamin and nutritional factors represented as being contained in respondent's said product. There is also no scientific or other basis for the representation that respondent's product makes an excellent replacement for green feeds or a substitute therefor, and there is no scientific basis for the claim, representation, or implication that its use creates a better appetite or augments the desire of poultry for food,

PAR. 5. The use by the respondent of the aforesaid statements in connection with the sale and distribution of its said product in commerce, as aforesaid, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations and implications are true and to cause many members of the public, because of said mistaken and erroneous belief, engendered as aforesaid, to purchase respondent's said product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and 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 Distillers Products 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 its semisolid poultry feed supplement sold as "Produlac Brand Semi-Solid Distillers Grains Mash" and "Semi-Solid Produlac" and "Produlac," or any product of substantially similar composition or possessing substantially similar properties, whether sold under said name or under any other name or names, do forthwith cease and desist from representing directly or by implication that when fed to poultry such product:

1. Increases egg production, or produces broilers of more uniform weight and superior quality at less cost, or results in faster and more economical growth of poultry and larger profits to the producer.

2. Improves the health and vitality of growing poultry, or increases the hatchability of eggs, or decreases mortality.

3. Increases the appetite and the ability of such poultry to assimilate foods.

4. Is an effective substitute for green feeds.

It is further ordered, That respondent do forthwith cease and desist from disseminating, or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains, directly or by inference, any of the representations prohibited in the preceding paragraphs of this order.

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

THE C. F. SAUER COMPANY

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

Docket 3646. Complaint, Sept. 29, 1939[1]*—Decision, July 31, 1941*

Where a corporation engaged in the manufacture of mayonnaise and salad dressing in its Greenville, S. C., plant, and in manufacture, packaging, or compounding of extracts, spices, tea, pepper, drugs, insecticides, and other commodities at its Richmond, Va., plant, and in interstate sale and distribution of such products to wholesale grocers, retail chain grocers, and retail grocers;

(*a*) Sold its food product of like grade and quality, for use, consumption and resale within the United States, to some purchasers at higher prices than those charged to competing purchasers, and at differentials varying from approximately 5 percent to 25 percent and such that the net price in some cases was lower to the retail chain grocer than to the wholesale grocer to such an extent that the former sold products at retail at a price lower than that at which the wholesaler could purchase such products from it, and such that purchasers charged the lower prices resold products at prices which were only slightly higher than, as low as, or lower than, those at which competing resellers were able to purchase said products from it, so that the latter were unable to resell except at a loss or at insufficient profit, such products, with the result that such material price differences did and might injure, prevent, or destroy competition:

Held, That said discriminations in price were in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act; and

Where said corporation, in consideration of and as compensation for advertising services and facilities contracted to be furnished or furnished by some customers in connection with the handling and sale of said food products—

(*b*) Contracted to pay and paid various sums, or in lieu thereof contracted to issue and issued credit memoranda in amounts varying from 5 to 10 percent of the net prices charged by it, while issuing no credit memoranda to other customers, competitive with those compensated as aforesaid, which were willing and able to furnish such services and facilities, and in some instances offered to do so, but offers of which were refused by it:

Held, That said payments and allowances, as above set forth, were in violation of subsection (d) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. John W. Addison*, trial examiner.
Mr. Edward S. Ragsdale for the Commission.
Mr. Simon Michelet, of Washington, D. C., for respondent.

AMENDED COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent, named in the caption hereof and hereinafter

[1] Amended.

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 amended complaint, stating its charges with respect thereto as follows:

Count 1

PARAGRAPH 1. The respondent, C. F. Sauer Co., is a corporation, organized and existing under the laws of the State of Virginia, with its principal office and place of business located at 2,000 West Broad Street, in the city of Richmond, State of Virginia. The respondent is engaged in manufacturing, selling, and distributing numerous grocery products, and owns and operates two manufacturing plants, one located in Greenville, S. C., and one located in Richmond, Va. Mayonnaise and salad dressing are manufactured at respondent's plant located in Greenville, and are sold and distributed from said plant, and from respondent's plant at Richmond. Extracts, spices, tea, pepper, drugs, insecticides and other commodities are manufactured, processed and packaged at, and are sold and distributed from respondent's plant located at Richmond.

The respondent has sold, and sells, its commodities, in general, to three groups of customers: wholesale grocers, retail chain grocers, and retail grocers.

Respondent facilitates its sales by the use of a large staff of traveling salesmen, numbering approximately 70, who travel in the various States of the United States securing orders, which are forwarded to the home office in Richmond, Va., for execution. Many additional orders are secured from customers through the mails after solicitation by salesmen and others.

PAR. 2. Since June 19, 1936, in the course and conduct of its business, the respondent has been and is now manufacturing the aforesaid commodities, in the aforesaid plants, and has sold, shipped, and does now sell and ship, such commodities in commerce between and among the various States of the United States from the States in which its factories are located, across State lines to purchasers thereof located in States other than the States in which respondent's said plants are located.

PAR. 3. Since June 19, 1936, 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, directly and indirectly discriminating in price between different purchasers of commodities of like grade and

quality, which commodities are sold for use, consumption, and 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 such commodities are sold to other purchasers generally competitively engaged with the favored purchasers.

Respondent effects said discriminations by granting and allowing larger discounts and rebates from list prices and lower net prices to some of such purchasers than to others. The extent of said discriminations in price varies from differentials of approximately 5 percent to differentials of approximately 33 percent, depending upon the commodity sold and the customer, or either.

PAR. 4. Dixie Home Stores is a corporation organized and existing, since approximately May 1937, under the laws of the State of South Carolina. It is engaged in business as a retail grocery chain, and has its principal place of business, purchasing agent, and warehouse in Greenville, S. C. It has purchased and received delivery of approximately $6,000 worth of commodities from respondent each month from approximately May 1937 to date, which commodities are destined to be and are distributed by Dixie Home Stores through its own facilities to approximately 170 retail grocery stores which it owns and operates. A large number of said stores are located in all sections of South Carolina and in the western section of North Carolina, and a few are located in the northeastern section of Georgia. Each of said stores is in competition in those areas with other persons, firms, partnerships, and corporations, who are similarly engaged in the grocery business and purchase commodities of like grade and quality from respondent.

Dixie Home Stores was organized and brought into existence about May 1937 by merging and consolidating two retail grocery chains, namely, Dixie Stores and Home Stores, each of which, prior to consolidation and merger, was an independent corporation organized and existing under the laws of the State of South Carolina. Home Stores had its principal place of business at Columbia, S. C., and Dixie Stores had its principal place of business at Greenville, S. C., in which latter city Dixie Home Stores now has its similar facilities and respondent has one of its plants.

Each of said corporations maintained its purchasing agent and warehouse at their respective principal places of business, where each purchased and received delivery of approximately $3,000 worth of commodities from respondent each month from June 19, 1936, to approximately May 1937, which commodities were destined to be and were distributed by each, respectively, to approximately 85

retail grocery stores which each owned and operated. The approximate 85 retail grocery stores of the Home Stores were located in the central and southern sections of South Carolina and in the northeastern section of Georgia, while the approximate 85 retail grocery stores of Dixie Stores were located in the northern and western sections of South Carolina, and the western section of North Carolina. These stores, although now owned and operated by Dixie Home Stores, retain their respective names as Home Stores and as Dixie Stores in the communities where located.

Approximately the same net prices, discounts, and other allowances granted by respondent to Dixie Home Stores, as hereinafter alleged in paragraph 8, and in exhibit A, were granted and allowed by respondent to Dixie Stores and to Home Stores, respectively, prior to consolidation, although respondent sold to Dixie Stores and to Home Stores, respectively, only approximately one-half the dollar quantity of commodities now sold to Dixie Home Stores. The Home Stores and the Dixie Stores through their respective retail stores were, and the Dixie Home Stores through its retail stores were and are, in competition, in the area where each of such stores is located, with other purchasers of respondents commodities who pay higher net prices and receive smaller discounts and other allowances than said Home Stores, Dixie Stores, and Dixie Home Stores.

PAR. 5. Approximately the same net prices, discounts, and other allowances alleged in paragraph 8 and in exhibit A to have been granted and allowed by respondent to Thomas & Howard Co.'s have been, and are being, granted and allowed by respondent to approximately 12 firms and their branches, each of which is engaged in the wholesale grocery business and the names and locations of which are as follows:

1. Thomas & Howard Co. of Columbia, S. C., with branches at Camden, Newberry, and Darlington, S. C.;

2. Thomas & Howard Co. of Greenville, S. C., with a branch at Seneca, S. C.;

3. Thomas & Howard Co. of Charleston, S. C., with a branch at Allendale, S. C.;

4. Thomas & Howard Co. of Chester, S. C.;

5. Thomas & Howard Co. of Spartanburg, S. C.;

6. Thomas & Howard Co. of Sumter, S. C.;

each of which is a corporation organized and existing under the laws of the State of South Carolina;

7. Thomas & Howard Company, Inc., of Charlotte, N. C., with branches at Salisbury, and Rocky Mount, N. C.;

8. Thomas & Howard Company of Hickory, N. C.;

each of which is a corporation organized and existing under the laws of the State of North Carolina;

9. Thomas & Howard Co. of Durham, N. C.;
10. Thomas & Howard Co. of Greensboro, N. C.;

each of which is organized and does business as a partnership;

11. Timberlake Grocery Co. of Thomasville, Ga.;
12. Christiansburg Canning Co. of Pulaski, Va.

The Timberlake Grocery Co. was organized and is doing business as a corporation under the laws of the State of Georgia, and The Christiansburg Canning Co. was organized and is doing business under the laws of the State of Virginia; and each of which is referred to, and known by the trade as Thomas & Howard Co.'s, although they do not use the words "Thomas & Howard Co." in the respective names under which they do business.

Each of said firms purchase from approximately $3,000 worth to approximately $35,000 worth of commodities from respondent each year, and the aggregate of the purchases of all of said firms is approximately $300,000 worth per year. Respondent solicits orders from each of said firms and its branches individually, at their respective and geographically separated places of business, from purchasing officers who purchase exclusively for their respective firms; and respondent delivers commodities when purchased to their respective individual warehouses located at their respective places of business.

Each of said firms is a separate, distinct, and independent legal and business entity, doing business with respondent as aforesaid, yet the basis upon which respondent grants the same net prices, discounts, and other allowances to each of said firms and its branches is that respondent considers and treats the purchases of all of them collectively as constituting the purchases of a single purchaser, and grants to each of said firms and its branches the net prices, discounts and other allowances which respondent has determined are applicable to a single purchaser who purchases approximately $300,000 worth of said commodities a year upon solicitation at and delivery to a single point. Although respondent has no such purchaser buying such a volume under such circumstances, respondent uses a hypothetical purchaser purchasing under such circumstances as a standard in granting said preferences to Thomas & Howard Co.'s and in refusing to grant similar preferences to other and competing purchasers, who, as individual firms, do not and cannot purchase such a volume, under such circumstances, but who do purchase as great a volume of commodities in a year as many of said firms.

When said firms are considered as a single purchaser, they do a volume of business which constitutes a substantial portion of the entire wholesale grocery business in the States where located, and they are so strategically located geographically in those States as to blanket those areas. Each of said Thomas & Howard Co.'s and branches are in competition, in the area where located, with other purchasers from respondent who are similarly engaged in the distribution of grocery commodities and who are charged and who pay higher net prices and receive smaller net discounts and other allowances than said Thomas & Howard Co.'s and branches; and some of the customers of each of said Thomas & Howard Co.'s and branches are in competition, in the areas where such customers are located, with customers of such other distributors. When all of said Thomas & Howard Co.'s and branches are treated as a single purchaser and each is accorded the terms of sale which respondent has determined are applicable to such a hypothetical purchaser, each of said firms and its branches exerts in its competitive area the same power that could be exerted by such hypothetical firm if located in each of such areas.

PAR. 6. Rose-Phillips Co. is a corporation, organized and existing under the laws of the State of South Carolina, having its principal place of business at Greenwood, S. C., and engages in the wholesale grocery business, buying groceries, vegetables, fruits, and other varieties of food and household commodities and selling such commodities to retail grocery stores, some of which are in competition with some of the retail grocery stores of Dixie Home Stores. It serves a large part of the trade area served by Thomas & Howard Co., of Newberry, S. C., and to a limited extent it serves the trade area served by Thomas & Howard Co. of Spartanburg, S. C., and Thomas & Howard Co. of Greenville, S. C. Rose-Phillips Co. was a purchaser of respondent's products on June 19, 1936, and continued to be a purchaser of respondent's products for some time thereafter. Rose-Phillips Co. ceased to purchase commodities from respondent some months after June 19, 1936, when respondent refused to grant and allow to said company the same net prices, discounts and other allowances which respondent granted and allowed to competitors of said company, namely, the Thomas & Howard Co.'s, and to competitors of said company's customers, namely, Home Stores, Dixie Stores, and Dixie Home Stores. The foregoing allegations with respect to Rose-Phillips Co. are equally applicable to many other of respondent's customers and former customers.

PAR. 7. Some of said discriminations in prices are effected through the use by respondent of three price lists. Each of said price lists states the prices at which the respondent instructs its salesmen and

representatives to quote certain commodities, some of which are on each list. As to some commodities which appear on each list, a different price is stated in each list, one list stating the lowest price, another list stating a higher price, and another list stating the highest price at which such commodities are sold. Such lists are effective concurrently, but each list is used in quoting prices to only certain customers, the customers quoted from each list being mutually exclusive. Respondent furnishes one or more of such lists to some of its salesmen and representatives together with the names of the customers to be quoted therefrom. The majority of respondent's customers are quoted prices from the list containing the highest prices; a smaller number of customers are quoted from the list containing prices lower than those contained in the first; and the smallest number of customers are quoted from the list containing the lowest prices. Respondent secures the enforcement of such policy by threatening to discharge and discharging any salesman who deviates therefrom by quoting a customer from any list other than the one specified by the respondent or who informs a customer of the existence of a list price lower than the list price specified by respondent to be quoted to that customer.

PAR. 8. Specific illustrations of said discriminations are as follows, to wit: Respondent sold miscellaneous spices of like grade and quality to the following purchasers at the following prices; to Dixie Home Stores at a net price of 40 cents per dozen packages; to Milner Stores, which is a retail grocery chain located in various sections of North Carolina, at a net price of 50 cents per dozen packages; to McGee & Bleckley, Anderson, S. C., Rose-Phillips Co. of Greenwood, S. C., and many other wholesale grocers, at a net price of 60 cents per dozen packages. Respondent, therefore, sold such spices to Dixie Home Stores at a price which is 20 percent less than the price to Milner Stores, and more than 33 percent less than the price to McGee & Bleckley, Rose-Phillips Co. and many others; and to Milner Stores at a price approximately 17 percent less than the price at which it sold such spices to McGee & Bleckley and many other purchasers.

Respondent sold Sauer's Salad Dressing of like grade and quality, in pint sizes to the following purchasers at the following prices: to Dixie Home Stores at a net price of $1.65 per dozen; to Rose-Phillips Co., and many others, at a net price of $2.01 per dozen. Respondent, therefore, sold such salad dressing to Dixie Home Stores at a price which is approximately 18 percent less than the price to Rose-Phillips Co. and many other purchasers.

Respondent sold No. 5 Vanilla of like grade and quality to the following purchasers at the following prices: to the Thomas & Howard Co.'s at a net price of $1.45 per dozen; to Augusta Grocery Co., of

Augusta, Ga., Seneca Grocery Co., Rose-Phillips Co., Talmage Bros., & Co., Inc., of Athens, Ga., and many others, all of whom are wholesale grocers, at a net price of $1.67. Respondent, therefore, sold such extracts to said Thomas & Howard Co.'s at more than 13 percent less than to Augusta Grocery Co., Seneca Grocery Co., Rose-Phillips Co., Talmage Bros. & Co., Inc., and many other purchasers. Further illustration of said discriminations are shown in a comparative table, marked "Exhibit A," attached to and hereby made a part of this complaint. Each of the firms listed in exhibit A are or have been purchasers of respondent. In each specific illustration of respondent's discriminations in prices alleged above, and in exhibit A, the sales to the favored and the unfavored purchasers accruing during an interval of time during which there was no upward or downward movement in the prices of said commodities.

PAR. 9. The effect of the discriminations in prices as hereinbefore set forth may be substantially to lessen competition in the sale and distribution of the said commodities in the respective lines of commerce in which respondent and its customers are engaged, and has been, and may be, to injure, destroy, or prevent competition in the sale and distribution of said commodities with the respondent and with its customers who receive the benefits of such discriminatory prices.

PAR. 10. Such discriminations in prices by respondent between different purchasers of goods of like grade and quality in interstate commerce in the manner and form aforesaid are in violation of the provisions of section 2 (a) of the act described in the preamble hereof.

Count 2

PARAGRAPH 1. Paragraphs 1, 2, 4, 5, and 6 of count 1 are hereby referred to, and by that reference incorporated herein as fully and completely as they would be if set forth herein verbatim.

PAR. 2. While engaged in commerce in the conduct of its business, and in the course of such commerce, as above alleged and described, respondent is now and has been, subsequent to June 19, 1936, engaged in manufacturing, processing, and packaging such commodities for sale, and selling such commodities to customers competitively engaged with each other in the handling, offering for sale, and sale of such commodities to consumers, and to others for resale to consumers; and the respondent contracts to pay and pays to some, but not all, of such customers, and to representatives of some, but not all, of such customers for the benefit of the customers represented, valuable consideration, in the form of credit memoranda, checks, and otherwise, in consideration

of and as compensation for transportation and advertising services and facilities, contracted to be furnished and furnished by and through such customers directly, and by such customers acting through such representatives in connection with the handling, offering for sale, and sale of said commodities as have been theretofore sold by respondent to them.

PAR. 3. Respondent makes such payments as compensation for advertising services and facilities in connection with the offering for sale, and sale of such commodities on at least two bases, namely:

1. On a basis of a percentage of the net cost of the commodities purchased;

2. On a basis of a definite fixed sum, the amount of which is not calculable by any determinable method.

Such payments are not available on proportionally equal terms to all customers competing in the distribution of such commodities, in that:

1. The same was not available, for example, to the following customers of respondent: J. Drake Edens, Columbia, S. C.; Standard Grocery Co., Greenwood Jitney Jungle, Inc., Miller Stores, all of Greenwood, S. C.; and P. P. Pearson and Williams Piggly Wiggly Store of Gastonia, N. C.

2. With reference to payments calculated on the basis of a percentage of the net cost of the commodities purchased, respondents grant to some of such customers receiving such payments a greater percentage than to others, and to some of such customers such percentage is not available at all. For example, respondent sells Dukes Mayonnaise in pint sizes to Thomas & Howard Cos. and grants them payment of 5 percent and 5 percent; and also to Dixie Home Stores; Lipscomb & Russell Co. of Greenville, S. C.; McGee & Bleckley and Anderson Hardware Co. of Anderson, S. C.; Augusta Grocery Co., of Augusta, Ga.; Talmage Bros. & Co., Inc., of Athens, Ga.; The Great Atlantic & Pacific Tea Co., of Charlotte, N. C., and many others, and grants them payments of only 5 percent.

Respondent sells Sauer's Salad Dressing and miscellaneous spices to Dixie Home Stores, and grants it payments of 5 percent; and also to Lipscomb Russell Co., McGee & Bleckley, Anderson Hardware Co., Augusta Grocery Co., Copeland Grocery Co., of Elberton, Ga., Seneca Grocery Co., of Seneca, S. C., and many others, and grants them no payments on such purchases.

3. With reference to the payments made on a basis of a definite fixed sum, the amount of which is not calculable on any determinable basis; the respondent grants to some of such customers receiving such payments a greater sum than to others, and to some of such customers, such payments are not available at all.

For example, the respondent pays to the following customers directly and through the representatives of such customers for the benefit of the customers represented:

Charlotte, N. C.:	
Retail Grocers Association	$40 per month.
Independent Food Dealers Association	$25 per month.
Washington, D. C.:	
Nation-Wide Stores	5 percent on net purchases.
District Grocery Stores	$40 per month.
Richmond, Va.:	
Monogram Food Stores	5 percent on net purchases.
Richmond Food Stores	Do.
Sunny South Stores	$380 per year.

The payments made to customers directly or to the representatives of such customers for their benefit on a percentage basis as illustrated above are set out for the purpose of comparison.

Further illustrations as to the amounts of such payment made to competing customers of respondent as compensation for advertising services and facilities are set out in exhibit A.

PAR. 4. Respondent pays compensation to some of such customers for transportation services and facilities in connection with the handling of such commodities by making deductions from invoice prices on the face of the invoice, and such deductions are made under the following circumstances.

As a general practice and policy, the prices which respondent quotes and which appear on its invoices include the cost of transportation by common carrier to customers, and a common carrier is usually employed which receives its lawful charges from respondent or from the customer. When a customer pays the transportation charges to the common carrier, such charges are deducted from the invoice prices at the time the customer makes remittance to respondent.

Some of respondent's customers use trucks to deliver merchandise from their respective places of business to purchasers who are located in the neighborhood of Greenville, S. C., and Richmond, Va., in which cities respondent's plants are situated. Sometimes respondent's customers have trucks in those cities for the purpose of receiving goods from suppliers and transporting them to their respective places of business, and such goods do not require the total capacity of such trucks.

EXHIBIT "A"

Approximate net delivered prices to preferred and nonpreferred customers after deduction of (I) trade discounts and (II) advertising allowances

[Column I below is the net price after deducting the trade discounts. Column II below is the net price after deduction of trade discounts and advertising allowances]

Product	Customer classification									
	Retailers						Wholesalers			
	Dixie-Home Stores		Milner Stores		Others [1]		Thomas & Howard		Others [2]	
Column No.	I	II	I	II	I	II	I	II	I	II
Sauer's Salad Dressing:										
Quarts	$2.70	$2.57	------	------	$3.25	$3.25	$3.25	$3.25	$3.25	$3.25
Pints	1.65	1.57	------	------	2.01	2.01	2.01	2.01	2.01	2.01
Duke's Mayonnaise:										
3-ounce	.73	.69	------	------	.73	.73	.73	.67	.73	.73
4-ounce	.77	.73	$0.77	$0.77	.77	.77	.77	.71	.77	.77
8-ounce	1.33	1.26	1.33	1.33	1.33	1.33	1.33	1.23	1.33	1.26
Pints	2.61	2.48	2.61	2.61	2.61	2.61	2.57	2.32	2.61	2.48
Quarts	4.40	4.18	4.40	4.40.	4.40	4.40	4.40	4.08	4.40	4.18
Pure extracts:										
No. 2 Vanilla	.77	.73	------	------	.77	.77	.77	.77	.77	.77
No. 2 Lemon	.77	.73	------	------	.77	.77	.77	.77	.77	.77
No. 5 Vanilla	1.67	1.59	------	------	1.67	1.67	1.45	1.38	1.67	1.67
No. 5 Lemon	1.67	1.59	------	------	1.67	1.67	1.67	1.59	1.67	1.67
Miscellaneous spices:										
Ground ginger	.40	.38	.50	.50	.60	.60	.60	.57	.60	.60
Ground mustard	.40	.38	.50	.50	.60	.60	.60	.57	.60	.60
Ground red pepper	.40	.38	.50	.50	.60	.60	.60	.57	.60	.60
Ground tumeric	.40	.38	.50	.50	.60	.60	.60	.57	.60	.60
Curry powder	.40	.38	.50	.50	.60	.60	.60	.57	.60	.60
Cream of tartar	.40	.38	.50	.50	.60	.60	.60	.57	.60	.60
Celery seed	.60	.57	.63	.63	.68	.68	.68	.65	.68	.68
Celery salt	.60	.57	.63	.63	.68	.68	.68	.65	.68	.68
Miscenaneous products:										
No. 2 Carter oil	4.15	gr. 0	------		------		4.75	0		
No. 2 Turpentine	3.50	gr. 0	------		------		4.25	0		

[1] Other retailers are J. Drake Edens, P. P. Pearson, Miller Stores, Williams Piggly Wiggly, Greenwood Jitney Jungle, and many others.

[2] Other wholesalers are Rose Phillips Co., McGee & Bleckley, Talmage Bros. & Co., Inc., Seneca Grocery Co., Carter Grocery Co., Augusta Grocery Co., Copeland Grocery Co., and many others.

In order to aid some of such customers to utilize or to more fully utilize such trucks on their return trip, respondent has delivered to such customers at the door of its plants, since June 19, 1936, commodities purchased by them for transportation by such customers to their rsepective places of business; and in consideration of and compensation for such handling of such commodities, respondent, as above alleged, deducts from the invoice prices a sum equal to the common carrier charges for such transportation.

Under such circumstances, the cost of such handling to such purchasers, who transport their own purchases, was and is substantially less than the tariff charges by common carrier for the same services and facilities; and the savings thus effected result in a lower per unit cost for such commodities to such customers than the cost to customers to whom purchases are transported by common carrier. Other such cus-

tomers similarly situated have requested respondent to so handle such commodities as they have purchased from respondent, and to receive such payments as compensation therefor, but respondent has denied such request, and their purchases are transported to them by common carrier.

In that such payments for transportation services and facilities have been and are granted to some such customers and denied to others, such payments are not available on proportionately equal terms to all customers competing in the distribution of such commodities.

PAR. 5. Such acts of respondent since June 19, 1936, in interstate commerce, in the manner and form aforesaid, in paying and contracting to pay valuable consideration to and for the benefit of some customers for services and facilities furnished by and through such customers, in connection with the handling, sale, and offering for sale of commodities theretofore sold to them by respondent without such payments being available on proportionately equal terms to all other competing customers is in violation of the provisions of section 2 (d) of the Robinson-Patman Act, further described in the preamble hereof.

REPORTS, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act, U. S. C. title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade Commission duly issued and served its complaint upon the respondent, The C. F. Sauer Co., charging it with violating the provisions of subsections (a) and (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the respondent had answered, hearings were held and evidence introduced on behalf of the Federal Trade Commission. Thereafter the Federal Trade Commission duly issued and served on the respondent its amended complaint in this proceeding charging violations of the provisions of subsections (a) and (d) of section 2 of the said Clayton Act as amended by the Robinson-Patman Act. The respondent in due course filed its answer to such amended complaint, admitting certain allegations and denying other allegations of said amended complaint.

After the issuance of said amended complaint and the filing of respondent's answer thereto and without the taking of any testimony pursuant thereto, a stipulation as to the facts was entered into between W. T. Kelley, Chief Counsel for the Commission, and Simon Michelet,

the duly authorized attorney for The C. F. Sauer Co. In the said stipulation as to the facts counsel for the respondent waived the taking of further evidence, the filing of the trial examiner's report, and all other intervening procedure, and expressly waived the filing of briefs and oral argument.

Thereafter this proceeding regularly came on for final hearing before the Commission on the said amended complaint, the answer thereto, and the stipulation as to the facts, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The C. F. Sauer Co., is a corporation organized and existing under the laws of the State of Virginia with its principal office and place of business located at 2000 West Broad Street, in the city of Richmond, State of Virginia. The C. F. Sauer Co. operates plants at Richmond, Va., and Greenville, S. C. Mayonnaise and salad dressing are manufactured at respondent's plant located at Greenville, S. C., and are sold and distributed from said plant and from respondent's plant at Richmond, Va.; extracts, spices, tea, pepper, drugs, insecticides, and other commodities are manufactured, packaged, or compounded and are sold and distributed from the respondent's plants located at Richmond, Va.

The respondent has sold its food products to three general groups of customers; namely, wholesale grocers, retail chain grocers, and retail grocers.

PAR. 2. Since June 19, 1936, in the course and conduct of its business, the respondent has sold the aforesaid food products, manufactured, packed, and compounded in the aforesaid plants, to purchasers located in States other than the States in which said plants are located; and such food products so sold were shipped and caused to be transported by respondent from said plants across State lines to such purchasers.

PAR. 3. Since June 19, 1936, while engaged in commerce as aforesaid, the respondent has sold such food products of like grade and quality, for use, consumption, and resale, within the United States to some purchasers at higher prices than the prices charged to competing purchasers.

Illustrations of such sales at different prices are as follows:

1. During April of 1937 or May and June of 1938, respondent sold and shipped its Sauer's Salad Dressing to Dixie Home Stores, retail

grocers who do business in North Carolina, South Carolina and Georgia, at a net price of $2.70 per dozen quarts and $1.65 per dozen pints, and respondent concurrently sold and shipped said salad dressing to a number of other and competing purchasers among whom was the Mutual Distributing Co., of Asheville, N. C., also a retail grocer, at an invoice price of $3.80 per dozen quarts and $2.35 per dozen pints, from which invoice prices the respondent granted and allowed discounts of 10 percent and 5 percent, making net prices to the said purchaser of $3.25 per dozen for quarts and $2.01 per dozen for pints.

2. During April of 1937 or May and June of 1938, respondent sold and shipped its Sauer's Salad Dressing to said Dixie Home Stores, retail grocers, doing business in North Carolina, South Carolina, and Georgia, at a net price of $2.70 per dozen quarts and $1.63 per dozen pints, and respondent concurrently sold and shipped said salad dressing to Rose-Phillips Co., Greenwood, S. C., Seneca Grocery Co., Seneca, S. C., and McGee & Bleckley, Anderson, S. C., all of whom are wholesale grocers, whose customers compete with said Dixie Home Stores, at invoice prices of $3.80 per dozen quarts and $2.35 per dozen pints, from which invoice prices the respondent granted and allowed discounts of 10 percent and 5 percent to the wholesale grocers named, making net prices to the said purchasers of $3.25 per dozen for quarts and $2.01 per dozen for pints.

3. During March or August and September of 1937, respondent sold and shipped its miscellaneous packaged spices to Dixie Home Stores, retail grocers doing business in North Carolina, South Carolina, and Georgia, at an invoice price of 40 cents per dozen 10-cent-size packages, and respondent concurrently sold and shipped, during the same month, said spices to a large number of other and competing retail purchasers, among whom was Horn's Cash Store of Forest City, N. C., Mutual Distributing Co. of Asheville, N. C., and K. E. Simpson of Rutherfordton, N. C., at an invoice price of 70 cents per dozen 10-cent-size packages, from which price respondent granted and allowed a discount of 10 percent and 5 percent, making a net price of 60 cents per dozen packages.

Sales of such food products by respondent to some purchasers at higher prices than to other competing purchasers were not limited to the food products, the purchasers, or to the dates set forth in the above illustrations; but since June 19, 1936, in each trade area served, respondent sold some of such food products to one or a few purchasers at higher prices than the same food products were concurrently sold to other and competing purchasers, and the extent of the differentials between such prices varied from differentials of approximately 5

percent to differentials of approximately 25 percent, depending upon the food products sold and the purchaser, or either.

For example: The respondent sold some of its food products in the same trade area, to retail chain grocers and to wholesale grocers. Respondent's net price on some such food products was lower to the retail chain grocer than to the wholesale grocer, to such an extent that the retail chain grocer could and did sell such food products at retail at a price lower than such wholesale grocer could purchase such food products of like grade and quality from respondent.

PAR. 4. The differentials between the prices charged for some such food products by respondent to such competing purchasers was sufficient to permit the purchasers charged the lower prices to resell, and such purchasers did so resell, such food products at prices only slightly higher than, as low as, or lower than the prices at which competing resellers were able to purchase such food products from respondent. Purchasers paying the higher prices for such food products were unable to resell them except at a loss, at no profit, or at a profit insufficient, those commodities alone considered, to warrant continued or anything but passive resale effort. The Commission concludes that price differences such as those herein described are, in the circumstances of this case, material in that the effect thereof upon competition among purchasers and with favored purchasers was, and may be, to injure, prevent, or destroy such competition.

PAR. 5. In consideration of and as compensation for advertising services and facilities contracted to be furnished or furnished by some customers in connection with the handling, offering for sale, and sale of such food products, respondent contracted to pay, and paid, various sums, or in lieu thereof contracted to issue, and issued, credit memoranda in amounts equal to that percentage of the net prices charged by respondent for such food products which is set forth opposite the customers' names in the column entitled "Amount of Credit Memorandum"; and where no such percentage figure is shown, no such credit memoranda were issued by respondent in any amount to such customers, although such customers were competitive with the compensated customers and were ready, willing, and able, and in some instances offered, to furnish such services and facilities, which said offers were refused by respondent.

The following tabulation shows the amount of the credit memoranda granted some customers on purchases of some food products, such allowance being based on a percentage of the net purchase price of such food products, in comparison to a smaller allowance or no allowance granted to competitors of such purchasers who also purchased such food products during the same specified time.

FOOD PRODUCT

Sauer's salad dressing

[Sold by respondent during April, May, and August, 1938]

Names and addresses of customers	Amount of credit memorandum	Size
Retailers		
Dixie Home Stores, North Carolina, South Carolina, and Georgia.	5 percent	Pints.
	do	Quarts.
Mutual Distributing Co., Asheville, N. C.	0 percent	Pints.
	do	Quarts.

Duke's mayonnaise

[Sold by respondent during March, April, and May, 1937]

Names and addresses of customers	Amount of credit memorandum	Size
Retailers		
Dixie Home Stores, North Carolina, South Carolina, and Georgia.	5 percent	8-ounce.
	do	Pints.
	do	Quarts.
The Great A & P Tea Co., Charlotte, N. C.	0 percent	8-ounce.
	do	Pints.
	do	Quarts.
Wholesalers		
Thomas & Howard Co., Inc., Charlotte, N. C.	5 percent+5 percent	8-ounce.
	do	Pints.
	do	Quarts.
Charles Moody Co., Charlotte, N. C.	5 percent	8-ounce.
	do	Pints.
	0 percent	Quarts.
F. M. Youngblood & Co., Concord, N. C.	5 percent	8-ounce.
	do	Pints.
	0 percent	Quarts.
Wholesalers		
Malone & Hyde, Inc., Memphis, Tenn.	5 percent+5 percent	8-ounce.
	do	Pints.
Clayton-Hughes Co., Covington, Tenn.	5 percent	8-ounce.
	do	Pints.

Duke's relish

[Sold by respondent during March, April, and May, 1937]

Names and addresses of customers	Amount of credit memorandum	Size
Retailers		
Dixie Home Stores, North Carolina, South Carolina, and Georgia.	5 percent	8-ounce.
	do	Pints.
Horn's Cash Store, Forest City, N. C.	0 percent	8-ounce.
	do	Pints.
Wholesalers		
Thomas & Howard Co., Inc., Charlotte, N. C.	5 percent+5 percent	8-ounce.
	do	Pints.
F. M. Youngblood & Co., Concord, N. C.	0 percent	8-ounce.
	5 percent	Pints.
Thomas & Howard Co., Greensboro, N. C.	5 percent+5 percent	8-ounce.
	do	Pints.
Carolina Commission Co., Hickory, N. C.	5 percent	8-ounce.
	0 percent	Pints.

FOOD PRODUCT

Sauer's tea

[Sold by respondent during March 1937]

Names and addresses of customers	Amount of credit memorandum	Size
Wholesalers		
Thomas & Howard Co., Greensboro, N. C	10 percent	4-ounce.
F. M. Youngblood & Co., Concord, N. C	0 percent	Do.
Central Grocery Co., Burlington, N. C	do	Do.

Sauer's pure extracts

[Sold by respondent during January, May, and June 1938]

Names and addresses of customers	Amount of credit memorandum	Size
Wholesalers		
Evans-Terry Co., Inc., Mississippi and Tennessee	10 percent	No. 5 Vanilla.
	do	No. 10 Vanilla.
Malone & Hyde, Inc., Tennessee, Mississippi, and Arkansas	5 percent	No. 5 Vanilla.
	do	No. 10 Vanilla.

Miscellaneous packaged spices

[Sold by respondent during May, June, and August 1938]

Names and addresses of customers	Amount of credit memorandum	Size
Wholesalers		
Evans-Terry Co., Inc., Mississippi and Tennessee	10 percent	10 cents.
Malone & Hyde, Inc., Tennessee and Mississippi	5 percent	Do.

CONCLUSION

The aforesaid discriminations in price and the aforesaid payments and allowances by the respondent, as herein found, are in violation of subsections (a) and (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, U. S. C. title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of the respondent thereto, 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 its conclusion that said respondent has violated the provisions of subsection (a) and subsection (d) of section 2 of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act, U. S. C. title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

It is ordered, That respondent The C. F. Sauer Co., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in the sale of mayonnaise, salad dressing, extracts, spices, tea, pepper, insecticides, or other of its products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist:

1. From discriminating, directly or indirectly, in the price of any such products of like grade and quality by selling any such product or products to any purchaser at a price or prices materially different from those at which sales are made to any other purchaser where those buying at such different prices compete in the resale of such product or products, or where the effect is, or may be, to injure, destroy, or prevent competition with any favored purchaser or his customers.

2. From otherwise discriminating in price, either directly or indirectly, among different purchasers of any such product or products of like grade and quality in any manner prohibited by section 2 (a) of the said Clayton Act as amended.

It is further ordered, That said respondent, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of any of respondent's aforesaid products in commerce, as "commerce" is defined in the said Clayton Act, do forthwith cease and desist from paying, or contracting to pay, or granting or allowing, anything of value to or for the benefit of any customer as compensation or in consideration for any advertising, promotive, or other services or facilities furnished by, or through, such customer in connection with the processing, handling, sale, or offering for sale of any such product or products, unless such payments or allowances are available on proportionally equal terms to all other customers competing in the distribution 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.

IN THE MATTER OF

GIANT TIGER CORPORATION

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 4276. Complaint, Aug. 28, 1940—Decision, July 31, 1941

Where a corporation engaged in operating a chain of self-service retail food stores, commonly known as "SUPER MARKETS," purchasing a substantial portion of its requirements from sellers in other States—

Received and accepted allowances and discounts in lieu of brokerage in substantial amounts, through purchasing commodities at prices lower than those at which such commodities were sold to other purchasers by an amount which reflected all or a portion of the brokerage currently being paid by the sellers to their respective brokers for effecting sales thereof to other purchasers:

Held, That such receipts and acceptance of allowances and discounts in lieu of brokerage fees or commissions from sellers upon purchases of commodities violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John T. Haslett for the Commission.

Einhorn & Schachtel, of Philadelphia, Pa., 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 Giant Tiger Corporation is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located at Forty-first and Chestnut Streets, Philadelphia, Pa. Respondent is engaged in the business of operating a chain of self-service retail food stores, commonly known as "SUPER MARKETS."

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchased commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. Since June 19, 1936, in connection with a purchase of its requirements in interstate commerce, as aforesaid, respondent has received and accepted allowances and discounts in lieu of brokerage in substantial amounts.

Usually, the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage is accomplished by respondent by purchasing commodities at prices lower than the prices at which such commodities are sold to other purchasers thereof by an amount which reflects all or a portion of the brokerage currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers.

PAR. 4. The receipt and acceptance of allowances and discounts in lieu of brokerage by respondent as set forth in paragraph 3 hereof is 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 act of Congress approved June 19, 1936, the Robinson-Patman Act (U. S. C. title 15, sec. 13), the Federal Trade Commission, on the 28th day of August 1940, issued and thereafter served its complaint in this proceeding upon respondent Giant Tiger Corporation, a corporation, charging it with violation of the provisions of subsection (c) of section 2 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 of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts and expressly waiving the filing of briefs and oral argument, 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, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Giant Tiger Corporation is a corporation organized and existing under the laws of the State of Pennsylva-

nia, with its principal office and place of business located at Forty-first and Chestnut Streets, Philadelphia, Pa. Respondent is engaged in the business of operating a chain of self-service retail food stores, commonly known as "SUPER MARKETS."

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchased commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. Since June 19, 1936, in connection with the purchase of its requirements in interstate commerce, as aforesaid, respondent has received and accepted allowances and discounts in lieu of brokerage in substantial amounts.

Usually, the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage is accomplished by respondent by purchasing commodities at prices lower than the prices at which such commodities are sold to other purchasers thereof by an amount which reflects all or a portion of the brokerage currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers.

CONCLUSION

In receiving and accepting allowances and discounts in lieu of brokerage fees or commissions from sellers upon purchases of commodities as set forth in paragraph 3 hereof, the respondent has violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and substitute answer of respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearings as to said facts and expressly waives 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 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 the respondent Giant Tiger Corporation, a corporation, its officers, directors, agents, employees, and representatives,

jointly or severally, directly or through any corporate or other device, in connection with the purchasing of commodities in interstate commerce, do forthwith cease and desist from:

1. Accepting from sellers, directly or indirectly, any allowance or discount in lieu of brokerage fees or commissions in whatever manner or form said allowances, discounts, brokerage fees, or commissions may be offered, allowed, granted, paid, or transmitted; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage fee or other compensation or any allowance or discount in lieu thereof upon purchases of commodities made by respondent.

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

IN THE MATTER OF

INTER-STATE CIGARETTE MERCHANDISERS 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 4388. Complaint, Nov. 26, 1940—Decision, July 31, 1941

Where an unincorporated trade association, together with its membership of five associations of operators of automatic cigarette vending machines, engaged in such business in the metropolitan area of New York City, and in New Jersey, New York, Pennsylvania, Connecticut, and Massachusetts, who purchased such machines from manufacturers and distributors and installed them in various types of retail establishments, such as restaurants, taverns, gasoline stations, etc., by agreement with proprietors thereof; controlling between 85 and 90 percent of the business in the territory concerned and enabled, through their aforesaid associations, more effectively to influence such trade for the enhancement of their own profits, and in active and substantial competition with each other and with others except as below set forth; and with the officers, directors, and members of said organizations—

Acting in concert to monopolize business in their respective territories, by means of (1) campaigns designed to force all operators controlling an appreciable number of locations, to join the associations, (2) demands that manufacturers refuse to sell machines to nonmembers, (3) appointment of committees to induce manufacturers to stop selling direct to "locations" and to promise not to create new operators or to sell nonmembers, or to induce nonmembers to join the association, (4) association agreements to purchase from the four leading manufacturers a specified number of machines annually in consideration of manufacturers' agreement not to create new operators or sell nonmembers, (5) threatening with boycott and, in many instances, boycotting, machines of noncooperating manufacturers, and (6) use of the combined power of all the associations in various ways to intimidate and coerce manufacturers as aforesaid—

Entered into and carried out understandings, agreements, and conspiracies between and among themselves for the purpose of restraining and eliminating competition in the purchase, distribution, and installation of automatic cigarette vending machines in interstate commerce; and, in pursuance thereof—

(*a*) Established and attempted to establish the members of said associations as a preferred class for the purpose of having manufacturers and distributors confine the sale and distribution of automatic cigarette machines to such member operators exclusively;

(*b*) Interfered with efforts of competitors of said member operators to obtain such machines;

(*c*) Required, induced, and compelled manufacturers and distributors, by promises and threats, not to sell or ship machines to competitors of said member operators, and to confine the sale and distribution thereof to said member operators; and

(*d*) Threatened to and did boycott manufacturers and distributors selling machines to competitors of said member operators;

With result that manufacturers were forced to comply with the requirements of the various associations and created no new operators in their territories, refused to sell to locations or to wholesale dealers who sold to locations, and to nonmembers of associations, and that, in certain territories, manufacturers refusing to abide by their agreements not to create new operators in consideration of an association's undertaking to purchase a definite quantity of their machines annually, were boycotted by the association members:

Held, That such acts and practices, as above set forth, were all to the prejudice of competitors of said member operators and of the public, had a dangerous tendency to and actually did hinder and prevent competition in the sale of automatic cigarette vending machines, unreasonably restrained commerce in said machines, and constituted unfair methods of competition.

Mr. Daniel J. Murphy for the Commission.

Parker, Chapin & Flattau, 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 Inter-State Cigarette Merchandisers Association, The Cigarette Merchandisers Association, Inc., Cigarette Merchandisers Association of New Jersey, Inc., The Automatic Cigarette Vendors Association of Eastern Pennsylvania, The Cigarette Machine Operators of Connecticut, Inc., Cigarette Merchandisers Association of New England, and the officers, directors and members of said organizations and associations, 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 Inter-State Cigarette Merchandisers Association, hereinafter for convenience referred to as the "Inter-State Associations," is an unincorporated association, with its principal office and place of business located at 60 Park Place, Newark, N. J. The membership of said Inter-State Association is composed of respondent organizations and associations of operators of automatic cigarette vending machines, to wit: The Cigarette Merchandisers Association, Inc., Cigarette Merchandisers Association of New Jersey, Inc., The Automatic Cigarette Vendors Association of Eastern Pennsylvania, The Cigarette Machine Operators of Connecticut, Inc., and Cigarette Merchandisers Association of New England. The said member respondent organizations and associations participate and cooperate in the management and activities of the said Inter-State Association. Each of the said member respondent organizations and associations appoint or elect three authorized delegates or alternates

who actively represent each respective member respondent organization and association at the meetings of the said Inter-State Association. In addition to said authorized delegates, each member respondent organization and association is further represented in the affairs and activities of said Inter-State Association, by its manager, executive secretary and/or counsel who, by reason of their office in their respective organization or association are associate members of said Inter-State Association.

The respondent officers and directors of the said Inter-State Association are:

President	John Sharenow, a representative of the Cigarette Merchandisers Association of New Jersey, Inc.
Vice President	William King, a representative of The Automatic Cigarette Vendors Association of Eastern Pennsylvania.
Treasurer	Edward Beresth, a representative of The Cigarette Machine Operators of Connecticut, Inc.
Secretary	Robert K. Hawthorne, a representative of The Cigarette Merchandisers Association, Inc.
Recorder	James V. Cherry, a representative of the Cigarette Merchandisers Association of New Jersey, Inc.
Director	Anthony J. Masone, a representative of The Cigarette Machine Operators of Connecticut, Inc.
Director	Alfred Sharenow, a representative of The Cigarette Merchandisers Association of New England.
Director	Edward J. Dingley, a representative of The Automatic Cigarette Vendors Association of Eastern Pennsylvania.

PAR. 2. Respondent The Cigarette Merchandisers Association, Inc., is a membership 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 Chanin Building in New York City, N. Y. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of respondent Inter-State Association. The membership of said respondent corporation consists of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the metropolitan area of New York City, N. Y. The respondent members of said respondent corporation operate approximately 17,000 of said machines which represent approximately 90 percent of such machines operated in the metropolitan area of New York City.

The respondent officers and directors of the said respondent corporation and the respective respondent members of said respondent corporation by or with which such officers and directors are employed or connected are as follows:

Officers and directors	*Name of member respondent with which respective officers and directors are connected*
President: Robert K. Hawthorne	P & H Cigarette Service, Bronx, N. Y.
First vice president: Alexander Frazer	Atlas Vending Co., 2840 8th Ave., New York, N. Y.
Second vice president: Albert S. Denver	Lincoln Cigarette Service (a trade name under which Albert S. Denver as an individual does business), 1645 Bedford Ave., Brooklyn, N. Y.
Treasurer: Samuel Yolen	Modern Cigarette Service (a trade name under which Samuel Yolen as an individual does business), 172 Fairview Ave., Port Chester, N. Y.
Secretary: Tom Cola	United Cigarette Service, 3734 East Tremont Ave., New York, N. Y.
Manager: Matthew Forbes	
Director: Michael Lascari	Manhattan Cigarette Service, Inc., 421 East 76th St., New York, N. Y.
Director: Jackson Bloom	Cigarette Service, Inc., 36 Cooper Sq., New York, N. Y.
Director: Louis D. Schwartz	Smokers Service, Inc., 211 Northland Blvd., Bayside, Long Island, N. Y.
Director: Martin M. Berger	Rowe Cigarette Service Co., Inc., New York, N. Y.
Director: Bernard Rosen	Supreme Cigarette Service, Inc., 381 Main St., New Rochelle, N. Y.
Director: Harold Roth	Herald Vending Corporation, 41 24th St., Long Island City, N. Y.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent corporation but are representative members thereof, respectively.

PAR. 3. Respondent Cigarette Merchandisers Association of New Jersey, Inc., is a membership 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 60 Park Place, Newark, N. J. The membership of said respondent corporation consists of certain persons, partnerships and corporations engaged in the operation of automatic cigarette vending machines in the States of New Jersey, New York, and Pennsylvania. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of the respondent Inter-State Association.

The respondent officers and directors of the said respondent corporation and the respective respondent members of said respondent corporation by or with which such officers and directors are employed or connected are as follows:

Officers and directors	*Name of member respondent with which respective officers and directors are connected*
President and director: Charles W. Strange.	Unit Vending Corporation, 227 North Park St., East Orange, N. J.
Vice president and director: Max Jacobowitz.	Hudson County Tobacco Co., 84 Montgomery St., Jersey City, N. J.
Treasurer and director: Henry W. Hartmann.	Pack Shops of Jersey City, Inc., 46½ Fleming Ave., Newark, N. J.
Secretary and director: John Grout	Jersey Cigarette Service, Inc., 111 4th St., Pelham, N. Y.
Manager: James V. Cherry	
Director: Michael Lascari	Public Service Tobacco Co., 1464 North Broad St. (a corporation), Hillside, N. J.
Director: John Sharenow	North Jersey Cigarette Service, Inc., 214 33rd St., North Bergen, N. J.
Director: Samuel M. Malkin	Malkin Sales Co. (a trade name under which Harry Malkin and Samuel Malkin as copartners do business), 408 Market St., Newark, N. J.
Director: Harry Zink	Coast Cigarette Service, Inc., 806 Monroe Ave., Asbury Park, N. J.
Director: Herman Arlein	Le Peko Co., Inc., 100 Newark Ave., Jersey City, N. J.

The above-named respondent officers, directors and members do not constitute the entire membership of said respondent corporation but are representative members thereof, respectively.

PAR. 4. Respondent, The Automatic Cigarette Vendors Association of Eastern Pennsylvania, is an unincorporated trade association or organization of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the State of Pennsylvania. The principal office and place of business of said respondent association is located at 1411 Fox Building, Philadelphia, Pa. Said respondent association is a member, and is represented by three authorized delegates or alternates at meetings, of the respondent Inter-State Association.

The respondent officers and directors of the respondent association and the respective respondent members of said respondent association by or with which such officers and directors are employed or connected are as follows:

Officers and directors	*Name of member respondent with which respective officers and directors are connected*
President and director: Walter I. Davidson.	Walday Sales Co. (a trade name under which Walter I. Davidson as an individual does business), 5645 North 15th St., Philadelphia, Pa.
Vice president and director: Patrick J. Bonoma.	Delaware County Tobacco Co. (a trade name under which E. P. Christake as an individual does business), 310 Edgemont Ave., Chester, Pa.
Treasurer and director: LeRoy A. Schackleton.	Automatic Vending Co., 525 Parker St., Chester, Pa.
Director: William L. King	Quaker Vending Co. (a trade name under which William L. King, as an individual does business), 605 Wyoming Ave., Philadelphia, Pa.
Director: W. Harry Steele, Jr	Steele Vending Co. (a trade name under which W. Harry Steele, Jr., as an individual does business), 5831 Henry Ave., Philadelphia, Pa.
Director: Harry D'Alessandro	Big 4 Distributors (a trade name under which Harry D'Alessandro, Anthony Lalli, Cosimo Lalli, and Alfred Lalli as copartners do business), 1111 Carpenter St., Philadelphia, Pa.
Director: Ralph J. Burnard	Saks Cigarette Service (a trade name under which Emma M. Bernard and Amedio Principi as copartners do business), 1423 Conlyn St., Philadelphia, Pa.
Director: Joseph Silberman	R. Baylin Co. (a trade name under which Richard Baylin as an individual does business), 151 West 3rd St., Chester, Pa.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent association but are representative members thereof, respectively.

PAR. 5. Respondent The Cigarette Machine Operators of Connecticut, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of Connecticut with its principal office and place of business located at 106 Meadow Street, Waterbury, Conn. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of the said respondent Inter-State Association. The membership of said respondent corporation consists of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the State of Connecticut.

The respondent officers and directors of the said respondent corporation and the respective respondent members of respondent said corporation by or with which such officers and directors are employed or connected, are as follows:

Officers and directors	*Name of member respondent with which respective officers and directors are connected*
President: Anthony R. Nastri	Automatic Sales Co., Inc., 106 Meadow St., Waterbury, Conn.
Vice president: Robert Zimmerman	Self-Service Sales Corporation, 627 Albany Ave., Hartford, Conn.
Secretary: Anthony J. Masone	Automatic Sales Co., Inc., 106 Meadow St., Waterbury, Conn.
Treasurer: M. E. Norris	Norris Tobacco Co. (a trade name under which M. E. Norris as an individual does business), Main Street, Danbury, Conn.
Director: John J. Fitzgerald	Connecticut Automatic Cigarette Co. (a trade name under which John J. Fitzgerald as an individual does business), 61 Broadway, New Haven, Conn.
Director: Samuel Aliener	1507 Chapel St., New Haven, Conn.
Director: Nathan Dubowry	Connecticut Automatic Sales Co. (a trade name under which Nathan Dubowry as an individual does business), 93 Lafayette St., New Britain, Conn.
Director: Lena Bonelli	Bonelli Cigarette Service (a trade name under which Lena Bonelli as an individual does business), 407 East Elm St., Torrington, Conn.
Director: Charles Sparrow	Cigarette Machines Sales Co. (a trade name under which Charles Sparrow as an individual does business), 298 Wayne St., Bridgeport, Conn.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent corporation but are representative members thereof, respectively.

PAR. 6. Respondent Cigarette Merchandisers Association of New England, is a membership corporation organized and existing under and by virtue of the laws of the State of Massachusetts with its principal office and place of business located at No. 1 Federal Street, Boston, Mass. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of the said respondent Inter-State Association. The membership of said respondent corporation consists of certain persons, partnerships and corporations engaged in the operation of automatic cigarette vending machines in the State of Massachusetts.

The respondent officers and directors of the respondent corporation and the respective respondent members of said respondent corporation by or with which such officers and directors are employed or connected are as follows:

Officers and directors	*Name of member respondent with which respective officers and directors are connected*
President: Samuel M. Goldstein	Metro Automatic Sales Corporation, 330 Massachusetts Ave., Boston, Mass.
Vice president: Louis Berman	Vogue Vending Co. (a corporation), 262 Middlesex St., Lowell, Mass.
Secretary: William B. Burns	Grand Novelty & Supply Co. (a trade name under which William B. Burns does business), 66 Southgate St., Worcester, Mass.
Manager: Walter R. Guild	
Director: Albert M. Coulter	M. A. C. Vending Co. (a trade name under which Albert M. Coulter and M. L. Coulter as copartners do business), 6 North Woodfort, Worcester, Mass.
Director: Frank Fendel	Fendel Bros. (a trade name under which Frank Fendel as an individual does business), 265 Park Ave., Revere, Mass.
Director: Oscar Gerson	Gerson Sales Co. (a corporation), 70 A Green St., Boston, Mass.
Director: Julian Karger	Enterprise Cigarette Service Co. (a trade name under which Julian Karger and Louis Elfman as copartners do business), 250 Broadway, Revere, Mass.
Director: Cleo C. Kingsley	K. D. Vending Co. (a trade name under which Julius Ulman and Cleo C. Kingsley as copartners do business), 219 State St., Swampscott, Mass.
Charles E. Knight	12 Kimbal Rd., Methuen, Mass.
Alfred I. Sharenow	Cigarette Service Co., 266 Salem St., Bedford, Mass.
Jacob Shelman	Shelley Sales Co., Inc., 382 Watertown St., Newton, Mass.
Harry Spierer	Monroe Sales Co. (a trade name under which Harry Spierer as an individual does business), 56 Harvest St., Lynn, Mass.
William Spiller	Massachusetts Vending Co. (a trade name under which Rose D. Spiller as an individual does business), 69 Wayland St., Roxbury, Mass.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent association but are representative members thereof, respectively.

PAR. 7. Those hereinabove specifically named respondents as officers, directors, and members of the said respondent organizations and associations do not constitute the entire list or number of such officers, directors, or members but are typical and representative thereof. All of the officers, directors, and members of said respondent organizations and associations are not known to the Federal Trade Commission and cannot be joined specifically as parties respondent in this proceeding without manifest inconvenience and delay prejudicial to the public interest. All of the officers, directors, and members of said respondent organizations and associations are, therefore, made parties respondent herein as a class of which those specifically named are representative of the whole.

PAR. 8. Said operators of automatic cigarette vending machines, members of said organizations and associations and respondents herein, in the course and conduct of their business, have purchased and are now purchasing automatic cigarette vending machines from manufacturers, producers and distributors, in various States; said respondent operators, by agreement with proprietors, install such machines in various types of retail establishments in which the sale of cigarettes is contemplated, i. e., restaurants, taverns, grills, barrooms, gasoline station, etc.; the places where such machines are installed are commonly known in the trade as "locations;" the said respondent operators have caused and are now causing automatic cigarette vending machines to be shipped and transported in commerce to the places of business and to the locations of such purchasing respondents from points in States other than the States in which such respective points of destination are located.

PAR. 9. In the course and conduct of their respective business heretofore described, except to the extent to which competition in the purchase and location of automatic cigarette vending machines has been restrained, lessened, injured, and suppressed by the undertakings, agreements, combinations, and conspiracies hereinafter referred to, the respondent operators of automatic cigarette vending machines have been, and are now, in active and substantial competition with each other and with other operators of such machines in the purchase and location of such machines.

PAR. 10. Said respondent operators of automatic cigarette vending machines, members of the said respondent organizations and associations hereinabove described, constitute a large and important part of the operators of automatic cigarette vending machines in the several States of the United States in which the members of respondent organizations and associations are engaged in business; and such members constitute a group so large and influential in the trade as to be

able to control and influence the flow of trade and commerce in automatic cigarette vending machines within, to, and from the several States wherein the said respondent operators are engaged in business. Said members as allied and banded together in associations and organizations are enabled thereby to more effectively exercise control and influence of such trade and commerce for the promotion and enhancement of their own volume of trade and profits.

PAR. 11. For more than 3 years last past there were, and have been and are now, several manufacturers, producers, and sellers of automatic cigarette vending machines whose respective places of business were, and are now located in various States other than the States where the respondent operators of automatic cigarette vending machines have their places of business; said manufacturers, producers, and sellers have been, and are now, engaged in the business of manufacturing and selling such machines which they have been, and are now, shipping in commerce between and among the several States of the United States, and who have been, and are now, selling large quantities of such machines to the respondent operators or their agents and shipping such machines in commerce to said purchasers into the various States of the United States other than the States where said manufacturers, producers, and sellers have their places of business. Except to the extent to which competition, between said manufacturers, producers, and sellers in the manufacture and sale of such machines and in the sale thereof for shipment in commerce into the various States of the United States other than the States where said manufacturers, producers, and sellers have their places of business, has been restrained, lessened, injured, and suppressed by the understandings, agreements, combinations, and conspiracies hereinafter referred to, the said manufacturers, producers, and sellers, in the course and conduct of their respective businesses as aforesaid, have been, and are now, engaged in active and substantial competition with each other in the manufacture and sale of such machines, and in the sale thereof for shipment in commerce into the various States of the United States and in the sale thereof to the respondent operators or their agents, and to competitors of respondent operators for shipment to said respondent operators and competitors of respondent operators in commerce into the various States of the United States.

PAR. 12. The respondents, viz, said organizations and associations hereinabove described, their officers, directors, and members, parties respondent herein, during and in the period of more than 3 years last past have entered into and thereafter carried out understandings, agreements, combinations, and conspiracies for the purpose of re-

stricting, restraining, suppressing, and eliminating competition and creating a monopoly in the purchase and sale of automatic cigarette vending machines in trade and commerce between and among the several States of the United States.

PAR. 13. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, the said respondents have engaged in and performed, and are now engaging in and performing the following practices and acts:

(*a*) Establishing the respondent operators of automatic cigarette vending machines as a preferred class for the purpose of confining and requiring the sale and distribution of automatic cigarette vending machines by manufacturers, producers, and sellers thereof to such respondent operators exclusively;

(*b*) Interfering with competitors of respondent operators of automatic cigarette vending machines in the said competitors' efforts to purchase and obtain such machines;

(*c*) Preventing competitors of respondent operators of automatic cigarette vending machines from purchasing or obtaining such machines;

(*d*) Requiring, inducing or compelling, by promises, threats, coercion, intimidation and otherwise, manufacturers, producers, and sellers of automatic cigarette vending machines;

1. Not to sell or ship automatic cigarette vending machines to competitors of respondent operators or directly to consumers of automatic cigarette vending machines;

2. To boycott competitors of respondent operators of automatic cigarette vending machines;

3. To confine to the respondent operators the said manufacturers', producers', and sellers' sales and shipments of automatic cigarette vending machines intended for use, consumption or resale in the various States where respondent operators are engaged in business.

(*e*) Boycotting and threatening to boycott manufacturers, producers, and sellers of automatic cigarette vending machines who sell or ship such machines either to competitors of respondent operators or directly to consumers of such machines;

(*f*) Requiring all members of respondent organizations and associations to carry out, and to agree and pledge themselves to support and carry out, the foregoing program;

(*g*) Using other methods and means designed to suppress and prevent competition and restrict and restrain the sale of automatic cigarette vending machines in said commerce.

PAR. 14. The capacity, tendency and effect of the aforesaid understandings, agreements, combinations, and conspiracies and the acts

and practices engaged in and performed pursuant thereto and in furtherance thereof are, and have been:

(*a*) To unduly and unlawfully restrain, lessen, injure, and suppress competition in the sale of automatic cigarette vending machines which are sold to the purchasers thereof for shipment into the various States where the respondents are located;

(*b*) To unduly and unlawfully impede, hinder, and prevent certain manufacturers, producers, and sellers of automatic cigarette vending machines from selling such machines for shipment from the various States where the said manufacturers, producers, and sellers are located into the various States where the respondent operators are located;

(*c*) To unduly and unlawfully restrain, lessen, injure, and suppress competition in the sale and purchase of automatic cigarette vending machines which are shipped in commerce into the various States where the respondents are located from the various States where the manufacturers, producers, and sellers of such machines are located;

(*d*) To unreasonably and unlawfully restrain, hinder, and prevent operators of automatic cigarette vending machines who are engaged in competition with the respondent operators of such machines from purchasing such machines for shipment to them in commerce into the various States where such competing operators are located from States where manufacturers, producers, and sellers of such machines are located;

(*e*) To tend to create in certain manufacturers, producers, and sellers of automatic cigarette vending machines a monopoly in the sale of such machines which are sold to the purchasers thereof for shipment into the various States other than the States where such manufacturers, producers, and sellers are located;

(*f*) To tend to create in the respondent operators of automatic vending machines a monopoly in the business of purchasing and locating such machines in the various States or parts thereof where the said respondent operators are located;

(*g*) To unlawfully and coercively condition the right of persons to engage in business as operators of automatic cigarette vending machines upon such persons becoming members of the respondent organizations and associations and cooperating with the respondents in executing the above-described understandings, agreements, combinations, and conspiracies;

(*h*) To prejudice and injure the public and manufacturers, producers, and sellers of automatic cigarette vending machines and others who do not conform to the program of the respondents or who do not desire but are compelled to conform to said program.

PAR. 15. Each of the said respondents at the times herein mentioned acted in concert with one or more of the other respondents in doing and performing the acts and practices hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 16. The acts and practices of the respondents as herein alleged are all to the prejudice of competitors of respondents and of the public; have a dangerous tendency to and have actually hindered and prevented competition in the sale of automatic cigarette vending machines in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in automatic cigarette vending machines, and have a dangerous tendency to create in the respondents a monopoly in the sale of automatic cigarette vending machines, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 26th day of November 1940, issued and served its complaint in this proceeding upon the respondents named in the above caption charging the said respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. On February 15, 1941, 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 in behalf of the said respondents by their counsel, Parker, Chapin & Flattau, 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 Inter-State Cigarette Merchandisers Association, hereinafter for convenience referred to as the "Inter-State

Association," is an unincorporated trade association, with its principal office and place of business located at 60 Park Place, Newark, N. J. The membership of said Inter-State Association is composed of respondent organizations and associations of operators of automatic cigarette vending machines, to wit: The Cigarette Merchandisers Association, Inc., Cigarette Merchandisers Association of New Jersey, Inc., The Automatic Cigarette Vendors Association of Eastern Pennsylvania, The Cigarette Machine Operators of Connecticut, Inc., and Cigarette Merchandisers Association of New England. The said member respondent organizations and associations participate and cooperate in the management and activities of the said Inter-State Association. Each of the said member respondent organizations and associations appoint or elect three authorized delegates or alternates who actively represent each respective member respondent organization and association at the meetings of the said Inter-State Association. In addition to said authorized delegates, each member respondent organization and association is further represented in the affairs and activities of said Inter-State Association, by its manager, executive secretary and/or counsel who, by reason of their office in their respective organization or association are associate members of said Inter-State Association.

The respondent officers and directors of the said Inter-State Association are:

President	John Sharenow, a representative of the Cigarette Merchandisers Association of New Jersey, Inc.
Vice President	William King, a representative of The Automatic Cigarette Vendors Association of Eastern Pennsylvania.
Treasurer	Edward Beresth, a representative of The Cigarette Machine Operators of Connecticut, Inc.
Secretary	Robert K. Hawthorne, a representative of The Cigarette Merchandisers Association, Inc.
Recorder	James V. Cherry, a representative of the Cigarette Merchandisers Association of New Jersey, Inc.
Director	Anthony J. Masone, a representative of The Cigarette Machine Operators of Connecticut, Inc.
Director	Alfred Sharenow, a representative of The Cigarette Merchandisers Association of New England.
Director	Edward J. Dingley, a representative of The Automatic Cigarette Vendors Association of Eastern Pennsylvania.

PAR. 2. Respondent The Cigarette Merchandisers Association, Inc., is a membership 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 Chanin Building in New York City, N. Y. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of respondent Inter-State Association. The membership of said respondent corporation consists of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the metropolitan area of New York City, N. Y. The respondent members of said respondent corporation operate approximately 17,000 of said machines which represent approximately 90 percent of such machines operated in the metropolitan area of New York City.

The respondent officers and directors of the said respondent corporation and the respective respondent members of said respondent corporation by or with which such officers and directors are employed or connected are as follows:

Officers and directors	*Name of member respondent with which respective officers and directors are connected*
President: Robert K. Hawthorne	P & H Cigarette Service, Bronx, N. Y.
First vice president: Alexander Frazer	Atlas Vending Co., 2840 Eighth Ave., New York, N. Y.
Second vice president: Albert S. Denver	Lincoln Cigarette Service (a trade name under which Albert S. Denver as an individual does business), 1645 Bedford Ave., Brooklyn, N. Y.
Treasurer: Samuel Yolen	Modern Cigarette Service (a trade name under which Samuel Yolen as an individual does business), 172 Fairview Ave., Port Chester, N. Y.
Secretary: Tom Cola	United Cigarette Service, 3734 East Tremont Ave., New York, N. Y.
Manager: Matthew Forbes	
Director: Michael Lascari	Manhattan Cigarette Service, Inc., 421 East 76th St., New York, N. Y.
Director: Jackson Bloom	Cigarette Service, Inc., 36 Cooper Sq., New York, N. Y.
Director: Louis D. Schwartz	Smokers Service, Inc., 211 Northland Blvd., Bayside, Long Island, N. Y.
Director: Martin M. Berger	Rowe Cigarette Service Co., Inc., New York, N. Y.
Director: Bernard Rosen	Supreme Cigarette Service, Inc., 381 Main St., New Rochelle, N. Y.
Director: Harold Roth	Herald Vending Corporation, 41 24th St., Long Island City, N. Y.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent corporation but are representative members thereof, respectively.

PAR. 3. Respondent Cigarette Merchandisers Association of New Jersey, Inc., is a membership 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 60 Park Place, Newark, N. J. The membership of said respondent corporation consists of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the States of New Jersey, New York, and Pennsylvania. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of the respondent Inter-State Association.

The respondent officers and directors of the said respondent corporation and the respective respondent members of said respondent corporation by or with which such officers and directors are employed or connected are as follows:

Officers and directors	*Name of member respondent with which respective officers and directors are connected*
President and Director: Charles W. Stange.	Unit Vending Corporation, 227 North Park St., East Orange, N. J.
Vice president and director: Max Jacobowitz.	Hudson County Tobacco Co., 84 Montgomery St., Jersey City, N. J.
Treasurer and director: Henry W. Hartmann.	Pack Shops of Jersey City, Inc., 46½ Fleming Ave., Newark, N. J.
Secretary and director: John Grout	Jersey Cigarette Service, Inc., 111 4th St., Pelham, N. Y.
Manager: James V. Cherry	
Director: Michael Lascari	Public Service Tobacco Co. (a corporation), 1464 North Broad St., Hillside, N. J.
Director: John Sharenow	North Jersey Cigarette Service, Inc., 214 33d St., North Bergen, N. J.
Director: Samuel M. Malkin	Malkin Sales Co. (a trade name under which Harry Malkin and Samuel Malkin as copartners do business), 408 Market St., Newark, N. J.
Director: Harry Zink	Coast Cigarette Service, Inc., 806 Monroe Ave., Asbury Park, N. J.
Director: Herman Arlein	Le Peko Co., Inc., 100 Newark Avenue. Jersey City, N. J.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent corporation but are representative members thereof, respectively.

PAR. 4. Respondent, The Automatic Cigarette Vendors Association of Eastern Pennsylvania, is an unincorporated trade association or organization of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the State of Pennsylvania. The principal office and place of business of said respondent association is located at 1411 Fox Building, Philadelphia, Pa. Said respondent association is a member, and is represented by three authorized delegates or alternates at meetings, of the respondent Inter-State Association.

The respondent officers and directors of the respondent association and the respective respondent members of said respondent association by or with which such officers and directors are employed or connected are as follows:

Officers and directors	*Name of member respondent with which respective officers and directors are connected*
President and director: Walter I. Davidson.	Walday Sales Co. (a trade name under which Walter I. Davidson as an individual does business), 5645 North 16th St., Philadelphia, Pa.
Vice president and director: Patrick J. Bonoma.	Delaware County Tobacco Co. (a trade name under which E. P. Christake as an individual does business), 310 Edgemont Ave., Chester, Pa.
Treasurer and director: LeRoy A. Shackleton.	Automatic Vending Co., 525 Parker St., Chester, Pa.
Director: William L. King	Quaker Vending Co. (a trade name under which William L. King, as an individual does business), 605 Wyoming Ave., Philadelphia, Pa.
Director: W. Harry Steele, Jr	Steele Vending Co. (a trade name under which W. Harry Steele, Jr., as an individual does business), 5831 Henry Ave., Philadelphia, Pa.
Director: Harry D'Alessandro	Big 4 Distributors (a trade name under which Harry D'Alessandro, Anthony Lalli, Cosimo Lalli, and Alfred Lalli as copartners do business), 1111 Carpenter St., Philadelphia, Pa.
Director: Ralph J. Burnard	Saks Cigarette Service (a trade name under which Amedio Principi and Emma N. Burnard, referred to in the complaint as Emma M. Bernard, as copartners do business), 1423 Conlyn St., Philadelphia, Pa.
Director: Joseph Silberman	R. Baylin Co. (a trade name under which Richard Baylin as an individual does business), 151 West 3d St., Chester, Pa.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent association but are representative members thereof, respectively.

PAR. 5. Respondent The Cigarette Machine Operators of Connecticut, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of Connecticut with its principal office and place of business located at 106 Meadow Street, Waterbury, Conn. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of the respondent Inter-State Association. The membership of said respondent corporation consists of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the State of Connecticut.

The respondent officers and directors of the said respondent corporation and the respective respondent members of respondent said corporation by or with which such officers and directors are employed or connected, are as follows:

Officers and directors	*Name of member respondent with which respective officers and directors are connected*
President: Anthony R. Nastri	Automatic Sales Co., Inc., 106 Meadow St., Waterbury, Conn.
Vice president: Robert Zimmerman	Self-Service Sales Corporation, 627 Albany Ave., Hartford, Conn.
Secretary: Anthony J. Masone	Automatic Sales Co., Inc., 106 Meadow St., Waterbury, Conn.
Treasurer: M. E. Norris	Norris Tobacco Co. (a trade name under which M. E. Norris as an individual does business), Main St., Danbury, Conn.
Director: John J. Fitzgerald	Connecticut Automatic Cigarette Co., (a trade name under which John J. Fitzgerald as an individual does business), 61 Broadway, New Haven, Conn.
Director: Samuel Aliener	1507 Chapel St., New Haven, Conn.
Director: Nathan Dubowry	Connecticut Automatic Sales Co., (a trade name under which Nathan Dubowry as an individual does business), 93 Lafayette Street, New Britain, Conn.
Director: Lena Bonelli	Bonelli Cigarette Service (a trade name under which Lena Bonelli as an individual does business), 407 East Elm St., Torrington, Conn.
Director: Charles Sparrow	Cigarette Machine Sales Co. (a trade name under which Charles Sparrow as an individual does business), 208 Wayne St., Bridgeport, Conn.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent corporation but are representative members thereof, respectively.

PAR. 6. Respondent Cigarette Merchandisers Association of New England, is a membership corporation organized and existing under and by virtue of the laws of the State of Massachusetts with its principal office and place of business located at No. 1 Federal Street, Boston, Mass. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of the said respondent Inter-State Association. The membership of said respondent corporation consists of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the State of Massachusetts.

The respondent officers and directors of the respondent corporation and the respective respondent members of said respondent corporation by or with which such officers and directors are employed or connected are as follows:

Officers and directors	*Name of member respondent with which respective officers and directors are connected*
President: Samuel M. Goldstein	Metro Automatic Sales Corporation, 330 Massachusetts Ave., Boston, Mass.
Vice President: Louis Berman	Vogue Vending Co. (a corporation), 262 Middlesex St., Lowell, Mass.
Secretary: William B. Burns	Grand Novelty & Supply Co. (a trade name under which William B. Burns does business), 66 Southgate St., Worcester, Mass.
Manager: Walter R. Guild	
Director: Albert M. Coulter	M. A. C. Vending Co. (a trade name under which Albert M. Coulter and M. L. Coulter as copartners do business), 6 North Woodfort, Worcester, Mass.
Director: Frank Fendel	Fendel Brothers (a trade name under which Frank Fendel as an individual does business), 265 Park Ave., Revere, Mass.
Director: Oscar Gerson	Gerson Sales Co. (a corporation), 70 A Green St., Boston, Mass.
Director: Julian Karger	Enterprise Cigarette Service Co. (a trade name under which Julian Karger and Louis Elfman as copartners do business), 250 Broadway, Revere, Mass.
Director: Cleo C. Kingsley	K. D. Vending Co. (a trade name under which Julius Ulman and Cleo C. Kingsley as copartners do business), 219 State St., Swampscott, Mass.

Officers and directors	*Name of member respondent with which respective officers and directors are connected*
Charles E. Knight	12 Kimbal Rd., Methuen, Mass.
Alfred I. Sharenow	Cigarette Service Co., 266 Salem St., Medford, Mass.
Jacob Shelman	Shelley Sales Co., Inc., 382 Watertown St., Newton, Mass.
Harry Spierer	Monroe Sales Co. (a trade name under which Harry Spierer as an individual does business), 56 Harvest St., Lynn, Mass.
William Spiller	Massachusetts Vending Co. (a trade name under which Rose D. Spiller as an individual does business), 69 Wayland St., Roxbury, Mass.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent association but are representative members thereof, respectively.

PAR. 7. Those hereinabove specifically named respondents as officers, directors, and members of the said respondent organizations and associations do not constitute the entire list or number of such officers, directors, or members, but are typical and representative thereof.

PAR. 8. Said operators of automatic cigarette vending machines, members of said organizations and associations and respondents herein, in the course and conduct of their business, have purchased and are now purchasing automatic cigarette vending machines from manufacturers, producers, and distributors in various States; said respondent operators, by agreement with proprietors, install such machines in various types of retail establishments in which the sale of cigarettes is contemplated, i. e., restaurants, taverns, grills, barrooms, gasoline stations, etc.; the places where such machines are installed are commonly known in the trade as "locations"; the said respondent operators have caused and are now causing automatic cigarette vending machines to be shipped and transported in commerce to the places of business and to the locations of such purchasing respondents from points in States other than the States in which such respective points of destination are located.

In the course and conduct of their respective businesses heretofore described, except to the extent to which competition in the purchase of automatic cigarette vending machines has been restrained, lessened, injured, and suppressed by the undertakings, agreements, and other facts hereinafter referred to, the respondent operators of automatic cigarette vending machines have been, and are now, in active and sub-

stantial competition with each other and with other operators of such machines in the purchase and location of such machines.

Said respondent operators of automatic cigarette vending machines, members of the said respondent organizations and associations hereinabove described, constitute a large and important part of the operators of automatic cigarette vending machines in the several States of the United States in which the members of respondent organizations and associations are engaged in business; and such members constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in automatic cigarette vending machines within, to, and from the several States wherein the said respondent operators are engaged in business. Said members as allied and banded together in associations and organizations are enabled thereby to more effectively exercise control and influence of such trade and commerce for the promotion and enhancement of their own volume of trade and profits.

PAR. 9. The automatic cigarette vending machine industry came into existence about 10 years ago, and is composed of operators and manufacturers. An operator of cigarette vending machines is one who purchases the machines from the manufacturer and solicits proprietors of various types of retail businesses, such as poolrooms, barrooms, restaurants, or other places, for permission to install one or more of said machines on the premises of the owners, upon the agreement that the operator shall service said machines with the various nationally advertised brands of cigarettes, for which privilege and said service the operator agrees to allow the owner of the premises a commission of anywhere from ½ to 1 cent on each package of cigarettes sold through said machine while on the premises of the owner. The establishment where such a machine is placed is, in the parlance of the operator, called a "location" or "stop." The operator purchases his cigarettes either direct from the manufacturer or from a wholesale tobacco dealer. He employs one or more so-called service men, who in New York City are members of a labor union affiliated with the American Federation of Labor, who from time to time call at the locations, taking with them the various brands of cigarettes which they use in servicing said machines, thereby keeping them supplied with the necessary merchandise for resale. These service men, in addition to keeping the machine supplied with cigarettes, also collect the money deposited therein by purchasers and, after accounting to the owners of the locations for their commissions, return the balance to their employer, the operator. The number of locations in which an operator has installed machines ranges from 20 to 5,000.

Prior to the organization of the various respondent associations, the number of locations which an operator had at any one time fluctuated. This was due to competition among the various operators for these locations, since in the majority of cases the machine was installed and was permitted to remain on location only at the will of the location owner. The competition consisted, among other things, of an offer of more commission per package of cigarettes, the payment of a bonus or rental privilege in addition to the payment of a commission, the offer of various types of premiums such as free matches, attractive electric illumination, clocks, or a more efficient or more attractive looking machine.

PAR. 10. For more than 3 years last past there have been, and are now, several manufacturers, producers, and sellers of automatic cigarette vending machines, the four principal ones being Rowe Manufacturing Co., Inc., New York, N. Y. (which, in addition to manufacturing and selling said machines, also operates its own machines through a number of subsidiary companies in the various territories where respondent operators are located); Arthur H. Du Grenier Co., Haverhill, Mass.; U-Need-A-Pak Products Co., Brooklyn, N. Y.; and National Vendors, Inc., St. Louis, Mo. The places of business of the various manufacturers of such machines were, and are now, located in States other than the States where the respondent operators of automatic cigarette vending machines have their places of business; said manufacturers, producers, and sellers have been, and are now, engaged in the business of manufacturing, and selling such machines which they have been, and are now, shipping in commerce between and among the several States of the United States, and have been, and are now, selling large quantities of such machines to the respondent operators or their agents and shipping such machines in commerce to said purchasers into the various States of the United States other than the States where said manufacturers, producers, and sellers have their places of business. Except to the extent to which competition between said manufacturers, producers, and sellers in the manufacture and sale of such machines, and in the sale thereof for shipment in commerce into the various States of the United States other than the States where said manufacturers, producers, and sellers have their places of business, has been restrained, lessened, injured, and suppressed by the understandings, agreements, and other factors hereinafter referred to, the said manufacturers, producers, and sellers, in the course and conduct of their respective businesses as aforesaid, have been, and are now, engaged in active and substantial competition with each other in the manufacture and sale of such machines, and in the sale thereof for shipment in commerce into the various States of the United States,

and in the sale thereof to the respondent operators or their agents, and to competitors of respondent operators for shipment to said respondent operators and competitors of respondent operators in commerce into the various States of the United States.

PAR. 11. The manufacturers have been constantly endeavoring to improve the efficiency of their machines and by reason thereof have from time to time manufactured different types and models. As a more efficient model was manufactured and distributed, operators who had purchased previous models which had become obsolete exchanged the obsolescent model for the new model and received as a credit on the purchase price of the new machine a certain amount as a trade-in allowance. In many instances the operator, instead of exchanging the obsolescent models, sold them to operators who made a practice of purchasing and operating only used machines. The manufacturers likewise distributed the old models taken in trade to other operators or to some individual or firm which desired to enter the operating business with used machines.

Since the organization of the various respondent associations, the respondents have engaged in a concerted and cooperative effort and have adopted rules designed to prohibit manufacturers from selling their machines direct to locations, to new operators, or to operators who are not members of the associations. The respondents have conducted campaigns designed to force all nonmember operators, who at the time controlled an appreciable number of locations, to join the associations, and where such nonmember operators have refused to join the respondents have requested and demanded of manufacturers that the said manufacturers should refuse to sell such machines to such nonmembers. As occasion required, they have appointed committees from among their membership whose duty it was to call upon manufacturers for the purpose of inducing them to stop selling direct to locations, to promise or agree not to create new operators, not to sell to nonmembers of the associations, or to agree to endeavor to induce nonmembers to join the association. On divers occasions the various associations have entered into contracts, agreements, or understandings whereby the associations each agreed to purchase from the four manufacturers a specified number of machines each year in consideration of the agreement, understanding, or promise on the part of manufacturers not to create new operators or not to sell to nonmembers. Where manufacturers have refused or failed to carry out their agreement not to sell direct to locations, not to create new operators, or not to sell to nonmembers, said associations have refused to carry out the agreement to purchase from said manufacturers, have threatened to boycott said manufacturers' machines, and in many instances the members of said

associations have boycotted said manufacturers and have refused to purchase machines from said manufacturers.

PAR. 12. The respondent The Cigarette Merchandisers Association, Inc., adopted a constitution, bylaws, and trade practice rules which have been revised from time to time. The objects of the said respondent association as set forth in the preamble of its constitution are as follows:

The objects and purposes of this organization shall be to foster trade and commerce in the automatic cigarette vending machine business; to reform abuses relative thereto; to diffuse accurate information in regard to the standing of customers and other matters; to procure uniformity and certainty in the customs and usages of trade; to settle equitably and justly differences between its members; to promote a more enlarged and friendly intercourse among automatic cigarette vendors; to hold meetings and social gatherings for the better realization of these purposes; and to promote a better understanding and relationship of its members towards each other; to create a code of fair competition in the operation of cigarette vending machines; to exchange such information as will improve the conditions of members.

The trade practice rules of the said respondent association include the following:

SECTION 3. The members are prohibited from purchasing additional cigarette machines when such are made by any manufacturer or vendor who sells, or permits the sale of such machines to individual locations in competition with the operators.

Complaints against members for violating any of the association rules are referred by the president of the association to the grievance committee:

which Committee holds hearings thereon and decides the complaint and reports their decision to the Association. The Association may mete out such punishment for noncompliance with such decision as to them may seem just and proper, under the circumstances, after an opportunity has been given to the offending member to defend himself before the Association. The action of the Association in such matters is final.

The rules and regulations, objects, purposes, and policies of the association were constantly brought to the attention of the manufacturers of automatic cigarette vending machines through committees which were appointed from time to time to call upon said manufacturers. For example, on June 25, 1936, such a committee was appointed. On August 17, 1936, the following resolution was proposed and adopted:

"That a committee be appointed to call on the manufacturers of cigarette vending equipment in order to determine their intentions toward cooperating with the Association." It was decided, after discussion, that Mr. Miller should first call upon these manufacturers and then, at a later date, Mr. Bloom, Mr. Orowitz, and Mr. Berger would follow up with another call.

At the meeting held on November 27, 1936, the following report was made by a member of such committee:

the results of a combined meeting between representatives of the C. M. A. and the Cigarette Machine Manufacturers, which was held at the Hotel New Yorker several weeks ago at which time the Mills Manufacturing Co., Rowe Mfg. Co., and the U-Need-A-Pak Company assured the operators of their willingness to cooperate with them in every way possible in formulating policies for the benefit of the industry.

On March 25, 1937, such a committee was appointed to call upon National Vendors, Inc., in order to secure its cooperation with the plans and policies of the association. The said committee made its report at a meeting of the association on April 8, 1937. At said meeting held April 8, 1937, a committee was appointed to join with a committee of New Jersey operators in calling upon Stewart-McGuire. A minute of said meeting is as follows:

It was further suggested that this committee as appointed join with a committee of New Jersey operators in calling upon Stewart-McGuire. Mr. Stein, Manager of the New Jersey Association, stated that such a committee of Jersey operators would be appointed at their next regular meeting, to be held Tuesday, April 13th, 1937, and it was decided that after this, a date convenient to all parties concerned would be selected for such a joint meeting. Mr. Berger, speaking for the Rowe Manufacturing Company, advised the membership that his firm was ready and willing to adopt any plan agreeable to the other manufacturers that might lead to stronger cooperation between the manufacturer and the operator and result in their mutual benefit. Mr. Yolen, representing the Mills Novelty Company, assured the membership of the Association that his firm would also cooperate in every possible manner with the operators and adopt any plan agreeable to other manufacturers. Mr. Willens, representing the Uneeda-Pack Manufacturing Company, assured the membership likewise.

A joint conference between manufacturers and operators was held October 13, and October 19, 1937, at the Hotel Commodore, New York City. A report of said meeting was presented at the following regular meeting of the association.

The activities of the association, through its committees appointed by it to call upon manufacturers and impress upon them the necessity of cooperating with the association in its efforts, were successful; manufacturers have cooperated to the fullest extent, in consequence of which very few new operators of vending machines have been created in this territory since 1937. Where a new operator has been created, it was done with the consent of the association. At the present time approximately 90 percent of the cigarette vending machines in operation in the metropolitan area of New York City are owned or controlled by members of the association. This has enabled the association to direct most of its efforts toward elimination of competition

from nonmembers of the association, as well as elimination of competition between their members for one another's locations. The latter was accomplished first by the adoption of various restrictions and the imposition of penalties upon members who refused or failed to adhere to rules and regulations, and by the creation of a separate corporation whose sole function was to assist the members in eliminating competition from nonmembers, principally by paying a bonus to a member for each location he could show was taken away from a nonmember.

The manager of the association, in a letter to the members dated September 20, 1937, stated as follows:

You are all aware of the competitive conditions prevailing throughout the industry at the present time, due principally to the number of new operators who have recently entered the field. Unfortunately, most of these operators are not in sympathy with the objects and policies of CIGARETTE MERCHANDISERS ASSOCIATION and as a consequence are the cause of creating discord in many sections. Unless their activities are controlled, it is very possible that the reforms accomplished by CIGARETTE MERCHANDISERS ASSOCIATION during the past year will be seriously affected and our future effort towards continuing our good work hampered. Even though the effect of this competition has not as yet been felt by all of you, your wholehearted attention and cooperation should be given, so that it may be controlled before becoming widespread throughout the territory covered by CIGARETTE MERCHANDISERS ASSOCIATION. To this end, we ask that you make it a special point to be present at the coming meeting, so that we may have the benefit of your views and opinions in considering this problem and in deciding upon a means to cope with it. In this respect, I might advise that the National Association has already decided upon a preliminary course of action, with which we will acquaint you at the coming meeting.

At a meeting of the association held March 10, 1938, the following report was made of a discussion concerning the

question and practicability of a central buying agency. It was proposed to favor only those manufacturers who would agree not to sell to nonmembers. Mr. Levy expressed the opinion that this is in the nature of a boycott. The situation was likened by Mr. Forbes to the resident buying offices conducted and patronized by department stores.

At several meetings of the board of directors of the association plans were discussed for the adoption of a central buying office. At a meeting of the board of directors held June 9, 1938, the following report was made:

The policy of the Association regarding the manufacturers' cooperation and the curtailment of the practice of creating new operators. It was the suggestion of a member that a central buying office be established on a non-profit basis for all members of the Association. He felt that the time was ripe for the members of the Association to do something constructive and help stabilize the business. After discussion, no definite plan was reached, and a recommendation was made to submit this problem to the body at large.

At a meeting of the directors held June 16, 1938, the following report was made:

The matter has been taken up with a legal mind at a meeting of the Committee. The plan is legal and feasible and can be worked out. This plan is as follows. The operators enter into an agreement with the Association. The Association is to make all purchases of machines through an office created by the Association. The operators can make individual deals with the manufacturers, if they notify the Association of the deal. A code of fair trade practices is to be adopted, with penalties for violation of this code. The manufacturers can be placed on the Association accredited list when they agree to restrict the territory of New York to accredited operators. Manufacturers agree to list with the Association all their operations and agree not to extend same. Manufacturers shall not make sales of individual machines to location owners.

At the meeting held September 1, 1938, it was unanimously adopted that a central buying plan be established. At the meeting held on September 15, 1938, it was reported to the membership that the association had gone on record as favoring:

a plan for a central buying office and that the Board of Directors had devised the following plan: Vendormatic Service Corporation will be set up to handle this plan. The members are obliged to sign the contract at a given date.

PAR. 13. The objects and purposes of the Cigarette Merchandisers Association of New Jersey, Inc., as set forth in its constitution, by-laws, and code of fair trade rules, and as disclosed by numerous resolutions adopted at its meetings, and the things and acts done pursuant thereto, are similar to those of the New York association; to wit, The Cigarette Merchandisers Association, Inc.

In connection with the efforts of the association to monopolize the business of operating cigarette machines in its territory for the benefit of its members, the association requested and obtained the cooperation of the manufacturers of automatic cigarette vending machines in refusing to sell to locations and in refusing to create new operators. The association from time to time appointed committees to call upon manufacturers of automatic cigarette vending machines and to impress upon them the advisability of refusing to create new operators and to refuse to sell to locations, and in various other ways attempted to exert, and did exert, pressure on such manufacturers. The association entered into agreements with manufacturers whereby, in consideration for the manufacturer agreeing not to sell to new operators or to locations, it undertook to purchase on behalf of its members a definite number of machines each year. When a manufacturer refused to comply with the association's requests or demands with respect to sales of cigarette vending machines, the manufacturer was boycotted or threatened with a boycott by the association. The association demanded that its members strictly adhere to the rules and regulations

of the association. A grievance or arbitration committee heard complaints respecting violation of the rules and regulations by members; the said committee had authority to mete out, and did mete out, penalties for violations thereof.

PAR. 14. The objects and purposes of The Automatic Cigarette Vendors Association of Eastern Pennsylvania as set forth in its constitution, bylaws, and code of fair trade practice, and the resolutions adopted from time to time at its meetings, and the acts and things done thereunder and pursuant thereto, are similar to those of the Cigarette Mechandisers Association, Inc., and Cigarette Merchandisers Association of New Jersey, Inc. The primary object and purpose of the association, as gathered from its activities, is the creation of a monopoly of the cigarette vending operating business in its territory for the benefit of its members. For the accomplishment of its object and purpose, the association from time to time has adopted rules and regulations designed to eliminate competition among its members. The association accepts and secures the cooperation of manufacturers in eliminating competition from nonmembers. The association from time to time impressed upon manufacturers the advisability of the manufacturers' cooperation in limiting sales of their machines to members of the association. In this connection the association entered into an agreement with the manufacturers whereby it was to purchase a specific number of machines from each manufacturer during the year, in consideration of said manufacturers' promise not to create new operators. One of the manufacturers did not abide by its promise and did sell to nonmembers of the association, with the result that no member of the association since that time has purchased machines from that company, nor has the association carried out its part of the contract to purchase annually a specified quantity of machines from that manufacturer.

PAR. 15. The objects and purposes of The Cigarette Machine Operators of Connecticut, Inc., as set forth in its constitution, bylaws, and code of trade practices, are substantially similar to those of the other respondent associations hereinabove referred to. The association has in its membership the operators in the State of Connecticut. The members of the association control 90 percent of the machines now in operation in that State. The preamble of the association's constitution and bylaws is as follows:

To eliminate unfair and ruinous competition which has caused serious financial loss and embarrassment to the vendors of tobacco products by machines, to improve economic conditions in the industry, and to the end that the sale of tobacco products by machines in the State of Connecticut may be stabilized and conducted profitably, this Association is formed.

Under the title Objects and Purposes of the Association, the following is stated:

The purpose of the Association shall be to establish such relations and mutual understanding among those engaged in the vending of tobacco products by machines as will contribute to the welfare of the business generally; to consider and adopt such forms of lawful and ethical business practices and principles as seem likely to improve economic conditions; to cooperate with government agencies and with those engaged in the tobacco industry generally to eliminate the evils that now exist or may hereafter arise, and to foster such measures deemed for the best interests of the business and welfare of the public * * *.

The association's trade practice rules prohibit the following as an unfair trade practice:

(the operation of) any cigarette machines when such are made by any manufacturer or vendor who sells or permits the sale of such machines to individual locations, in competition with the operators or to do business with any manufacturer or vendor of such machines who fails to comply with provisions for territorial protection to members of the association.

The association from time to time appointed committees to call on manufacturers for the purpose of protesting sales of machines to new operators. The association likewise adopted resolutions which it mailed to manufacturers in which it was indicated that the members thereof objected to sales of machines to new operators and that such sales would incur the displeasure of members. It also secured written pledges from manufacturers that they would comply with the rules and regulations of the association as they applied to sales to new operators.

At a meeting of the association held September 8, 1936, the following report was made:

A discussion relative to any member being forced to discontinue purchasing machines from a manufacturer because of some breach of territory rights, and what assistance that member could get regarding machines from other members.

PAR. 16. Cigarette Merchandisers Association of New England was organized at a later date than the other heretofore-mentioned respondent associations. Its objects and purposes, as indicated by its constitution, bylaws, and code of fair trade practices, are similar in every respect to the objects and purposes of the other respondent associations. This association has joined forces with the Interstate Association and has participated in its activities. The minutes of meetings of its executive committee and of the membership disclose the appointment of committees to call on manufacturers in reference to the latter's sale to locations and the imposition of penalties on members for violating the association's fair trade rules.

PAR. 17. The objects and purposes of the Inter-State Cigarette Merchandisers Association, as set forth in its constitution and bylaws, are

similar to the objects and purposes of the other respondent associations. Its constitution sets forth:

This Association aims thru *collective action* to lay the foundation for and maintain equitable relations between all factors that affect economic conditions in the Industry. It recommends *uniform action* in securing constructive legislation toward the elimination of any abuses of power or unfairness. This Association leaves all questions of management in this business to the determination of each member.

At a meeting of the association held May 20, 1939, the question arose:

As to what to do where a given manufacturer sold machines to either nonmembers or started an independent operation in a given area.

Mr. Alfred Sharenow suggested that the better customers of such a manufacturer could speak to such manufacturer where there was such a disturbance in any given area and that the manufacturer would probably seriously consider and remedy any such situation.

Mr. Charles W. Stange reminded the Interstate Association that the purpose of the Inter-State was to eliminate abuses by the manufacturers and that everything should be done to acquaint the manufacturer with the disturbance in a given area.

Mr. Goldstein proposed the following resolution which was seconded by Mr. Nastri: "That the Inter-State CMA appoint representatives to cooperate with the local associations in contacting the particular manufacturer of a given area in order to straighten out any given matter."

Mr. John Sharenow moved that it was the opinion of the Inter-State CMA that New York CMA and New Jersey CMA appoint a Committee to settle the commission rates in overlapping areas.

The minutes of the meeting of the association held October 14, 1939, clearly show that the object and purpose of the association were to use the combined power of the membership of all the local associations as consolidated by the Inter-State organization in intimidating and compelling manufacturers of automatic cigarette machines to refuse to sell to locations, to nonmembers of associations or to new operators. Some of the minutes of said meeting are as follows:

Mr. Barest then brought up the question of whether any of the Inter-State members were having trouble with direct sales to locations or with the creation of new operators in any particular area.

Mr. Zimmerman reported that because of the difficulties arising with new competition created by a manufacturer, the Connecticut C. M. A. called on said manufacturer for cooperation. The manufacturer involved did not offer to assist the association in clearing up the difficulties created.

Mr. John Sharenow told the members that some difficulty had arisen in New Jersey with a cigarette vending machine manufacturer and that following considerable effort, the New Jersey association arrived at an agreement with that manufacturer who has been cooperating with the C. M. A. of New Jersey since that time.

Mr. Al Sharenow expressed himself as being sincerely disappointed in the method used by the Connecticut Association to accomplish *what the Inter-State had originally set out to do.* According to Mr. Sharenow the original purpose

for the formation of the Inter-State C. M. A. was to attempt to obtain cooperation from manufacturers in all areas where there are C. M. A.'s and that where any manufacturer would not cooperate, the Inter-State was to appoint a committee made up of members from various States to call on the offending manufacturer. *In such a way the full power of the Inter-State Association could be used because in each area covered by any member in the Inter-State there are certain groups who have strength with each manufacturer.*

Mr. Hawthorne suggested that if a manufacturer refused to cooperate that one of the best methods open to any State association was to notify their members of the facts and to allow the members to follow their own best judgments.

Mr. Forbes stated that the C. M. A. of New York has no difficulty with any manufacturer *and that these manufacturers only sell to any new operator at the suggestion of the Association.*

Mr. Sharenow said that the reason for the cooperation of all manufacturers with the New York Association was because all manufacturers were sufficiently represented by the membership for them to cooperate with the Association members. He also suggested that inasmuch as the New York Association is in a friendly status with all manufacturers, *that they use their strength in behalf of other Inter-State members.*

Mr. Zimmerman made a motion that each individual Manager of the various C. M. A.'s write a letter to any offending manufacturer asking for cooperation wherever necessary.

Mr. King stated that at the present time the Pennsylvania Association is receiving all cooperation requested and that they have been working on a private matter with one particular manufacturer for a period of one year and, therefore, he did not want the Pennsylvania Association to go on record to write this one particular manufacturer.

Mr. Forbes suggested that the services of the President and Treasurer of the New York C. M. A. be used for contacting any manufacturer involved.

Mr. Al Sharenow made a motion which was passed that in the event of any disturbance the Recorder be immediately notified by the Association in that territory; that Managers of each association have on file a record of their operators according to number of machines and type of machines; and that each Manager contact the proper operators and arrange for them to meet with the offending manufacturer.

Mr. Fuhrman suggested that the individual association select whatever representatives were best suited to the particular case and Mr. Forbes suggested using operators who were not purchasers of the machines made by the particular manufacturer involved.

PAR. 18. The various local respondent associations all joined the respondent Inter-State Association, appointed the requisite number of delegates who attended its meetings, and in various ways cooperated together and with the Inter-State Association in attempting to effectuate its objects and purposes.

The president of the Cigarette Machine Operators of Connecticut, Inc., in a letter dated October 23, 1939, to the manager of the Cigarette Merchandisers Association of New Jersey, Inc., who was also recorder of the Inter-State Association, after referring to competition

from an operator who, it was alleged, is controlled by a distributor for the U-Need-A-Pak Corporation, stated:

As this has been a serious situation here for some time, and some action must be taken to see if it can be eliminated, I am requesting you to get in touch with the presidents of the various associations who are members of the Interstate C. M. A., to appoint one or two men to act as a committee to call on the head of the U-Need-A-Pak Corporation, I would sincerely recommend that the men chosen should be those who are large U-Need-A-Pak operators, and who are intimately known to the officers of the U-Need-A-Pak Corporation, so that their word will carry more weight.

Arrangements should also be made for an interview with the officers of the Company in question, and I shall be glad to receive any comments or suggestions that would tend to make this meeting a successful one.

The recorder, under date of October 25, 1939, replied as follows:

I received your letter of October 23rd yesterday and will immediately communicate with the other members of the Inter-State C. M. A. I would like to set a date for this meeting with U-Need-A-Pak Products Corp. for the very near future.

I do hope that we shall be able to straighten out the situation so that business in Connecticut can resume its usual smooth operation.

As far as making any appointment for the committee to call on the officers of the company in question, I believe that we should hold the matter in abeyance following the interview with Messrs. Willens and Weiner.

The recorder, on November 2, 1939, in a communication further stated:

After receiving your letter concerning the situation in Connecticut, I contacted all the Managers of the Inter-State Association members.

In the meantime, I also got in touch with Matthew Forbes who asked me to let him handle the matter, if possible. Mr. Forbes told me yesterday that he had lunch with Mr. Willens during the past week and had taken up the situation with him. Mr. Willens has told Mr. Forbes that he will investigate the matter and I am sure that it will be taken care of very shortly without any further contact through the Inter-State members.

At a meeting of the Inter-State Cigarette Merchandisers Association on February 11, 1940, Manager Forbes of the New York association reported that—

A situation had arisen in Connecticut which was causing trouble to members of that Association. Both Mr. Forbes and Mr. Hawthorne volunteered their services to clear up this matter and the manufacturer agreed to sell the operation to members of the Connecticut C. M. A.

A meeting of the Inter-State Association was held February 11, 1940. The eastern representative for the National Vendors, Inc., who was present at said meeting, stated:

January 29, 1940, he received an inquiry from the St. Louis office concerning this operator. He thereupon contacted his representative in Boston, who had sold five machines to this operator without investigating whether or not this

man was already an established cigarette vending machine operator. Mr. Cantor saw this operator on February 8th at which time they told him that they had purchased fifty machines from another manufacturer and was given an order which he refused to accept.

Mr. Sparrow of Connecticut stated that the report was made that the Diamond Self Service was entering the field about three weeks before the operation actually was started. The company was backed by a tobacco concern. Originally the U-Need-A-Pak Products Corp. was requested to sell machines to this new operator but refused. Mr. Kushner, a representative of the U-Need-A-Pak Corp., had been instructed how to act in this matter by his company. However, the U-Need-A-Pak Corp. had also gone on record that if someone else started a new operator, they would sell equipment to him. Mr. Sparrow said that he heard of the DuGrenier machines which had been sold through his nephew who had lost several locations. He immediately called New York to find out from Mr. Glassgold what the situation was. Mr. Kushner of the U-Need-A-Pak Corp. investigated the locations and found DuGrenier machines operating and then wired his firm the facts.

Mr. Morris Zimmerman stated that Mr. Sparrow had been very instrumental in clearing up the former situation in Connecticut.

He also said that he had been forewarned of new trouble in Connecticut. The Diamond Self Service, according to Mr. Zimmerman is headed by a group of racketeers. This same group has started operations in various lines and then sold out for large sums of money. This group is using politics, other types of pressure and actual arrests in order to put machines into locations.

Mr. Forbes suggested that a campaign of action should be planned without any further recourse to committee meetings with manufacturers.

President Masone stated that he had a conference with Mr. Willens on the evening of February 10th concerning this matter. Mr. Willens promised that if the DuGrenier, Rowe and National organizations would each go on record not to make any more sales that he would stop selling machines to the Diamond Self Service. However, there was one condition to this statement and that was that he must be permitted to fill the last order which he had received.

Mr. Sparrow declared that the situation in Hartford is a matter of a personal grievance. He also said that he had been instrumental in preventing the sale of U-Need-A-Pak machines to newly created nonmembers in Connecticut. Mr. Willens has told Mr. Sparrow that since straightening out the situation in Connecticut, there has been only one U-Need-A-Pak machine sold in that State. Again Mr. Sparrow brought up the fact that a new operator was created in Connecticut by Mr. Zimmerman, a member of the Association, who sold one Aristocrat machine thereby starting another competitor in the field.

Mr. John Sharenow stated that the same evils existed everywhere, that in order for a new operator to purchase machines from a manufacturer, he would have to have originally some equipment. However, he felt that the question in this case was would DuGrenier have sold the Diamond Self Service any more machines when they had been advised of the error which was made. If they would have refused to do so and all other manufacturers had also refused to do so then the situation would have straightened out of itself. In New York and New Jersey we have been able to take care of matters with most of the manufacturers and therefore, we have been able to get the cooperation which we deserve. Mr. Sharenow further asserted that in his opinion a committee could take care of this situation and that a manufacturer who has lost the good will of Association operators, must continue for a reasonable length of time to try to win the respect of those operators.

A motion was made and passed to appoint a committee to take up matters of this sort with any manufacturer with whom trouble might arise. Mr. John Sharenow further stated that he should ask the manufacturers to observe the spirit of our request and not to look for loopholes which could possibly be found. In other words, if a manufacturer were to consult us first before actually shipping machines we could possibly be of assistance to them.

On February 19, 1940, Secretary Masone of The Cigarette Machine Operators of Connecticut, Inc., in a communication to the U-Need-A-Pak Products Corporation stated as follows:

On behalf of our Connecticut Association, I want to thank you for the courtesy shown the representatives of our Inter-State Association when we met in your office last week.

Naturally, we are interested in the outcome of that conference with you and your associates, and we are watching with a great deal of interest any shipments of machines made to the operator we discussed. According to your promise of last week the shipment of machines en route to him at the time of our discussion, must have reached him by this time, and any future shipment of machines made at this time would be against our agreement. It may also interest you to know that we have received further assurances from the other manufacturers that they positively will not ship this concern any machines.

PAR. 19. In the territory covered by the several respondent associations and Inter-State Association the members of said associations control between 85 and 90 percent of the business of operating automatic cigarette vending machines. Manufacturers have been forced to comply with the requirements of the various associations and have not created any new operators in territories covered by the various associations; said manufacturers have refused to sell to locations or to wholesale dealers with whom they formerly did business but who sold to locations; said manufacturers have likewise refused to sell to nonmembers of associations. In certain territories manufacturers who have refused to abide by agreements not to create new operators in consideration for the undertaking on the part of an association to purchase a definite quantity of their machines annually have been boycotted by the members of such association. An example is the case of the U-Need-A-Pak Corporation which entered into such an agreement with the Philadelphia association, The Automatic Cigarette Vendors Association of Eastern Pennsylvania. The U-Need-A-Pak Corporation, subsequent to the making of said agreement did sell its machines to nonmembers. Since that time no member of the Philadelphia association has purchased machines from the U-Need-A-Pak Corporation.

The effect of the activities of the various associations, acting individually and in combination with the Inter-State Association, with respect to manufacturers is clearly indicated by extracts from a memorandum report dated March 14, 1940, prepared by the president of the DuGrenier Sales Co. to the Arthur H. DuGrenier Manufacturing Co.

concerning his meeting with the secretary of the Cigarette Merchandisers Association of New Jersey, Inc.:

Mr. Cherry called on us for the purpose of reaching an understanding with DuGrenier that we would not sell cigarette machines to any new accounts in New Jersey. Specifically he wanted us to agree not to deliver to Schnorrbush machines on the order which we have. This led to a general discussion of the policies of his Association, what we could expect in return, etc., etc.

It is our understanding that the Philadelphia Association does not even permit us to sell machines to non-members. Kline reported to me that Uneeda-Pak was blacklisted and that Association members are not permitted to buy from Uneeda-Pak because they violated this ruling.

It is also my understanding that the Connecticut Association tries to enforce the ruling that manufacturers cannot sell to any new accounts although they may be permitted to sell non-members.

The New Jersey Association is attempting to operate on the basis of the Connecticut Association in that manufacturers may sell non-members but cannot start new operations.

* * * * * * *

He agreed that according to operators, we had the best looking machine for 1940 and that based on identical prices and identical trade-in allowances, DuGrenier should receive orders for at least 500 machines. That if we failed to secure orders from the above named customers, we would be justified in believing that such customers were getting trade-in allowances higher than the published figures or were getting rebates from a competitive manufacturer.

He stated that the New Jersey Association working in conjunction with the Interstate group, i. e., New England, Connecticut, New York City, New Jersey and Pennsylvania Associations, were desirous of having the manufacturers fix a uniform trade-in price to which all would adhere and that the Associations were willing to see the manufacturers raise their list price $5.00 per machine so that all machines older than our Model "S" and Rowe's Model Imperial could be taken in by the manufacturers at around $5.00 per machine and destroyed.

The Associations were desirous of not having this old equipment re-sold to used machine dealers and come back on the market and to be put in use in their territories. * * *

From Mr. Cherry's statement there are virtually no non-member operators in New Jersey now except, Gambino in Manville, N. J., who was sold by Mr. Paul some months ago and Schnorrbush, who only has possibly five machines. There is no question whatever that the Association members ganging up on any new operator can force such new operator to lose so much money operating new cigarette machines that he will be forced to sell out or go out of business. This is practically what happened to Katzman. The Association allowed Katzman to get a fairly large number of good locations but after things were running fairly smoothly for him, they began exerting pressure on his locations by offering advanced commissions, bonuses, etc. so that in order to protect himself and hold what he had, Katzman had to join the Association, but this did not happen until after he had lost many of his better stops.

From our experience in New Jersey, as well as elsewhere in the Metropolitan area, in starting new operations, it seems that the headaches are not justified by the results. If we are unable to work out some satisfactory arrangement to sell machines in accordance with Association requirements, we will be faced with three alternatives:

1. Sell new operators with resultant credit troubles and possible losses. I do not think that any of us would recommend to a friend of ours that he go into the cigarette machine business as a new operator in New Jersey knowing the troubles that he would be almost sure to encounter.

2. Sell to locations either directly ourselves or through some dealer or distributor in New Jersey. It is questionable how much business would result from this policy but certainly we would have far more collection troubles and such procedure would hurt us in Southern New Jersey where Kline sells and would hurt us elsewhere with customers.

3. If we tried to do either of the above, there is a probability of failure which would result in this third alternative of doing little if no business in Northern New Jersey.

While it disagreeable to all of us and I have fought against being dictated to by an Association as to how and whom we can sell, the fact is that such conditions are not working out particularly adversely for Kline in Philadelphia. Our records show that in that part of New Jersey covered by Kline, he sold 133 machines compared to a total of 82 R & S machines and 39 W & V machines sold by Stewart and McGuire, Inc.

Even granting that our figures are not complete, it is possible that Kline has sold more machines to customers in his New Jersey territory during the past year and a half than S & M sold in the same territory during the previous three or four years. I am inclined to believe that a part of our trouble in the Northern New Jersey territory may be our sales coverage. In other words I think that possibly Kline would have gotten a far greater share of the business from Northern New Jersey than we have been able to obtain.

* * * * * * *

I have an appointment to see Mr. Lascari today at about 3:00 P. M. and while I am still interested in making a distributorship arrangement with him and think it might work out to our advantage, I believe that if the manufacturers did agree to a fixed trade-in allowance price for old equipment, as well as for equipment less than five years old, that we might expect to get a fair share of the business. So I will talk to Mr. Lascari along the line of the Association proposal.

Mr. Cherry states that the Association realizes that they must give us a fair share of the business on our new machines, else we will be forced to use other methods of getting our share of the business, and, although Cherry may be kidding us to some extent, I think there is some truth in what he says. Certainly he was frank enough to admit that our share of the business should be 500 machines which is more than we had originally thought of as securing through Lascari.

This memorandum is for the record so that you will know just what Mr. Cherry has said to us and the intentions of the New Jersey Association.

PAR. 20. Each of the said respondents; to wit, the respondent associations, respondent officers and directors, and respondent members herein mentioned, acted in concert with one or more of the other respondents in doing and performing the acts and practices herein stated in furtherance of understandings and agreements.

PAR. 21. It follows from the foregoing facts that for more than 3 years last past the respondent organizations and associations, their officers, directors, and members herein mentioned have entered into and

carried out understandings, agreements, and conspiracies between and among themselves for the purpose of restricting, restraining, suppressing, and eliminating competition in the purchase, distribution, and installation of automatic cigarette vending machines in interstate commerce between and among the several States of the United States, and that pursuant to such understandings, agreements, and conspiracies, the said respondents have engaged in and performed the following practices and acts:

(*a*) Established and attempted to establish the members of the respondent organizations and associations, operators of automatic cigarette vending machines, as a preferred class for the purpose of having manufacturers and distributors of automatic cigarette vending machines confine the sale and distribution of such machines to such respondent member operators exclusively;

(*b*) The said respondents interfered with and prevented competitors of the said respondent member operators in the said competitors' efforts to obtain such machines;

(*c*) Said respondents required, induced, and compelled manufacturers and distributors of automatic cigarette vending machines, by promises and threats, not to sell or ship automatic cigarette vending machines to competitors of the said respondent member operators, and to confine the sale and distribution of such machines to the said respondent member operators;

(*d*) Said respondents threatened to boycott, and have boycotted, manufacturers and distributors of automatic cigarette vending machines selling such machines to competitors of the said respondent member operators.

CONCLUSION

The acts and practices of the respondents as above set forth are all to the prejudice of competitors of respondent member operators and of the public, have a dangerous tendency to and have actually hindered and prevented competition in the sale of automatic cigarette vending machines in commerce within the intent and meaning of the Federal Trade Commission Act, have unreasonably restrained such commerce in automatic cigarette vending machines, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and a stipulation as to the facts entered into between the

respondents herein by their counsel, Parker, Chapin & Flattau, 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:

1. Inter-State Cigarette Merchandisers Association, its officers as follows: President John Sharenow; Vice President William King; Treasurer Edward Beresth; Secretary Robert K. Hawthorne; Recorder James V. Cherry; and its directors as follows: Anthony J. Masone, Alfred Sharenow, and Edward J. Dingley;

2. The Cigarette Merchandisers Association, Inc., its officers as follows: President Robert K. Hawthorne; First Vice President Alexander Frazer; Second Vice President Albert S. Denver; Treasurer Samuel Yolen; Secretary Tom Cola; Manager Matthew Forbes; its directors as follows: Michael Lascari, Jackson Bloom, Louis D. Schwartz, Martin M. Berger, Bernard Rosen, Harold Roth; and its members with which its respective officers and directors are connected;

3. Cigarette Merchandisers Association of New Jersey, Inc., its officers and directors as follows: President and Director Charles W. Stange; Vice President and Director Max Jacobowitz; Treasurer and Director Henry W. Hartmann; Secretary and Director John Grout; Manager James V. Cherry; its directors as follows: Michael Lascari, John Sharenow, Samuel M. Malkin, Harry Zink, Herman Arlein; and its members with which its respective officers and directors are connected;

4. The Automatic Cigarette Vendors Association of Eastern Pennsylvania, its officers and directors as follows: President and Director Walter I. Davidson; Vice President and Director Patrick J. Bonoma; Treasurer and Director LeRoy A. Shackleton; its directors as follows: William L. King, W. Harry Steele, Jr., Harry D'Alessandro, Ralph J. Burnard, Joseph Silberman; and its members with which its respective officers and directors are connected;

5. The Cigarette Machine Operators of Connecticut, Inc., its officers as follows: President Anthony R. Nastri; Vice President Robert Zimmerman; Secretary Anthony J. Masone; Treasurer M. E. Norris, its directors as follows: John J. Fitzgerald, Samuel Aliener, Nathan Dubowry, Lena Bonelli, Charles Sparrow; and its members with which its respective officers and directors are connected;

6. Cigarette Merchandisers Association of New England, its officers as follows: President Samuel M. Goldstein; Vice President Louis Berman; Secretary William B. Burns; Manager Walter R. Guild; its directors as follows: Albert M. Coulter, Frank Fendel, Oscar Gerson, Julian Karger, Cleo C. Kingsley, Charles E. Knight, Alfred I. Sharenow, Jacob Shelman, Harry Spierer, William Spiller; and its members with which its respective officers and directors are connected; and their respective agents, representatives, and employees, in connection with the purchase and location of automatic cigarette vending machines in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from doing and performing by understanding, agreement, or combination between themselves, or between any two or more of them, or with others, any of the following acts and practices:

1. Establishing, or attempting to establish, the members of the aforesaid respondent organizations and associations or any other group of operators of automatic cigarette vending machines, as a preferred class for the purpose of confining and requiring the sale and distribution of automatic cigarette vending machines by manufacturers, producers, and sellers thereof to such member operators exclusively.

2. Interfering, or attempting to interfere with competitors of the members of the aforesaid respondent organizations and associations, operators of automatic cigarette vending machines, in the said competitors' efforts to purchase and obtain such machines.

3. Preventing, or attempting to prevent, competitors of the members of the aforesaid respondent organizations and associations, operators of automatic cigarette vending machines, from purchasing or obtaining such machines.

4. Requiring, inducing or compelling, by promises, threats, coercion, intimidation and otherwise, manufacturers, producers and sellers of automatic cigarette vending machines;

(*a*) Not to sell or ship automatic cigarette vending machines to competitors of the member operators of the aforesaid respondent organizations and associations, or directly to consumers of automatic cigarette vending machines;

(*b*) To boycott competitors of the member operators of the aforesaid respondent organizations and associations;

(*c*) To confine to the member operators of the aforesaid respondent organizations and associations, the said manufacturers', producers' and sellers' sales and shipments of automatic vending machines intended for use, consumption, or resale in the various States where the member respondents are engaged in business;

5. Boycotting and threatening to boycott manufacturers, producers, and sellers of automatic cigarette vending machines who sell or ship such machines either to competitors of the member operators of the aforesaid respondent organizations and associations or directly to consumers of such machines.

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

BENJAMIN GORDON AND LOUIS GORDON, TRADING AS BENGOR PRODUCTS COMPANY AND MAGNET 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 4474. Complaint, Mar. 24, 1941—Decision, July 31, 1941

Where two individuals engaged in competitive interstate sale and distribution of drug sundries, notions, household specialties, and other novelty merchandise, and in selling certain assortments thereof so packed and assembled as to involve the use of a lottery scheme or game of chance when sold and distributed to the purchasers, typical assortment including a cigarette lighter and a push card for use in its sale, under a plan, as there explained, by which the purchaser selecting by chance that 1 of 35 feminine names displayed thereon corresponding to that concealed under card's master seal, received the lighter, and the amount paid by a customer for a push was decided by the number disclosed in disk beneath the particular feminine name selected—

Sold and distributed such assortments, directly or indirectly, to retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, under which the fact as to whether a purchaser received the lighter or nothing except the right to push, and the amount of money paid for a push were determined wholly by lot or chance, and thereby supplied to and placed in the hands of others means of conducting a lottery in the sale of their products, involving possibility of procuring merchandise at much less than normal retail price thereof; contrary to an established public policy of the United States Government, and in competition with many who refrain from using any method involving a game of chance or any other method contrary to public policy;

With the result that many persons were attracted by said sales plans and the element of chance involved therein, and were thereby, induced to buy and sell their products in preference to those of said competitors, and with tendency and capacity unfairly to divert trade in commerce to themselves therefrom:

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

Before *Mr. A. B. Duvall*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Samuel J. Ernstoff, 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 Benjamin Gordon and Louis Gordon, individually, and trading as Bengor Products Co., and Magnet Merchandise Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Benjamin Gordon and Louis Gordon, are individuals trading and doing business as Bengor Products Co., and Magnet Merchandise Co., with their office and principal place of business located at 878 Broadway, New York, N. Y. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of drug sundries, notions, household specialties, and other novelty merchandise to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise, when sold, to be transported from their said place 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.

In the course and conduct of their business respondents are and have been in competition with other individuals, firms and corporations engaged in the sale 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 retail dealers and others certain assortments of merchandise so packed and assembled as to involve the use of a lottery scheme or game of chance when sold and distributed to the purchasers thereof. One of said assortments consists of a cigarette lighter and a device commonly known as a push card. The push card bears on its face 35 feminine names with ruled columns for writing in the name of the purchaser opposite the name selected. Said push card has 35 small partially perforated disks on the face of which is printed the word "Push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives a Dunhill

cigarette lighter. The push card bears the legend or instruction as follows:

NAME UNDER SEAL RECEIVES A
DUNHILL SILENT FLAME LIGHTER
1¢ to 15¢—NO HIGHER
Nos. 1 to 15 Pay What You Draw
Nos. Over 15 Pay ONLY 15¢
TOTAL $4.86.

Sales of respondents' lighters by means of the said push card are made in accordance with the above described legend or instruction. The fact as to whether a purchaser receives a lighter or nothing for the amount of money paid for a push is thus determined wholly by lot or chance.

Respondents sell and distribute and have sold and distributed various other assortments of merchandise involving a lot or chance feature but the sales plans or methods by which said merchandise is distributed are similar to the one above described, varying only in detail.

PAR. 3. Retail dealers and others who purchase respondents' merchandise 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 a means of conducting a lottery in the sale of their product 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.

PAR. 4. The sale of merchandise to the purchasing public by the method or sales plan hereinabove set forth involves a game of chance or the sale of a chance to procure merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute products in competition with respondents, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method which is 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 products and by the element of chance involved therein, and are thereby induced to buy and sell respondents' products in preference to products 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 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.

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 March 24, 1941, issued and on March 25, 1941, served its complaint in this proceeding upon respondents, Benjamin Gordon and Louis Gordon, individually and trading as Bengor Products Co. and Magnet Merchandise 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' 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 the said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint 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, Benjamin Gordon and Louis Gordon, are individuals trading and doing business as Bengor Products Co. and Magnet Merchandise Co., with their office and principal place of business located at 878 Broadway, New York, N. Y. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of drug sundries, notions, household specialties and other novelty merchandise to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise, when sold, to be transported from their said place 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.

In the course and conduct of their business respondents are and have been in competition with other individuals, firms, and corporations engaged in the sale 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 retail dealers and others certain assortments of merchandise so packed and assembled as to involve the use of a lottery scheme or game of chance when sold and distributed to the purchasers thereof. One of said assortments consists of a cigarette lighter and a device commonly known as a push card. The push card bears on its face 35 feminine names with ruled columns for writing in the name of the purchaser opposite the name selected. Said push card has 35 small partially perforated disks on the face of which is printed the word "Push." Concealed within each disk is a number which is not disclosed until the disk is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card which name is not disclosed until the seal is removed. The person selecting the feminine name corresponding to the one under the master seal received a Dunhill cigarette lighter. The purchasers of all the other pushes receive nothing for their money except the right to push. The push card bears the legend or instruction as follows:

NAME UNDER SEAL RECEIVED A
DUNHILL SILENT FLAME LIGHTER

1¢ to 15¢—NO HIGHER
Nos. 1 to 15 Pay What You Draw
Nos. Over 15 Pay ONLY 15¢
TOTAL $4.86

Sales of respondents' lighters by means of the said push card are made in accordance with the above described legend or instruction. The fact as to whether a purchaser receives a lighter or nothing except the right to push for the amount of money paid for a push is thus determined wholly by lot or chance.

Respondents sell and distribute and have sold and distributed various other assortments of merchandise involving a lot or chance feature and the sales plans or methods by which said merchandise is distributed are similar to the one above described, varying only in detail.

PAR. 3. Retail dealers and others who purchase respondents' merchandise 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 a means of conducting a lottery in the sale of their product 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.

PAR. 4. The sale of merchandise to the purchasing public by the method or sales plan hereinabove set forth involves a game of chance or the sale of a chance to procure merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute products in competition with respondents, as above found, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method which is 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 products and by the element of chance involved therein, and are thereby induced to buy and sell respondents' products in preference to products 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 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 acts and practices in commerce within the intent and meaning of the Federal 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 the respondents Benjamin Gordon and Louis Gordon, individually and trading as Bengor Products Co. and Magnet Merchandise Co., or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their cigar and 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 cigar or cigarette lighters or any other merchandise so packed and assembled that sales of such cigar or cigarette lighters 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, punchboards, push or pull cards, pull tabs or other lottery devices either with assortments of merchandise or separately, which said punchboards, push or pull cards, pull tabs or other lottery devices are to be used or may be used, in selling or distributing said cigar and cigarette lighters 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

LEE BOYER'S CANDY

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

Docket 4265. Complaint, Aug. 24, 1940—Decision, Aug. 6, 1941

Where a corporation engaged in the manufacture of candy and in the competitive interstate sale and distribution thereof, including certain 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; a typical assortment consisting of a number of bars or rolls of candy, together with a punchboard for use in their sale and distribution under a plan, as explained thereon, by which the person selecting, by chance, for nickel paid, one of certain numbers, received a quarter-pound nut-roll, persons selecting certain other numbers each received a half-pound roll, purchaser of the last number in each of two sections into which board was divided received 1-pound nut roll, and others received nothing for their money—

Sold such assortments to dealers, including, as direct or indirect purchasers, retailers by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, involving sale of a chance to procure a bar or roll of candy at much less than normal retail price thereof, and thereby supplied to and placed in the hands of others a means of conducting lotteries in the sale of its merchandise, contrary to an established public policy of the United States Government, and in competition with many who refrain from using any methods involving chance, or contrary to public policy;

With the result that many persons were attracted by its said methods and the element of chance involved therein, and were thereby induced to buy and sell its candy in preference to that offered and sold by aforesaid competitors, and with tendency and capacity to unfairly divert trade to it from such competitors; to the substantial injury of competition in commerce:

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

Mr. D. C. Daniel for the Commission.

Gilley, Humphreys & Sercombe, of Portland, Ore., 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 Lee Boyer's Candy, 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, Lee Boyer's Candy, is a corporation, organized and doing business under the laws of the State of Oregon, with its principal office and place of business located at 103 Southwest Front Avenue, Portland, Oreg. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers located in various States of the United States. It causes and has caused said candy, when sold, to be shipped or transported from its aforesaid place of business in the State of Oregon to purchasers thereof in various other States of the United States at their respective points of location. There is now and for more than 2 years last past has been a course of trade by said respondent in such 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 corporations, and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold certain assortments of said 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 was and is sold and distributed to the purchasing public in the following manner: This assortment consists of a number of bars or rolls of candy, together with a device commonly called a punchboard. Sales are 5 cents each. Said punchboard is divided into two sections, and each section contains a number of small sealed tubes, in each of which is concealed a slip of paper with a number printed thereon. Said board contains statements or legends informing purchasers and prospective purchasers that the persons selecting certain designated numbers each receive a quarter pound nut roll; that persons selecting other designated numbers each receive a half pound nut roll; that purchasers of the last number in each section each receive a 1 pound nut roll. Persons who do not select said designated numbers receive nothing for their money. The said numbers are effectively concealed from purchasers and prospective purchasers until said slips of paper have been punched or removed from said board. The said candy is thus distributed to the purchasing public wholly by lot or chance. Respondent sells and distributes various assortments of candy

which involve the use of games of chance, gift enterprises, or lottery schemes, but the sales plans or methods employed in connection with each of said assortments are similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's candy directly or indirectly expose and sell the same to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of its merchandise in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said methods in the sale of its candy, and the sale of said candy by and through the use thereof and by the aid of said methods, is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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

PAR. 5. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of 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 24, 1940, issued and thereafter served its complaint in this proceeding upon the respondent Lee Boyer's Candy, a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 24, 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 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, Lee Boyer's Candy, is a corporation, organized and doing business under the laws of the State of Oregon, with its principal office and place of business located at 103 Southwest Front Avenue, Portland, Oreg. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers located in various States of the United States. It causes and has caused said candy, when sold, to be shipped or transported from its aforesaid place of business in the State of Oregon to purchasers thereof in various other States of the United States at their respective points of location. There is now and for more than 2 years last past has been a course of trade by said respondent in such 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 corporations, and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold certain assortments of said 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 was and is sold and distributed to the purchasing

public in the following manner: This assortment consists of a number of bars or rolls of candy, together with a device commonly called a punchboard. Sales are 5 cents each. Said punchboard is divided into two sections, and each section contains a number of small sealed tubes, in each of which is concealed a slip of paper with a number printed thereon. Said board contains statements or legends informing purchasers and prospective purchasers that the persons selecting certain designated numbers each receive a quarter pound nut roll; that persons selecting other designated numbers each receive a half pound nut roll; that purchasers of the last number in each section each receive a 1 pound nut roll. Persons who do not select said designated numbers receive nothing for their money. The said numbers are effectively concealed from purchasers and prospective purchasers until said slips of paper have been punched or removed from said board. The said candy is thus distributed to the purchasing public wholly by lot or chance. Respondent sells and distributes various assortments of candy which involve the use of games of chance, gift enterprises, or lottery schemes, but the sales plans or methods employed in connection with each of said assortments are similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's candy directly or indirectly expose and sell the same to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of its merchandise in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said methods in the sale of its candy, and the sale of said candy by and through the use thereof and by the aid of said methods, is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of candy to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure a bar or roll of candy at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy in competition with the respondent as above found are unwilling to adopt and use said methods or any methods involving the use of a game of chance or the sale of a chance to win something by chance, or any other method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale of said candy in the manner above described, and are thereby induced to buy

and sell respondent's candy in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by the respondent, because of said game of chance, has the tendency and capacity to and does unfairly divert trade to respondent from its competitors who do not use the same or equivalent methods in commerce between and among various States of the United States. As a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal 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 Lee Boyer's Candy, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of candy or any other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing any merchandise so packed and assembled that sales of said merchandise to the 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, which said push or pull cards, punchboards, or other devices are to be used or may be used in selling or distributing said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

3. Supplying to or placing in the hands of others push or pull cards, punchboards or other devices, which said push or pull cards, punchboards, or other devices are to be used or may be used in the sale or distribution of said merchandise to the public at retail.

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

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

IN THE MATTER OF

ATLAS WALL PAPER MILLS, INC.

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

Docket 4288. Complaint, Aug. 29, 1940—Decision, Aug. 6, 1941

Where a corporation engaged in the manufacture and interstate sale and distribution of wall paper; through price lists and sample books and oral statements by its salesmen—

Represented and implied to jobber and retailer purchasers that the wall paper in question might be washed or cleaned with water without suffering damage or loss of appearance and was capable of resisting the usual effects of water, that the colors printed thereon would not fade, and that it was unaffected by exposure to sunlight, through such statements, in referring to said products, as "washable," "water-resisting," "colorfast," and "printed with the best non-fading colors obtainable";

Facts being such wall paper was not washable or water-resisting, as such terms are commonly understood, since application of water thereto caused it to deteriorate substantially and the colors to smear, and the colors were not fast, but faded appreciably when subjected to sunlight for short periods of time;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, with result that it purchased a substantial quantity 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. Maurice C. Pearce for the Commission.

Palmer & Serles, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the Atlas Wall Paper Mills, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Atlas Wall Paper Mills, Inc., is a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located in Coal City, State of Illinois.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the manufacture, sale, and distribution of wall paper. Respondent causes and has caused its said product, 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 other than the State of Illinois, and in the District of Columbia.

Respondent now maintains, and at all times herein mentioned has maintained, a course of trade in its said wall paper 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, for the purpose of inducing the purchase of its product, the respondent has made false and misleading representations and statements with respect to the character and qualities of certain items of its said product, such representations being disseminated among prospective purchasers, both jobbers and retailers, by appearing in its price lists and sample books, the latter of which are often exhibited to the ultimate purchaser, and by means of oral statements made by respondent's agents and salesmen.

Among and typical of the words and statements used by the respondent, as aforesaid, are the words "washable," "water resisting," and "colorfast," and the legend "printed with the best non-fading colors obtainable."

Through the use of the foregoing representations, statements, and others of similar import not specifically set out herein, the respondent represents that such items of its said wall paper may be washed or cleaned with the use of water without suffering damage or loss of appearance, and that said paper is capable of resisting the usual and customary effects of water; that the colors printed on said paper will not fade; and that said paper is unaffected by exposure to sunlight.

PAR. 4. The foregoing representations and statements are grossly exaggerated, false, and misleading. In truth and in fact, certain items of said wall paper concerning which such representations are made are not washable or water resisting, as such terms are usually and customarily understood by the purchasing public. Said paper is incapable of resisting the usual and customary effects of water as the application of water to said paper causes it to deteriorate substantially and causes the colors in said paper to smear, with the result that said paper suffers a substantial change in appearance. The colors used in said paper are not fast or free from fading, nor are such colors capable of resisting the usual and ordinary effects

of sunlight. In truth and in fact, the colors printed on respondent's said paper fade appreciably when subjected to sunlight for short periods of time.

PAR. 5. The use by the respondent of the foregoing false and misleading representations and statements, with respect to certain items of its said wall paper, 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 representations and statements are true, and that respondent's wall paper possesses character and qualities which it does not, in fact, possess. As a result of such erroneous and mistaken belief the purchasing public has been induced to and does purchase a substantial quantity of respondent's product.

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 29, 1940, issued, and subsequently served its complaint in this proceeding upon respondent Atlas Wall Paper Mills, 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, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Atlas Wall Paper Mills, Inc., is a corporation duly chartered, organized and existing under and by virtue

of the laws of the State of Illinois, with its principal office and place of business located in Coal City, State of Illinois.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the manufacture, sale and distribution of wall paper. Respondent causes and 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 the various States of the United States other than the State of Illinois and in the District of Columbia.

Respondent now maintains, and at all times herein mentioned has maintained, a course of trade in its said wall paper 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, for the purpose of inducing the purchase of its products, the respondent has made false and misleading representations and statements with respect to the character and qualities of certain of its products. Such representations were disseminated among prospective purchasers, both jobbers and retailers, through price lists and sample books, the latter of which are often exhibited by retailers to the ultimate purchaser, and through oral statements made by respondent's agents and salesmen.

Among and typical of the statements used by the respondent in referring to the qualities of certain of its products are "washable," "water-resisting," "color-fast," and "printed with the best non-fading colors obtainable."

Through the use of the foregoing statements and others of similar import not set out herein, the respondent represents and implies that the wall paper so referred to may be washed or cleaned with water without suffering damage or loss of appearance, and that said paper is capable of resisting the usual and customary effects of water; that the colors printed on said paper will not fade; and that said paper is unaffected by exposure to sunlight.

PAR. 4. The foregoing representations and statements are false and misleading. In truth and in fact, the wall paper concerning which such representations are made is not washable or water-resisting, as such terms are usually and customarily understood by the purchasing public. Said paper is incapable of resisting the usual and customary effects of water, as the application of water to said paper causes it to deteriorate substantially and causes the colors in said paper to smear, with the result that said paper suffers a substantial change in appearance. The colors used in said paper are not fast

or free from fading, nor are such colors capable of resisting the usual and ordinary effects of sunlight. In truth and in fact, the colors printed on respondent's said paper fade appreciably when subjected to sunlight for short periods of time.

PAR. 5. The use by the respondent of the foregoing false and misleading representations and statements, with respect to said wall paper, 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 representations are true, and that respondent's wall paper possesses qualities which it does not, in fact, possess. As a result of such erroneous and mistaken belief, the purchasing public has been induced to, and does, purchase a substantial quantity of respondent's said products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission 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, Atlas Wall Paper Mills, 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 wall paper in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that wall paper is washable, water-resisting, color-fast or nonfading, when such paper is affected in appearance, or otherwise, when washed or cleaned with water or when exposed to sunlight;

2. Using the terms "washable," "water-resisting," "color-fast," or "printed with the best nonfading colors obtainable," or any other

term or terms of similar import and meaning, to designate, describe, or refer to wall paper which is affected in appearance, or otherwise, when washed or cleaned with water or when exposed to sunlight.

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

GATES MEDICINE 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 4301. Complaint, Sept. 5, 1940—Decision Aug. 6, 1941

Where a corporation and an individual who was its treasurer, general manager, and practically sole stockholder, engaged in the manufacture, from 1934 to 1940, of their "White Ribbon Remedy" for alcoholism, and, since 1940, of their "Improved White Ribbon Remedy," and in the interstate sale and distribution thereof; by means of advertisements disseminated, through the mails, in newspapers, periodicals, letters, circulars, and other advertising literature, directly or by implication—

(*a*) Represented, prior to January 1940, that their said "White Ribbon Remedy" constituted a competent and effective treatment for the liquor habit and was safe and harmless, through such statements as "George no longer drinks whiskey. White Ribbon treatment made him hate liquor. White Ribbon Remedy can be given in coffee, tea, or milk and has done much to stop drinking. One woman cured a drunkard of 20 years with one box," and "* * * White Ribbon Remedy, the safe and reliable medicine for the liquor habit * * *";

The facts being tartar emetic, the active drug in the original formula of said product is a poison, administered medically only once or twice as an emetic dose and never prescribed over a period of 8 days as was the product in question; the depressant effect of alcohol, added to that of tartar emetic, is dangerous to a person sufficiently susceptible to chronic antimony poisoning and addicted to the use of liquor, and, in the case of such a person, the prescribed doses taken three times daily would cause depression of the cardiovascular system, chronic irritation of the stomach and intestinal tract, nausea, and failure to eat and get the proper amount of food minerals and vitamins necessary for health; the effect of tartar emetic on the liquor habit is very slight, if any, and the prescribed three powders a day of aforesaid remedy over a period of 8 days would have no therapeutic effect upon an indivilual's alcoholic addiction; and

(*b*) Failed to reveal in their said advertisements facts material in the light of the representations therein contained, and that use of their said "White Ribbon Remedy," under prescribed or usual conditions, might produce the dangerous conditions noted above; and

(*c*) Represented, subsequent to January 1940, that their "Improved White Ribbon Remedy" constituted an effective and competent treatment for the liquor habit and an effective remedy or cure for nervousness, fatigue, illness, or other conditions caused by excessive drinking of alcoholic beverages, through such statements as "NERVOUS AFTER DRINKING Vitamin B in Improved White Ribbon Remedy Helps Give Needed Relief. Nervousness and Fatigue after excessive drinking is usually increased by a vitamin B deficiency. Improved White Ribbon Remedy, rich in vitamin B, not only gives relief by nourishing ragged nerves and restoring energy, but often helps counteract many of the more serious ills attributable to over-imbibing. * * *," and "RELIEF FOR LIQUOR HABIT Improved White Ribbon

Remedy Relieves Vitamin B Deficiency. Excessive drinking usually results in ragged uncontrolled nerves, often due to a vitamin B deficiency. Improved White Ribbon Remedy, rich in vitamin B, relieves these symptoms, restores energy and makes it easier to do without alcohol";

The fact being that, while the formula for said "Improved" product excluded the tartar emetic previously contained and included an increase from 384 to 2,160 international units of vitamin B–1 for each 24 powders, such contribution to the normal vitamin requirements of the human system was practically negligible, it being not unusual for the medical profession to prescribe in excess of 3,000 international units as an ordinary single therapeutic dose in the not infrequent cases in which an alcoholic develops a vitamin B–1 deficiency, and their said "Improved White Ribbon Remedy" was not a competent cure for the liquor habit or the aforesaid conditions caused by excessive drinking;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken beliefs aforesaid, with the result that it purchased substantial quantities of said preparations:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. R. A. McOuat for the Commission.

Mr. P. H. Murphy, of Charleston, 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 Gates Medicine 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 Gates Medicine Co., Inc., is a corporation organized and existing under the laws of the State of West Virginia, having its office and principal place of business at 32½ Capitol Street, Charleston, W. Va. Respondent is now and has been since 1934, engaged in the business of manufacturing, selling, and distributing medicinal preparations designated White Ribbon Remedy and Improved White Ribbon Remedy, which are drugs as "drugs" are defined in the Federal Trade Commission Act. Respondent causes said medicinal preparations, when sold, to be transported from its 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 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 its aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said products by the United States mail 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 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 of White Ribbon Remedy, disseminated and caused to be disseminated as hereinabove set forth, are the following:

GEORGE NO LONGER DRINKS WHISKEY

White Ribbon Treatment Made Him Hate Liquor.

White Ribbon Remedy can be given in coffee, tea or milk and has done much to stop drunkenness. One woman cured a drunkard of 20 years with one box.

We are about to start advertising in your City White Ribbon Remedy, the safe and reliable medicine for the liquor habit.

Among and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements of Improved White Ribbon Remedy, disseminated and caused to be disseminated as hereinabove set forth, are the following:

NERVOUS AFTER DRINKING?

Vitamin B in Improved White Ribbon Remedy Helps Give Needed Relief.

Nervousness and fatigue after excessive drinking is usually increased by a Vitamin B deficiency. Improved White Ribbon Remedy, rich in Vitamin B Not only gives relief by nourishing ragged nerves and restoring energy, but often helps counteract many of the more serious ills attributable to overimbibing. This relief likewise makes it easier to do without alcohol.

RELIEF FOR LIQUOR HABIT

Improved White Ribbon Remedy relieves Vitamin B deficiency.

Excessive drinking usually results in ragged uncontrolled nerves, often due to a Vitamin B deficiency. Improved White Ribbon Remedy, rich in Vitamin

B, relieves these symptoms, restores energy and makes it easier to do without alcohol. Can be given secretly if necessary in coffee, tea or milk.

By the use of the representations hereinabove set forth and other representations similar thereto not specifically set forth herein, respondent represents that White Ribbon Remedy is a competent, effective, safe, and reliable cure for the liquor habit.

By the use of the representations hereinabove set forth and other representations similar thereto not specifically set forth herein, respondent represents that Improved White Ribbon Remedy is a competent, effective, and reliable cure for the liquor habit and is a remedy or cure for nervousness, fatigue, illness, and other conditions caused by the excessive drinking of alcoholic beverages.

PAR. 3. The aforesaid representations used and disseminated by respondent in the manner above described are grossly exaggerated, misleading, deceptive, and untrue and constitute false advertisements within the meaning of the Federal Trade Commission Act. White Ribbon Remedy is not a competent, effective, safe, nor reliable cure for the liquor habit. Said advertisements of respondent are also false in that they fail to reveal that the use of this medicinal preparation, under conditions prescribed by respondent and under such conditions as are customary and usual may result in serious illness of the user. The facts are that White Ribbon Remedy contains tartar emetic which produces expectorant, nauseant, depressant effects, which may be harmful and dangerous to the health of the user. Improved White Ribbon Remedy is not a competent, effective, or reliable cure for the liquor habit. It is not an effective remedy or cure for nervousness, fatigue, illness, or other conditions caused by the excessive drinking of alcoholic beverages.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to the products White Ribbon Remedy and Improved White Ribbon 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 said statements and representations are true and to induce and has induced, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparations.

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 meaning of the Federal Trade Commission 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 September, A. D. 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Gates Medicine 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, testimony, and other evidence in support of the allegations of the complaint were introduced by R. A. McOuat, attorney for the Commission, and in opposition to the allegations of the complaint by P. H. Murphy, attorney for the respondent, before Lewis C. Russell, duly appointed trial examiner of the Commission, designated by it to serve in this proceeding, 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, the testimony and other evidence, the report of the trial examiner, and brief in support of the complaint; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Gates Medicine Co., Inc., is a corporation organized A. D. 1934, under the laws of the State of West Virginia, with its principal place of business located in Charleston, W. Va. Garland B. Potterfield is its treasurer, general manager, and practically its sole stockholder.

PAR. 2. Respondent, from the year 1934 to 1940, was engaged in the business of manufacturing, selling, and distributing a medical preparation designated as "White Ribbon Remedy," and since January 1940, has manufactured, sold, and distributed a medical preparation designated "Improved White Ribbon Remedy." Respondent caused its White Ribbon Remedy, when sold, and has caused and causes its Improved White Ribbon Remedy, when sold, to be transported from its principal place of business in the State of West Virginia to purchasers thereof located in various States of the United States, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medical preparations in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. Respondent sold White Ribbon Remedy as a cure for the liquor habit. The original formula for respondent's said product was tartar emetic and sugar of milk, the latter being a carrying body for the active drug. This formula was used for the years 1934 to 1937, when the formula was changed to include thiamin chloride (vitamin B–1), and the formula then became: tartar emetic, 1 grain; sugar of milk, 150 grains; vitamin B–1, 2.5 milligrams, mixed and divided into 50 powders. According to the directions issued by the respondent in connection with White Ribbon Remedy, three powders were to be taken daily for a period of 8 days, and each of these powders contained one-fiftieth of a grain of tartar emetic. If directions were followed, 24 of these powders would be taken by an individual over a period of 8 days, and he would therefore be taking, during said period, twelve twenty-fifths of a grain of tartar emetic.

The medical profession prescribes tartar emetic for the purpose of producing nausea, or for expectorant effect, in order to rid the body of poisons more speedily and effectively than they are ordinarily eliminated. The minimum effective dose, as ordinarily prescribed, is one-twentieth of a grain, and is administered only once or twice as an emetic dose. It is never prescribed over a period of 8 days in smaller quantities. The depressant effect of alcohol, added to the depressant effect of tartar emetic, creates danger to the person sufficiently susceptible to chronic antimony poisoning and addicted to the use of liquor. In the case of a susceptible individual, doses of one-fiftieth of a grain of tartar emetic taken three times a day would cause depression of the cardiovascular system, chronic irritation of the stomach and intestinal tract, nausea, and failure to eat and get the proper amount of food minerals and vitamins necessary to maintain health. Tartar emetic is a poison, and is not a safe, reliable remedy for the liquor habit, and may be harmful and dangerous to the health of the user. The effect of tartar emetic on the liquor habit is very slight, if any, and no therapeutic effect upon an individual's alcoholic addiction would result from the taking of three powders per day of White Ribbon Remedy over a period of 8 days.

PAR. 4. Respondent consulted a medical authority concerning the use of tartar emetic as a part of its formula for White Ribbon Remedy, and was advised that medical authorities consider it of no value as a remedy for the liquor habit.

PAR. 5. On January 1, A. D., 1940, respondent again changed the formula of its product by eliminating tartar emetic, and attempted to withdraw from sale all of its White Ribbon Remedy which contained tartar emetic. The product, from that time on, was put up in boxes, each of which contained 24 powders, each powder containing

90 international units of thiamin chloride (Vitamin B–1), with sugar of milk as a carrying body, and no other ingredient, and the name of the product was changed to "Improved White Ribbon Remedy." The dosage prescribed by respondent was three powders a day for 8 days.

Prior to January 1940, the 24 White Ribbon powders contained 384 international units of vitamin B–1, and since said date this amount has been increased to 2160 international units. The amount of vitamin B–1 contained in respondent's product, even after it was increased in 1940, is not sufficient to be effective for the purposes contemplated. An individual chronically addicted to the use of alcoholic liquor almost always fails to eat sufficient or proper food, or develops a gastric or intestinal irritation and is unable to properly assimilate the food he consumes, and in many instances develops a vitamin B–1 deficiency. In such cases the medical profession prescribes vitamin B–1 to overcome this deficiency; but the amount prescribed depends upon the evidence of deficiency, and it is not unusual to prescribe in excess of three thousand international units as an ordinary single therapeutic dose. Respondent's new product may contribute a portion of the normal vitamin requirement of the human system, but the contribution is practically negligible. It is not a competent, effective, reliable cure for the liquor habit and is not an effective remedy or cure for nervousness, fatigue, illness, or other condition caused by the excessive drinking of alcoholic beverages.

PAR. 6. In the course and conduct of its aforesaid business, the respondent, from the year 1934 to January 1940, disseminated and caused the dissemination of false advertisements concerning its product known as "White Ribbon Remedy," by means of the United States Mail and by various other means, in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent also disseminated and 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 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 means of the United States Mail, by advertisements in newspapers and periodicals, and by letters, circulars, and other advertising literature, are the following:

GEORGE NO LONGER DRINKS WHISKEY

White Ribbon treatment made him hate liquor.

White Ribbon Remedy can be given in coffee, tea or milk and has done much to stop drinking. One woman cured a drunkard of 20 years with one box.

We're about to start advertising in your city, White Ribbon Remedy, the safe and reliable medicine for the liquor habit * * *. White Ribbon Remedy has a good sale with the most reliable drug stores throughout the country * * *. As soon as we receive your o. k. we will consign several dozens of the medicine and start the advertising at once.

PAR. 7. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation known as "White Ribbon Remedy" was not a competent and effective treatment for the liquor habit, and said preparation was not safe and reliable, in that it contained the drug tartar emetic in sufficient quantity to cause serious and irreparable injury to health, if used under the conditions described in said advertisements or under such conditions as are customary and usual. Such use of said preparation is dangerous to the person sufficiently susceptible to chronic antimony poisoning and addicted to the use of liquor, by causing depression of the cardiovascular system, chronic irritation of the stomach and intestinal tract, nausea and failure to get the proper amount of food minerals and vitamins necessary to maintain health.

PAR. 8. The advertisements disseminated by the respondent constitute false advertising for the further reason that they fail to reveal facts which are material in the light of the representations contained therein, and fail to reveal that the use of said preparation known as White Ribbon Remedy, under the conditions described in such advertisements, or under such conditions as are customary or usual, may cause depression of the cardiovascular system, chronic irritation of the stomach and intestinal tract and nausea, and failure to eat and get the proper amount of food minerals and vitamins necessary to maintain health.

PAR. 9. In the course and conduct of its aforesaid business, the respondent, since January 1940, has disseminated and is now disseminating, and has caused and is now causing the distribution of false advertisements concerning its product known as "Improved White Ribbon Remedy" by means of the United States Mail, 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 advertising concerning the said product Improved White Ribbon Remedy by various means for the purpose of inducing and which are likely to induce 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 by respondent as above set forth, by means of the United States Mail, by advertisements in newspapers and by circulars and other advertising literature, are the following:

NERVOUS AFTER DRINKING

Vitamin B in Improved White Ribbon Remedy Helps Give Needed Relief. Nervousness and Fatigue after excessive drinking is usually increased by a vitamin B deficiency. Improved White Ribbon Remedy rich in vitamin B, not only gives relief by nourishing ragged nerves and restoring energy, but often helps counteract many of the more serious ills attributable to overimbibing. This relief likewise makes it easier to do without alcohol.

RELIEF FOR LIQUOR HABIT

Improved White Ribbon Remedy Relieves Vitamin B Deficiency. Excessive drinking usually results in ragged uncontrolled nerves, often due to a vitamin B deficiency. Improved White Ribbon Remedy, rich in vitamin B, relieves these symptoms, restores energy and makes it easier to do without alcohol. Can be given secretly, if necessary, in coffee, tea or milk.

PAR. 10. 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, directly and by implication, that its preparation known as Improved White Ribbon Remedy constitutes an effective and competent treatment for the liquor habit, and an effective remedy or cure for nervousness, fatigue, illness, or other conditions caused by excessive drinking of alcoholic beverages.

PAR. 11. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's Improved White Ribbon Remedy is not an effective and competent treatment for the liquor habit, and is not an effective remedy or cure for nervousness, fatigue, illness, or other condition caused by excessive drinking of alcoholic beverages.

PAR. 12. The use by respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to its said preparations, disseminated as aforesaid, with respect to its White Ribbon Remedy has had, and with respect to its Improved White Ribbon Remedy 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 respondent's preparations possess properties which they did not and do not possess, and that respondent's preparation White Ribbon Remedy was in all cases

safe and harmless, when such was not the fact; and as a result of said mistaken and erroneous belief, a considerable number of the purchasing public have been induced to purchase and have purchased substantial quantities of respondent's said preparations.

CONCLUSION

The aforesaid acts and practices of respondent as herein found are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce, within the meaning of the Federal 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 introduced before Lewis C. Russell, duly appointed trial examiner of the Federal Trade Commission designated by it to serve in this proceeding, 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 the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Gates Medicine Co., Inc., a corporation, its officers, directors, agents, representatives, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its preparations known as "White Ribbon Remedy" and "Improved White Ribbon Remedy," or any preparation of substantially similar composition or possessing substantially similar properties, 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 advertisement represents directly or by implication that said preparation, White Ribbon Remedy, constitutes a competent or effective treatment for the liquor habit, or that said preparation is safe and harmless; or which advertisement fails to reveal that the use of said preparation may cause depression of the cardiovascular system, chronic irritation of the stomach and intestinal tract, nausea, and failure to eat and get the proper amount of food minerals and vitamins necessary to maintain health.

2. 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 advertisement represents, directly or by implication, that its said preparation Improved White Ribbon Remedy constitutes a competent or effective treatment for the liquor habit; or that said improved White Ribbon Remedy is a remedy for nervousness, fatigue, illness, or other condition caused by the excessive drinking of alcoholic beverages.

(3) 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 paragraphs (1) and (2) hereof, or which fails to reveal that the use of the preparation White Ribbon Remedy may cause depression of the cardiovascular system, chronic irritation of the stomach and intestinal tract, nausea, and failure to eat and get the proper amount of food minerals and vitamins necessary to maintain health.

It is further ordered, That respondent, Gates Medicine Co., Inc., a corporation, 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, it shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Complaint

IN THE MATTER OF

GEORGE G. BLAISDELL, WALTER G. BLAISDELL, AND HOMER G. BARCROFT, TRADING AS ZIPPO MANUFACTURING COMPANY

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

Docket 4497. Complaint, May 8, 1941 —Decision, Aug 6, 941

Where three individuals engaged in the manufacture, and in the competitive interstate sale and distribution of assortments of cigar and cigarette lighters so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold to consumers, a typical assortment including eight lighters and a punchboard for use in sale thereof under a plan, explained thereon, by which chance selection of certain numbers entitled purchaser, for 2 cents paid, to one lighter, certain other numbers entitled purchaser to a package of cigarettes, purchaser making last punch in each of the first nine sections completely sold was similarly entitled to receive such a package, and person making last punch on board received a lighter, value of which and of the packages of cigarettes was in excess of 2 cents, other customers receiving nothing for their money—

Sold such assortments to wholesalers, jobbers, and retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, involving a chance to procure lighters at much less than the normal retail price, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of their products, contrary to an established public policy of the United States Government, and in competition with many unwilling to use any method involving chance, or contrary to public policy, and who refrain therefrom;

With result that many persons were attracted by their said sales plan or method and the element of chance involved therein, and were thereby induced to buy and sell their lighters in preference to those of aforesaid competitors, and with tendency and capacity, because of said game of chance, unfairly to divert trade in commerce to them from such competitors: to the substantial injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and their 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.
Wilson & Fitzgibbon, of Bradford, 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 George G. Blaisdell,

Walter G. Blaisdell, and Homer G. Barcroft, individuals trading as Zippo 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, George G. Blaisdell, Walter G. Blaisdell, and Homer G. Barcroft, are individuals trading and doing business under the name of Zippo Manufacturing Co., with their office and principal place of business located at Bradford, Pa. Respondents are now and for more than six months last past have been engaged in the manufacture and in the sale and distribution of cigar and cigarette lighters to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their principal place of business in the city of Bradford, Pa., to purchasers thereof at their respective points of location in various States of the United States other than Pennsylvania and in the District of Columbia. There is now and has been for more than 6 months last past a course of trade by respondents in such cigar and cigarette lighters in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their said business, respondents are and have been in competition with other individuals, firms, and corporations engaged in the sale and distribution of cigar and cigarette lighters 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 cigar and cigarette lighters 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 includes eight Zippo cigar and cigarette lighters and a punchboard. Appearing on the face of the punchboard is the following inscription:

ZIPPO WIND PROOF LIGHTER ASSORTMENT

2¢ Per Sale (Depiction of Lighter)

Numbers 200–400–600–800–1000–1200
Each Receive a Zippo Lighter

Numbers 25–50–125–150–225–250–325–350–425–450–525–550–625–650–725–750–825–850–925–950 Each Receive One Package of (20) Cigarettes

Last Sale in Each Section Receives One Package (20) Cigarettes
Last Sale on Board Receives a Zippo Lighter

Said lighters are distributed to the purchasing public by means of said punchboard in the following manner:

Sales are 2 cents each, and when a punch is made 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, and said numbers are arranged in 10 sections. The board bears a statement informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a lighter and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes; and the last punch in each of the first 9 sections completely sold entitles the purchaser to receive a package of cigarettes, and the last punch on the board entitles the purchaser to receive a lighter. A customer who does not qualify by obtaining one of the specified numbers or the last punch on the board or in a section receives nothing for his money. The lighters are worth more than 2 cents each, and the cigarettes are worth more than 2 cents per package, and the purchaser who obtains a number calling for a lighter or a package of cigarettes receives the same for 2 cents. The numbers are effectively concealed from purchasers and prospectsive purchasers until a punch or selection has been made and the particular punch separated from the board. The cigar and cigarette lighters are thus distributed to the purchasers of punches from the board wholly by chance.

The respondents furnish and have furnished various punchboards and lighter assortments for use in the sale and distribution of their lighters by means of a game of chance, gift enterprise, or lottery scheme. Such punchboards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' cigar and cigarette lighters, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with

the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their lighters and the sale of said lighters 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. The sale of cigar and cigarette lighters 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 lighters at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute lighters in competition with respondents, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their lighters and in the element of chance involved therein and are thereby induced to buy and sell respondents' lighters in preference to lighters 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 unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent method, and as a result thereof substantial injury is being and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission on May 8, 1941, issued and subsequently served its complaint in this proceeding upon respondents George G. Blaisdell, Walter G. Blaisdell, and Homer G. Barcroft, individuals trading as Zippo 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. In due course the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, George K. Blaisdell, Walter G. Blaisdell, and Homer G. Barcroft, are individuals trading and doing business under the name of Zippo Manufacturing Co., with their office and principal place of business located at Bradford, Pa. Respondents are now and for more than 6 months last past have been engaged in the manufacture and in the sale and distribution of cigar and cigarette lighters to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their principal place of business in the city of Bradford, Pa., to purchasers thereof at their respective points of location in various States of the United States other than Pennsylvania and in the District of Columbia. There is now and has been for more than 6 months last past a course of trade by respondents in such cigar and cigarette lighters in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their said business, respondents are and have been in competition with other individuals, firms, and corporations engaged in the sale and distribution of cigar and cigarette lighters 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 cigar and cigarette lighters 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 includes eight Zippo cigar and cigarette lighters and a punchboard. Appearing on the face of the punchboard is the following inscription:

ZIPPO WIND PROOF LIGHTER ASSORTMENT
2¢ Per Sale (Depiction of Lighter)
Numbers 200–400–600–800–1000–1200
Each Receive a Zippo Lighter
Numbers 25–50–125–150–225–250–325–350–425–450–525–550–625–650–725–750–825–850–925–950
Each Receive One Package of (20) Cigarettes
Last Sale in Each Section Receives One Package (20) Cigarettes
Last Sale on Board Receives a Zippo Lighter

Said lighters are distributed to the purchasing public by means of said punchboard in the following manner:

Sales are 2 cents each, and when a punch is made 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, and said numbers are arranged in 10 sections. The board bears a statement informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a lighter and certain other specified numbers entitle the purchaser thereof to receive a package of cigarettes; and the last punch in each of the first 9 sections completely sold entitles the purchaser to receive a package of cigarettes, and the last punch on the board entitles the purchaser to receive a lighter. A customer who does not qualify by obtaining one of the specified numbers or the last punch on the board or in a section receives nothing for his money. The lighters are worth more than 2 cents each, and the cigarettes are worth more than 2 cents per package, and the purchaser who obtains a number calling for a lighter or a package of cigarettes receives the same for 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 cigar and cigarette lighters are thus distributed to the purchasers of punches from the board wholly by chance.

The respondents furnish and have furnished various punchboards and lighter assortments for use in the sale and distribution of their lighters by means of a game of chance, gift enterprise, or lottery scheme. Such punchboards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' cigar and cigarette lighters, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The use by respond-

ents of said sales plan or method in the sale of their lighters and the sale of said lighters 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. The sale of cigar and cigarette lighters 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 lighters at prices much less than the normal retail price thereof. Many persons, firms, and corporations, who sell and distribute lighters in competition with respondents, as above found, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their lighters and in the element of chance involved therein and are thereby induced to buy and sell respondents' lighters in preference to lighters 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 unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent method, and as a result thereof substantial injury is being, and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

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 from the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admitted all the material allegations of fact set forth in said complaint and stated that they waived all intervening procedure and further hearing as to

said facts, and the Commission having 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 George G. Blaisdell, Walter G. Blaisdell, and Homer G. Barcroft, individuals, trading as Zippo Manufacturing Co., or under any other name, either jointly or severally, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cigar and 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 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, punchboards, push or pull cards, pull tabs, or other lottery devices, either with assortments of merchandise or separately, which said punchboards, push or pull cards, pull tabs, 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.

Syllabus

IN THE MATTER OF

F. W. JOHNSON, TRADING AS KEMICO

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

Docket 4505. Complaint, May 17, 1941—Decision, Aug. 6, 1941

Where an individual engaged in interstate sale and distribution of formulas for various medicinal and cosmetic preparations; in describing the therapeutic properties and value of the preparations or products compounded from such formulas; by means of circulars, leaflets, and other advertising literature, directly or by implication—

(*a*) Falsely represented that the "Greaseless Massage Cream" and "Lemon Greaseless Cream" products of such formulas, respectively (1) constituted a cure or remedy and a competent and effective treatment for sallowness and roughness of the skin, and for pimples and other skin imperfections, and (2) was of substantial therapeutic value as a skin treatment, and helped to promote a clear, healthy skin;

(*b*) Falsely represented that the "Catarrhal Cream," "Vapor Inhalant," and "Nasal Jelly" products of such formulas, respectively, constituted competent and effective treatments for (1) nasal catarrh, dry catarrh, catarrhal headaches, head colds, hay fever, sore throat, bronchitis, and throat troubles generally, and for burns, cuts, and sores, (2) croup, head colds, headaches and catarrh, and (3) head colds, catarrh, and similar conditions;

(*c*) Represented that the "Hair-Lay Cream" product promoted the growth of hair, relieved itching scalp and helped to prevent dandruff and falling hair, that "Dandruff Remedy" for dandruff and the "Beauty Balm" was of substantial therapeutic value in improving the complexion, helped to eliminate wrinkles, and had a tonic effect upon the skin, and his "Debest Skin Treatment" constituted a competent and effective treatment for eczema and for redness, roughness, and scaling of the skin;

Facts being said "Hair-Lay" formula contained no active therapeutic agent; use of word "Remedy" for said dandruff formula was false and misleading, it having no therapeutic value in excess of affording temporary relief from itching symptom associated with said condition and of assisting in temporary removal of dandruff scales; and said formulas or preparations made therefrom would not accomplish the results, and did not possess the properties, claimed therefor;

(*d*) Represented that "Teeth Whitener Formula A" and "Teeth Whitener Formula B" products would remove tartar, stains, and other discolorations from the teeth, and were entirely safe for use;

Facts being products from said formulas would not accomplish such results, and preparation made from the former was not entirely safe for use, in that it contained precipitated chalk which might severely scratch the enamel of the teeth;

(*e*) Falsely represented that the "Pine Oil Nasal Spray" and "Menthol and Camphor Nasal Spray" products were competent and effective treatments for head colds, catarrh, and similar conditions; and that they were entirely safe for continued use, notwithstanding they contained sufficient light

mineral oil to cause oil pneumonia, particularly in children, if used over long periods; and

(*f*) Falsely represented that "Nose Inhalant" product was safe for use, when in fact it contained sufficient chloroform to cause anesthesia and, in some instances, complete circulatory failure, and continued use thereof might also cause degenerative changes in the liver;

With tendency and capacity, through use of such misrepresentations and failure to disclose possible harmful effects of said preparations, to mislead and deceive a substantial number of prospective purchasers of said formulas and cause them to buy substantial quantities of his formulas, and with effect of placing in the hands of uninformed or unscrupulous purchasers means of misleading and deceiving members of the 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. Joseph C. Fehr 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 F. W. Johnson, individually and trading under the name Kemico, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, F. W. Johnson, is an individual trading under the name Kemico and having his principal office and place of business located in the city of Park Ridge, in the State of Illinois. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of certain formulas for various medicinal and cosmetic preparations.

Respondent causes his said formulas, when sold, to be sent through the United States mails and by other means to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said formulas in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as aforesaid, and for the purpose of inducing the purchase of his said formulas, the respondent has made many false and misleading representations with respect to his said formulas and with respect to the therapeutic properties and values of the preparations compounded from said formulas,

such representations being made by means of circulars, leaflets, and other advertising literature circulated and distributed among prospective purchasers of said formulas. Through said false and misleading representations, distributed and circulated as aforesaid, the respondent represents and has represented, directly or by implication:

(*a*) That respondent's preparation *Greaseless Massage Cream* is a cure or remedy and a competent and effective treatment for sallowness and roughness of the skin, and for pimples and other skin imperfections.

(*b*) That respondent's preparation *Lemon Greaseless Cream* is of substantial therapeutic value as a skin treatment, and that it helps to promote a clear, healthy skin.

(*c*) That respondent's preparation *Catarrhal Cream* is a competent and effective treatment for nasal catarrh, dry catarrh, catarrhal headaches, head colds, hay fever, sore throat, bronchitis, and throat troubles generally, and for burns, cuts, and sores.

(*d*) That respondent's preparation *Hair-Lay Cream* promotes the growth of hair, relieves itching scalp, and helps to prevent dandruff and falling hair.

(*e*) That respondent's preparation *Dandruff Remedy* is a cure or remedy for dandruff.

(*f*) That respondent's preparation *Vapor Inhalant* is a competent and effective treatment for croup, head colds, headaches, and catarrh.

(*g*) That respondent's preparation *Beauty Balm* is of substantial therapeutic value in improving the complexion, that it helps to eliminate wrinkles, and that it has a tonic effect upon the skin.

(*h*) That respondent's preparation *Debest Skin Treatment* is a competent and effective treatment for eczema and for redness, roughness, and scaling of the skin.

(*i*) That respondent's preparation *Nasal Jelly* is a competent and effective treatment for head colds, catarrh, and similar conditions.

(*j*) That respondent's preparations *Teeth Whitener Formula A* and *Teeth Whitener Formula B* will remove tartar, stains, and other discolorations from the teeth, and that said preparations are entirely safe for use.

(*k*) That respondent's preparations *Pine Oil Nasal Spray* and *Menthol and Camphor Nasal Spray* are competent and effective treatments for head colds, catarrh, and similar conditions, and that said preparations are entirely safe for continued use.

(*l*) That respondent's preparation *Nose Inhalant* is safe for use.

PAR. 3. The aforesaid representations, as well as others of similar import which have not been specifically set out herein, are grossly exaggerated, false, and misleading. In truth and in fact:

(*a*) Respondent's preparation *Greaseless Massage Cream* is not a cure or remedy, or a competent or effective treatment, for sallowness or roughness of the skin, or for pimples or other skin imperfections.

(*b*) Respondent's preparation *Lemon Greaseless Cream* does not possess any therapeutic value as a skin treatment, nor does it help to promote a clear or healthy skin.

(*c*) Respondent's preparation *Catarrhal Cream* does not constitute a competent or effective treatment for nasal catarrh, dry catarrh, catarrhal headaches, head colds, hay fever, sore throat, bronchitis, or throat troubles generally, nor is it a competent or effective treatment for burns, cuts, or sores.

(*d*) Respondent's preparation *Hair-Lay Cream* contains no active therapeutic agent. It is wholly incapable of promoting the growth of hair or relieving itching scalp, and is of no assistance in preventing dandruff or falling hair.

(*e*) Respondent's preparation *Dandruff Remedy* is not a cure or remedy for dandruff, and the use of the word "Remedy" to designate said preparation is false and misleading. Said preparation is of no therapeutic value in the treatment of dandruff in excess of affording temporary relief from the itching symptom associated with dandruff and assisting in the temporary removal of dandruff scales.

(*f*) Respondent's preparation *Vapor Inhalant* is not a competent or effective treatment for croup, head colds, headaches, or catarrh.

(*g*) Respondent's preparation *Beauty Balm* is wholly incapable of improving the complexion. It does not help to eliminate wrinkles, nor does it have any tonic effect upon the skin.

(*h*) Respondent's preparation *Debest Skin Treatment* is not a competent or effective treatment for eczema or for redness, roughness, or scaling of the skin.

(*i*) Respondent's preparation *Nasal Jelly* is not a competent or effective treatment for head colds, catarrh, or any similar conditions.

(*j*) Respondent's preparations *Teeth Whitener Formula A* and *Teeth Whitener Formula B* will not remove tartar, stains, or other discolorations from the teeth.

Moreover, said preparation *Teeth Whitener Formula A* is not entirely safe for use, as it contains precipitated chalk which may severely scratch the enamel of the teeth.

(*k*) Respondent's preparations *Pine Oil Nasal Spray* and *Menthol and Camphor Nasal Spray* are not competent or effective treatments for head colds, catarrh, or similar conditions.

Moreover, said preparations are not entirely safe for continued use, as they contain light mineral oil in a quantity sufficient to

cause oil pneumonia, particularly in the case of children, if said preparations are used over long periods of time.

(*l*) Respondent's preparation *Nose Inhalant* is not safe for use, as it contains chloroform in a quantity sufficient to cause anesthesia, and in some instances complete circulatory failure. The continued use of said preparation may also cause degenerative changes in the liver.

PAR. 4. The use by the respondent of said false and misleading representations, and the failure of respondent to disclose the harmful effects which may result from the use of certain of said preparations, have the tendency and capacity to cause a substantial number of prospective purchasers of said formulas to believe that the preparations represented by said formulas possess therapeutic properties and values which they do not in fact possess, and that certain of said preparations are safe for use, when such is not the fact, and the tendency and capacity to cause such prospective purchasers to purchase substantial quantities of respondent's said formulas as a result of such erroneous and mistaken belief.

The acts and practices of the respondent serve also to place in the hands of uninformed or unscrupulous purchasers of said formulas means and instrumentalities whereby such parties 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 May 17, 1941, issued and on May 21, 1941, served its complaint in this proceeding upon respondent, F. W. Johnson, individually and trading under the name Kemico, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, F. W. Johnson, is an individual trading under the name Kemico and having his principal office and place of business located in the city of Park Ridge, in the State of Illinois. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of certain formulas for various medicinal and cosmetic preparations.

Respondent causes his said formulas, when sold, to be sent through the United States mails and by other means to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said formulas in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as aforesaid, and for the purpose of inducing the purchase of his said formulas, the respondent has made many false and misleading representations with respect to his said formulas and with respect to the therapeutic properties and values of the preparations compounded from said formulas, such representations being made by means of circulars, leaflets, and other advertising literature circulated and distributed among prospective purchasers of said formulas. Through said false and misleading representations, distributed and circulated as aforesaid, the respondent represents and has represented, directly or by implication:

(*a*) That the preparation compounded from respondent's *Greaseless Massage Cream* formula is a cure or remedy and a competent and effective treatment for sallowness and roughness of the skin, and for pimples and other skin imperfections.

(*b*) That the preparation compounded from respondent's *Lemon Greaseless Cream* formula is of substantial therapeutic value as a skin treatment, and that it helps to promote a clear, healthy skin.

(*c*) That the preparation compounded from respondent's *Catarrhal Cream* formula is a competent and effective treatment for nasal catarrrh, dry catarrh, catarrhal headaches, head colds, hay fever, sore throat, bronchitis, and throat troubles generally, and for burns, cuts, and sores.

(*d*) That the preparation compounded from respondent's *Hair-Lay Cream* formula promotes the growth of hair, relieves itching scalp, and helps to prevent dandruff and falling hair.

(*e*) That the preparation compounded from respondent's *Dandruff Remedy* formula is a cure or remedy for dandruff.

(*f*) That the preparation compounded from respondent's *Vapor Inhalant* formula is a competent and effective treatment for croup, head colds, headaches, and catarrh.

(*g*) That the preparation compounded from respondent's *Beauty Balm* formula is of substantial therapeutic value in improving the complexion, that it helps to eliminate wrinkles, and that it has a tonic effect upon the skin.

(*h*) That the preparation compounded from respondent's *Debest Skin Treatment* formula is a competent and effective treatment for eczema and for redness, roughness, and scaling of the skin.

(*i*) That the preparation compounded from respondent's *Nasal Jelly* formula is a competent and effective treatment for head colds, catarrh, and similar conditions.

(*j*) That the preparations compounded from respondent's *Teeth Whitener Formula A* and *Teeth Whitener Formula B* formulas will remove tartar, stains, and other discolorations from the teeth, and that said preparations are entirely safe for use.

(*k*) That the preparations compounded from respondent's *Pine Oil Nasal Spray* and *Menthol and Camphor Nasal Spray* formulas are competent and effective treatments for head colds, catarrh, and similar conditions, and that said preparations are entirely safe for continued use.

(*l*) That the preparation compounded from respondent's *Nose Inhalant* formula is safe for use.

PAR. 3. The aforesaid representations, as well as others of similar import which have not been specifically set out herein, are grossly exaggerated, false, and misleading. In truth and in fact:

(*a*) The preparation compounded from respondent's *Greaseless Massage Cream* formula is not a cure or remedy, or a competent or effective treatment, for sallowness or roughness of the skin, or for pimples or other skin imperfections.

(*b*) The preparation compounded from respondent's *Lemon Greaseless Cream* formula does not possess any therapeutic value as a skin treatment, nor does it help to promote a clear or healthy skin.

(*c*) The preparation compounded from respondent's *Catarrhal Cream* formula does not constitute a competent or effective treat-

ment for nasal catarrh, dry catarrh, catarrhal headaches, head colds, hay fever, sore throat, bronchitis, or throat troubles generally, nor is it a competent or effective treatment for burns, cuts, or sores.

(*d*) The preparation compounded from respondent's *Hair-Lay Cream* formula contains no active therapeutic agent. It is wholly incapable of promoting the growth of hair or relieving itching scalp, and is of no assistance in preventing dandruff or falling hair.

(*e*) The preparation compounded from respondent's *Dandruff Remedy* formula is not a cure or remedy for dandruff, and the use of the word "Remedy" to designate said preparation is false and misleading. Said preparation is of no therapeutic value in the treatment of dandruff in excess of affording temporary relief from the itching symptoms associated with dandruff and assisting in the temporary removal of dandruff scales.

(*f*) The preparation compounded from respondent's *Vapor Inhalant* formula is not a competent or effective treatment for croup, head colds, headaches, or catarrh.

(*g*) The preparation compounded from respondent's *Beauty Balm* formula is wholly incapable of improving the complexion. It does not help to eliminate wrinkles, nor does it have any tonic effect upon the skin.

(*h*) The preparation compounded from respondent's *Debest Skin Treatment* formula is not a competent or effective treatment for eczema or for redness, roughness, or scaling of the skin.

(*i*) The preparation compounded from respondent's *Nasal Jelly* formula is not a competent or effective treatment for head colds, catarrh, or any similar conditions.

(*j*) The preparations compounded from respondent's *Teeth Whitener Formula A* and *Teeth Whitener Formula B* formulas will not remove tartar, stains, or other discolorations from the teeth.

Moreover, said preparation *Teeth Whitener Formula A* is not entirely safe for use, as it contains precipitated chalk which may severely scratch the enamel of the teeth.

(*k*) The preparations compounded from respondent's *Pine Oil Nasal Spray* and *Menthol and Camphor Nasal Spray* formulas are not competent or effective treatments for head colds, catarrh, or similar conditions.

Moreover, said preparations are not entirely safe for continued use, as they contain light mineral oil in a quantity sufficient to cause oil pneumonia, particularly in the case of children, if said preparations are used over long periods of time.

(*l*) The preparation compounded from respondent's *Nose Inhalant* formula is not safe for use, as it contains chloroform in a quantity sufficient to cause anesthesia, and in some instances complete circulatory failure. The continued use of said preparations may also cause degenerative changes in the liver.

PAR. 4. The use by the respondent of said and false misleading representations, and the failure of respondent to disclose the harmful effects which may result from the use of certain of said preparations, have the tendency and capacity to cause a substantial number of prospective purchasers of said formulas to believe that the preparations represented by said formulas possess therapeutic properties and values which they do not in fact possess, and that certain of said preparations are safe for use, when such is not the fact, and the tendency and capacity to cause such prospective purchasers to purchase substantial quantities of respondent's said formulas as a result of such erroneous and mistaken belief.

The acts and practices of the respondent serve also to place in the hands of uninformed or unscrupulous purchasers of said formulas means and instrumentalities whereby such parties are enabled to mislead and deceive members of the purchasing public.

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

It is ordered, That respondent, F. W. Johnson, individually and trading under the name Kemico, or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of his said formulas for medicinal and cosmetic preparations, or any other formulas for the compounding of medicinal

or cosmetic preparations in which are listed substantially similar ingredients, or which possess substantially similar properties, whether sold under the name now employed by respondent or under any other name or names, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

(*a*) That the preparation compounded from respondent's *Greaseless Massage Cream* formula is a cure or remedy, or a competent or effective treatment for sallowness or roughness of the skin or for pimples or other skin imperfections.

(*b*) That the preparation compounded from respondent's *Lemon Greaseless Cream* formula possesses therapeutic value as a skin treatment or that it helps to promote a clear or healthy skin.

(*c*) That the preparation compounded from respondent's *Catarrhal Cream* formula constitutes a competent or effective treatment for nasal catarrh, dry catarrh, catarrhal headaches, head colds, hay fever, sore throat, bronchitis, or throat troubles generally, or that it is a competent or effective treatment for burns, cuts, or sores.

(*d*) That the preparation compounded from respondent's *Hair-Lay Cream* formula will promote the growth of hair or relieve itching scalp, or that it has any value in preventing dandruff or falling hair.

(*e*) Through the use of the word "Remedy" or any other word of similar import or meaning in the trade name of respondent's formula or in any other manner that the preparation compounded from respondent's *Dandruff Remedy* formula is a cure or remedy for dandruff, or that it has any therapeutic value in the treatment of dandruff in excess of affording temporary relief from the symptom of itching associated with dandruff and assisting in the temporary removal of dandruff scales.

(*f*) That the preparation compounded from respondent's *Vapor Inhalant* formula is a competent or effective treatment for croup, head colds, headaches, or catarrh.

(*g*) That the preparation compounded from respondent's *Beauty Balm* formula will help to eliminate wrinkles, improve the complexion, or have any tonic effect upon the skin.

(*h*) That the preparation compounded from respondent's *Debest Skin Treatment* formula is a competent or effective treatment for eczema, or for redness, roughness, or scaling of the skin.

(*i*) That the preparation compounded from respondent's *Nasal Jelly* formula is a competent or effective treatment for head colds, catarrh, or any similar conditions.

(*j*) That the preparations compounded from respondent's *Teeth Whitener Formula A* or *Teeth Whitener Formula B* formulas will remove tartar stains or other discolorations from the teeth, or that the preparation compounded from Teeth Whitener Formula A is safe for use.

(*k*) That the preparations compounded from respondent's *Pine Oil Nasal Spray* and *Menthol and Camphor Nasal Spray* formulas are competent or effective treatments for head colds, catarrh, or similar conditions, or that said preparations are entirely safe for continued use.

(*l*) That the preparation compounded from respondent's *Nose Inhalant* formula is safe for continued use.

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

UCO FOOD CORPORATION

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 4277. Complaint, Aug. 28, 1940—Decision, Aug. 7, 1941

Where a corporation engaged in the purchase, sale, and distribution of food products at wholesale—

Received and accepted allowances and discounts in lieu of brokerage in substantial amounts in connection with the purchase of its requirements in interstate commerce, through, usually, purchasing commodities at prices lower than those at which they were sold to other purchasers by an amount which reflected all or a portion of the brokerage currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers:

Held, That such acts and practices were in violation of the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John T. Haslett for the Commission.

Einhorn & Schachtel, of Philadelphia, Pa., 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, Section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Uco Food Corporation, is a corporation organized and existing under the laws of the State of New Jersey with its principal office and place of business located at 506–510 Frelinghuysen Avenue, Newark, N. J. Respondent is engaged in the purchase, sale, and distribution of food products at wholesale.

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchases commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. Since June 19, 1936, in connection with the purchase of its requirements in interstate commerce, as aforesaid, respondent has received and accepted allowances and discounts in lieu of brokerage in substantial amounts.

Usually, the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage is accomplished by respondent by purchasing commodities at prices lower than the prices at which such commodities are sold to other purchasers thereof by an amount which reflects all or a portion of the brokerage currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers.

PAR. 4. The receipt and acceptance of allowances and discounts in lieu of brokerage by respondent as set forth in paragraph 3 hereof is 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 act of Congress approved June 19, 1936 (the Robinson-Patman Act). (U. S. C. title 15, sec. 13), the Federal Trade Commission, on the 28th day of August 1940, issued and served its complaint in this proceeding upon respondent Uco Food Corporation, a corporation, charging the respondent with violation of the provisions of subsection (c) of section 2 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 of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts and expressly waiving the filing of briefs and oral argument, 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 and being of the opinion that section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act has been violated by the respondent, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Uco Food Corporation, is a corporation organized and existing under the laws of the State of New Jersey with its principal office and place of business located at 850 Frelinghuysen Avenue, Newark, N. J. Respondent is engaged in the purchase, sale, and distribution of food products at wholesale.

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchases, commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. Since June 19, 1936, in connection with the purchase of its requirements in interstate commerce, as aforesaid, respondent has received and accepted allowances and discounts in lieu of brokerage in substantial amounts.

Usually, the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage is accomplished by respondent by purchasing commodities at prices lower than the prices at which such commodities are sold to other purchasers thereof by an amount which reflects all or a portion of the brokerage currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers.

CONCLUSION

In receiving and accepting allowances and discounts in lieu of brokerage fees or commissions from sellers upon purchases of commodities as herein found, respondent has violated the provisions of section 2 (c) of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by act of Congress approved June 19, 1936 (the Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and substitute answer of respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearings as to said facts and expressly waives the filing of briefs and oral argument, and the Commission having made its findings as to the facts and conclu-

sion that said respondent has violated the provisions of section 2 (c) of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C., title 15, sec. 13).

It is ordered, That the respondent, Uco Food Corporation, a corporation, its agents, employees, and representatives, in the purchase of commodities in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Receiving or accepting from sellers, directly or indirectly, any allowance or discount in lieu of brokerage fees or commissions in whatever manner or form said allowances, discounts, brokerage fees, or commissions may be offered, allowed, granted, paid, or transmitted; and

2. Receiving or accepting from sellers in any manner or form whatever directly or indirectly, anything of value as a commission, brokerage fee or other compensation or any allowance or discount in lieu thereof upon purchases of commodities by respondent.

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

IN THE MATTER OF

G. KRUEGER BREWING COMPANY

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

Docket 4434. Complaint, Dec. 26, 1940—Decision, Aug. 7, 1941

Where a corporation engaged in brewing its "Ambassador Beer," and in competitive interstate sale and distribution thereof; by means of interstate newspaper advertising—

Represented, directly or by implication, that said product was composed wholly of barley malt and hops and contained no other cereals or fermentable ingredients, through use of such statements as "* * * Only the choicest barley malt and hops are used in brewing this distinctively different product," when in fact said product was not an "all-malt beer," in which barley malt and hops are used exclusively, and which is well-known to the beer-drinking public and in demand by a portion thereof, but was product in brewing of which other fermentable grains or cereals were used in addition to malt and hops;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such advertisements were true, and with capacity to induce its purchase of substantial quantities thereof as a result of such belief, whereby trade was diverted unfairly by it from its competitors who truthfully advertise their products, to the injury of competition in commerce:

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

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

Mr. Jesse D. Kash for the Commission.

Guggenheimer & Untermyer, 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 G. Krueger Brewing 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, G. Krueger Brewing 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 Newark, N. J.

PAR. 2. The respondent is now and for more than 2 years last past has been engaged in the business of brewing, selling, and distributing beer under the brand name Ambassador Beer. Respondent causes its said product 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 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 as aforesaid respondent has been and is in competition with other corporations and individuals and with firms and partnerships selling and distributing beer in commerce in 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 their said products or the ingredients composing same, and who do not make any other false statements in connection with the sale and distribution of their said products.

PAR. 4. In the course and conduct of its aforesaid business respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said product by 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 and misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinbefore set forth, by United States mails, by advertisements in newspapers and periodicals and by pamphlets, circulars, and other advertising matter are the following:

A custom brewed beer for cultured taste, Ambassador is designed to meet the present day demand for a lighter, milder, more delicately flavored beer. Only the choicest barley malt and hops are used in brewing this distinctively different product.

Through the use of the statements and representations hereinbefore set forth and others similar thereto not specifically set out herein, respondent has represented directly or by implication that its product Ambassador Beer is composed wholly of barley malt and hops.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's product Ambassador Beer is not wholly composed of barley malt and hops but includes corn and other grains or cereals.

PAR. 6. The term "only the choicest barley malt and hops" when applied to beer is understood by the purchasing public as denoting a beer composed wholly of barley and hops and not containing any other cereal or fermentable ingredients and such beer has been well known to the beer drinking public and there is a demand on the part of a substantial portion of the purchasing public for such beer.

PAR. 7. The use by the respondent of the foregoing false and misleading advertisements disseminated, as aforesaid, has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false advertisements are true and to induce the purchasing public to purchase substantial quantities of respondent's product as the result of such belief.

As a result trade has been diverted unfairly by the respondent from its competitors in commerce who truthfully advertise their products. In consequence thereof, injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods in 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 December 1940, issued and thereafter served its complaint in this proceeding upon the respondent, G. Krueger Brewing Co., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive

acts and practices in commerce in violation of the provisions of said act. On January 16, 1941, the respondent filed its answer in this proceeding. Thereafter, and on April 11, 1941, at a hearing duly scheduled and held at Brooklyn, N. Y., it was agreed by and between counsel for the respondent and counsel for the Commission that, subject to the approval of the Commission, a stipulation as to the facts read into the record may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon and issue its order disposing of this proceeding without the presentation of argument or filing of briefs. Respondent expressly waived the filing of the trial examiner's report on the evidence. Thereafter, this proceeding came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the same and being 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, G. Krueger Brewing 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 75 Belmont Avenue, in the city of Newark, State of New Jersey.

PAR. 2. The respondent is now and for more than 2 years last past has been engaged in the business of brewing, selling, and distributing beer under the trade mark "Ambassador Beer." Respondent causes its said product, 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. Respondent maintains and at all times mentioned herein has maintained a course of trade in said product in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has been and is in competition with other corporations and individuals and with firms and partnerships selling and distributing beer in commerce in and among the various States of the United States.

PAR. 4. In the course and conduct of its aforesaid business respondent has disseminated and has caused the dissemination of advertisements concerning its said product by means of newspaper advertisements in commerce as "commerce" is defined in the Federal Trade Commission Act, and respondent has also disseminated and has caused to be disseminated, advertisements concerning its product by newspaper advertising 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 in commerce, as "commerce" is defined in said act.

PAR. 5. Among the statements and representations contained in said advertisements disseminated and caused to be disseminated, as hereinbefore set forth, are the following:

A custom brewed beer for cultured tastes, Ambassador is designed to meet the present day demand for a lighter, milder, more delicately flavored beer. Only the choicest barley malt and hops are used in brewing this distinctively different product.

Through the use of the statements and representations hereinbefore set forth, respondent represented directly or by implication that its product "Ambassador Beer" is composed wholly of barley malt and hops and does not contain any other cereals or fermentable ingredients.

PAR. 6. The foregoing representations are false, misleading, and deceptive. In truth and in fact other fermentable grains or cereals are used in brewing said product in addition to barley malt and hops.

PAR. 7. The Commission finds that while certain members of the purchasing public would not be led to believe, through the use by the respondent of the statement "only the choicest barley malt and hops are used in brewing this distinctively different product," that only barley malt and hops are used in brewing said product, the use by the respondent of such statement has the capacity and tendency to mislead a substantial number of the purchasing public into the mistaken and erroneous belief that said beer is composed wholly of barley malt and hops to the exclusion of all other cereals or fermentable ingredients. Barley malt and hops are used exclusively in brewing approximately 2 percent of the beer brewed and consumed in the United States, such beer being known as "all-malt beer." Such beer is and has been well known to the beer drinking public and there is a demand on the part of a portion of such public for this particular kind of beer.

PAR. 8. The Commission further finds that the advertisement set out herein in paragraph 5 appeared in the Newark Evening News,

Newark, N. J., in the July 19, 1939, issue, and that said newspaper has an interstate circulation. Said advertisement is not being used at the present time and has not been used by the respondent since July 19, 1939.

PAR. 9. The use by the respondent of the foregoing misleading and deceptive advertisements disseminated as aforesaid, had a tendency and capacity to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such advertisements were true and to induce the purchasing public to purchase substantial quantities of respondent's product as the result of such belief.

As a result, trade has been diverted unfairly by the respondent from its competitors in commerce who truthfully advertise their products. In consequence thereof, injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found were 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 complaint of the Commission, the answer of the respondent and a stipulation as to the facts entered into by counsel for respondent herein, and counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, G. Krueger Brewing 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 product "Ambassador Beer," or any other beer containing fermentable ingredients other

than and in addition to barley malt and hops, 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 any means, in commerce as "commerce" is defined in the Federal Trade Commission Act, which advartisement represents directly or by implication that only barley malt and hops are used in brewing said beer.

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 beer, which advertisement contains the representation 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.

Syllabus

IN THE MATTER OF

CASIMIRO MUOJO, TRADING AS ALVI CO. AND AS ALVI, INC.

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

Docket 4484. Complaint, Apr. 5, 1941—Decision, Aug. 7, 1941

Where an individual engaged in interstate sale and distribution of a hair dye cosmetic variously designated as "Vitale Instantaneous Hair Dye," "Vitale Rapid Hair Coloring," etc.; by means of advertisements disseminated through the mails and otherwise, including newspaper advertisements offering free samples, and circulars, leaflets, and other advertising literature sent in response to requests for such samples and in reply to inquiries—

(*a*) Represented that his said hair dye cosmetic was scientific, safe, and free from harmful, dangerous, and injurious chemicals, that it would end premature gray hair and produce a permanent, natural, uniform shade, that it gave the hair the warmth, color, lustre, and glint of youth and would have no ill effects, its statements accompanying samples including the representations "can be used by all persons having perfect skin and hair," along with advice, when in doubt, to apply a few drops of the product "behind the ear or on the arm," and statement that "If no redness appears on the following morning, you can use VITALE with the assurance that it will do no harm," it asserting in various advertising that it was "free from any harmful material," "SAFE FOR SCALP AND HAIR," "perfectly safe," etc.;

Facts being his said cosmetic was a chemical dye which was not capable of producing results claimed, and was not safe or harmless, in that it contained the toxic coal tar derivative paraphenylenediamine in sufficient quantity to cause skin irritation and violent local dermatitis when used as prescribed, and, if absorbed into the body, to result in vertigo, gastritis, exophthalmos, and asthma, among other ailments, while its application to eyebrows or eyelashes might cause blindness; and

(*b*) Failed to reveal, in such advertisements, facts material in the light of the representations contained therein, and that use of said hair dye cosmetic under prescribed or usual conditions might result in injury to health, in that they contained no warning against use of product on the eyelashes or eyebrows, nor adequate warnings as to the necessity of a proper skin patch test before each application to the hair, in order to determine user's toxic reaction;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that his said representations were true, and of inducing it, because of said belief, to purchase his 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.

Mr. Alfred C. Ditolla, 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 Casimiro Muojo, an individual, trading as Alvi Co. and as Alvi, 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, Casimiro Muojo, is an individual trading as Alvi Co. and as Alvi, Inc., with his office and principal place of business at 158 Grand Street, New York, N. Y., from which address he transacts business under the above trade names.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain hair dye cosmetic, variously designated as Vitale Instantaneous Hair Dye, Vitale Rapid Hair Coloring, Vitale Rapid, Vitale Hair Coloring, Vitale Hair Dye, and as Vitale.

In the course and conduct of his business the respondent causes said cosmetics, when sold, to be transported from his 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, respondent has maintained a course of trade in said cosmetic, sold and distributed by him in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; 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 advertisements in newspapers, are the following:

WHITE HAIR

Can be eliminated without danger in only 15 minutes by using VITALE RAPID once a month. It does not discolor upon washing and gives a natural shade. Price $2.00. Free Sample. State Color.

ALVI, INC.
158 Grand Street
New York

GRAY HAIR

Will vanish in 15 minutes by using the rapid dye "VITALE" once a month. Box for 4 applications, $2.00. Ask for free sample and state the color of your hair.

ALVI CO.
158 Grand St., N. Y.

GRAY HAIR

Can be eliminated without danger in only 15 minutes by using VITALE RAPID once a month. Does not lose color when washed and gives a natural shade. Price $2.00. Free sample. State color.

ALVI CO.
158 Grand St., N. Y.

In answer to requests for free samples offered in the foregoing newspaper advertisements and in reply to inquiries regarding said product, the respondent also disseminated in the manner and for the purpose aforesaid, circulars, leaflets, and other advertising literature by the United States mails and by various other means in commerce, containing the following, false, misleading, and deceptive statements and representations:

VITALE gives a clear and natural color. The VITALE can be used by all persons having perfect skin and hair. When in doubt, we advise you to wash a bit of the skin behind the ear or on the arm. When dry, mix a few drops from vials A and B and apply. If no redness appears on the following morning, you can use VITALE with the assurance that it will do no harm. VITALE is a most economical modern dye, free from any harmful material. Send the coupon today for the large box, and you will be glad to have given your hair the warmth and luster of youth.

ALVI CO.
158 Grand St.
New York, N. Y.

VITALE HAIR COLORING

Only 15 minutes required to banish gray hair. One application is required. VITALE is easily applied in your own home with success.

SAFE FOR SCALP AND HAIR. Perfect color. VITALE is safe. Over 30 years of experience in manufacturing hair preparations are your best guarantee.

VITALE, the scientific rapid hair coloring has brought happiness to thousands of women, security and youthful appearance to thousands of men.

ALVI CO.
158 Grand St.
New York, N. Y.

Thousands use the VITALE with great success. It has been endorsed by the leading beautician, in Europe and America for over 10 years, because it is not a commercialized hair dye, but the result of scientific researches. VITALE is perfectly safe. Hair coloring are safe to use. This modern hair coloring, free from any dangerous materials, is economical and safe. Write today for the large box, and you will be glad to have given the youthful color, and glint to your hair.

ALVI CO.
158 Grand St.
New York, N. Y.
Youthful Hair

END THE TRAGEDY OF PREMATURE GRAYNESS QUICKLY—SAFELY

In order to overcome the handicap of gray hair, "Vitale," a rapid ideal hair coloring, was developed after years of constant research and study.

Vitale, not only duplicates nature's color but penetrate inside the hair, after Nature's own fashion, retaining its natural lustre silkness and beauty.

ALVI DISTRIBUTORS
158 Grand Street
New York, N. Y.

VITALE RAPID to restore youthful color to gray hair in nature's way. It produces a natural color that cannot be distinguished even under close scrutiny. It does not contain injurious chemicals. It is permanent. It will give a uniform shade throughout a number of years. There is more quality, supreme quality and effectiveness in VITALE than any other preparation.

ALVI, Inc.
158 Grand Street
New York, N. Y.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondent represents that his hair dye cosmetic, designated as Vitale Instantaneous Hair Dye and by various other names as aforesaid, is scientific, safe, and free from harmful, dangerous, and injurious chemicals; that it will end premature gray hair; that it will produce a permanent, natural, uniform shade; that it gives the hair the warmth, color, luster, and glint of youth and that its use will have no ill effects upon the human body.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the cosmetic sold and distributed by the respondent as aforesaid is a chemical dye and will not end premature gray hair, nor will it produce a permanent, natural, uniform shade. It is incapable of giving the hair the warmth, color, luster or glint of youth, or affecting the hair in any

way other than as a dye. The said preparation is not safe, scientific, or harmless, as its use may result in serious and irreparable injury to health.

Respondent's preparation contains paraphenylene-diamine, a toxic coal tar derivative, in sufficient quantity to cause in some cases skin irritation and other harmful effects, 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 cosmetic may cause, in some cases, violent local dermatitis, and if absorbed into the body, it may result in vertigo, gastritis, exophthalmos, asthma, diplopia, asthenia, or subcutaneous oedema about the face and head. Furthermore, the application of said cosmetic to the eyebrows or eyelashes in any case may cause blindness.

PAR. 6. The advertisements disseminated by the respondent, as aforesaid, contain no warning against the use of said preparation on the eyelashes or eyebrows, nor do such advertisements contain adequate warnings as to the necessity of a proper skin patch test before each application of said preparation to the hair, in order to determine the toxic reaction of the user. 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. 7. The use by the respondent of the foregoing, false, deceptive, and misleading statements and representations with respect to his preparation, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's 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 the 5th day of April 1941, issued,

and on the 7th day of April 1941, served its complaint in this proceeding upon respondent, Casimiro Muojo, an individual, trading as Alvi Co. and as Alvi; Inc., charging him with the use of 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 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, Casimiro Muojo, is an individual trading as Alvi Co. and as Alvi, Inc., with his office and principal place of business at 158 Grand Street, New York, N. Y., from which address he transacts business under the above trade names.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain hair dye cosmetic, variously designated as Vitale Instantaneous Hair Dye, Vitale Rapid Hair Coloring, Vitale Rapid, Vitale Hair Coloring, Vitale Hair Dye, and as Vitale.

In the course and conduct of his business the respondent causes said cosmetic, when sold, to be transported from his 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, respondent has maintained a course of trade in said cosmetic, sold and distributed by him in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; 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 advertisements in newspapers, are the following:

WHITE HAIR

Can be eliminated without danger in only 15 minutes by using VITALE RAPID once a month. It does not discolor upon washing and gives a natural shade. Price $2.00. Free Sample. State Color.

ALVI, INC.
158 Grand Street
New York

GRAY HAIR

Will vanish in 15 minutes by using the rapid dye "VITALE" once a month. Box for 4 applications, $2.00. Ask for free sample and state the color of your hair.

ALVI CO.
158 Grand St.
N. Y.

GRAY HAIR

Can be eliminated without danger in only 15 minutes by using VITALE RAPID once a month. Does not lose color when washed and gives a natural shade. Price $2.00. Free sample. State color.

ALVI CO.
158 Grand St.
N. Y.

In answer to requests for free samples offered in the foregoing newspaper advertisements and in reply to inquiries regarding said product, the respondent also disseminated in the manner and for the purpose aforesaid, circulars, leaflets, and other advertising literature by the United States mails and by various other means in commerce, containing the following, false, misleading, and deceptive statements and representations:

VITALE gives a clear and natural color. The VITALE can be used by all persons having perfect skin and hair. When in doubt, we advise you to wash a bit of the skin behind the ear or on the arm. When dry, mix a few drops from vials A and B and apply. If no redness appears on the following morning, you can use VITALE with the assurance that it will do no harm. VITALE is a most

economical modern dye, free from any harmful material. Send the coupon today for the large box, and you will be glad to have given your hair the warmth and luster of youth.

ALVI CO.
158 Grand St.
New York, N. Y.

VITALE HAIR COLORING

Only 15 minutes required to banish gray hair. One application is required. VITALE is easily applied in your own home with success. SAFE FOR SCALP AND HAIR. Perfect color. VITALE is safe. Over 30 years of experience in manufacturing hair preparations are your best guarantee.

VITALE, the scientific rapid hair coloring has brought happiness to thousands of women, security and youthful appearance to thousands of men.

ALVI CO.
158 Grand St.
New York, N. Y.

Thousands use the VITALE with great success. It has been endorsed by the leading beautician, in Europe and America for over 10 years, because it is not a commercialized hair dye, but the result of scientific researches. VITALE is perfectly safe. Hair coloring are safe to use. This modern hair coloring, free from any dangerous materials, is economical and safe. Write today for the large box, and you will be glad to have given the youthful color, and glint to your hair.

ALVI CO.
158 Grand St.
New York, N. Y.

Youthful Hair
END THE TRAGEDY OF
PREMATURE GRAYNESS
QUICKLY—SAFELY

In order to overcome the handicap of gray hair, "Vitale", a rapid ideal hair coloring, was developed after years of constant research and study.

Vitale, not only duplicates nature's color but penetrate inside the hair, after Nature's own fashion, retaining its natural lustre silkness and beauty.

ALVI DISTRIBUTORS
158 Grand Street
New York, N. Y.

VITALE RAPID to restore youthful color to gray hair in nature's way. It produces a natural color that cannot be distinguished even under close scrutiny. It does not contain injurious chemicals. It is permanent. It will give a uniform shade throughout a number of years. There is more quality, supreme quality and effectiveness in VITALE than any other preparation.

ALVI, INC.
158 Grand Street
New York, N. Y.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out

herein, the respondent represents that his hair dye cosmetic, designated as Vitale Instantaneous Hair Dye and by various other names as aforesaid, is scientific, safe, and free from harmful, dangerous, and injurious chemicals; that it will end premature gray hair; that it will produce a permanent, natural, uniform shade; that it gives the hair the warmth, color, luster, and glint of youth and that its use will have no ill effects upon the human body.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the cosmetic sold and distributed by the respondent as aforesaid is a chemical dye and will not end premature gray hair, nor will it produce a permanent, natural, uniform shade. It is incapable of giving the hair the warmth, color, luster, or glint of youth, or affecting the hair in any way other than as a dye. The said preparation is not safe, scientific, or harmless, as its use may result in serious and irreparable injury to health.

Respondent's preparation contains paraphenylene diamine, a toxic coal tar derivative, in sufficient quantity to cause in some cases skin irritation and other harmful effects, 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 cosmetic may cause, in some cases, violet local dermatitis, and if absorbed into the body, it may result in vertigo, gastritis, exophthalmos, asthma, diplopia, asthenia, or subcutaneous oedema about the face and head. Furthermore, the application of said cosmetic to the eyebrows or eyelashes in any case may cause blindness.

PAR. 6. The advertisements disseminated by the respondent, as aforesaid, contain no warning against the use of said preparation on the eyelashes or eyebrows, nor do such advertisements contain adequate warnings as to the necessity of a proper skin patch test before each application of said preparation to the hair, in order to determine the toxic reaction of the user. 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. 7. The use by the respondent of the foregoing, false, deceptive, and misleading statements and representations with respect to his preparation, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and

mistaken belief that such statements, representations, and advertisements are true, and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase 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 the 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, Casimiro Muojo, an individual, trading as Alvi Co. and as Alvi, 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 hair dye cosmetic variously advertised as Vitale Instantaneous Hair Dye, Vitale Rapid Hair Coloring, Vitale Rapid, Vitale Hair Coloring, Vitale Hair Dye, and as Vitale, or any other hair dye cosmetic or 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 preparation is a safe or scientific cosmetic, free from harmful, injurious, or dangerous chemicals; that its use will end premature gray hair or produce a permanent, natural, uniform shade, or give the warmth, color, luster, or glint of youth to the hair; or which advertisement fails to conspicuously reveal therein the following:

CAUTION: This product contains ingredients which may cause skin irritation on certain individuals and preliminary tests 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.

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 conspicuously reveal therein the following:

CAUTION: This product contains ingredients which may cause skin irritation on certain individuals and preliminary tests 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.

It is further ordered, That 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 maner 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

STANDARD CONTAINER MANUFACTURERS' ASSOCIATION, INC. ET AL

MODIFIED CEASE AND DESIST ORDER

Docket 3289. Order, Aug. 11, 1941

Modified order, pursuant to provisions of section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which (1) Commission on March 5, 1940, made its findings and conclusion and issued cease and desist order in Docket 3289, 30 F. T. C. 577, 598, and (2) Circuit Court of Appeals for the Fifth Circuit on April 23, 1941, in *Standard Container Manufacturers' Association, Inc., et al.* v. *Federal Trade Commission*, 119 F. (2d) 262, 32 F. T. C. 1879, rendered its decision and, on May 20, 1941, issued its decree modifying said order of the Commission in certain particulars and affirming same in other particulars, and directed the Commission to modify such order in accordance with said decree—

I. Requiring respondent corporations, partners, and individuals engaged in manufacture, sale, and distribution, or sale and distribution, of wooden fruit and vegetable containers in the southeastern portion of the United States, and more particularly in Georgia and Florida, and their officers, etc., to cease and desist from—

Entering into or carrying out any understanding, agreement, etc., with intent or effect of restricting, etc., competition in sale in interstate commerce of such containers, and, as a part of such understanding, etc.—

(1) Agreeing to fix and maintain, or fixing and maintaining, (*a*) uniform or minimum prices, or (*b*) uniform terms and conditions of sale, such as maximum discounts, brokerage fees, freight and other allowances, and time limitations in contracts;

(2) Agreeing to curtail, or curtailing, production of such containers or parts, or to check, or checking, production of other parties to agreement *re* agreed curtailment;

(3) Threatening, etc., members of industry to induce them to become parties to, or to maintain prices fixed by, agreement, or to curtail production in furtherance thereof;

(4) Filing with their association, its officers, etc., report as to member compliance *re* prices or production; and

(5) Reporting or conferring with respondent Adkins or any officer, etc., of respondent association *re* prices for sale of product, or production curtailment, or nonconformance to agreement by industry members as to aforesaid matters; and

II. Requiring respondent association and its officers, etc., including respondents Adkins, Chazal, and Bennett, to cease and desist from—

Aiding, abetting, encouraging, or cooperating with respondent corporations, partners, and individuals, in doing any of the acts and things prohibited by this order; and

III. Requiring respondent Adkins, former president of association of members of such industry, to cease and desist from—

Threatening, coercing, or in any wise intimidating members of the industry in an attempt to induce them to become a party to such an understanding, etc., or to maintain prices, terms, and conditions of sale or to curtail production in furtherance of any such understanding, etc.

MODIFIED ORDER TO CEASE AND DESIST

This matter coming on for further hearing before the Federal Trade Commission and it appearing that on March 5, 1940, the Commission made its findings as to the facts herein, and concluded therefrom that the respondents had violated the Federal Trade Commission Act, and on March 5, 1940, issued and subsequently served its order to cease and desist; and it further appearing that on May 20, 1941 the United States Circuit Court of Appeals for the Fifth Circuit rendered its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars, and directed the Commission to modify its said order to cease and desist in accordance with said decree.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said Court decree:

It is ordered, That the respondents Adkins Manufacturing Co., Consumers Lumber and Veneer Co., Elberta Crate & Box Co., Hector Supply Co., Georgia Veneer & Package Co., R. C. Balfour, Jr. and J. V. Hawthorne, doing business as the Georgia Crate & Basket Co., The Greenville Veneer & Crate Co., Keysville Lumber Co., Walton E. Nants and R. A. Nants, trading and doing business as Nants Manufacturing Co., Nocatee-Manatee Crate Co., Ocala Manufacturing, Ice & Packing Co., Inc., The Pierpont Manufacturing Co., Roux Crate & Lumber Co., Inc., Shollar Crate and Box Co., Inc., Southern Crate & Veneer Co., Southern Veneer Co., L. B. Walling, Hugh Walling and Frieda Walling, doing business as Walling Crate Co., Frank R. Pounds Crate Co., Lake Crate and Lumber Co., Zachary Veneer Co., Osceola Crate Mills, Inc., Montbrook Crate Co., Southern Container Co., Cummer Sons Cypress Co., Zach Russ, trading as Russ Crate Co., and Stephen O. Shinholzer, their officers, agents, representatives and employees, cease and desist from entering into, or carrying out, any understanding, agreement, combination, or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and any other member or members of the industry, for the purpose or with the effect of restricting, restraining, or monopolizing, or eliminating competition in, the sale in interstate commerce of wooden containers used in packaging fruits

and vegetables, variously described and referred to as crates, baskets, boxes, hampers, lugs, cups, and trays, and the parts thereof, and as a part of such understanding, agreement, combination, and conspiracy from doing any of the following acts or things:

1. Agreeing to fix and maintain, or fixing and maintaining, uniform or minimum prices.

2. Agreeing to fix and maintain, or fixing and maintaining, uniform terms and conditions of sale, such as maximum discounts, brokerage fees, freight, and other allowances and time limitations in contracts.

3. Agreeing to curtail, or curtailing, production of such containers or the parts thereof or agreeing to check, or checking, the production of the mills of other parties to such an agreement to determine if such other mills have curtailed production as agreed upon.

4. Threatening, coercing or in any wise intimidating members of the industry in an effort to induce such members to become parties to said understanding, agreement, combination or conspiracy, or to 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 Russel 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.

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 respondent 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

AJAX TIRE & RUBBER CORPORATION

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

Docket 3943. Complaint, Nov. 6, 1939—Decision, Aug. 12, 1941

Where a corporation engaged in interstate sale and distribution of its "Ajax" automobile tires and tubes; in dealing with the matter of plies in its tires, as to which there is an established manufacturers' practice, familiar to the purchasing public which necessarily relies thereon, of indicating on the side walls and wrappings of tires the number of plies contained therein; by means of letters, blotters, signs, price lists, and other advertising matter circulated among dealers—

(*a*) Represented that its tires were six-ply and eight-ply construction, respectively, through such typical statements as "Silent 6 Six—Silent 8 Eight" and "Cleated 6 Six—Cleated 8 Eight," "Ajax—The World's Premier Tire—Since 1904," and "The World's Premier Tires for over 34 years," through means aforesaid and through placing on the side walls and wrappings of said tires marks, brands, numbers, and insignia which purported to represent that six and eight plies, respectively, were used in their construction; facts being its said products contained less than six and eight plies, respectively;

(*b*) Represented that it had been selling tires and tubes since 1904, facts being that, while its predecessors sold such products from 1904 to 1934, it did not sell or distribute them prior to 1934; and

(*c*) Represented that certain designated amounts were the retail prices of its products, when in fact they were in excess of the prices at which such tires and tubes were customarily sold by retailers, and thereby placed in the hands of dealers means of deceiving members of the purchasing public as to the regular retail prices;

With the result, notwithstanding fact it neither owned nor controlled any retail outlets and disseminated no advertising which reached the consumer directly from it, and the passing of its products through varying multiple channels before reaching the ultimate consumer, that use of such practices had the capacity and tendency to and did mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and with result that the purchasing public bought substantial quantities of its said products:

Held, That such acts and practices, under the circumstances set forth, constituted unfair and deceptive acts and practices in commerce.

Mr. B. G. Wilson for the Commission.

Levien, Singer & Neuburger, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Ajax Tire & Rubber Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Ajax Tire & Rubber 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 at 601 West Twenty-sixth Street, New York, N. Y. The respondent is now, and has been for some time last past, engaged in the business of selling and distributing automobile tires and tubes designated "Ajax" in commerce between and among the various States of the United States and in the District of Columbia.

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

PAR. 2. The number of plies in tires is an important factor in determining the durability and value thereof. There is among manufacturers of automobile tires an established custom and practice of placing on the side walls of tires and on the wrappings of such tires figures and marks indicating the number of plies contained in such tires. The purchasing public is familiar with such practice and relies upon such figures and marks in purchasing tires and in fact has no other way of knowing the actual number of plies contained in said tires other than as revealed in the manufacturers' representations so stamped on the tires themselves and the wrappings thereof.

PAR. 3. In the course and conduct of its business, and for the purpose of inducing the purchase of its said automobile tires and tubes, respondent has made many false and misleading representations concerning the character, quality and prices of said products by means of letters, blotters, signs, price lists and other printed and written matter circulated generally among dealers. Among and

typical of the false and misleading representations so used and disseminated as aforesaid are the following:

Silent 6 Six—Silent 8 Eight and
Cleated 6 Six—Cleated 8 Eight
Ajax—The World's Premier Tire—Since 1904.
The World's Premier Tires for over 34 years.

Respondent has also caused to be placed on the wrappings enclosing its said tires and on the side walls of said tires marks, brands, numbers, and insignia which purport to represent and indicate that six and eight plies respectively are used in the construction of such tires.

Through the use of the aforesaid statements and practices the respondent represents that its tires are of six ply construction and eight ply construction, respectively, and that its tires and tubes have been on the market since 1904.

PAR. 4. The foregoing representations are false, misleading, and untrue. In truth and in fact, such tires do not contain six plies and eight plies, respectively, but contain substantially smaller number of plies. Respondent's tires and tubes have not been on the market since 1904. It was not until 1934 that respondent was organized and began the sale and distribution of said tires and tubes.

PAR. 5. Respondent also represents, by means of fictitious price lists and other advertising material, that the value and retail price of its tires and tubes are much greater than is actually the fact. In truth and in fact, the purported prices set forth in such price lists and advertising material do not represent the actual retail prices of such tires and tubes but are fictitious prices and are greatly in excess of the retail prices at which such tires and tubes are customarily sold by retail dealers in the normal course of business.

By this practice respondent has placed in the hands of unscrupulous dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive members of the purchasing public as to the regular value and retail price of said tires and tubes.

PAR. 6. The use by respondent of the practices set forth herein has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, and into the purchase of substantial quantities of respondent's tires and tubes as a result of such erroneous 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 6th day of November 1939, issued and thereafter served its complaint in this proceeding upon respondent, Ajax Tire & Rubber Corporation, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 27th day of November 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 Levien, Singer and Neuburger, counsel for respondent, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Counsel for the respondent expressly waived the filing of the 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, Ajax Tire & Rubber 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 at 601 West Twenty-sixth Street, New York, N. Y. The respondent is now, and has been for some time last past, engaged in the business of selling and distributing automobile tires and tubes designated "Ajax" in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes and has caused its said products, when sold, to be shipped or transported from its place of business in the State of New York to the purchasers thereof located in various other States

of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said automobile tires and tubes 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 automobile tires and tubes, respondent has made many representations concerning the character, quality, and prices of said products by means of letters, blotters, signs, price lists, and other printed and written matter circulated generally among dealers. Among and typical of the representations so used and disseminated as aforesaid are the following:

Silent 6 Six—Silent 8 Eight and
Cleated 6 Six—Cleated 8 Eight
Ajax—The World's Premier Tire—Since 1904.
The World's Premier Tires for over 34 years.

Respondent has also caused to be placed on the wrappings enclosing its said tires and on the side walls of said tires marks, brands, numbers, and insignia which purport to represent and indicate that six and eight plies, respectively, are used in the construction of such tires.

Through the use of the aforesaid statements and practices the respondent represents or implies that its tires are of six-ply construction and eight-ply construction, respectively, and that the respondent has been selling tires and tubes on the market since 1904.

PAR. 3. The number of plies in tires is an important factor in determining the durability and value thereof. There is among manufacturers of automobile tires an established custom and practice of placing on the side walls of tires and on the wrappings of such tires, figures and marks indicating the number of plies contained in such tires. The purchasing public is familiar with such practice and relies upon such figures and marks in purchasing tires, and in fact has no other way of knowing the actual number of plies contained in said tires other than as revealed in the manufacturers' representations so stamped on the tires themselves and the wrappings thereof.

PAR. 4. In truth and in fact respondent's tires do not contain six plies and eight plies, respectively, but contain a lesser number of plies. Respondent has not been selling tires and tubes on the market since 1904. Ajax tires and tubes were sold by respondent's predecessors from 1904 to 1934. Respondent prior to 1934, did not sell or distribute Ajax tires and tubes.

PAR. 5. Respondent, in marketing its tires and tubes issues price lists and other advertising material to its distributors by means of which it represents that certain designated amounts are the retail prices of its tires and tubes. In truth and in fact, the purported prices set forth in such price lists and advertising material do not represent the actual retail prices of such tires and tubes but are prices in excess of the retail prices at which such tires and tubes are customarily sold by retail dealers in the normal course of business.

By this practice respondent has placed in the hands of dealers a means and instrumentality whereby certain dealers are enabled to mislead and deceive members of the purchasing public as to the regular retail price of said tires and tubes.

PAR. 6. Although respondent neither owns nor controls any retail outlets and does not disseminate any advertising which reaches the consumer directly from the respondent and its products pass through varying multiple channels before reaching the ultimate consumer, the use by respondent of the practices set forth in paragraphs 2 and 5 hereof, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, and as a result of such erroneous belief the purchasing public has purchased substantial quantities of respondent's tires and tubes.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, 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 Levien, Singer and Neuburger, counsel for the respondent, and W. T. Kelly, chief counsel for the Commission, which provides among other things that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein its findings as to the facts and conclusion based thereon and an order disposing of this proceeding, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Ajax Tire & Rubber 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 automobile tires and tubes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, by means of words, brands, markings, numbers, or insignia placed on its automobile tires or on the tire wrappings, or in any other manner, that the tires offered for sale or sold by respondent contain more plies in their construction than is actually the fact.

2. Representing, directly or indirectly, that any specified amounts are the retail selling prices of its automobile tires and tubes when such amounts are not, in fact, the bona fide actual selling prices of such tires and tubes as established by the usual and customary retail sales in the normal course of business.

3. Furnishing price lists and advertising material to its dealers, in which certain amounts are designated as the retail prices of its automobile tires and tubes, unless such amounts are the bona fide regular established retail selling prices of such tires and tubes, as established by the usual and customary retail sales of dealers in the normal 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

LAMBERT AGIN, TRADING AS JACKS CHEMICAL COMPANY AND JACQUE 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 4247. Complaint, Aug. 20, 1940—Decision, Aug. 12, 1941

Where an individual engaged in interstate sale and distribution of his "Jacks" or "Jacque" medicinal preparation; by means of advertisements disseminated through the mails, in newspapers and periodicals, and other advertising literature—

Represented that his said preparation constituted a cure or remedy for gall, kidney, and bladder stones, diabetes, rheumatism, swollen limbs, hives, excess acid and excess uric acid, and possessed substantial therapeutic value in the treatment thereof, facts being it was nothing more than a dilute aqueous solution of nitric, hydrochloric, and acetic acids of an approximate 10 percent strength, and was wholly incapable of effecting any of the results claimed for it as above set forth;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that aforesaid representations were true, and with result that substantial quantities of his said product were purchased in reliance upon such belief:

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

Before Mr. J. A. Purcell, trial examiner.
Mr. Jay L. Jackson for the Commission.
Mr. H. C. Beckner, of Cincinnati, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Lambert Agin, an individual, trading as Jacks Chemical Co. and as Jacque 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. Respondent, Lambert Agin, is an individual trading under the name and style of Jacks Chemical Co. and Jacque Chemical Co., with his office and principal place of business located at Pleasant Ridge Station, in the city of Cincinnati, State of Ohio. Said respondent is now, and for more than 2 years last past has been, en-

gaged in the business of offering for sale, selling, and distributing, in commerce between and among the various States of the United States and in the District of Columbia, a medicinal preparation called "JACKS," sometimes called "JACQUE," described as a remedy and treatment for various ailments and conditions of the human body.

Respondent has maintained and now maintains a course of trade in said product in said commerce and has caused and now causes said product, when sold, to be shipped or transported from his said place of business in the State of Ohio to purchasers, including retailers, resellers, and users thereof, located in various States of the United States other than the State of Ohio, 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, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product; and respondent has also disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, and by other advertising literature, are the following:

ARE YOU A DIABETIC?

For 30 years, JACKS has relieved thousands of sufferers from such ailments as Gall, Kidney and Bladder Stones, Diabetes, Rheumatism, Swollen Limbs, and other ailments caused by excess uric acid condition. JACKS priced at $1.25 is sold with a money back guarantee. Try this marvelous relief today. If you are not completely satisfied, your druggist will cheerfully refund your money.

RHEUMATISM SUFFERERS!

For 30 years, JACKS has relieved thousands of sufferers from such ailments as Gall, Kidney and Bladder Stones, Diabetes, Rheumatism, Swollen Limbs and other ailments caused by excess uric acid condition.

SLUGGISH GALL-BLADDER

For 30 years, JACKS has relieved thousands of sufferers from such ailments as Gall, Kidney and Bladder Stones, Diabetes, Rheumatism, Swollen Limbs,

and other ailments caused by excess uric acid condition. JACKS priced at $1.25 is sold with a money back guarantee. Try this marvelous relief today. If you are not completely satisfied, your druggist will cheerfully refund your money.

GALL BLADDER

JACKS has relieved thousands of sufferers from such ailments as Gall, Kidney and Bladder Stones, Diabetes, Rheumatism, Hives and Excess-Acid.

PAR. 3. 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 his said medicinal preparation constitutes a cure or remedy for gall, kidney, and bladder stones, diabetes, rheumatism, swollen limbs, hives, excess acid and excess uric acid, and that said preparation possesses substantial therapeutic value in the treatment of such ailments and conditions.

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 gall, kidney, or bladder stones, diabetes, rheumatism, swollen limbs, hives, excess acid or excess uric acid, nor does said preparation possess any therapeutic value in the treatment of any of such ailments or conditions. Respondent's preparation is in fact nothing more than a diluted aqueous solution of nitric, hydrochloric, and acetic acids, of an approximate 10 percent strength, and is wholly incapable of effecting any of the results claimed by the respondent.

PAR. 5. The use by the respondent of the aforesaid false and misleading statements and representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and thus 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 August 20, 1940, issued, and on August 22, 1940, served its complaint in this proceeding upon respondent, Lambert Agin, individually, and trading as Jacks Chemical Co., and as Jacque Chemical Co., charging him with the use of unfair

and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Lambert Agin, is an individual trading under the name and style of Jacks Chemical Co. and Jacque Chemical Co., with his office and principal place of business located at Pleasant Ridge Station, in the city of Cincinnati, State of Ohio. Said respondent is now, and for more than 2 years last past has been, engaged in the business of offering for sale, selling, and distributing, in commerce between and among the various States of the United States and in the District of Columbia, a medicinal preparation called "JACKS," sometimes called "JACQUE," described as a remedy and treatment for various ailments and conditions of the human body, and has maintained a course of trade in said products in said commerce. In the course thereof respondent has caused said product, when sold, to be transported from his said place of business in the State of Ohio to purchasers, including retailers, resellers, and users thereof, located in various States of the United States other than the State of Ohio 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, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product; and respondent has also disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly,

the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, and by other advertising literature, are the following:

ARE YOU A DIABETIC?

For 30 years, JACKS has relieved thousands of sufferers from such ailments as Gall, Kidney and Bladder Stones, Diabetes, Rheumatism, Swollen Limbs, and other ailments caused by excess uric acid conditions. JACKS priced at $1.25 is sold with a money back guarantee. Try this marvelous relief today. If you are not completely satisfied, your druggist will cheerfully refund your money.

RHEUMATISM SUFFERERS!

For 30 years, JACKS has relieved thousands of sufferers from such ailments as Gall, Kidney and Bladder Stones, Diabetes, Rheumatism, Swollen Limbs and other ailments caused by excess uric acid condition.

SLUGGISH GALL BLADDER

For 30 years, JACKS has relieved thousands of sufferers from such ailments as Gall, Kidney and Bladder Stones, Diabetes, Rheumatism, Swollen Limbs, and other ailments caused by excess uric acid conditions. JACKS priced at $1.25 is sold with a money back guarantee. Try this marvelous relief today. If you are not completely satisfied, your druggist will cheerfully refund your money.

GALL BLADDER

JACKS has relieved thousands of sufferers from such ailments as Gall, Kidney and Bladder Stones, Diabetes, Rheumatism, Hives and Excess-Acid.

PAR. 3. Through and by means of the foregoing statements and representations, and others of similar import, respondent has represented and represents that his said medicinal preparation constitutes a cure or remedy for gall, kidney, and bladder stones, diabetes, rheumatism, swollen limbs, hives, excess acid and excess uric acid, and further that said preparation possesses substantial therapeutic value in the treatment of said ailments and conditions.

PAR. 4. The aforesaid statements and representations are grossly exaggerated, false, and misleading, in that, in truth and in fact, respondent's said preparation does not constitute a cure or remedy for gall, kidney, or bladder stones, diabetes, rheumatism, swollen limbs, hives, excess acid, or excess uric acid, and does not possess any therapeutic value in the treatment of any such ailments or conditions. The said preparation is in fact nothing more than a diluted aqueous solution of nitric, hydrochloric and acetic acids, of an approximate

10 percent strength, and is wholly incapable of effecting any of the results claimed for it in the treatment of said ailments and conditions.

PAR. 5. The use by respondent of the aforesaid false and misleading statements and representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, resulting in the purchase of substantial quantities of respondent's said product in reliance upon such erroneous belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer the respondent admits all of the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to 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, Lambert Agin, individually and trading as Jacks Chemical Co. and as Jacque Chemical 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 the medicinal preparation called "Jacks" or "Jacque," or of any other medicinal preparation or preparations containing similar ingredients or possessing substantially similar properties, whether sold or distributed 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 or product constitutes a cure or remedy for gall, kidney, and bladder stones, diabetes, rheumatism, swollen limbs, hives, excess acid and excess uric acid, or that said preparation pos-

sesses any therapeutic value in the treatment of such ailments 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 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

DOMENICO DEL VECCHIO, TRADING AS PEOPLES HARDWARE STORES

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

Docket 4495. Complaint, May 1, 1941—Decision, Aug. 12, 1941

Where an individual engaged in competitive interstate sale and distribution of paints and other merchandise; by means of advertisements in newspapers and otherwise—

(*a*) Represented that he owned and operated or controlled the plant in which his products were made, and that the prices at which they were offered represented savings of 20 to 35 percent to purchasers as compared with prices of comparable products, through such statements as "Our factory-to-you plan brings savings of 20% to 35%"; facts being he was not a manufacturer, from whom merchandise is preferably bought direct by members of the purchasing public as affording them, in their belief, a more uniform line of goods, superior quality, lower prices, and other advantages, but filled orders with products made in a plant or factory which he did not own, operate, or control, and his prices represented no such savings; and

(*b*) Represented that his "Lawrence Master Painters Flat Paint" "* * * covers 1,100 square feet per gallon"; facts being such coverage could not be obtained under normal conditions of use, but only when used over a pigment sealer on a smooth surface;

With effect of deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing it, because of such belief, to purchase his said products, thereby unfairly diverting trade to him from his competitors, to the substantial injury of competition in commerce:

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

Mr. B. G. Wilson for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Domenico Del Vecchio, an individual trading as Peoples Hardware Stores, 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, Domenico Del Vecchio, is an individual trading as Peoples Hardware Stores, with his office and principal place of business located at 1434 Florida Avenue, NE., in the District of Columbia.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of paints and other articles of merchandise in commerce between and among various States of the United States and in the District of Columbia.

In the course and conduct of his said business, the said respondent causes his products, when sold, to be transported from his place of business in the District of Columbia to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce, particularly in the District of Columbia and between the District of Columbia and the States of Maryland and Virginia.

Respondent is, and at all times mentioned herein has been, in competition with other corporations, partnerships, firms, and individuals likewise engaged in the sale and distribution of paints 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 and in connection with the sale and distribution of his paint products in commerce, as herein described, the respondent has disseminated false and misleading statements and representations with reference to the comparative price and quality of his said paint products in newspapers and in other advertising media, all of which are circulated among prospective purchasers of said products located in the several States of the United States and in the District of Columbia and particularly in the various localities hereinabove set forth. Among and typical of such false and misleading statements and representations are the following:

Our factory-to-you plan bring savings of 20% to 35%.
Lawrence Master Painters Flat Paint—covers 1100 square feet per gallon.

PAR. 4. Through the use of the foregoing statements and representations, together with other statements and representations similar thereto not set out herein, the respondent represents that he owns and operates or controls the plant or factory wherein the products he sells are made or manufactured, and that the prices at which such

products are offered for sale represent savings of 20 percent to 35 percent to the purchasers thereof as compared to the prices of the same or comparable products made of the same or comparable materials; and respondent represents that his paint designated as "Lawrence Master Painters Flat Paint" covers 1,100 square feet of surface per gallon under normal conditions.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, the respondent does not own and operate or control, and has not owned and operated or controlled, a plant, factory or machinery for the manufacture of the products which he sells and distributes as hereinabove alleged. The respondent fills orders for such articles of merchandise with products which are made or manufactured in a plant or factory which he neither owns, operates, nor controls. The price at which the respondent offers his products for sale does not represent a saving of 20 percent to 35 percent to the purchasers of said products as compared to the prices charged by his competitors for similar products made of the same or comparable materials. The representation that respondent's "Lawrence Master Painters Flat Paint" covers 1,100 square feet per gallon, is false in that such coverage cannot be obtained under normal conditions of use and can be obtained only when used over a pigment sealer on a smooth surface.

PAR. 6. 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. 7. The use by the respondent of the false and misleading statements and representations referred to herein has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and, because of such erroneous and mistaken belief, a substantial portion of the purchasing public is induced to, and does, purchase respondent's said products and trade is thereby unfairly diverted to respondent from his competitors. As a result of respondent's said practices, as herein set forth, substantial injury has been and is being done to competition in commerce between and among various States of the United States and in the District of Columbia.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 1, 1941, issued and served its

complaint in this proceeding upon respondent, Domenico Del Vecchio, an individual trading as Peoples Hardware Stores, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 31, 1941, 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, Domenico Del Vecchio, is an individual trading as Peoples Hardware Stores, with his office and principal place of business located at 1434 Florida Avenue, NE., in the District of Columbia.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of paints and other articles of merchandise in commerce between and among various States of the United States and in the District of Columbia.

In the course and conduct of his said business, the said respondent causes his products, when sold, to be transported from his place of business in the District of Columbia to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce, particularly in the District of Columbia and between the District of Columbia and the States of Maryland and Virginia.

Respondent is, and at all times mentioned herein has been, in competition with other corporations, partnerships, firms, and individuals likewise engaged in the sale and distribution of paints 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 and in connection with the sale and distribution of his paint products in commerce, as herein described, the respondent has disseminated false and misleading statements and representations with reference to the comparative price and quality of his said paint products in

newspapers and in other advertising media, all of which are circulated among prospective purchasers of said products located in the several States of the United States and in the District of Columbia and particularly in the various localities hereinabove set forth. Among and typical of such false and misleading statements and representations are the following:

Our factory-to-you plan brings savings of 20% to 35%.
Lawrence Master Painters Flat Paint—covers 1100 square feet per gallon.

PAR. 4. Through the use of the foregoing statements and representations, together with other statements and representations similar thereto not set out herein, the respondent represents that he owns and operates or controls the plant or factory wherein the products he sells are made or manufactured, and that the prices at which such products are offered for sale represent savings of 20 percent to 35 percent to the purchasers thereof as compared to the prices of the same or comparable products made of the same or comparable materials; and respondent represents that his paint designated as "Lawrence Master Painters Flat Paint" covers 1,100 square feet of surface per gallon under normal conditions.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the respondent does not own and operate or control, and has not owned and operated or controlled, a plant, factory, or machinery for the manufacture of the products which he sells and distributes. The respondent fills orders for such articles of merchandise with products which are made or manufactured in a plant or factory which he neither owns, operates, nor controls. The price at which the respondent offers his products for sale does not represent a saving of 20 percent to 35 percent to the purchasers of said products as compared to the prices charged by his competitors for similar products made of the same or comparable materials. The representation that respondent's "Lawrence Master Painters Flat Paint" covers 1,100 square feet per gallon, is false in that such coverage cannot be obtained under normal conditions of use and can be obtained only when used over a pigment sealer on a smooth surface.

PAR. 6. 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. 7. The use by the respondent of the false and misleading statements and representations referred to herein has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and, because of such erroneous and mistaken belief, a substantial portion of the purchasing public is induced to, and does, purchase respondent's said products and trade is thereby unfairly diverted to respondent from his competitors. As a result of respondent's said practices, as herein set forth, substantial injury has been and is being done 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 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, Domenico Del Vecchio, an individual, trading as Peoples Hardware Stores, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of paint products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that the products sold and distributed by respondent are made or manufactured by him.

2. Representing, directly or indirectly, that respondent's products are offered for sale at savings of 20 percent to 35 percent, or at any other savings, in excess of the actual savings from the prices charged by respondent's competitors for similar products made of the same or comparable ingredients.

3. Representing, directly or indirectly, that respondent's paint designated "Lawrence Master Painters Flat Paint," or designated by any other name, or any other paint composed of comparable ingredients, by whatsoever name it may be designated, will cover 1,100 square feet of surface per gallon, or any comparable area, unless it is also stated in a manner equally as conspicuous that such coverage is possible only over a pigment sealer and on a smooth surface.

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

ROCKFORD FURNITURE 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 4503. Complaint, May 14, 1941—Decision, Aug. 12, 1941

Where a corporation, with office and principal place of business in Newark, N. J., engaged in interstate sale and distribution of furniture at retail—

Represented, directly or indirectly, that it was a manufacturer of furniture and owned, operated, or controlled the plants or factories in which the furniture dealt in by it was made, and that such furniture was manufactured in Rockford, Ill., through adoption and use of corporate name including words "Rockford Furniture Factories," and through designating as "Rockford Furniture Showrooms" building and rooms in which its said furniture was displayed, and featuring its said corporate name on letterheads, sales contracts and other printed and advertising matter, and its said latter, designation about the building and rooms in question, and printing the same on order blanks, code price cards, and other literature used in connection with the display, solicitation, and sale of its furniture;

Notwithstanding it was not a manufacturer of furniture, but purchased it on the open market, and stocked and sold very little, if any, furniture made exclusively in Rockford, Ill.;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief (1) that it was a manufacturer, for dealing with whom directly, there is a marked preference, due to the belief that the profit of the middleman may be thereby eliminated and lower prices, more favorable terms, and other advantages obtained, and (2) that its said furniture was made in Rockford, Ill., long known as an important part of the furniture industry, products of which had long enjoyed a widespread popularity and demand; and of inducing a substantial portion of the purchasing public to buy its furniture as a result 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. J. V. Buffington for the Commission.
Mr. Samuel S. Ferster, of Newark, N. J., 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 Rockford Furniture Factories, 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, Rockford Furniture Factories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 801 Passaic Avenue in the city of Newark and State of New Jersey. The respondent for more than three years last past has been, and is now, engaged in the distribution and sale at retail of furniture.

Respondent causes its said furniture, 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 furniture 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 adopted as and for its corporate and trade name the words "Rockford Furniture Factories, Inc.," under which to carry on its business, which said name, including the words "Rockford" and "Factories," respondent at all times mentioned herein has used continuously, and now uses, in soliciting the sale of and selling its furniture as described herein. Respondent has also described and designated, and now describes and designates, the building and rooms in which its said furniture is displayed as "Rockford Furniture Showrooms." Respondent has caused, and still causes, said corporate or trade name, "Rockford Furniture Factories, Inc.," to be prominently and conspicuously displayed in and about its place of business and to appear on its letterheads, sales contracts and other printed and advertising matter distributed in commerce among and between the various States of the United States and in the District of Columbia, and has caused, and still causes, the said designation, "Rockford Furniture Showrooms," to prominently appear in and about the building and rooms in which its furniture is displayed and to be imprinted on its order blanks, code price cards and other literature used in connection with the display, solicitation of sales and selling of said furniture.

PAR. 3. Through the use of the aforesaid corporate or trade name, "Rockford Furniture Factories, Inc.," and said designation, "Rockford Furniture Showrooms," and through other representations not specifically set out herein, the respondent has represented, and still represents, directly or indirectly, that it is a manufacturer of furni-

ture; that it owns and operates or controls the manufacturing plants or factories in which the furniture it sells is manufactured; and that said furniture is manufactured in the city of Rockford, Ill.

PAR. 4. Such representations on the part of the respondent are false and misleading. In truth and in fact, respondent has never been, and is not now, a manufacturer of furniture. It has never, and does not now, own and operate or control in any manner the manufacturing plants or factories in which such furniture, or any of it is manufactured. Respondent at all times mentioned herein, on the contrary, has purchased, and now purchases, all of its furniture on the open market. Respondent has never and does not now stock or sell furniture manufactured exclusively in the city of Rockford, Ill., but on the contrary, has stocked and sold, and now stocks and sells, very little, if any, furniture manufactured in said city.

PAR. 5. There is a marked preference on the part of a substantial portion of the purchasing public for purchasing furniture and other merchandise directly from the manufacturer thereof, such preference being due in part to a belief on the part of the public that the profit of a middleman may be eliminated and that lower prices, more favorable terms and other advantages may be obtained thereby.

PAR. 6. The city of Rockford, Ill., has been for many years last past, and is now, a large and important center of the furniture industry, which fact has been, and is, generally known to a substantial portion of the public throughout the United States. The furniture manufactured in said city for many years has enjoyed, and now enjoys, a widespread popularity and demand and there is a preference on the part of a substantial portion of the purchasing public for such furniture.

PAR. 7. The use by the respondent of the acts and practices herein set forth has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into an erroneous and mistaken belief that respondent is a manufacturer of the furniture it sells and that said furniture is manufactured in Rockford, Ill., and has had, and now has, the tendency and capacity to, and does, induce such portion of the public to purchase substantial quantities of said furniture as the result of such erroneous and mistaken 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 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 14, 1941, issued and on May 15, 1941, served its complaint in this proceeding upon respondent Rockford Furniture 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 June 4, 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 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, Rockford Furniture Factories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 801 Passaic Avenue in the city of Newark and State of New Jersey. The respondent for more than 3 years last past has been, and is now, engaged in the sale at retail and distribution of furniture.

Respondent causes its said furniture, 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 furniture 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 adopted as and for its corporate and trade name the words "Rockford Furniture Factories, Inc," under which to carry on its business, which said name, including the words "Rockford" and "Factories," respondent at all times mentioned herein has used continuously, and now uses, in soliciting the sale of and selling its furniture as described herein. Respondent has also described and designated, and now describes and designates, the building and rooms in which its said furniture is displayed as "Rockford Furniture Show-

rooms." Respondent has caused, and still causes, said corporate or trade name, "Rockford Furniture Factories, Inc." to be prominently and conspicuously displayed in and about its place of business and to appear on its letterheads, sales contracts, and other printed and advertising matter distributed in commerce among and between the various States of the United States and in the District of Columbia, and has caused, and still causes, the said designation, "Rockford Furniture Showrooms," to prominently appear in and about the building and rooms in which its furniture is displayed and to be imprinted on its order blanks, code price cards and other literature used in connection with the display, solicitation of sales and selling of said furniture.

PAR. 3. Through the use of the aforesaid corporate or trade name, "Rockford Furniture Factories, Inc." and said designation, "Rockford Furniture Showrooms," and other representations not specifically set out herein, the respondent has represented, and still represents, directly or indirectly, that it is a manufacturer of furniture; that it owns, operates, or controls the manufacturing plants or factories in which the furniture it has sold, and now sells, was and is manufactured; and that said furniture is manufactured in the city of Rockford, Ill.

PAR. 4. Such representations on the part of the respondent are false and misleading. In truth and in fact, respondent has never been, and is not now, a manufacturer of furniture. It has never, and does not now, own, operate, or control in any manner the manufacturing plants or factories in which such furniture, or any of it, was and is manufactured. Respondent at all times mentioned herein, on the contrary, has purchased, and now purchases, all of its furniture on the open market. Respondent has never and does not now stock or sell furniture manufactured exclusively in the city of Rockford, Ill., but, on the contrary, has stocked and sold, and now stocks and sells, very little, if any, furniture manufactured in said city.

PAR. 5. There is a marked preference on the part of a substantial portion of the purchasing public for purchasing furniture and other merchandise directly from the manufacturer thereof, such preference being partly due in part to a belief on the part of the public that the profit of a middleman may be eliminated and that lower prices, more favorable terms and other advantages may be obtained thereby.

PAR. 6. The city of Rockford, Ill., has been for many years last past, and is now, a large and important center of the furniture industry, which fact has been, and is, generally known to a substantial portion of the public throughout the United States. The

furniture manufactured in said city for many years has enjoyed, and now enjoys, a widespread popularity and demand, and there is a preference on the part of a substantial portion of the purchasing public for such furniture.

PAR. 7. The use by the respondent of the acts and practices herein set forth has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into an erroneous and mistaken belief that respondent is a manufacturer of the furniture it sells and that said furniture is manufactured in Rockford, Ill., and has had, and now has, the tendency and capacity to, and does, induce such portion of the public to purchase substantial quantities of said furniture as the result of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent Rockford Furniture Factories, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of furniture in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Rockford," or any simulation thereof, in its corporate name, or in any way to designate or refer to its business or its display rooms, when the furniture offered for sale and sold by respondent is not in substantial proportion manufactured in the city of Rockford, Ill.

2. Using the word "Rockford," or any simulation thereof, on its letterheads, posters, advertising materials, or in any manner to repre-

sent, import, or imply that furniture not manufactured in the city of Rockford, Ill., was manufactured in that city.

3. Using the word "Factories," or any other word or terms of similar import or meaning, in its corporate name, or to designate or refer to its business or in any manner represent, import, or imply that respondent is the manufacturer of furniture offered for sale or sold by it.

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

ILLINOIS NUT 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 3807. Complaint, June 3, 1939—Decision, Aug. 13, 1941

Where a corporation engaged in manufacture and in competitive interstate sale and distribution of candy, including certain assortments packed and assembled so to involve the use of a game of chance, gift enterprise, or lottery scheme when sold to consumers, and in shipping push cards to be used with such assortments, to its wholesaler and jobber purchasers, by whom the cards and candy were assembled into assortments and sold to the retail trade; a typical assortment consisting of a box of malted milk balls, together with a push card for use in their sale under a plan in accordance with which the chance selection of such football legends as "Touchdown," "Drop Kick," "Safety," etc., entitled a customer, for the cent paid, from 20 down to 1 malted milk ball, the last play in first of card's two sections was entitled to 10, and last play on card to 20 pieces—

Sold such assortments to wholesalers, jobbers, and retailers, and furnished therewith as aforesaid, various push cards for use, in their sale, thereby placing in the hands of others devices through which said merchandise was distributed to the ultimate consumer wholly by lot or chance, in competition with those who do not use any sales method involving such a game, gift enterprise, or lottery scheme;

With the result that many persons were attracted by its said sales plan and the element of chance involved therein, and were thereby induced to buy and sell its candy in preference to that of its said competitors, and with tendency and capacity unfairly to divert trade in commerce to it from them:

Held, That such acts and practices were contrary to the established public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

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

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of authority vested in it by said act, the Federal Trade Commission, having reason to believe that Illinois Nut Products Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commis-

sion 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, Illinois Nut Products Co., is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 613 West Lake Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale 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 aforesaid place of business 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 some time last past, a course of trade by said respondent in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and for some time last past 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 which were designed to be, and are, used with the said assortments to be shipped to the aforesaid wholesale dealers and jobbers. The wholesale dealers and jobbers aforesaid, in turn assemble the push cards and candy into one assortment and sell the same to the retail trade. Respondent distributes, and has distributed, various push cards for use in the sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said candy by means of said push cards, is the same as the one hereinafter described, varying only in detail:

One of said assortments consists of a box of malted milk balls, together with a device commonly called a push card. The said malted milk balls are distributed to the consuming public by means of said push card in the following manner:

The push card is divided into two sections, and each of said sections contain 50 partially perforated disks on the face of which is printed the word "push." Concealed within the said disks is one of the following words or phrases: Touchdown, Drop Kick, Safety, Field Goal, Forward Pass, End Run, Fake Pass, Line Buck, and Off Side. These words or phrases are effectively concealed from purchasers and prospective purchasers until a push or selection has been made, and the selected disk removed or separated from said push card. Punches on the said card are 1 cent each, and the number of malted milk balls received by the purchaser is determined by the following legend which appears on the face of the card:

PLAY

FOOTBALL

FOR DELICIOUS CHOCOLATE COVERED MALTED MILK BALLS

1¢ a Play

EVERY PLAY A WINNER

	PIECES
TOUCHDOWN Receives	20
DROP KICK Receives	10
SAFETY Receives	10
FIELD GOAL Receives	6
FORWARD PASS Receives	3
END RUN Receives	3
FAKE PASS Receives	3
LINE BUCK Receives	2
OFF SIDE Receives	1
LAST PLAY IN FIRST SECTION COMPLETED Receives	10

LAST PLAY ON CARD RECEIVES 20 PIECES

The sales of respondent's candy by means of said push cards are made in accordance with the above described legend. Said pieces of candy are allotted to the customers or purchasers in accordance with the above legend. The fact as to whether a purchaser receiving one or more pieces of candy for the amount of money paid is thus determined wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed various assortments of candy along with push cards involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondent furnishes or distributes the said push cards use the same in selling and distributing respondent's candy 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 candy 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 in the manner above alleged 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 or distribute candy in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its candy and the element of chance involved therein, and are thereby induced to buy and sell respondent's candy in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or an equivalent method. As a result thereof substantial injury is being, and has been done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 3rd day of June A. D., 1939, issued and thereafter served its complaint in this proceeding upon the respondent, Illinois Nut Products 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, testimony and other evidence in support of the allegations of the complaint were introduced by

attorneys for the Commission, and in opposition to the allegations of the complaint, by attorney for the respondent before duly appointed trial examiners 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 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. Respondent, Illinois Nut Products Co., is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and since 1934 has been, engaged in the manufacture, sale, and distribution of candy to wholesale dealers, jobbers, and retail dealers, and causes its said products when sold to be shipped from its principal place of business to purchasers thereof located in the 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 or distribution of candy in commerce between and among the various States of the United States.

PAR. 4. Respondent in the course and conduct of its business, as described in paragraph 2 hereof, 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 which were designed to be and are used with the said assortments, to be shipped to the aforesaid wholesale dealers and jobbers who, in turn, assemble the push cards and candy into one assortment and sell the same to the retail trade. Respondent distributes, and has distributed, various push cards for use in the sale and distribution of its candies, and the said push cards and the respondent's sales plan or methods vary only in detail.

One of respondent's assortments consists of a box of malted milk balls, together with a device commonly called a push card. Upon the face of the push card appears the following legend:

PLAY FOOTBALL FOR DELICIOUS CHOCOLATE COVERED MALTED MILK BALLS	1¢ a Play		
	EVERY PLAY A WINNER		
	TOUCHDOWN Receives	20	PIECES
	DROP KICK Receives	10	
	SAFETY Receives	10	
	FIELD GOAL Receives	6	
	FORWARD PASS Receives	3	
	END RUN Receives	3	
	FAKE PASS Receives	3	
	LINE BUCK Receives	2	
	OFF SIDE Receives	1	
	LAST PLAY IN FIRST SECTION COMPLETED Receives	10	

LAST PLAY ON CARD RECEIVES 20 PIECES

The push card is divided into two sections, each of said sections contain 50 disks, each covering a perforation in the card. These perforations are also covered on the reverse side by 12 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 one of the football terms appearing in the legend. One cent is charged for the right to push one of the disks and the number of malted milk balls received by the purchaser is determined wholly by lot or chance, in accordance with the foregoing legend.

PAR. 5. The persons to whom the respondent furnishes or distributes the said push cards use the same in selling and distributing respondent's candy in accordance with the aforesaid sales plan. Respondent by its sales plan or 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 candy, and by use of said devices said merchandise is distributed to the ultimate consumer wholly by law of chance.

PAR. 6. 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 the various States of the United States, of candy similar to that sold by the respondent who are unwilling to use and do not use in the sale and distribution of their candy any method involving

a game of chance, gift enterprise, or lottery scheme. Many persons are attracted by the sales plan or method employed by respondent in the sale and distribution of its candy and the element of chance involved therein, and are thereby induced to buy and sell respondent's candy in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or 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 to respondent from its said competitors who do not use the same or an equivalent method.

PAR. 7. On May 11, 1937, the Commission approved a stipulation entered into between the respondent and the Commission in which respondent admitted engaging in the practices charged in the complaint and agreed to discontinue such practices. Respondent, notwithstanding said agreement, continued said practices up to the date of the issuance of the complaint herein.

CONCLUSION

The aforesaid acts and practices of respondent 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 testimony and other evidence taken before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, the report of the trial examiners thereon, brief filed by the attorney for the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent Illinois Nut Products Co., a corporation, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Illinois Nut Products Co., 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 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 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, pull tabs, punchboards, or other lottery devices, either with assortments of candy or other 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 candy or other merchandise to the public.

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

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

IN THE MATTER OF

DISABLED AMERICAN VETERANS OF THE WORLD WAR REHABILITATION DEPARTMENT, AND FRANK J. MACKEY, L. C. MAIER, DANIEL C. MOORE, AND ROBERT T. MACKEY

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

Docket 4492. Complaint, Apr. 24, 1941—Decision, Aug. 18, 1941

Where a corporation and four individuals, who as officers thereof directed and controlled its policies and operations, engaged in publication and in competitive interstate sale and distribution of books, including an 11-volume set entitled "Progress of Nations" and a 2-volume set of history and war picture books entitled "Forward March";

Following agreement with the well-known, not-for-profit "Disabled American Veterans of the World War," established shortly thereafter, and incorporated in 1932 under Federal statute, to cooperate with the Veterans Administration and other agencies devoted to improving the conditions, health and interests of wounded or disabled veterans of the World War, with the exclusive right to use aforesaid name, and under which agreement it, in consideration of right, among others, to incorporate as the "Disabled American Veterans of the World War Rehabilitation Department" and to conduct its business in the name of said national organization, was to pay latter a royalty of 15 percent, later reduced to 10 percent, on its gross sales of said two sets of books—

(*a*) Represented, through their salesmen, that they were representatives of the "Disabled American Veterans of the World War," and represented literature published and circulated by said organization, as endorsing their books; facts being they were not such representatives and literature referred to made no reference to said books, but related only to the general aims and purposes of the organization;

(*b*) Represented through said salesmen, that the books were being sold only to certain selected customers, and said "Disabled American Veterans" received the entire profit derived from the sale thereof, that a purchaser was in effect making a contribution to the organization, and that funds thus derived would be used by it in defraying expenses of its activities in combating anti-American and subversive organizations and influences in the United States; frequently concealing the fact that books in question were being sold and taking advantage of said campaign against subversive activities to urge prospective purchasers to contribute thereto, and making receipt of a set of books appear as only incidental to such subscription;

When in fact said books were sold as an ordinary commercial transaction for the profit of the corporation and individuals concerned, the only profit derived by the "Disabled American Veterans" was in the royalties referred to, and such books were sold indiscriminately to the general public and not, as claimed, restricted to any group or number of persons; and

(c) Represented, through use of corporate name "Disabled American Veterans of the World War Rehabilitation Department," that corporation in question was identical with, or connected with, or a part of, said "Disabled American Veterans of the World War," and thereby accentuated also other false and misleading representations made by said salesmen;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and into the purchase of substantial quantities of their said books as a result of such belief, and of unfairly diverting trade to them from their competitors, to the substantial injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and 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. Joseph C. Fehr for the Commission.
Mr. Henry Junge, 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 Disabled American Veterans of the World War Rehabilitation Department, a corporation, and Frank J. Mackey, L. C. Maier, Daniel C. Moore, and Robert T. Mackey, individually, and as officers of Disabled American Veterans of the World War Rehabilitation Department, hereinafter referred to as respondents, have violated the provisions of said act, and is appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Disabled American Veterans of the World War Rehabilitation Department, is a corporation organized, existing, and doing business by virtue of the laws of the State of Illinois, with its office and principal place of business located at 104 South Michigan Avenue, in the city of Chicago, State of Illinois. Said corporation was formerly known as International Historical Society and was organized under that name on August 9, 1929, by the individual respondents, its name being changed on November 25, 1929, to Disabled American Veterans of the World War Rehabilitation Department.

Respondents Frank J. Mackey, L. C. Maier, Daniel C. Moore, and Robert T. Mackey are individuals and are respectively president, vice president, secretary-treasurer, and treasurer of the corporate

respondent, with their office and principal place of business located at 104 South Michigan Avenue in the city of Chicago, State of Illinois. As such officers of the respondent corporation, they are and have been actively in charge of, and direct and control, and have directed and controlled, the policies and operations of said corporate respondent. The stock in said corporate respondent is wholly owned by respondent Frank J. Mackey.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the publication and in the sale and distribution of books, including among others, two sets of books, one entitled "Progress of Nations," consisting of an 11-volume set of history books; the other consisting of a 2-volume set of history and war picture books, entitled "Forward March." In the course and conduct of their business respondents cause their said books, when sold, to be transported from their said place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said books in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents are now, and at all times mentioned herein have been, in substantial competition with other corporations and individuals, and with firms and partnerships, engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of books of an encyclopedic and historical nature.

PAR. 4. Shortly after the conclusion of the Great World War, there was organized in the United States a patriotic, unincorporated society known and designated as Disabled American Veterans of the World War, to be devoted to the care, welfare, and advancement of the interests of wounded, injured, and disabled American veterans of the World War. In the year 1932, there was incorporated pursuant to Federal statute a national corporation designated as Disabled American Veterans of the World War, the incorporators thereof being members of the unincorporated organization by the same name, composed of wounded and disabled soldiers, sailors, and marines of the Great War. The purposes for which said corporation was created, as set forth in its national charter and articles of incorporation, were as follows: to uphold and maintain the constitution and laws of the United States, to realize the true American ideals and aims for which those eligible to membership had fought; to advance the interests and work for the betterment of all wounded,

injured, and disabled veterans of the World War; to cooperate with the United States Veterans Administration and all other public and private agencies devoted to the cause of improving and advancing the condition, health, and interests of wounded, injured, or disabled veterans of the World War; and to encourage in all people that spirit of understanding which will guard against future wars.

Among the corporate powers conferred upon the corporation were the establishment of State and Territorial organizations and local chapters or post organizations and the power to publish a newspaper or other publications devoted to the purposes of the corporation. The organization was to be nonpolitical and nonsectarian. The aforesaid Federal statute provides that said national organization, and its State and local subdivisions, shall have the sole and exclusive right to have and to use in carrying out its purposes the name "Disabled American Veterans of the World War," and said national corporation is required, on or before the first day of January in each year, to make a report to Congress of its proceedings for the preceding calendar year.

PAR. 5. On or about November 2, 1929, the respondent corporation, Disabled American Veterans of the World War Rehabilitation Department entered into an agreement or contract with the Disabled American Veterans of the World War under the terms of which said organization was to receive a royalty of 15 percent on all gross sales of said two sets of books by the respondent corporation, said books to be sold under the sponsorship of the said Disabled American Veterans of the World War. Subsequently, on or about January 2, 1938, this royalty was by agreement between said parties reduced to and still is 10 percent on all gross sales of said books.

PAR. 6. In the course and conduct of their said business, and for the purpose of promoting the sale of said books, respondents have made and are making many false, misleading, and deceptive statements and representations to prospective purchasers of their said books, such statements and representations being made through respondents' salesmen and representatives and by other means. Among and typical of such false, misleading, and deceptive statements and representations are the following:

That respondents' salesmen and representatives are representatives of the organization known as the Disabled American Veterans of the World War; that respondents' books are being sold only to certain selected customers; that the organization known as the Disabled American Veterans of the World War receives the entire profit derived from the sale of said books, and that one purchasing such books is in effect making a contribution to said organization; that the

funds derived from the sale of said books will be used by said organization known as the Disabled American Veterans of the World War to defray the expense of said organization's activities and efforts in combating anti-American and subversive organizations and influences in the United States.

In numerous instances, the fact that books are being sold by respondents is concealed from customers and prospective customers, respondents' proposition as presented by their salesmen and representatives taking the form of a patriotic and emotional appeal addressed to said customers and prospective customers. The Disabled American Veterans of the World War is represented as having launched a great legislative and educational campaign against subversive influences and activities in the United States, and prospective purchasers of respondents' books are urged to participate in and contribute to such campaign. Those subscribing to such purported campaign are finally advised that they will receive a set of books, the books being made to appear as incidental, however, to the subscription to such campaign fund.

PAR. 7. The foregoing representations made by and on behalf of respondents are grossly exaggerated, false, and misleading. In truth and in fact, respondents' salesmen and representatives are not representatives of the organization known as the Disabled American Veterans of the World War. Said organization does not receive the entire profit derived from the sale of said books, nor does the profit from the sale of said books constitute a contribution to said organization or to any campaign conducted by it. Said books, on the contrary, are sold by respondents as an ordinary commercial transaction for profit to respondents, and the only profit derived by the organization known as the Disabled American Veterans of the World War from the sale of such books is and has been the respective royalties hereinabove mentioned. The sale of said books is not restricted to any group or number of persons, but said books are sold indiscriminately to the general public.

PAR. 8. A further deceptive and misleading practice employed by respondents in promoting the sale of said books consists of the wrongful use by respondents of literature published and circulated by the organization known as the Disabled American Veterans of the World War. Said literature is represented by the respondents as endorsing said books, when in truth and in fact said literature has no reference to said books, but relates only to the general aims and purposes of said organization.

PAR. 9. The organization known as the Disabled American Veterans of the World War is now and for many years last past has

been identified in the public mind as a nonprofit organization devoted to the rehabilitation and general welfare of its members, all of whom are disabled veterans of the World War. The use by respondent corporation of the corporate name Disabled American Veterans of the World War Rehabilitation Department constitutes within itself a false and misleading representation that said respondent is identical with or is connected with or is a part of the Disabled American Veterans of the World War. The use of said name by respondent corporation serves also to accentuate the other false and misleading representations made by respondents in the sale of their said books.

PAR. 10. The use by the respondents of the false and misleading statements and representations in connection with the sale of their said books, as hereinabove set out, 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' said books as a result of such belief. Thereby trade has been diverted unfairly to the respondents from their competitors, many of whom do not make false or misleading representations with respect to their products, and in consequence thereof substantial injury has been done, and is now being done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 11. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 24th day of April 1941, issued and thereafter served its complaint in this proceeding upon respondents Disabled American Veterans of the World War Rehabilitation Department, a corporation, and Frank J. Mackey, L. C. Maier, Daniel C. Moore, and Robert T. Mackey, individually, and as officers of Disabled American Veterans of the World War Rehabilitation Department, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 26, 1941, the respondents filed their answer to this proceeding. Thereafter, at a hearing held in Chicago, Ill., on June 30, 1941, before John P. Bram-

hall, a duly appointed trial examiner of the Commission, theretofore duly designated by it, to serve in this proceeding, evidence was received and a stipulation was entered into between counsel for the respondents and counsel for the Commission whereby it was stipulated and agreed that, subject to the approval of the Commission, a statement of fact read into the record might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission might proceed upon such statements of facts and the inferences drawn therefrom to make its report, stating its findings as to the facts and its conclusion based thereon and issue its order disposing of this proceeding without the presentation of argument or the filing of briefs. Respondents expressly waived the filing of the trial examiner's report upon the evidence. Thereafter, this proceeding came on for final hearing before the Commission on said complaint, answer, evidence and stipulation as to the facts, said stipulation having been approved by the Commission, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Disabled American Veterans of the World War Rehabilitation Department, is a corporation organized, existing and doing business by virtue of the laws of the State of Illinois, with its office and principal place of business located at 104 South Michigan Avenue, in the city of Chicago, State of Illinois. Said corporation was formerly known as International Historical Society and was organized under that name on August 9, 1929, by the individual respondents, its name being changed on November 25, 1929, to Disabled American Veterans of the World War Rehabilitation Department.

Respondents Frank J. Mackey, L. C. Maier, Daniel C. Moore, and Robert T. Mackey are individuals and are respectively president, vice president, secretary-treasurer, and treasurer of the corporate respondent, with their office and principal place of business located at 104 South Michigan Avenue, in the city of Chicago, State of Illinois. As such officers of the respondent corporation, they are and have been actively in charge of, and direct and control, and have directed and controlled, the policies and operations of said corporate respondent. The stock in said corporate respondent is wholly owned by respondent Frank J. Mackey.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the publication and in the sale and distribution of books, including among others, two sets of books, one entitled "Progress of Nations," consisting of an 11-volume set of history books; the other consisting of a 2-volume set of history and war picture books, entitled "Forward March." In the course and conduct of their business respondents cause their said books, when sold, to be transported from their said place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said books in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, respondents are now, and at all times mentioned herein have been, in substantial competition with other corporations and individuals, and with firms and partnerships, engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia, of books of an encyclopedic and historical nature.

PAR. 4. Shortly after the conclusion of the Great World War, there was organized in the United States a patriotic, unincorporated society known and designated as Disabled American Veterans of the World War, to be devoted to the care, welfare, and advancement of the interests of wounded, injured, and disabled American veterans of the World War. In the year 1932, there was incorporated pursuant to Federal statute a national corporation designated as Disabled American Veterans of the World War, the incorporators thereof being members of the unincorporated organization by the same name, composed of wounded and disabled soldiers, sailors, and marines of the Great War. The purposes for which said corporation was created, as set forth in its national charter and articles of incorporation, were as follows: to uphold and maintain the constitution and laws of the United States, to realize the true American ideals and aims for which those eligible to membership had fought; to advance the interests and work for the betterment of all wounded, injured and disabled veterans of the World War; to cooperate with the United States Veterans Administration and all other public and private agencies devoted to the cause of improving and advancing the condition, health, and interests of wounded, injured, or disabled veterans of the World War; and to encourage in all people that spirit of understanding which will guard against future wars.

Among the corporate powers conferred upon the corporation were the establishment of State and Territorial organizations and local chapters or post organizations and the power to publish a newspaper or other publications devoted to the purposes of the corporation. The organization was to be nonpolitical and nonsectarian. The aforesaid Federal statute provides that said national organization, and its State and local subdivisions, shall have the sole and exclusive right to have and to use in carrying out its purposes the name "Disabled American Veterans of the World War," and said national corporation is required, on or before the first day of January in each year, to make a report to Congress of its proceedings for the preceding calendar year.

PAR. 5. On or about November 2, 1929, the respondent corporation, Disabled American Veterans of the World War Rehabilitation Department, entered into an agreement or contract with the Disabled American Veterans of the World War under the terms of which the respondent corporation was granted the right to organize and incorporate as the Disabled American Veterans of the World War Rehabilitation Department and the right to use the seal of the Disabled American Veterans of the World War, the signature of said organization's National Commander, and to conduct its business in the name of said national organization. In consideration of this arrangement the said national organization was to receive royalty of 15 percent on all gross sales of said two sets of books by the respondent corporation, said books to be sold under the sponsorship of the said Disabled American Veterans of the World War. Subsequently, on or about January 2, 1938, this royalty was by agreement between said parties reduced to and still is 10 percent on all gross sales of said books.

PAR. 6. In the course and conduct of their said business and for the purpose of promoting the sale of said books, respondent's salesmen have made statements and representations to prospective purchasers of respondents' said books. Among and typical of such statements and representations were the following:

That respondents' said salesmen and representatives were representatives of the organization known as the Disabled American Veterans of the World War; that respondents' books were being sold only to certain selected customers; that the organization known as the Disabled American Veterans of the World War received the entire profit derived from the sale of said books, and that one purchasing such books was in effect making a contribution to said organization; that the funds derived from the sale of said books would be used by said organization known as the Disabled American Veterans of the

World War to defray the expense of said organization's activities and efforts in combating anti-American and subversive organizations and influences in the United States.

In numerous instances, the fact that books were being sold by respondents was concealed from customers and prospective customers, respondents' proposition as presented by their salesmen and representatives taking the form of a patriotic and emotional appeal addressed to said customers and prospective customers. Some of respondents' salesmen taking advantage of the fact that the Disabled American Veterans of the World War had launched a great legislative and educational campaign against subversive influences and activities in the United States, urged prospective purchasers of respondents' books to participate in and contribute to such campaign. Those subscribing to such purported campaign were advised that they would receive a set of books, but the receipt by such subscribers of said books was made to appear as only incidental to the subscription to such purported campaign fund.

PAR. 7. The statements and representations thus made by respondents' said salesmen and representatives, as set out in paragraph 6 hereof, were grossly exaggerated, false, and misleading. In truth and in fact, respondents' salesmen and representatives were not representatives of the organization known as the Disabled American Veterans of the World War. Said organization did not and does not receive the entire profit derived from the sale of respondents' said books, nor has the profit from the sale of said books ever constituted a contribution to said organization or to any campaign conducted by it. Said books, on the contrary, were sold by respondents' said salesmen and representatives as an ordinary commercial transaction for profit to respondents, and the only profit derived by the organization known as the Disabled American Veterans of the World War from the sale of such books was and has been the respective royalties hereinabove mentioned. The sale of said books was not restricted to any group or number of persons, but said books were sold indiscriminately to the general public.

PAR. 8. A further deceptive and misleading practice employed by respondents' salesmen and representatives in promoting the sale of respondents' said books consisted of the wrongful use by them of literature published and circulated by the organization known as the Disabled American Veterans of the World War. Said literature was represented by respondents' salesmen and representatives as endorsing said books, when in truth and in fact said literature had no reference to said books, but related only to the general aims and purposes of said organization.

PAR. 9. The organization known as the Disabled American Veterans of the World War is now and for many years last past has been identified in the public mind as a nonprofit organization devoted to the rehabilitation and general welfare of its members, all of whom are disabled veterans of the World War. The use by respondent corporation of the corporate name Disabled American Veterans of the World War Rehabilitation Department constitutes within itself a false and misleading representation that said respondent is identical with or is connected with or is a part of the Disabled American Veterans of the World War. The use of said name by respondent corporation serves also to accentuate the other false and misleading representations made by respondents' salesmen and representatives in connection with the sale of respondents' aforesaid books.

PAR. 10. The use by the respondents of the false and misleading statements and representations in connection with the sale of their said books, as hereinabove set out, 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' said books as a result of such belief. Thereby trade has been diverted unfairly to the respondents from their competitors, and in consequence thereof substantial injury has been done, and is now being done to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents, Disabled American Veterans of the World War, Rehabilitation Department, a corporation, and Frank J. Mackey, L. C. Maier, Daniel C. Moore, and Robert T. Mackey, individually, and as officers of Disabled American Veterans of the World War Rehabilitation Department, 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 answer of the respondents, evidence and stipulation as to the facts entered into 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Disabled American Veterans of the World War Rehabilitation Department, a corporation, its directors, officers, representatives, agents, and employees, and Frank J. Mackey, L. C. Maier, Daniel C. Moore, and Robert T. Mackey, individually, and as officers of Disabled American Veterans of the World War Rehabilitation Department, and their 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 books known as "Progress of Nations" and "Forward March," or any other books of similar kind or nature whether sold under these names or under and other name or names, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist, directly or indirectly from:

1. Representing, through the display and use of literature published by the organization known as the Disabled American Veterans of the World War, or by any other means, that respondents' salesmen and representatives are representatives or agents of said organization.

2. Representing that any books or sets of books offered for sale and sold by respondents, or any of them, are being offered for sale or sold to selected persons only, when such is not the fact.

3. Representing that the organization known as the Disabled American Veterans of the World War receives the entire profit derived from the sale of respondents' said books or sets of books, or any profit in excess of that actually paid by respondents to said organization.

4. Representing that any customer purchasing any of respondents' books or sets of books is, in effect, making a direct contribution to the organization known as the Disabled American Veterans of the World War.

5. Representing that the funds derived from the sale of said books or sets of books will be used by the Disabled American Veterans of the World War to defray the expense of said organization's activities and efforts in combating anti-American and subversive organizations and influences in the United States.

6. Using the corporate name "Disabled American Veterans of the World War Rehabilitation Department," or representing in any manner that the corporate respondent is identical to, identified with, or is a constituent part of the organization known as the Disabled American Veterans of the World War.

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

Syllabus

IN THE MATTER OF

SOAP LAKE PRODUCTS CORPORATION[1]

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

Docket 2823. Complaint, May 27, 1936—Decision, Aug. 19, 1941

Where a corporation engaged in preparation and competitive interstate sale and distribution of packaged mineral salts obtained from Soap Lake, Washington, which (1) were composed of about 20 percent sodium sulphate or Glauber's salts, 54 percent sodium carbonate or washing soda, and 25 percent sodium chloride and potassium chloride or ordinary table salt; and (2) included (a) "Mother Nature Soap Lake Salts" consisting of the unadulterated residue of the natural lake water after evaporation, (b) "Mother Nature Soap Lake Spirit" consisting of the liquid concentrate bottled before evaporation was complete, and (c) "Mother Nature Soap Lake Seltzer," consisting of 60 percent "Salts" and 40 percent citric and tartaric acid salts, added for effervescense and palatability;

In advertising its said packaged mineral salts through booklets, folders, pamphlets, and other advertising literature distributed to members of the purchasing public in the various States and furnished to customers for distribution to members of said public, and through newspapers and magazines of general interstate circulation, and radio broadcasts, in all of which it featured its corporate name—

Falsely represented, directly or by implication, that said various products would prevent and cure and were beneficial in the treatment of many of the diseases, ailments, and conditions of the body, including rheumatism, arthritis, neuritis, eczema, athlete's foot, ulcers of the stomach, poison oak and ivy, gangrene, body and scalp sores, Buerger's disease, hyperacidity, lumbago, trench mouth, and pyorrhea;

Facts being the therapeutic benefits, if any, obtained from use of said products, were limited to those resulting from the laxative diuretic, and cleansing properties of their ingredients and the products did not accomplish the results claimed in the diseases and conditions set forth;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public into the erroneous belief that said representations were true, and with result, as direct consequence of such beliefs, that a number of the consuming public purchased a substantial volume of said products and trade in commerce was unfairly diverted to it from its competitors, many of whom truthfully represent the effectiveness of their respective products, to the injury of competition in commerce:

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

Before *Mr. Henry M. White*, *Mr. Charles P. Vicini*, and *Mr. Miles J. Furnas*, trial examiners.

Mr. R. A. McOuat for the Commission.

[1] For original findings and order in this matter, set aside by the Commission on Aug. 5, 1939, by order reopening the proceeding, *see* 28 F. T. C. 1377.

Hyland, Elvidge & Alvord, of Seattle, Wash., for respondent.

Copass & Hall, of Seattle, Wash., for International Chemical Co., successors to Soap Lake Products Corp.

Honorable Clarence D. Martin, Governor of the State of Washington, and *Honorable W. A. Toner*, Assistant Attorney General for the State of Washington, of Olympia, Wash., for State of Washington, amicus curiae.

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 Soap Lake Products Corporation, a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Soap Lake Products Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 2013 Fourth Avenue, in the city of Seattle, State of Washington. Respondent is now, and has been for more than 1 year last past, engaged in the business of preparing, distributing, and selling, in commerce as herein set out, certain packaged mineral salts designated as "Mother Nature Soap Lake Salts" and packaged kindred products designated as "Mother Nature Soap Lake Seltzer" and "Mother Nature Soap Lake Spirit," obtained from Soap Lake located in the State of Washington.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said salts and kindred products, when sold, to be transported from its office and place of business in the State of Washington to purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been at all times since the organization of respondent corporation, a constant current of trade and commerce in said products so prepared, distributed, and sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, the respondent is now, and has been, in substantial competition with other corporations, and with firms and individuals likewise engaged in the

business of manufacturing, distributing, and selling mineral salts or other products designed, intended, and sold for the same purposes for which respondent's products are sold, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of said business, and for the purpose of inducing individuals, firms, and corporations to purchase said salts and kindred products, respondent has caused advertisements to be inserted in newspapers, periodicals, and trade journals of general circulation throughout the United States, has printed and circulated throughout the several States to customers and prospective customers, through the United States mails and otherwise, advertising folders, letters and literature, and has made use of radio broadcasts over stations of sufficient power to convey the programs emanating therefrom into the various States of the United States; in all of which advertisements, respondent has caused its corporate name to be prominently and conspicuously displayed, together with the following statements:

* * * Ask almost anyone who has been there (Soap Lake) and who faithfully took the treatments for such ills as rheumatism, neuritis, arthritis, eczema, athlete's foot, ulcers of the stomach, poison oak or ivy, gangrene, infections, or body and scalp sores. In many cases you will be told stories of complete and prompt recovery so astonishing as to be almost unbelievable.

No longer need you journey far and expensively to prove the virtue of Soap Lake minerals. They are now easily and inexpensively available to you through your druggist under the name of Mother Nature Soap Lake Products—Mother Nature Soap Lake Salts for the bath; Mother Nature Soap Lake Seltzer—pleasantly effervescent—for internal use, and Mother Nature Soap Lake Spirit for external application—all natural products from Nature's own laboratory.

The answer to all such arguments are the thousands and thousands of cases of neuritis, arthritis, rheumatism, insomnia, Buerger's Disease, gangrene, infections, etc., that have been benefited by Soap Lake baths alone.

You will find that Mother Nature Soap Lake baths are a wonderful aid to Nature in correcting certain forms of eczema, itch, poison oak and ivy, athlete's foot and disorders resulting from hyperacidity.

For rheumatic swellings and congestion, sore muscles, lumbago, etc., poulticing is recommended.

ULCERS OF THE STOMACH. Soap Lake water has proven wonderfully beneficial in aiding Nature to correct this distressing trouble. No one should submit to an operation for ulcers without first having given Mother Nature Soap Lake Seltzer a trial.

ORAL HYGIENE: TRENCH MOUTH—PYORRHEA. * * * Wonderful aid to Nature in Pyorrhea and Trench Mouth.

All of said statements, together with many similar statements appearing in respondent's advertising literature purport to be descriptive of respondent's products and their effectiveness in treating

or curing many of the diseases, ailments, afflictions, and conditions of the human body. 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 its various packaged products to wit: Mother Nature Soap Lake Salts, Mother Nature Soap Lake Seltzer and Mother Nature Soap Lake Spirit, will prevent and cure, or are beneficial in the treatment of, many of the diseases, ailments, afflictions and conditions which may be present or exist in the human body.

Among the diseases, ailments, afflictions, and conditions named by the respondent in said radio broadcasts and advertising literature as diseases, ailments, afflictions, and conditions which the use of said above-named products will prevent and cure, or are beneficial in the treatment of, are the following: rheumatism, neuritis, arthritis, eczema, athlete's foot, ulcers of the stomach, poison oak or ivy, gangrene, body or scalp sores, Buerger's Disease, hyperacidity, lumbago, trench mouth, and pyorrhea.

PAR. 5. The representations made by the respondent with respect to the nature and effect of its products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the use of respondent's packaged products will not prevent and cure, nor is it beneficial in the treatment of all, or any of, the diseases, ailments, afflictions, and conditions hereinabove named. The beneficial properties, if any, of said products are limited to laxative and diuretic action. Said packaged products have no therapeutic value in the treatment of the diseases, ailments, afflictions, and conditions above named.

PAR. 6. There are among respondent's competitors many who manufacture, distribute, and sell various products designed, intended and sold for the purpose of curing, relieving, or treating the various diseases, ailments, afflictions, and conditions of the human body hereinabove named and who do not, in any way, misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating or describing its products and the effectiveness of said products for curing, treating or relieving the diseases, ailments, afflictions, and conditions of the human body herein named, in offering for sale and selling its said products was, and is, calculated to, and had, and now has, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that said products will, in truth, accomplish the results claimed. Further, as a direct consequence of the mistaken and erroneous be-

liefs, induced by the acts and representations of the respondent, as hereinabove detailed, a number of the consuming public has purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling similar products or other products designed, intended and sold for use in the cure, relief, or treatment of the various diseases, ailments, afflictions, and conditions named herein, and who truthfully represent the effectiveness of their respective products. As a result thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 27th day of May 1936, issued and subsequently served its complaint in this proceeding upon the respondent, Soap Lake Products Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of an answer thereto by the respondent, testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission, and in opposition thereto by the attorney for the respondent, before trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, 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 fully advised in the premises, on April 10, 1939, made its findings as to the facts and its conclusions drawn therefrom, and isued its order requiring the respondent to cease and desist from the use of said unfair methods of competition.

Subsequently, the State of Washington, appearing as amicus curiae, filed a petition alleging that the findings of the Commission reflected adversely upon the therapeutic properties of the water of Soap Lake, Washington, and requesting that the proceeding be reopened for the taking of further testimony. Upon consideration of said petition, the Commission, on August 5, 1939, entered its order directing that the proceeding be reopened for the purpose of taking further testimony and other evidence in support of and in opposition to certain allegations of the complaint, the Commission thereby setting aside its original findings as to the facts and order to cease and desist. Pursuant to such order, supplemental hearings were held at which additional testimony and other evidence were introduced in support of and in opposition to said allegations of the complaint. Thereafter the proceeding regularly came on for final hearing before the Commission upon the complaint, answer, testimony and other evidence introduced in both the original and supplemental hearings, original briefs of counsel for the Commission and for the respondent, and supplemental brief of counsel for the Commission (no supplemental briefs having been filed by either the respondent or the State of Washington, and oral argument not having been requested); and the Commission, having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Soap Lake Products Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 2013 Fourth Avenue, in the city of Seattle, in said State. Respondent is now, and for more than 6 years last past has been, engaged in the business of preparing, selling, and distributing in commerce, certain packaged mineral salts designated as "Mother Nature Soap Lake Salts," "Mother Nature Soap Lake Seltzer," and "Mother Nature Soap Lake Spirit." The salt ingredients which go to make up these products are obtained by respondent from a body of water called "Soap Lake," which is situated in the State of Washington.

PAR. 2. Respondent causes its products, when sold, to be transported from its place of business in Seattle, in the State of Washington, to purchasers thereof located at various points in other States of the United States. There is now and has been for more

than 6 years last past a course of trade by the respondent in its products in commerce among and between various States of the United States.

PAR. 3. The respondent, in the course of the operation of its business, is in competition with other corporations and with individuals and firms also engaged in the business of preparing, selling, and distributing mineral salt products or other products intended and sold for the same purposes as those for which respondent's products are sold, in commerce among and between various States of the United States.

PAR. 4. In the course of the operation of its business and for the purpose of inducing individuals, firms, and corporations to purchase its said packaged mineral salts, the respondent has made use of booklets, folders, pamphlets, and other advertising literature, some of which it distributes to members of the purchasing public located in the various States of the United States, and some of which it furnishes to its customers to be by them placed in the hands of the members of the purchasing public. It has also made use of advertisements inserted in newspapers and magazines having a general circulation throughout the various States of the United States. It has also made use of radio broadcasts over stations of sufficient power to convey the programs emanating therefrom into the various States of the United States. In all of its said advertisements, respondent has caused its corporate name to be prominently and conspicuously displayed in connection with the trade names of its products, "Mother Nature Soap Lake Salts," "Mother Nature Soap Lake Seltzer," and "Mother Nature Soap Lake Spirit," together with the following statements:

A JOYOUS BLESSING FOR THE AFFICTED

* * * * * * *

ALMOST UNBELIEVABLE—BUT TRUE!

THE FAME of Soap Lake has become nationwide. More than 30,000 visitors last summer! They came with aches and pains—rheumatism, neuritis, arthritis * * * with skin irritations—eczema, itch, psoriasis, athlete's foot, poison oak, poison ivy, gangrene and lingering infections; with stomach, gall, intestine, kidney, bladder and other functional disorders—and left happy.

The Government sends its Buerger's disease patients to Soap Lake * * *.

Not all, however, who are afflicted can afford the time and money to visit Soap Lake. So the Soap Lake Products Corporation, under the brand name, MOTHER NATURE, is making available the virtues of SOAP LAKE to the public everywhere. Through modern concentrating and evaporating methods, three products have been produced, viz: MOTHER NATURE SOAP LAKE SALTS for the bath; MOTHER NATURE SOAP LAKE SELTZER for internal use, and MOTHER NATURE SOAP LAKE SPIRIT for external application.

Stop at the nearest drug store—get the MOTHER NATURE Soap Lake product for your particular affliction. Through its use—*more complete relief* than ever dreamed possible! * * *

The trade name, MOTHER NATURE, is your protection. *Insist on the genuine*—MOTHER NATURE SOAP LAKE PRODUCTS—and get the gratifying results you expect. At drug stores everywhere. Samples free—send us your name and address at once on a postcard.

Make sure—demand natural, Genuine MOTHER NATURE Soap Lake products. Demonstrate, without cost, their anti-acid value in correcting ills caused by hyperacidity.

They neutralize acid wherever contacted.

Ask almost anyone who has been there and who faithfully took the treatments for such ills as rheumatism * * * ulcers of the stomach, gangrene, body or scalp sores. In many cases you will be told stories of complete and prompt recovery so astonishing as to be almost unbelievable. * * *

No longer need you journey far and expensively to prove the virtue of Soap Lake minerals. They are now easily and inexpensively available to you through your druggist * * * from Nature's own laboratory.

No one should submit to an operation for ulcers without first having given Mother Nature Soap Lake Seltzer a trial.

ORAL HYGIENE: TRENCH MOUTH—PYORRHEA. * * * Wonderful aid to Nature in Pyorrhea and Trench Mouth * * * Hold in mouth in contact with sore places as long as possible. Wonderful results.

Through the use of said statements and other statements of similar import and meaning used in its radio broadcasts and advertising literature, respondent represents directly or by implication that "Mother Nature Soap Lake Salts," "Mother Nature Soap Lake Seltzer," and "Mother Nature Soap Lake Spirit," will prevent and cure, and are beneficial in the treatment of, many of the diseases, afflictions, ailments, and conditions which may be present or exist in the human body. Among the diseases, ailments, afflictions, and conditions named by respondent in its radio broadcasts and advertising literature as diseases, ailments, afflictions, and conditions which the use of the said products will benefit, prevent and cure, are the following: Rheumatism, arthritis, neuritis, eczema, athlete's foot, ulcers of the stomach, poison oak and ivy, gangrene, body or scalp sores, Buerger's disease, hyperacidity, lumbago, trench mouth, and pyorrhea.

PAR. 5. In truth and in fact, the use of respondent's packaged mineral salts alone, either externally or internally, will not prevent or cure, and are not beneficial in the treatment of rheumatism, arthritis, neuritis, eczema, athlete's foot, ulcers of the stomach, poison oak and ivy, gangrene, body or scalp sores, Buerger's disease, hyperacidity, lumbago, trench mouth, pyorrhea, or any other disease, affliction, ailment, or condition which may be present or exist in the human body, as represented in respondent's radio broadcasts and other advertisements and advertising literature.

Respondent obtains its above-named products by evaporation of the waters of Soap Lake. Respondent's "Salts" are the unadulterated residue after evaporation is complete, and its "Spirit" is the liquid concentrate bottled before evaporation is complete. Its "Seltzer" is 60 percent "Salts" and 40 percent citric and tartaric acid salts, which are added solely for effervescence and palatability.

"Mother Nature Soap Lake Salts" contain:

Sodium Chloride	18.19%
Potassium Chloride	6.57%
Sodium Sulphate	21.38%
Sodium Carbonate	53.72%
Calcium Carbonate	.07%

Negligible traces of silica, phosphorus, iron, alumina, magnesium, iodine and lithium.

No merit is claimed for the calcium carbonate or for the negligible traces of silica, phosphorus, iron, alumina, magnesium, iodine, and lithium.

Sodium sulphate, or Glauber's salts, a well known purgative, accounts for a trifle more than one-fifth of the total solid content. Concentrated Glauber's salts give a laxative effect. The effect of the Glauber's salts in respondent's products, however, is so minimized by its combination with the other ingredients therein as to require increased dosage and the ingestion of a very large amount of water, in order to have the same effect as that given by a concentrated laxative requiring a much less amount of water. Physicians prefer to prescribe a laxative in concentrated form, in order that the patient be not required to drink more water than he would normally consume.

More than one-half of the content of the "Salts" is sodium carbonate, a caustic alkali known as washing soda. For the purpose of temporarily neutralizing acid in cases where ulcers or a condition of hyperacidity exists, an alkali is sometimes prescribed by physicians. One of the elements usually prescribed for temporarily overcoming hyperacidity is sodium bicarbonate which is less caustic and more readily decomposed by the hydrochloric acidity of the stomach than sodium carbonate. While the respondent's products, because of the sodium carbonate therein, do have an alkalizing effect, they are not a proper treatment for ulcers or hyperacidity because of their extremely caustic effect.

Of the total content, 24.76 percent is sodium chloride and potassium chloride. Potassium chloride is ordinary table salt. The medicinal properties of potassium chloride and sodium chloride are practically the same. The normal diet contains an adequate supply of salt and other chlorides for all purposes.

During the course of the supplemental hearings testimony was introduced by respondent to the effect that in addition to the ingredients listed above, respondent's preparations contain an ingredient designated as ichthammol homologue. The weight of the expert testimony shows, however, and the Commission finds, that this ingredient is not present in the preparations in sufficient quantity to have any effect upon the therapeutic value of the preparations.

In the treatment of neuritis, arthritis, or lumbago, which are types of rheumatism, and kidney trouble, the use of chlorides is restricted by physicians because an excess of chloride irritates and aggravates the pathological processes in the kidneys. The internal use of respondent's products by persons afflicted with any type of rheumatism causes additional aggravation and irritation of the kidneys. Frequently, the conditions prevalent when the patient is suffering from so-called rheumatism are associated with some degree of kidney involvement, and the use of respondent's products is distinctly harmful. When taken internally the respondent's products act as a mild and indefinite diuretic and laxative. There are many well known harmless laxatives, diuretics, and neutralizers of hyperacidity which do not aggravate the pathological processes of the organs of the patient. Many of these other preparations will react definitely as prescribed by physicians.

Bathing in hypertonic salt solutions will promote dehydration through the skin and thus eliminate to a certain extent toxic products circulating in the blood. This effect is increased when baths are taken hot. Hot baths with or without salts of this character are very useful in giving temporary relief to internal pains, especially those associated with the joints, arising from neuritis, arthritis, lumbago, rheumatism, gangrene, or Buerger's disease. The dehydrating effect of the hypertonic salt solution very probably results in the lessening of congestion in and about swollen joints or other afflicted parts and thus temporarily relieves pain. While respondent's products have a slight hypertonic effect, there are many other hypertonic salts which likewise furnish temporary relief when mixed with hot bath water.

Eczema and other similar diseases are generally considered of systemic origin and are manifested by skin lesions. When sodium carbonate is applied to this diseased skin, it acts as a counterirritant and temporarily relieves the itching and discomfort. Respondent's products, however, are not effective in curing or preventing these skin diseases.

Athlete's foot is a fungoid infection deeply embedded in the layers of the skin. While some of the ingredients of respondent's products

might cleanse the diseased tissue, there are no antiseptic properties in respondent's product which will prevent or cure athlete's foot.

Poison oak and poison ivy are skin diseases which spread rapidly unless properly checked. The rapidity with which the infection is spread over the body is greatly accentuated by the use of liquid solutions. External applications of respondent's products are harmful to a person suffering from this affliction.

Body and scalp sores are commonly treated with medicines having astringent qualities. It is also necessary to keep the afflicted parts clean. Respondent's products have no astringent properties whatever. The beneficial effect following the use of these products on sores is limited to the cleansing properties thereof.

Trench mouth is caused by a germ which is not affected in any way by respondent's products. The only benefit which a person afflicted with trench mouth or pyorrhea could derive from respondent's products would be through their use as a mouth wash. When so used the effect would be similar to that of table salt.

Hot and cold baths are beneficial in temporarily relieving the pain incidental to Buerger's disease and gangrene. Gangrene is sometimes due to diabetes. In that event, respondent's products may be soothing when mixed with bath water. However, respondent's products, when administered in any form, are not competent treatments for gangrene or Buerger's disease.

The therapeutic benefits, if any, generally obtained from the use of any or all of respondent's products are limited to those resulting from the laxative, diuretic and cleansing properties of the various ingredients thereof. Additional expert testimony introduced at the instance of the Commission during the supplemental hearings corroborated the testimony taken during the original hearings with respect to the therapeutic properties of respondent's products.

PAR. 6. Testimony adduced at the instance of the State of Washington during the supplemental hearings shows that in 1938 the State established, and has since maintained, a hospital at Soap Lake for the study and treatment of Buerger's disease, the hospital being primarily for the benefit of American veterans of the World War. Up to the present time some 25 to 30 patients have received treatment at the hospital. The usual treatment includes rest in bed, cessation from smoking, and the use of the lake water as a bath and for soaking the feet. The testimony of the head of the institution is to the effect that while substantial progress appears to have been made in certain cases, it is too early to form any definite conclusions as to the effectiveness of the treatment or as to the therapeutic properties of Soap Lake water.

Neither the effectiveness of the hospital's method of treatment nor the therapeutic properties of the natural waters of Soap Lake is involved in this proceeding. The proceeding has to do only with the representations made by respondent with respect to its own packaged products.

PAR. 7. The use by the respondent of each and all of the false and misleading statements and representations in its advertising circulars, pamphlets, radio continuities and other advertising media, in connection with the offering for sale and selling of its products in commerce, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. As a direct result of these erroneous and mistaken beliefs induced by the acts and representations of the respondent, as hereinabove enumerated, a number of the consuming public have purchased a substantial volume of respondent's products, with the result that trade in commerce has been diverted unfairly to the respondent from its said competitors, many of whom truthfully represent the effectiveness of their respective products, to the injury of competition in commerce among and between the various states of the United States.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence introduced in both the original and supplemental hearings before trial examiners of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, original briefs of counsel for the Commission and for the respondent, and supplemental brief of counsel for the Commission (no supplemental brief having been filed by the respondent and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Soap Lake Products Corporation, a corporation, and 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 packaged mineral salts now designated as "Mother Nature Soap Lake Salts," "Mother Nature Soap Lake Seltzer," and "Mother Nature Soap Lake Spirit," or any other products 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 representing:

1. That said mineral salt preparations will cure eczema or similar skin diseases of systemic origin, or have any beneficial effect in the treatment thereof other than temporarily relieving the itching and discomfort incidental to said diseases.

2. That said mineral salt preparations will cure athlete's foot or any body or scalp sores or have any beneficial value in the treatment thereof other than cleansing effect upon surface lesions.

3. That said mineral salt preparations will cure poison oak or poison ivy or have any beneficial value in the treatment thereof.

4. That said mineral salt preparations will cure pyorrhea or trench mouth or have any beneficial value in the treatment thereof other than as a cleansing agent.

5. That said mineral salt preparations will cure ulcers of the stomach or hyperacidity, or constitute a competent and proper treatment therefor, or have any beneficial value in the treatment thereof other than temporarily relieving the pain and discomfort incident thereto by temporarily neutralizing excess acid.

6. That said mineral salt preparations, when taken internally, will prevent or cure rheumatism, neuritis, arthritis, lumbago, gangrene, or Buerger's disease, or constitute a proper treatment therefor or have any beneficial value in the treatment thereof.

7. That said mineral salt preparations, when used externally, will prevent or cure rheumatism, neuritis, arthritis, lumbago, gangrene, or Buerger's disease, or have any beneficial effect in the treatment thereof other than temporarily relieving pain and congestion in the afflicted parts.

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

ROXIE THORSON, TRADING AS THORSON'S SOAP LAKE PRODUCTS 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 2832. Complaint, June 3, 1936—Decision, Aug. 19, 1941

Where an individual engaged in the preparation and competitive interstate sale and distribution of packaged mineral salts, salt ingredients of which were obtained from Soap Lake in State of Washington, including salts, effervescent salts, "Linament," "Skin-Aid Soap Lake Ointment," "Shampoo," and "Skin-Aid Soap Lake Soap"; in advertising her said products through letters, pamphlets, and other material circulated through various States, and through radio broadcasts—

Falsely represented, featuring her trade name "Soap Lake Products Company," and making such statements as "A Short Cut to Health through Nature," "Health Through the Skin," "The World's Greatest Healing Spot," "* * * contain all the qualities of the lake itself," and "Bringing a great Health Resort to your Home," etc., in connection with references to said Soap Lake and Soap Lake salts, that her aforesaid products would prevent and cure, or be beneficial in the treatment of, a large number of diseases, ailments, and afflictions, including stomach, liver, bowel, and kidney troubles, rheumatism, diabetes, diseases of the skin and blood, high blood pressure, arthritis, and neuritis;

Facts being the theurapeutic benefits, if any, obtained from use of her said products, were limited to those resulting from the laxative, diuretic, and cleansing properties thereof, and her said representations were grossly exaggerated, misleading, and untrue;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations were true, and with result, as direct consequence thereof, that a number of the consuming public bought a substantial volume of her said products and trade was unfairly diverted to her from her said competitors, many of whom truthfully represent the effectiveness of their respective products; to the substantial injury of competition in commerce:

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

Before *Mr. Henry M. White* and *Mr. Miles J. Furnas*, trial examiners.

Mr. R. A. McOuat for the Commission.

Mr. William M. Clapp, of Ephrata, Wash., for respondent.

Honorable Clarence D. Martin, Governor of the State of Washington, and *Honorable W. A. Toner*, Assistant Attorney General for

[1] For original findings and order in this matter, set aside by the Commission on Aug. 5, 1939, by order reopening the proceeding, *see* 28 F. T. C. 82.

the State of Washington, of Olympia, Wash., for State of Washington, amicus curiae.

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 Roxie Thorson, trading as Thorson's Soap Lake Products Co., hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Roxie Thorson, trading as Thorson's Soap Lake Products Co., has her place of business at Soap Lake, in the State of Washington. Respondent is now, and has been for some years, engaged in the business of preparing, distributing, and selling, in commerce as herein set out, certain packaged mineral salts designated as "Thorson's Soap Lake Salts," "Thorson's Effervescent Soap Lake Salts," and packaged kindred products designated as "Thorson's Soap Lake Liniment," "Thorson's Skin-Aid Soap Lake Ointment," "Thorson's Soap Lake Shampoo," and "Thorson's Skin-Aid Soap Lake Soap," obtained from Soap Lake, located in the State of Washington.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said salts and kindred products, when sold, to be transported from her place of business in the State of Washington to purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been for several years, a constant current of trade and commerce in said products so prepared, distributed, and sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her business, respondent is now, and has been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of manufacturing, distributing, and selling mineral salts or other products designed, intended, and sold for the same purposes for which respondent's products are sold, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of said business, and for the purpose of inducing the purchase of said salts and kindred

products, respondent has printed and circulated throughout the several States to customers and prospective customers, through the United States mails and otherwise, advertising folders, pamphlets, circulars, letters, and other literature, and has made use of radio broadcasts over stations of sufficient power to convey the programs emanating therefrom into the various States of the United States to advertise the products sold by her; in all of which advertisements, respondent has caused her trade name, Thorson's Soap Lake Products Co., to be prominently and conspicuously displayed, together with the following statements:

A Short Cut to Health through Nature.

Learn to Get Well Quick and Be Well Always.

Relieve your Ailments—While at Home.

Thorson's Soap Lake Salts Give Health Through the Skin.

Most persons who come to Soap Lake do so on the advice of friends who have been benefited by the Health Giving Water of Soap Lake which shows that the water, as well as the Sun Evaporated Minerals produced from it, is all it is claimed to be.

Soap Lake—Unequaled Health Giving Water.

The World's Greatest Healing Spot.

Thorson's Soap Lake Salts contain all of the qualities of the lake itself.

Bringing a Great Health Resort to your Home.

You can now take this Soap Lake Mineral Water treatment right in your home, without loss of time—of the vast expense of travel—the Soap Lake Mineral Water Treatment has been used successfully in the treatment of the following Disorders and Ailments:

High Blood Pressure.	Excess Acidity.
Stomach Disorders.	Constipation.
Liver and Bladder Troubles.	Rheumatism.
Auto-Intoxication.	Arthritis.
Nervous Ailments.	Diabetes.
Skin Afflictions.	Neuritis.
Kidney Trouble.	

THORSON'S SOAP LAKE SHAMPOO—It is a marvelous combination of all the ingredients essential to Hair Health.

THORSON'S SKIN-AID SOAP LAKE SOAP—Used in connection with SKIN-AID OINTMENT is without equal in the treatment of Skin Diseases and Eruptions.

THORSON'S EFFERVESCENT SOAP LAKE SALTS—Relief for all Stomach Trouble.

By a special process of crystallization you can now make this wonderful product in your own home without losing any of the curative power of the water.

All of said statements, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's products and their effectiveness in treating or curing many of the diseases, ailments, afflictions, and conditions of the human body. In all of her advertising literature, respondent represents, through the statements and representations herein set out

and other statements of similar import and effect, that her various packaged products to wit: Thorson's Soap Lake Salts, Thorson's Effervescent Soap Lake Salts, Thorson's Soap Lake Liniment, Thorson's Skin-Aid Soap Lake Ointment, Thorson's Soap Lake Shampoo, and Thorson's Skin-Aid Soap Lake Soap, will prevent and cure, or are beneficial in the treatment of, many of the diseases, ailments, afflictions, and conditions which may be present or exist in the human body.

Among the diseases, ailments, afflictions, and conditions named by the respondent in said radio broadcasts and advertising literature as diseases, ailments, afflictions, and conditions which the use of said above-named packaged products will prevent and cure, or is beneficial in the treatment of, are the following:

Stomach, liver, bowel and kidney trouble, rheumatism, diabetes, catarrh, skin diseases, female trouble, diseases of the blood, psoriasis, pyorrhea and sore gums, gangrene, foot trouble, eye trouble, eczema, lumbago, dropsy, pleurisy, dyspepsia, ivy oak poison, sunburn, insect bites, chilblains, frostbite, cramps of muscles, scalds, wounds and sores, high blood pressure, auto-intoxication, nervous ailments, excess acidity, constipation, arthritis, neuritis, and Buerger's disease.

PAR. 5. The representations made by the respondent with respect to the nature and effect of her products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the use of respondent's packaged products will not prevent and cure, nor are any of said products beneficial in the treatment of all, or any of, the diseases, ailments, afflictions, and conditions hereinabove named. The benefits, if any, generally obtained from a use of any or all of said products are limited to those resulting from the laxative and diuretic properties and action of said products and the use of said products as either an external or an internal cleansing agent. Said packaged products have no therapeutic value in the treatment of the diseases, ailments, afflictions, and conditions above named.

PAR. 6. There are among respondent's competitors many who manufacture, distribute, and sell various products designed, intended and sold for the purpose of curing, relieving, or treating some, or all, of the various diseases, ailments, afflictions, and conditions of the human body hereinabove named and who do not, in any way, misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating or describing her products and the effectiveness of said products for curing, treating, or relieving the diseases, ailments, afflictions, and conditions of

the human body herein named, in offering for sale and selling her said products were, and are, calculated to, and had, and now have, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that said products will, in truth, accomplish the results claimed. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and representations of the respondent, as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling similar products or other products designed, intended, and sold for use in the cure, relief, or treatment of the various diseases, ailments, afflictions, and conditions named herein, and who truthfully represent the effectiveness of their respective products. As a result thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 3, 1936, issued, and on June 8, 1936, served its complaint in this proceeding upon respondent, Roxie Thorson, trading as Thorson's Soap Lake Products Co., charging her with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, 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 fully advised in the premises, on January 16, 1939, made its findings as to the facts and its conclusion drawn therefrom, and issued its order requiring the respondent to cease and desist from the use of said unfair methods of competition.

Subsequently, the State of Washington, appearing as amicus curiae, filed a petition alleging that the findings of the Commission reflected adversely upon the therapeutic properties of the water of Soap Lake, Wash., and requesting that the proceeding be reopened for the taking of testimony. Upon consideration of said petition, the Commission, on August 5, 1939, entered its order directing that the proceeding be reopened for the purpose of taking testimony and other evidence in support of and in opposition to certain allegations of the complaint, the Commission thereby setting aside its original findings as to the facts and order to cease and desist. Pursuant to such order, supplemental hearings were held at which testimony and other evidence were introduced in support of and in opposition to said allegations of the complaint. Thereafter the proceeding regularly came on for final hearing before the Commission upon the complaint, answer, testimony and other evidence, and brief of counsel for the Commission (no briefs having been filed by either the respondent or the State of Washington, and oral argument not having been requested); and the Commission, having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Roxie Thorson, is an individual trading as Thorson's Soap Lake Products Co., with her principal office and place of business located at Soap Lake, in the State of Washington. Respondent is now, and for some years last past has been, engaged in the business of preparing, distributing, and selling in commerce, certain packaged mineral salts designated as "Thorson's Soap Lake Salts," "Thorson's Effervescent Soap Lake Salts," and kindred products designated as "Thorson's Soap Lake Liniment," "Thorson's Skin-Aid Soap Lake Ointment," "Thorson's Soap Lake Shampoo," and "Thorson's Skin-Aid Soap Lake Soap."

The salt ingredients that go to make up these products are obtained by respondent from a body of water called Soap Lake, which is a lake located in the State of Washington.

PAR. 2. Respondent causes her products, when sold, to be transported from her place of business at Soap Lake in the State of Washington to purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade by the respondent in her products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, in the course of the operation of her business, is in competition with other individuals and with firms and corporations also engaged in the business of preparing, distributing and selling mineral salt products or other products prepared, intended and sold for the same purpose as those for which respondent's products are sold, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In order to induce customers and prospective customers to purchase her products, respondent causes to be printed and circulated throughout the various States of the United States certain advertising matter which consists for the most part of letters, pamphlets, and circulars. Respondent has also made use of the radio for the purpose of creating a demand for her products by broadcasting advertising statements concerning her products over radio stations which have sufficient power to reach audiences in other states.

In all of her advertising matter respondent has featured her trade name, Thorson's Soap Lake Products Co., together with the following statements and representations which purport to be descriptive of respondent's products, the names of which are set forth in full in paragraph 1 hereof, and the effectiveness of said products in treating and curing many of the diseases, ailments, afflictions, and conditions of the human body:

A Short Cut to Health through Nature.

Learn to Get Well Quick and Be Well Always.

Relieve your Ailments—While at Home.

Thorson's Soap Lake Salts Give Health Through the Skin.

Most persons who come to Soap Lake do so on the advice of friends who have been benefited by the Health Giving Water of Soap Lake which shows that the water, as well as the Sun Evaporated Minerals produced from it, is all it is claimed to be.

Soap Lake—Unequaled Health Giving Water.

The World's Greatest Healing Spot.

Thorson's Soap Lake Salts contain all of the qualities of the lake itself.

Bringing a great Health Resort to your Home.

You can now take this Soap Lake Mineral Water treatment right in your home, without loss of time—of the vast expense of travel—the Soap Lake

Mineral Water Treatment has been used successfully in the treatment of the following Disorders and Ailments:

High Blood Pressure.	Excess Acidity.
Stomach Disorders.	Constipation.
Liver and Bladder Troubles.	Rheumatism.
Auto-Intoxication.	Arthritis.
Nervous Ailments.	Diabetes
Skin Afflictions.	Neuritis.
Kidney Trouble.	

THORSON'S SOAP LAKE SHAMPOO—It is a marvelous combination of all the ingredients essential to Hair Health.

THORSON'S SKIN-AID SOAP LAKE SOAP.—Used in connection with SKIN-AID OINTMENT is without equal in the treatment of Skin Diseases and Eruptions.

THORSON'S EFFERVESCENT SOAP LAKE SALTS—Relief for all Stomach Trouble.

By a special process of crystallization you can now make this wonderful product in your own home without losing any of the curative power of the water.

In all of her advertising literature respondent represents through statements and representations herein set out and through other statements of similar import and effect that her products will prevent or cure, or are beneficial in the treatment of the following diseases, ailments, and afflictions:

Stomach, liver, bowel and kidney troubles, rheumatism, diabetes, catarrh, skin diseases, female trouble, diseases of the blood, psoriasis, pyorrhea and sore gums, gangrene, foot trouble, eye trouble, eczema, lumbago, dropsy, pleurisy, dyspepsia, ivy and oak poison, sunburn, insect bites, chilblains, frostbite, cramps of muscles, scalds, wounds, and sores, high blood pressure, autointoxication, nervous ailments, excess acidity, constipation, arthritis, neuritis, and Buerger's disease.

PAR. 5. The Commission finds that the representations set forth in paragraph 4 hereof, which respondent makes with respect to the therapeutic value of her products when used, are grossly exaggerated, misleading, and untrue. In truth and in fact, respondent's products will not prevent or cure, nor do they constitute competent treatments for, all or any of the diseases, ailments, or afflictions set forth in paragraph 4 hereof. The therapeutic benefits, if any, generally obtained from the use of any or all of said products are limited to those resulting from the laxative, diuretic and cleansing properties of said products.

PAR. 6. Testimony adduced at the instance of the State of Washington during the supplemental hearings shows that in 1938 the State established, and has since maintained, a hospital at Soap Lake for the study and treatment of Buerger's disease, the hospital being primarily for the benefit of American veterans of the World War.

Up to the present time some twenty-five to thirty patients have received treatment at the hospital. The usual treatment includes rest in bed, cessation from smoking, and the use of the lake water as a bath and for soaking the feet. The testimony of the head of the institution is to the effect that while substantial progress appears to have been made in certain cases, it is too early to form any definite conclusions as to the effectiveness of the treatment or as to the therapeutic properties of Soap Lake water.

Neither the effectiveness of the hospital's method of treatment nor the therapeutic properties of the natural waters of Soap Lake is involved in this proceeding. The proceeding has to do only with the representations made by respondent with respect to her own packaged products.

PAR. 7. Each and all of the false and misleading statements and representations made by respondent, as hereinabove set forth, in her advertising, letters, circulars, pamphlets, and over the radio and by other advertising media in offering for sale and selling her products, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true.

As a direct result of these mistaken and erroneous beliefs induced by the acts and misrepresentations of respondent as hereinabove enumerated, a number of the consuming public have purchased a substantial volume of respondent's products, with the result that trade has been diverted unfairly to respondent from her said competitors, many of whom truthfully represent the effectiveness of their respective products.

As a result thereof substantial injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States 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 and the answer of respondent, in which answer respondent admitted all of the material

allegations of fact set forth in said complaint and stated that she waived all intervening procedure and further hearing as to said facts, and upon testimony and other evidence introduced in certain supplemental hearings before trial examiners of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, and upon brief of counsel for the Commission (no brief having been filed by the respondent and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Roxie Thorson, individually and trading as Thorson's Soap Lake Products Company, or trading under any other name, and her representatives, agents, and employees, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of her packaged mineral salts now designated as "Thorson's Soap Lake Salts," "Thorson's Effervescent Soap Lake Salts," "Thorson's Soap Lake Liniment," "Thorson's Skin-Aid Soap Lake Ointment," "Thorson's Soap Lake Shampoo," and "Thorson's Skin-Aid Soap Lake Soap," or any other products 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 representing:

That said mineral salt preparations will prevent or cure, or that they constitute competent treatments for, stomach, liver, bowel or kidney disorders, rheumatism, diabetes, catarrh, skin diseases, female trouble, diseases of the blood, psoriasis, pyorrhea, sore gums, gangrene, foot trouble, eye trouble, eczema, lumbago, dropsy, pleurisy, dyspepsia, ivy or oak poisoning, sunburn, insect bites, chilblains, frostbite, cramps of muscles, scalds, wounds or sores, high blood pressure, autointoxication, nervous ailments, excess acidity, constipation, arthritis, neuritis, or Buerger's disease; or that said preparations possess any therapeutic value in excess of their laxative, diuretic, and cleansing properties.

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

WILLIAM CLARENCE OHLENDORF, TRADING AS W. C. OHLENDORF, CLARENCE OHLENDORF, C. OHLENDORF, AND DR. OHLENDORF

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

Docket 4079. Complaint, Apr. 3, 1940—Decision, Aug. 19, 1941

Where practicing physician, engaged in interstate sale and distribution of his "Dr. Ohlendorf's Tonic," which he compounded from a formula originated by his father, also a physician; by means of advertisements in periodicals of general circulation and circulars sent through the mails, directly or by implication—

Represented that his said preparation constituted a cure or remedy and a competent and effective treatment for kidney, bladder, and nervous disorders, rheumatism, neuritis, diabetes, and catarrh of the bladder and bowels, and that it would tone up the nerves and acted as a diuretic; the facts being ferric chloride, only active ingredient of the product in question, while having some value as an iron tonic and treatment in cases of anemia due to deficiency of iron in the blood, possesses no therapeutic value in treatment of ailments and disorders named, and is not capable of acting as a diuretic;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such advertisements were true, and to cause it, as a result of such belief, to purchase substantial quantities of his 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.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that William Clarence Ohlendorf, an individual trading under the names W. C. Ohlendorf, Clarence Ohlendorf, C. Ohlendorf, and Dr. Ohlendorf, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, William Clarence Ohlendorf, is an individual trading under the names W. C. Ohlendorf, Clarence Ohlen-

dorf, C. Ohlendorf, and Dr. Ohlendorf, having his principal place of business located at 1924 Blue Island Avenue in the city of Chicago, in the State of Illinois. He is now, and for more than 1 year last past has been, engaged in advertising, selling, and distributing a certain medicinal preparation designated as DR. OHLENDORF'S TONIC. Respondent causes said preparation when sold to be shipped from Chicago, Ill., to the purchasers thereof located in the various States of the United States other than the State of Illinois, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning said product, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of 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:

If you are Weak, Nervous, Run-Down or suffer from Sluggish Kidneys, Irritable Bladder or Weak Nerves, Backache, Rheumatism, Neuritis, Diabetes, Catarrh of Bladder and Bowels, Burning, Night Arising, due to anemia and poor circulation I want you to try my successful prescription Dr. Ohlendorf's Tonic under my Special One Cent Offer! This medicine Tones up the Kidneys, Bladder and Nerves, Relieves Rheumatism, Neuritis and Backache, Enriches the Blood and Peps up the system, contains no dope.

KIDNEYS * * * NERVES

Weak, nervous, run-down or suffer from kidney, bladder, nerve dysfunctions, rheumatism, catarrh due to anemia? Try Dr. Ohlendorf's Tonic.

Kidney, Bladder, Nerve Sufferers * * * Send for Dr. Ohlendorf's Tonic. Helps rheumatism, backache, frequency. Enriches Blood. Tones up nerves, diuretic to kidneys.

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 or therapeutic properties of the preparation sold and distributed by him, the respondent has represented and does now represent directly and indirectly that his preparation, "Dr. Ohlendorf's Tonic," is a cure or remedy for kidney, bladder, and nervous disorders, rheumatism, neuritis, diabetes, and catarrh of the bladder and bowels, and that said preparation constitutes a competent and effective treatment for such disorders and ailments. By the same means the respondent further represents that the use of his preparation will be benficial to those who are weak and anemic, and will tone up the nerves, and that said preparation will act as a diuretic to the kidneys by increasing the secretion and the discharge of urine.

PAR. 4. The aforesaid statements and representations used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading, and untrue. In truth and in fact respondent's preparation "Dr. Ohlendorf's Tonic," has no therapeutic value in the treatment of kidney, bladder, and nervous disorders, rheumatism, neuritis, diabetes, catarrh of the bladder or bowels, and is not a cure or remedy for, or a competent or effective treatment of any such disorder or ailments. Said preparation will have no therapeutic value in the treatment of persons suffering from anemia in excess of improving the condition of the blood in those cases where anemia is caused from a deficiency of iron in the blood. Respondent's preparation will not tone up the nerves and has no therapeutic value as a diuretic, and will not increase the secretion and the discharge of urine.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statments, 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 a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true. As a result of such erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the purchasing public have been, and are, induced to purchase 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 April 3, 1940, issued and thereafter served its complaint in this proceeding upon the respondent, William Clarence Ohlendorf, an individual trading under the names W. C. Ohlendorf, Clarence Ohlendorf, C. Ohlendorf, and Dr. Ohlendorf, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition to the allegations of the complaint by the respondent, appearing on his own behalf, before Arthur F. Thomas, a trial examiner of the Commission theretofore duly designated by it, and such 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, report of the trial examiner upon the 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, William Clarence Ohlendorf, is an individual trading under the names W. C. Ohlendorf, Clarence Ohlendorf, C. Ohlendorf, and Dr. Ohlendorf, and has his principal place of business at 1924 Blue Island Avenue, Chicago, Ill. He is now, and for more than 3 years last past has been, engaged in the sale and distribution of a certain medicinal preparation designated as Dr. Ohlendorf's Tonic.

Respondent causes his preparation, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and for more than 3 years last past has maintained, a course of trade in his 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 business, respondent advertises his product in periodicals having a general circulation throughout the United States. He also advertises his product by

means of circulars, which he sends through the United States mails to purchasers and prospective purchasers of his product. All of respondent's advertisements are for the purpose of inducing and 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 statements and representations appearing in respondent's advertisements are the following:

If you are Weak, Nervous, Run-Down or suffer from SLUGGISH KIDNEYS, IRRITABLE BLADDER or WEAK NERVES, Backache, Rheumatism, Neuritis, Diabetes, Catarrh of Bladder and Bowels, Burning, Night Arising, due to anemia and poor blood circulation. I want you to try my successful prescription DR. OHLENDORF'S TONIC under my Special ONE CENT OFFER! This medicine TONES up the Kidneys, Bladder and Nerves. RELIEVES Rheumatism, Neuritis and Backache, ENRICHES the Blood and PEPS up the system. Contains No Dope.

KIDNEYS * * * NERVES.

Weak, Nervous, Run-down or suffer from Kidney, Bladder, Nerve, Dysfunction, Rheumatism, Catarrh, due to Anemia? Try Dr. Ohlendorf's Tonic.

Kidney, Bladder, Nerve Sufferers send * * * for Dr. Ohlendorf's Tonic. Helps Rheumatism, Backache, Frequency. Enriches Blood. Tones up Nerves. Diuretic to Kidneys.

PAR. 3. Through the use of these statements and representations, and of others similar thereto but which are not specifically set out herein, the respondent represents and has represented, directly, or by implication, that his preparation, Dr. Ohlendorf's Tonic, constitutes a cure or remedy and a competent and effective treatment for kidney, bladder, and nervous disorders, rheumatism, neuritis, diabetes, and catarrh of the bladder and bowels; that it will tone up the nerves; and that it acts as a diuretic.

PAR. 4. Respondent is a licensed and practicing physician. He compounds or manufactures his preparation himself, using a formula originated by his father, who is also a physician, although no longer active in the practice. Respondent has been selling the preparation since 1928. The formula of the preparation is as follows:

Tincture ferric chloride	2½ drams
Oil of wintergreen	3 minims
Water	q. s. to make 4 ounces

The directions for the use of the preparation are that one-half to one teaspoonful shall be taken in a glass of hot water after meals. A 4-ounce bottle of the preparation is supposed to contain 45 doses or a 15-day supply.

PAR. 5. The only active ingredient in respondent's preparation is the ferric chloride. The oil of wintergreen is added merely for the purpose of supplying flavor and color. To support his claim for the therapeutic value of his preparation, respondent relies principally upon a scientific work published about 1795, which stressed the im-

portance of ferric chloride, or iron, to the human system and attributed to it unusual therapeutic value. Respondent insists also that he has many times in his own practice prescribed ferric chloride with favorable results. He insists that his preparation is of substantial value as a remedy or treatment for all of the ailments and conditions mentioned in his advertisements. His testimony is corroborated by the testimony of his father.

PAR. 6. The weight of expert testimony in the record shows, however, and the Commission finds, that ferric chloride does not possess the therapeutic value formerly attributed to it. It is still used as a tonic and in certain cases of anemia and it has astringent properties to a slight degree. The consensus of medical opinion is, and the Commission finds, that ferric chloride possesses no therapeutic value in the treatment of kidney or bladder disorders, rheumatism, neuritis, diabetes, or catarrh of the bladder or bowels. It is incapable of acting as a diuretic. While respondent's preparation possesses some therapeutic value as an iron tonic, and as a treatment in cases of anemia due to a deficiency of iron in the blood, it will not tone up the nerves, nor is it of any therapeutic benefit in the treatment of nervous disorders.

PAR. 7. The Commission therefore finds that the representations made by respondent with respect to the therapeutic value of his preparation, as set forth in paragraph 3 hereof, are misleading and deceptive and constitute false advertisements.

PAR. 8. The Commission further finds that the use by the respondent of such false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such advertisements are true and that respondent's product possesses therapeutic properties and values which it does not in fact possess, and the tendency and capacity to cause such portion of the public, as a result of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer or re-

spondent, testimony and other evidence taken before Arthur F. Thomas, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence, and brief in support of the allegations 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 the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, William Clarence Ohlendorf, individually and trading as W. C. Ohlendorf, Clarence Ohlendorf, C. Ohlendorf, and Dr. Ohlendorf, or trading under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in conection with the offering for sale, sale, or distribution of his medicinal preparation designated "Dr. Ohlendorf's Tonic" 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 that it possesses any therapeutic value in the treatment of, kidney disorders, bladder disorders, rheumatism, neuritis, diabetes, or catarrh of the bladder or bowels.

(*b*) That said preparation possesses any therapeutic value as a diuretic.

(*c*) That said preparation will tone up the nerves, or that it has any therapeutic value in the treatment of nervous disorders.

2. Disseminating or causing to be disseminated any advertisement by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase 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

CINCHONA PRODUCTS INSTITUTE, INC.

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

Docket 4398. Complaint, Dec. 3, 1940—Decision, Aug. 19, 1941

Where a corporation, wholly owned subsidiary of two Dutch concerns, controlled by and affiliated with a foreign unknown corporation, engaged in the sale and distribution to United States of quinine, and itself engaged in business of disseminating advertisements to promote domestic sale of such quinine, sold by said foreign corporation to domestic purchasers in substantial competition with others engaged in interstate sale and distribution of medicinal preparations other than drug quinine for use in the treatment of malaria;

In pamphlets, circulars, and other advertising literature disseminated in commerce for the purpose of inducing the purchase of and increasing the demand for and use of quinine in the United States, directly or by implication—

Represented that quinine constitutes a certain cure or remedy for malaria which is in all cases safe for use and is the only treatment for said ailment which is inexpensive and dependable, through such statements, among others, as "QUININE is the only cheap, safe, and certain remedy," and "the only dependable treatment for malaria is quinine";

The facts being that while quinine possesses therapeutic value in the treatment of malaria, it is not effective in all cases nor safe in all cases as it may sometimes cause toxic conditions manifested by skin rashes, ringing in the ears and dizziness; the use of quinine in excessive doses by women in the later stage of pregnancy may precipitate miscarriage; and it is not the only treatment for malaria which is inexpensive and dependable, there being other drugs and medicinal preparations which constitute dependable treatments for malaria and which are also inexpensive;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true, with consequence that such public was induced to and did purchase substantial quantities of quinine, sale thereof to purchasers thereof in the United States by such foreign corporation was increased, and trade was thereby diverted unfairly to purchasers in the United States who buy said drug from such unknown corporation, affiliated, as aforesaid, with the two corporate owners of advertising concern here involved:

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.

Mr. Eugene R. Pickrell, 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 Cinchona Products Institute, 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, Cinchona Products Institute, Inc., is a corporation chartered, organized, and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 10 Rockefeller Plaza, New York, N. Y. Respondent is a wholly owned subsidiary, and American agent and representative, of the Cinchona Institute of Amsterdam, Holland, a foreign corporation engaged in the sale and distribution in the United States of America and elsewhere of a drug known as quinine.

PAR. 2. Respondent, as the agent of said Cinchona Institute of Amsterdam, Holland, and in furtherance of the business of its said principal, is now and for more than 2 years last past has been engaged in the business of disseminating advertisements, as hereinafter set forth, with respect to its principal's product, which product is intended and recommended by respondent and by said Cinchona Institute of Amsterdam, Holland, for use in the treatment of malaria.

The said Cinchona Institute of Amsterdam, Holland, causes its said product, when sold, to be transported from its place of business in the country of Holland to purchasers thereof located in various States of the United States of America. Said Cinchona Institute of Amsterdam, Holland, maintains and at all times mentioned herein has maintained a course of trade in its said product in commerce between the country of Holland and various States of the United States of America.

PAR. 3. Said Cinchona Institute of Amsterdam, Holland, 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 between the United States and other countries and between and among various States of the United States, of drugs and medicinal preparations intended for use in the treatment of the same ailment or condition of the human body as that for which the product of said Cinchona Institute of Amsterdam, Holland, is intended.

PAR. 4. In the course and conduct of its business, the respondent, Cinchona Products Institute, Inc., acting for and on behalf of its principal, as aforesaid, has disseminated and is now disseminating

and has caused and is now causing the dissemination of false advertisements concerning 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 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 periodicals and by pamphlets, circulars, and other advertising literature, are the following:

QUININE is the only cheap, safe and certain remedy.
* * * the only dependable treatment for malaria is quinine * * *.

PAR. 5. Through the use of the foregoing representations and others of similar import not specifically set out herein the respondent represents, directly or by implication, that said drug quinine constitutes a certain cure or remedy for malaria; that it is in all cases safe for use; that it is the only treatment for malaria which is inexpensive and dependable.

PAR. 6. The foregoing representations are grossly exaggerated, false and misleading. While the drug quinine possesses therapeutic value in the treatment of malaria, it is not effective in all cases. Said drug is not in all cases safe for use, as it may cause in some cases toxic conditions manifested by skin rashes, ringing in the ears, and dizziness. The use of quinine by women in the latter stages of pregnancy may precipitate miscarriage. Quinine is not the only treatment for malaria which is inexpensive and dependable, there being other drugs and medicinal preparations which constitute dependable treatments for malaria and which are inexpensive.

PAR. 7. The respondent further represents, through the use of the word "Institute" in its corporate name and by other representations disseminated in the manner herein set forth, that it is a nonprofit organization whose purpose is the promotion of learning and research. In truth and in fact, respondent is not such an organization, but is a commercial enterprise whose sole purpose is the promotion of the sale of its principal's product.

PAR. 8. There are among the competitors of said Cinchona Institute of Amsterdam, Holland, those who do not misrepresent their business status or the therapeutic value of their products.

PAR. 9. The use by the respondent of said false, deceptive, and misleading representations, disseminated as aforesaid, has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false representations are true. 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 the product of respondent's principal, said Cinchona Institute of Amsterdam, Holland. Thereby trade has been diverted unfairly to said Cinchona Institute of Amsterdam, Holland, from its competitors, and in consequence thereof substantial injury has been done by respondent to competition in commerce between the United States and foreign countries and between and among the various States of the United States.

PAR. 10. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of the competitors of respondent's said principal, Cinchona Institute of Amsterdam, Holland, and constitute unfair methods 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 3rd day of December 1940, issued and thereafter served its complaint in this proceeding upon the said respondent, Cinchona Products Institute, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 21, 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 Eugene R. Pickrell, attorney 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 in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its

conclusion based thereon (subject to an unexercised reservation with respect to the filing of briefs and oral argument) and, further, that the filing of a report upon the evidence by the trial examiner 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 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, Cinchona Products Institute, Inc., is a corporation chartered, organized, and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 10 Rockefeller Plaza, New York, N. Y. Respondent is a wholly owned subsidiary of Naamlooze Vermootschap Serband Veem, Amsterdam, The Netherlands, and Naamlooze Vermottschap Combinatie Voochemische Industrie, Amsterdam, The Netherlands. These two Dutch concerns are controlled by and affiliated with a foreign unknown corporation, engaged in the sale and distribution to the United States of a drug known as quinine.

PAR. 2. Respondent, owned by the two Dutch concerns controlled by and affiliated with a foreign unknown corporation, as above stated, has been engaged in the business of disseminating advertisements as hereinafter set forth, designed to promote the sale and distribution in the United States of a drug known as quinine, which is intended and recommended by respondent for use in the treatment of malaria.

PAR. 3. The drug quinine advertised by the respondent and produced by the unknown affiliated foreign corporation is now, and at all times mentioned herein has been, sold by the said unknown affiliated foreign corporation to purchasers located in the United States of America, which purchasers are in substantial competition with other corporations, and with individuals and firms engaged in the sale and distribution in commerce between and among the various States of the United States of medicinal preparations other than quinine for use in the treatment of malaria.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of and increasing the demand for and use of quinine in the United States, respondent, by means of pamphlets, circulars, and other advertising literature disseminated in commerce among and between the various States of the United States to prospective purchasers, has made representations concerning the

efficacy of the drug quinine as the only cheap, safe, and certain cure or remedy and the only dependable treatment for malaria. Among and typical of representations made by respondent are the following:

QUININE is the only cheap, safe and certain remedy.

* * * the only dependable treatment for malaria is quinine * * *

PAR. 5. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents, directly or by implication, that said drug, quinine, constitutes a certain cure or remedy for malaria; that it is in all cases safe for use; that it is the only treatment for malaria which is inexpensive and dependable.

PAR. 6. The foregoing representations are not true. While the drug, quinine, possesses therapeutic value in the treatment of malaria, it is not effective in all cases. Said drug is not in all cases safe for use as it may cause in some cases toxic conditions manifested by skin rashes, ringing in the ears and dizziness. The use of quinine in excessive doses by women in the latter stages of pregnancy may precipitate miscarriage. Quinine is not the only treatment for malaria which is inexpensive and dependable, there being other drugs and medicinal preparations which constitute dependable treatments for malaria and which are also inexpensive.

PAR. 7. The use by the respondent of the misleading representations disseminated as aforesaid has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true. 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 the drug quinine. Consequently, the sale to purchasers in the United States of the drug quinine by the said foreign unknown corporation has been increased. Thereby trade has been diverted unfairly to certain corporations, individuals, and firms in the United States who purchase said drug quinine from said foreign unknown corporation which is affiliated with the two corporations which, in turn, own the respondent herein.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and a stipulation as to the facts entered into between Eugene R. Pickrell, attorney for 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 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 Cinchona Products Institute, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from, directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that the drug quinine, or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, constitutes a certain cure or remedy for malaria, that it is in all cases safe for use, or that it is the only treatment for malaria which is inexpensive and dependable.

2. Disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That said 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 paragraph 7 of the complaint be, and the same hereby is, dismissed.

IN THE MATTER OF

THE GERRARD COMPANY, INC., AND AMERICAN STEEL & WIRE COMPANY

COMPLAINT, FINDINGS, AND MODIFIED ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 3498. Complaint, July 19, 1938—Decision, Aug. 20, 1941

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—FIELDS OF COMPETITION—IF MODERN AND SPECIALIZED SERVICE FRACTIONAL PART ONLY OF OLDER GENERAL FIELD—WHETHER SUBSTANTIAL COMPETITIVE EFFECT POSSIBLE.

As respects a contention that metal tying machines constitute such a small part of the entire tying field that the practice of the leading tying machine concerns can have no substantial effect upon competition in that field, it is to be noted that most of the devices and methods used for tying purposes—such as rope, twine, gummed tape, etc., tools for metal reinforcing such as pliers, nippers, twisting bars, and hammer and nails, and including also prefabricated containers which either do not need reinforcing or are reinforced in the process of manufacture—are of a more or less primitive or outmoded nature and, in many instances, are being supplanted by modern tying machines, such as those made by the instant concern and others. The very existence of the tying machine industry, in fact, depends upon its ability to convince shippers that the tying machine is an improvement over such other methods. That it has been able to make substantial inroads into the tying field and to supplant the more primitive methods in many instances, is attested by its steady and rapid growth.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—WHETHER "LINE OF COMMERCE"—TYING MACHINES.

The tying machine industry constitutes a field distinct from the general tying field, and is a line of commerce within the meaning of the Clayton Act.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—RESTRICTIVE CONDITIONS—IF PRACTICAL EFFECT TO PRECLUDE. LESSEES' USE OF SUPPLIES, ETC., OF LESSOR'S COMPETITOR.

While the form of a lease contract used by lessor company in leasing its metal tying machines, providing that no wire other than that supplied by the company should be used in the operation of the machine and that, in the event of a breach of said condition, lessee's right to possess or use a machine should terminate forthwith, did not expressly provide that lessees of its machines and appliances should not use the wire of its competitiors, the practical effect of said condition was to preclude such lessees from using competitors' wire.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—LEASE OF MACHINES PERFORMING MODERN SPECIALIZED SERVICE IN OLDER GENERAL FIELD ON CONDITIONS PRECLUDING USE OF COMPETITORS' SUPPLIES.

Where a manufacturer of wire tying machines or appliances, doing approximately 40 percent of the business in the United States in flat band or strap machines and constituting 1 of the 3 leading companies in the industry which together, out of some 10 or 15 in the United States, controlled about three-fourths of the business of furnishing tying machines; engaged in the interstate sale and distribution of steel tying wire which it purchased from various sources but mainly from its parent company, manufacturer thereof, leasing its machines only, without profit and frequently at a net loss, as did the aforesaid other two leading companies, and having as its sole purpose the sale of steel strapping or wire used in the machines' operation, gross receipts from which sales were in excess of 30 times its receipts from the leasing of the machines—

Leased its said machines upon the condition that no wire other than that supplied by it should be used therewith, and that in the event of a breach of said condition the right of the lessee to possess or use the machine should terminate forthwith and the company should have the right to repossess it and to enter upon the premises of the lessee for that purpose, and thereby excluded from the market numerous parties who, in the absence of such restriction, would be potential purchasers of tying wire from its competitors, and restricted and contracted competition in the tying wire market in direct proportion to the extent to which it was successful in leasing its machines under such restrictive agreements;

Effect of which practice, materially increased as a part of the cumulative effect upon competition of the practices of said three leading companies, might be to substantially lessen competition in line of commerce aforesaid:

Held, That, through use of acts and practices described, said corporation and its parent company violated Section 3 of the Clayton Act.

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. George W. Williams for the Commission.

Knapp, Allen & Cushing, of Chicago, Ill., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that The Gerrard Co., Inc., a corporation, and the American Steel and Wire Co., a corporation, hereinafter referred to as respondents, have violated, and are now violating, the provisions of section 3 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, and commonly known as the Clayton Act, hereby issues this its complaint against said respondents and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent, The Gerrard Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business at 2915 West Forty-seventh Street, in the city of Chicago, State of Illinois, and branch offices and places of business located in

New York, State of New York, Pittsburgh, State of Pennsylvania, New Orleans, State of Louisiana, Los Angeles and San Francisco, State of California, Portland, State of Oregon, and Seattle, State of Washington. It is now, and for many years last past has been, engaged in the business of manufacturing wire-tying machines and equipment, the leasing and licensing thereof, the servicing of the same, and the selling and supplying of steel tying-wire used in the operation thereof, said machine and wire being used by lessees, licensees, or vendees in the tying or binding of boxes, packages, and bundles. In connection with the making of such leases and license agreements, the respondent, the Gerrard Co., Inc., has caused, and still causes, said machines and equipment when leased, or licensed, and the said wire when sold, to be transported from its principal place of business or its branch plants located in Brooklyn, N. Y., McKee's Rocks, Pa., Chicago, Ill., or New Orleans, La., through and into other States of the United States and the District of Columbia, to the aforesaid lessees, licensees, and vendees, and there is now, and has been for more than 3 years last past, a constant current of trade and commerce in said products between and among the various States of the United States, the Territories thereof, and in the District of Columbia.

In the course and conduct of its said business, said respondent has been, for more than 3 years last past, and now is, in competition with other firms, partnerships, and corporations, and with individuals, engaged in the leasing and licensing of wire-tying machinery and equipment, and in the selling of wire used in the operation thereof, as aforesaid, in commerce between and among the States of the United States and in the District of Columbia.

Said respondent is now, and for more than 3 years last past has been, the largest manufacturer and distributor of wire-tying machines and equipment and tying-wire used in connection therewith in the United States, and now occupies a dominant position in said industry, and is one of the largest in the whole tying-machine and tying-wire business in the United States.

PAR. 2. Respondent, American Steel and Wire 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 in the Rockefeller Building, Cleveland, Ohio. It is now, and has been for many years last past, engaged, among other things, in the manufacturing and selling of steel tying wire used in the operation of the tying machines mentioned and referred to in paragraph 1 hereof.

PAR. 3. The respondent, The Gerrard Co., Inc., in the course and conduct of its said business, hereinbefore described in paragraph 1, has leased and licensed, and is now leasing and licensing, its said machines and equipment for use in the several States and territories of the United States, and in the District of Columbia, on the condition, agreement, or understanding that the lessees or licensees or other users thereof will not use the tying wire of any of the competitors of the respondent The Gerrard Co., Inc., and on the further condition, agreement, or understanding that if such lessees or licensees should use any tying wire in the operation of any of said machines and equipment other than that purchased from or supplied by the said respondent The Gerrard Co., Inc., the right to the use and possession of such machines and equipment shall forthwith terminate and said machines and equipment may be thereafter immediately repossessed by said respondent, and at once removed from the premises of such lessees or licensees.

PAR. 4. The effect of said leases or licenses, on the said condition, agreement, or understanding set forth in paragraph 3 hereof may be to substantially lessen competition in commerce in the leasing of tying machines and the sale of the tying wire hereinbefore described, between respondents and said competitors or tend to create a monopoly in respondents in commerce between and among the various States of the United States and in the District of Columbia, in said products.

PAR. 5. Respondents, The Gerrard Co., Inc., is, and since September 1936 has been, through the ownership of both its stock and assets, wholly owned by the respondent American Steel and Wire Co., as aforesaid, and through such ownership the said American Steel and Wire Co. has complete and entire power and control over the business and various practices and business methods of the respondent The Gerrard Co., Inc., which said practices and methods of leasing or licensing its said wire-tying machines, as in this complaint set forth, are known to respondent American Steel and Wire Co., or, by the exercise of reasonable care and diligence, could and therefore should be well known to it, and therefore, said respondent American Steel and Wire Co. is jointly responsible with said respondent The Gerrard Co., Inc., for the existence and continued existence of all of said acts, practices and methods so employed and engaged in by the said respondent The Gerrard Co. Inc.

PAR. 6. The aforesaid acts, practices, and methods of respondent constitute a violation of the provisions of section 3 of the hereinabove mentioned act of Congress entitled, "An act to supplement existing

laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of that certain act of the Congress of the United States entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission on July 19, 1938, issued and subsequently served its complaint in this proceeding upon the respondents, The Gerrard Co., Inc., a corporation, and American Steel & Wire Co., a corporation, charging them with the violation of the provisions of section 3 of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by George W. Williams, attorney for the Commission, and in opposition to the allegations of the complaint by Knapp, Allen and Cushing, attorneys for the respondents, before trial examiners of the Commission theretofore duly designated by it, and the testimony and other evidence were duly recorded and filed in the office of the Commission. Also, stipulations as to certain of the facts involved in the proceeding were entered into between the attorney for the Commission and the attorneys for the respondents, which stipulations were duly recorded in the record of the proceeding. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answers thereto, testimony and other evidence, stipulations as to certain of the facts, report of the trial examiners upon the evidence and the exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral argument before the Commission; and the Commission having duly considered the matter 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, The Gerrard Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2915 West Forty-seventh Street, in the city of Chicago, Ill. Said respondent also maintains branch offices and places of business in New York, N. Y.; Pittsburgh, Pa.; New Orleans, La.; Los Angeles. Calif.; San Francisco, Calif.; Portland, Oreg.; and Seattle, Wash.

Said respondent is now, and for many years last past has been, engaged in the manufacture of wire-tying machines or appliances and in the leasing of such machines, and in the sale and distribution of steel tying wire to be used in the operation of such machines.

PAR. 2. In the course and conduct of its business said respondent causes, and for many years last past has caused, its said machines, when leased, and its said wire, when sold, to be transported from its principal place of business in Chicago, Ill., or from its branch plants located in New York, N. Y; McKee's Rocks, Pa.; and New Orleans, La., to the parties leasing such machines and purchasing such wire, such parties being located in various States of the United States other than the States in which said shipments originate, and in the District of Columbia. 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 and in the District of Columbia.

PAR. 3. There are in the United States other corporations, and individuals, firms, and partnerships, who have been and are engaged in the sale, in commerce among and between the various States of the United States and in the District of Columbia, of steel tying wire suitable for use in and with said respondent's machines and appliances. But for the restrictive conditions in said respondent's lease contracts, as hereinafter set forth, said respondent would have been and would now be in active and substantial competition with such corporations, individuals, firms, and partnerships in the sale of steel wire to the lessees of said respondent's machines and appliances.

PAR. 4. Respondent, The Gerrard Co., Inc. (hereinafter referred to as the Gerrard Co.), was organized in 1927, succeeding to the business theretofore operated by one A. J. Gerrard as an individual. The company has always manufactured the machines leased by it, but has never manufactured the wire sold by it for use in the machines. It purchases the wire from various sources and then resells it to the users of its machines. During the first 2 or 3 years of its business operations the company sold its machines outright, but about 1930 it discontinued the policy of selling the machines and adopted the policy of leasing them exclusively.

The form of lease contract used by the company provides, among other things, that no wire other than that supplied by the company shall be used in the operation of the machine. The contract further provides that in the event of a breach of this condition the right of the lessee to possess or use the machine shall terminate forthwith, and

the company shall have the right to repossess the machine and to enter upon the premises of the lessee for that purpose.

The pertinent provisions of the contract are in the following language:

The Gerrard Company, Inc., offers to furnish you for the binding, bundling and stowage work in your plant at (location), its Wire Tying Service which comprises, supplying such machines and auxiliary equipment as may be needed and the special tying wire to be used in that operation; maintaining the machines and equipment in operating condition including complete replacement when necessary; and furnishing the advice and counsel of its staff in the installation and use of the Gerrard Method of Wire Tying.

Promptly upon receipt of written request therefor, you will pay the service fee specified in the annexed "Terms and Conditions" hereof for each item of equipment delivered to you.

The machines and equipment supplied to you by this Company shall be used only with the special tying wire to be supplied by this Company for that purpose at the schedule of prices specified in the "Terms and Conditions" hereof above referred to and shall be used only for the binding, bundling and stowage work at your plant or plants above named. * * *

You will have the privilege of returning at any time and without notice, transportation charges prepaid to Chicago, Illinois, any machine or item of equipment furnished you by this Company. The return of all machines and equipment in your hands will effect a cancellation of this agreement. This Company will promptly refund to you the full amount of the service fee paid by you on any machine or item of equipment which may be returned within one month after date of original shipment.

All machines and equipment, and all parts therefor and replacements thereof, supplied by this Company shall remain the exclusive property of this Company, and shall be subject at all times to all the terms and provisions hereof, including the right of this Company to retake and remove the same from your possession upon any default on your part.

* * * * * * *

* * * your right to possess and/or use said machines and equipment shall terminate forthwith, as to each and every such machine and item of equipment, upon your failure to pay any sums owing to this Company promptly when due, or in the event tying wire other than that supplied by this Company is used in the operation of any of the machines or equipment supplied to you hereunder, and this Company reserves the right, at any time after the happening of either such event, to repossess itself of any and all such machines and equipment as may then be in your possession, and shall have the right to enter upon your said premises for that purpose.

Unless your license and right to the machines and equipment supplied to you by this Company is earlier terminated, for one or more of the reasons hereinabove specified, you may continue to use the same as long as you desire so to do, during all of which time the obligations of this Company, with respect to maintenance, repair and replacement of said machines and equipment, and the supplying of wire therefor and the furnishing of advice and counsel, as herein provided, shall continue in full force and effect.

No alterations in, or attachments to, any such machines and equipment are to be made by you without the consent, in writing, of an officer of this Company.

* * * * * * *

PAR. 5. Respondent American Steel & Wire 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 in the Rockefeller Building, Cleveland, Ohio. Said respondent is now, and for many years last past has been, engaged in the manufacture and sale of steel tying wire and strips and bands used in the operation of tying machines.

In 1936 the Gerrard Co. became involved in financial difficulties, and as a result of the adjustment of such difficulties the American Steel & Wire Co. became in effect the owner of the Gerrard Co., acquiring some 98 or 99 percent of the capital stock of the Gerrard Co. The American Steel & Wire Co. was familiar with the form of contract used by the Gerrard Co. in leasing its machines and was also familiar with the general policies and practices of the company. No change, however, was made with respect to the lease contract nor with respect to any of the general policies or practices of the Gerrard Co., nor was any change made in the management of the company, the same officers being retained.

The Gerrard Co. purchases the major portion of its wire from the American Steel & Wire Co. For example, between January 1, 1937, and October 31, 1937, the total purchases of wire by the Gerrard Co. from all sources amounted to $763,021.82, and of this total, the purchases from the American Steel & Wire Co. amounted to $417,789.04.

PAR. 6. Tying machines are divided into two general classes, those which use flat strips or bands of steel, commonly called steel strapping, and those which use wire. The general purpose of the machines is the reinforcement of boxes, bales, bundles, packages, etc., so that such containers and their contents may be transported or stored more efficiently and with greater safety and satisfaction. Essentially, the machines perform two operations: first, the tightening or tensioning of the wire or strapping around the bundle, and second, the tying or fastening of the wire or strapping.

PAR. 7. Tying machines were first used in the United States about 25 years ago. Since that time the development of the industry has been fairly steady and rapid. There are now approximately 100,000 tying machines in use in the United States, of which about 80,000 are flat band or strap machines and about 20,000 are wire machines. The gross volume of business done by the industry, including both machines and supplies (wire and strapping), is approximately $9,000,000 per year.

PAR. 8. At the present time there are some 10 to 15 companies in the United States engaged in the furnishing of tying machines.

Approximately three-fourths of the business, however, is confined to 3 companies, these being the Acme Steel Co. (respondent in the Commission's proceeding under Docket No. 3818), the Signode Steel Strapping Co. (respondent in the Commission's proceeding under Docket No. 3688), and the Gerrard Co., respondent in the present case. The Acme and Signode companies each do approximately 30 percent of the total volume of business in the industry, while the Gerrard Co. does approximately 17 percent of the total volume.

The Acme Co. deals in flat band or strap machines exclusively. The Signode Co. deals in both strap and wire machines. The Gerrard Co. confines its business entirely to wire machines. In this field (wire machines) the Gerrard Co. does approximately 40 percent of the total volume of business.

Like the Gerrard Co., the Acme and Signode companies lease their machines and do not sell them outright. The lease agreements used by both of these companies contain conditions prohibiting the lessee from using in the machine any strapping or wire other than that supplied to the lessee by the company furnishing the machine.

PAR. 9. None of these three companies makes or undertakes to make any profit on the machines themselves. In fact, the supplying and servicing of the machines is frequently done at a net loss to the companies. The sole purpose of supplying the machines is to sell the steel strapping or wire used in their operation. Illustrative of this is the fact that the gross revenue received by the Gerrard Co. from the leasing of its machines during the period from June 1938 to June 1939, amounted to only about $40,000, whereas the gross revenue received by the company from the sale of wire for its machines during the same period amounted to approximately $1,460,000.

PAR. 10. There is testimony in the record from a number of users of tying machines, some of whom use the machine of the Gerrard Co. exclusively and some of whom use both the Gerrard machine and other machines. Several of these witnesses testified that they would prefer to buy the wire or strapping for their machines in the open market rather than be restricted to the purchase of wire or strapping from the respective companies furnishing the machines; that they had been approached by representatives of concerns selling tying wire, but that they had been unable to entertain offers from such concerns because of the restrictive conditions in their lease agreements.

Other witnesses testified that they thought it preferable to obtain both machine and wire from the same source so as to preclude any attempted division of responsibility in the event the results obtained from the use of the machine were unsatisfactory. According to these witnesses, when the wire is obtained from a source other than the

company supplying the machine, there is a tendency on the part of the manufacturer of the machine to attribute any unsatisfactory results to the wire, and likewise there is a tendency on the part of the manufacturer or seller of the wire to place the blame on the machine.

Other users of tying machines were of the opinion that the matter of avoiding a division of responsibility was of little consequence. Some of these witnesses were using, along with machines leased under contracts containing restrictive conditions, other machines which had been purchased outright and which were free from any restrictions as to the purchase of wire. As to these latter machines these users were in fact buying their wire in the open market, although they were observing the terms of their contracts insofar as the leased machines were concerned.

Even those witnesses who attached importance to the matter of avoiding a division of responsibility, testified that in the absence of restrictive conditions in their lease contracts, they would consider offers from concerns other than those supplying the machines; that they would be inclined to purchase from such outside sources if they found the material to be satisfactory and if the prices quoted were low enough to offset the point as to avoiding a division of responsibility.

PAR. 11. There is testimony to the effect that the wire sold by the Gerrard Co. for use in its machines is manufactured according to specifications furnished by the company, and that the wire has certain characteristics as to tensile strength, ductility, finish, etc. It is, however, undisputed that there is in the market and available at all times an ample supply of tying wire suitable for use in the Gerrard Co.'s machines, and that such wire will produce satisfactory results when used in such machines in the usual and normal manner. In fact, such wire may be obtained from some of the mills supplying the Gerrard Co.

Much of this wire which is suitable for use in the Gerrard Co.'s machines is for sale by concerns which do not manufacture, sell, or lease tying machines. These concerns have attempted to sell such wire to users of the Gerrard Co.'s machines but have found themselves precluded because of the restrictive conditions in the company's lease contract.

PAR. 12. The Commission finds that the practice of the Gerrard Co. in requiring that the lessees of its machines use in such machines no wire other than that supplied by the company, results in the exclusion from the market of numerous parties who, in the absence of such restriction, would be prospective and potential purchasers

of tying wire from the company's competitors. Competition in the tying wire market is restricted and contracted in direct proportion to the extent to which the Gerrard Co. is successful in leasing its machines under agreements containing such restrictive conditions.

PAR. 13. It is contended by the Gerrard Co. that metal-tying machines constitute such a small part of the entire tying field that the practice of the company and of the other leading tying machine concerns can have no substantial effect upon competition in that field. In support of this contention it is pointed out that there are many devices which can be and are used for tying purposes, such as rope, twine, gummed tape, etc., and that even where metal reinforcing is desired there are many tools and devices which are used in doing the work, such as pliers, nippers, twisting bars, and hammer and nails. It is further pointed out that many shippers use preformed or prefabricated boxes or containers which either do not need reinforcing or which are reinforced in the process of manufacture.

PAR. 14. Most of the devices and methods referred to, however, are of a more or less primitive or out-moded nature and in many cases are being supplanted by modern tying machines such as those manufactured by the Gerrard Co. and the other tying machine concerns. In fact, the very existence of the tying-machine industry depends upon its ability to convince shippers that the tying machine is an improvement over these other methods. That the industry has been able to make substantial inroads into the tying field and to supplant the more primitive methods in many instances is attested by the steady and rapid growth of the industry.

PAR. 15. The Commission is of the opinion from the evidence, and finds, that the tying machine industry constitutes a field distinct from the general tying field, and that it is a line of commerce within the meaning of the Clayton Act.

PAR. 16. While the restrictive condition in the Gerrard Co.'s contract does not expressly provide that the lessees of the company's machines and appliances shall not use the wire of the company's competitors, the practical effect of such condition is to preclude such lessees from using such wire. The Commission further finds that the effect of such restrictive condition, under the circumstances set forth herein, has been, is, and may be, to substantially lessen competition in the aforesaid line of commerce. Such effect is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the three leading companies in the tying machine industry upon competition in said line of commerce.

CONCLUSION

Through the use of the acts and practices described herein the respondents have violated and are now violating section 3 of the act of the Congress of the United States entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act.

MODIFIED ORDER TO CEASE AND DESIST [1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, stipulations as to certain of the facts, 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 and the exceptions thereto, briefs filed herein, and oral arguments by George W. Williams, attorney for the Commission, and by Knapp, Allen and Cushing, attorneys for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of that certain act of the Congress of the United States entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act.

It is ordered, That the respondents, The Gerrard Co., Inc., a corporation, and American Steel & Wire Co., a corporation, and their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the leasing, sale, or making of any contract for the sale, of respondents' machines and appliances in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Leasing, selling, or making any contract for the sale of, respondents' machines or appliances on the condition, agreement or understanding that the lessee or purchaser thereof shall not use in or with such machines or appliances any wire other than that acquired from respondents, or from any other source designated by respondents.

2. Enforcing, or continuing in operation or effect, any condition, agreement, or understanding in or in connection with any existing lease or sale contract, which condition, agreement or understanding is to the effect that the lessee or purchaser of respondents' machines

[1] Order published as modified as of October 29, 1941.

or appliances shall not use in or with such machines or appliances any wire other than that acquired from respondents.

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.

Syllabus

IN THE MATTER OF

SIGNODE STEEL STRAPPING COMPANY

COMPLAINT, FINDINGS, AND MODIFIED ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 3688. Complaint, Jan. 16, 1939—Decision, Aug. 20, 1941

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—FIELDS OF COMPETITION—IF MODERN AND SPECIALIZED SERVICE FRACTIONAL PART ONLY OF OLDER GENERAL FIELD—WHETHER SUBSTANTIAL COMPETITIVE EFFECT POSSIBLE.

As respects a contention that metal tying machines constitute such a small part of the entire tying field that the practice of the leading tying machine concerns can have no substantial effect upon competition in that field, it is to be noted that most of the devices and methods used for tying purposes—such as rope, twine, gummed tape, etc., tools for metal reinforcing such as pliers, nippers, twisting bars, and hammer and nails, and including also prefabricated containers which either do not need reinforcing or are reinforced in the process of manufacture—are of a more or less primitive or outmoded nature and, in many instances, are being supplanted by modern tying machines, such as those made by the instant concern and others. The very existence of the tying machine industry, in fact, depends upon its ability to convince shippers that the tying machine is an improvement over such other methods. That it has been able to make substantial inroads into the tying field and to supplant the more primitive methods in many instances, is attested by its steady and rapid growth.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—WHETHER "LINE OF COMMERCE"—TYING MACHINES.

The tying machine industry constitutes a field distinct from the general tying field, and is a line of commerce within the meaning of the Clayton Act.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—RESTRICTIVE CONDITIONS—IF PRACTICAL EFFECT TO PRECLUDE. LESSEES' USE OF SUPPLIES, ETC., OF LESSOR'S COMPETITOR.

While the form of a lease contract used by lessor company in leasing its metal tying machines, providing that no wire other than that supplied by the company should be used in the operation of the machine and that, in the event of a breach of said condition, lessee's right to possess or use a machine should terminate forthwith, did not expressly provide that lessees of its machines and appliances should not use the wire of its competitors, the practical effect of said condition was to preclude such lessees from using competitors' wire.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—LEASE OF MACHINES PERFORMING MODERN SPECIALIZED SERVICE IN OLDER GENERAL FIELD ON CONDITIONS PRECLUDING USE OF COMPETITORS' SUPPLIES.

Where a corporation engaged in the manufacture and interstate purchase and sale of steel tying wire and strapping, and in the manufacture of five

general classes of machines and appliances for use in stretching such wire or strapping and tying the ends to make shipping units, which, excepting only electric wire tying machines purchased by it for resale, it leased to lessees in other states, for revenues constituting only a fractional part of those received from the sale of wire and strapping, which constituted the primary purpose of the leasing; doing from twenty to thirty percent of the total business in the industry, and, along with 2 other companies out of some 12 in the United States, controlling from two-thirds to three-fourths of such business and, like said two, leasing its machines only—

Leased its said machines upon the condition that no wire other than that supplied by it should be used therewith, and thereby excluded from the market numerous parties who, in the absence of such restriction, would be potential purchasers of tying wire from its competitors, and restricted competition in the tying wire market in direct proportion to the extent to which it was successful in leasing its machines under such agreements;

With the result that the effect of such restrictive condition, under the circumstances set forth, materially increased as a part of the cumulative effect upon competition of the practices of said three leading companies, might be to substantially lessen competition in the line of commerce concerned:

Held, That such acts and practices constituted violations of section 3 of the Clayton Act.

Mr. George W. Williams for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., and *Scott, MacLeish & Falk*, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that Signode Steel Strapping Co., a corporation, hereinafter referred to as respondent, has violated, and is now violating the provisions of section 3 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, and commonly known as the Clayton Act, hereby issues this its complaint against said respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent, Signode Steel Strapping Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business at 2600 Northwestern Avenue in the city of Chicago, State of Illinois, and branch offices and places of business located in New York, State of New York; Boston, State of Massachusetts; Philadelphia, State of Pennsylvania; Cleveland, State of Ohio; and San Francisco, State of California. It is now, and for many years last past has been, engaged in the business of processing and selling flat steel strapping used in the wrapping and bundling of boxes and packages, together with the manufacture, sale, leasing, servicing, and

the licensing of the use of patented tools used in the stretching and fastening of said flat steel strapping. It is also now, and for many years last past has been, engaged in the purchase, sale, leasing, and servicing of wire-tying machines and the selling and supply of steel tying wire used in the operation thereof, said machine and wire being used by the lessees or vendors in the tying and bundling of boxes and packages. In connection with the making of such leases, licenses, agreements, and sales the respondent has caused and still causes said tools and machines, when leased, licensed, or sold, and the flat steel strapping and the steel tying wire, when sold, to be transported from its principal place of business or its branch plants located in New York, N. Y.; Boston, Mass.; Philadelphia, Pa.; Cleveland, Ohio; and San Francisco, Calif., through and into other states of the United States and the District of Columbia to the aforesaid lessees, licensees, and vendees, and there is now, and has been for more than 9 years last past, a course of trade in commerce between and among the various States of the United States, the Territories thereof, and in the District of Columbia.

There are in the United States, and have been during the time respondent has been in business, other corporations, firms, partnerships, and individuals who have been and are engaged in the sale of steel strapping and wire in commerce among and between the several States, which strapping and wire are suitable for and may be used in and with respondent's machines and tools; and with whom, but for the restrictive condition of respondent's contracts of license and lease, as hereinafter set forth, respondent would have been and would now be in active, substantial competition in the sale of steel strapping and wire to the vendees, licensees, and lessees of respondent's machines and tools.

Said respondent is now and for more than 9 years last past has been one of the largest manufacturers and distributors, licensors, lessors, and servicers of steel strapping, fastening and stretching tools, and flat steel strapping used in connection therewith, and also one of the largest vendors and distributors, lessors, and servicers of wire-tying machines and the steel wire used in connection therewith and now occupies a dominant position in said industry.

PAR. 2. The respondent in the course and conduct of its said business hereinabove described in paragraph 1, has leased and licensed and is now leasing and licensing the use of its said steel strapping, fastening and stretching tools and the distributing and leasing of its said wire-tying machines and equipment for use in the several States and territories of the United States and the District of Colum-

bia, on the condition, agreement or understanding that the lessees or licensees or other users thereof will not use the flat steel strapping or the steel tying wire of any of the competitors of respondent, and on the further condition, agreement or understanding that, if such lessees or licensees should use any steel strapping or tying wire in the operation of any of said tools, machines and equipment other than that purchased from or supplied by the said respondent, the right to the use and possession of such tools, machines, and equipment shall forthwith terminate and said tools, machines, and equipment may be thereafter immediately repossessed by said respondent, and at once removed from the premises of such lessees or licensees.

PAR. 3. The effect of said leases and licenses on the condition, agreement, or understanding set forth in paragraph 2 hereof, may be, has been, and is, to substantially lessen competition between respondent and said competitors, and to tend to create a monopoly in respondent, in the sale, to vendees, licensees, and lessees of respondent's machines and tools, of steel strapping and wire in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. The aforesaid acts, practices, and methods of respondent constitute a violation of the provisions of section 3 of the hereinabove mentioned act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of that certain act of the Congress of the United States entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission on January 16, 1939, issued and subsequently served its complaint in this proceeding upon the respondent, Signode Steel Strapping Co., a corporation, charging it with the violation of the provisions of section 3 of said act. After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation as to the facts was entered into between W. T. Kelley, chief counsel for the Commission, and Davies, Richberg, Beebe, Busick and Richardson, and Scott MacLeish and Falk, attorneys for the respondent, which provided among other things, that the Commission might proceed upon such statement of facts and certain other matter referred to in the stipulation to make its report, stating its findings as to the facts (including inferences which it might draw

from the facts stipulated), and its conclusion based thereon, the parties reserving, however, the right to file briefs and present oral argument. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, answer, stipulation, briefs filed by the attorneys for the Commission and for the respondent, and oral argument before the Commission and the Commission having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Signode Steel Strapping 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 2600 North Western Avenue, Chicago, Ill. Respondent also maintains branch offices and places of business located in New York, N. Y.; Boston, Mass.; Philadelphia, Pa.; Cleveland, Ohio; and San Francisco, Calif.

Respondent is now, and for a number of years last past has been, engaged in the business of manufacturing and selling, and of buying and selling, steel wire and steel strapping suitable for use in making a package or shipping unit, and also in the business of manufacturing, selling, and leasing machines and appliances used in the stretching or tensioning of strapping or wire and in fastening or tying the ends of the strapping or wire to make a package or shipping unit.

PAR. 2. In the course and conduct of its business the respondent causes its machines and appliances, when sold or leased, and its steel strapping and wire, when sold, to be transported from its principal place of business in the State of Illinois, or from its branch places of business in the States of New York, Massachusetts, Pennsylvania, Ohio, and California, to the purchasers or lessees of such products located in various States of the United States other than the States in which such shipments originate, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. There are in the United States other corporations, and individuals, firms, and partnerships, who have been and are engaged in the sale, in commerce among and between the various States of the United States and in the District of Columbia, of steel strapping and wire suitable for use in and with respondent's machines, appli-

ances, and tools. But for the restrictive conditions in respondent's lease contracts, as hereinafter set forth, respondent would have been and would now be in active and substantial competition with such corporations, individuals, firms, and partnerships in the sale of steel strapping and wire to the lessees of respondent's machines, appliances, and tools.

PAR. 4. Tying machines and appliances are divided into two general classes, those which use or are used with flat strips or bands of steel, commonly called steel strapping, and those which use or are used with steel wire. The general purpose of the machines and appliances, whether used separately or in combinations, is the tying or reinforcing of boxes, bales, bundles, etc., so that such containers and their contents may be transported or stored more efficiently and with greater safety and satisfaction. Essentially, the machines perform two operations: first, the tightening or tensioning of the wire or strapping around the bundle; and second, the tying or fastening of the wire or strapping.

PAR. 5. The machines and appliances manufactured by respondent fall into the following general classes: (1) appliances or tools known as sealing tools, which are hand tools designed on the principle of pliers and used to crimp or seal a fastener over the ends of the strapping; (2) tensioning appliances or tools which are hand tools used for tensioning strapping around a package or shipping unit; (3) combination appliances or tools which are used for tensioning the strapping, and also the crimping or sealing fasteners over the end of the strapping; (4) wire tying machines or appliances which are used for joining the ends of steel wire by twisting them together; (5) electric stretching machines for use in stretching steel strapping, which machines operate on the same principle as the hand tensioning tools, except that the tensioning is accomplished by electric mechanism instead of by hand operation.

These machines, appliances, and tools are manufactured by the respondent in different sizes for use with steel strapping and wire of different sizes and weights. Respondent purchases for resale electric wire tying machines, which both tension and fasten the wire around the package or shipping unit.

PAR. 6. Only the electric wire tying machines are sold or offered for sale by the respondent. All of the other machines, appliances or tools are leased by respondent and are not offered for sale. While some of the forms of lease agreements used by respondent refer to the equipment as having been "loaned," the Commission finds that the agreements are in fact leases within the meaning of section 3

of the Clayton Act. All of the agreements contain provisions prohibiting the use in or in connection with the equipment of any wire or strapping other than that supplied by respondent. The forms of the agreements are as follows:

(a) *Sealing Tools, Tensioning Tools and Combination Tools for Strapping of certain smaller dimensions, and Wire-Tying Appliances.*

Respondent leases its sealing tools, tensioning tools, and combination tools for use with strapping of certain smaller dimensions, and its wire tying appliances, upon the deposit of an amount with the respondent which is in no case larger than $25 per tool (except in the case of the combination tool, upon which the deposit is $37.50), which sum represents the total payment to respondent regardless of when the lease is terminated. The pertinent provisions of the lease agreement are in substance as follows:

That the loaned tools and machines are loaned to facilitate the customer's practice and use of the Signode system or of the Loop-the-Loop system of bundling or banding.

That the customer will not make such Signode joints or Loop-the-Loop joints by the use of the loaned tools except with steel strapping acquired from respondent.

That the customer will not transfer the tools and machines, or use them except in the customer's business.

That respondent shall repair the loaned tools, when returned for this purpose, free of charge during the two succeeding quarterly periods from the date of the loan, and thereafter at actual cost except in the case of misuse.

That the loan may be terminated at any time by either the customer or the respondent, and as a condition precedent to termination by the customer, the customer shall return the loaned tools.

That if the tools are returned in good condition, except for reasonable wear, the respondent will repay to the customer the amount deposited therefor less 10 percent for each quarterly period or fraction thereof between the date on which the tools were shipped and the date on which the tools were returned, until such time as the depreciated value shall be 20 percent of the tool loan deposit.

(b) *Larger Sealing and Tensioning Tools, Combination Tools, and Electric Stretching Machines.*

Respondent leases its larger sealing tools, tensioning tools, combination tools, and electric stretching machines under what is known as a "Yearly Maintenance and Service Agreement," the pertinent provisions of which are in substance as follows:

That respondent will loan as many Signode machines and/or tools as may be required, and respondent agrees to make such repairs,

adjustments, or replacements as are necessary to maintain the same in good working order except in the case of misuse.

That in consideration of the loan the lessee agrees not to use the loaned machines or tools except with Signode bands purchased from the respondent at the respondent's quoted prices.

That for such tools and machines the customer agrees to pay an annual service charge ranging in amount from $5 to $50 which covers periods of time varying from 1 year to 4 years. That the customer is at liberty at any time to terminate the agreement by giving notice to respondent and returning the loaned equipment, transportation charges prepaid, and respondent may cancel the agreement should the customer fail to carry out any of the terms hereof.

That title to the machines and tools remains in the respondent, and if the agreement is terminated for any cause whatever, the customer will return all machines and tools without prejudice to any of the rights either party may have under the agreement.

That the customer will take reasonable care to avoid loss or destruction of all Signode machines and/or tools, and if in spite of such care any machine and/or tool should be lost or destroyed, the customer agrees to remit to the respondent three times the annual maintenance and service charges for such machine and/or tool, and if lost, will give a certificate of loss.

(c) *Wiring Tying Machines.*

Respondent leases its wire-tying machines especially adapted for the bundling of newspapers and other commodities and merchandise under several forms of contract.

One form is known as the "rental contract," the pertinent provisions of which are, in substance, as follows:

That the respondent will furnish its automatic wire-tying service, which comprises the use of its automatic wire-tying machines, its supplying for use with such machines round wire of suitable physical property, size, and finish; and the inspection and assistance of respondent's service men and advice of respondent's staff in applying automatic wire-tying service to the customer's work of tying bundles of newspapers.

That the respondent will install (number) Model (description) automatic wire-tying machines in the customer's plant, transportation charges to be paid by the customer from Riverside, Calif., to plant.

That the customer will pay for the wire-tying service (amount) per month for each machine so installed.

That the customer will use in the wire-tying machines only wire ordered and secured from the respondent, which will be invoiced

at prices shown in an attached letter, changes in prices to correspond to changes in the wire market.

That the respondent will have the machines examined, tested, and adjusted from time to time, and at least once during each year, and at such times will replace such working parts as may be reasonably expected to cause interruption of continuous and efficient operation, and for such service respondent will make no charge for the time or traveling expenses of the mechanic, but the customer will pay standard prices for repair parts, and if special trips of the mechanic are necessary, the customer will pay transportation and hotel expenses.

That the customer will make no alteration in an installation, and install no attachments to such machines without respondent's written consent.

That at any time after 1 year from the date of the agreement the customer may cancel the contract by returning the machines, and otherwise, unless breached, the agreement remains in force for (number) years from the date of the agreement.

That respondent may cancel the contract should the customer use with the machines wire not supplied by respondent, or fail to pay monthly charges.

Prior to the summer of 1938 respondent used another form of contract, this particular contract being in connection with the purchase of a stated quantity of steel wire per year. This agreement provided, in substance, as follows:

That the respondent agrees to sell to the customer and to deliver to the customer in LCL lots from local stocks at its nearest warehouse, or to ship to the customer in CL or LCL lots from mill if so specified by the customer, all of the round and flat steel wire used by customer in the automatic tying of bundles of (commodity) and the like; and that customer agrees to purchase from the respondent the entire requirements of the customer for round and flat wire used in the automatic tying of bundles of (commodity) and the like.

In 1933 many of the contracts then outstanding were amended so that the customer's obligation to purchase wire from respondent was limited to the customer's requirements for use with wire-tying machines leased under the contract, and such amendments were sent to customers with the following letter:

It has been called to our attention that our standard form of contract covering newspaper automatic wire tying machines can be read so as to impose limitations on the users of these machines which would prevent them from installing a wire tying machine of some other make and securing tying wire for operation in such machines from someone other than ourselves.

It was not and is not our intention to so limit our licensees, and the sole object of this signed amendment which we are enclosing in duplicate is to clarify the contract in that respect.

If this amendment meets with your approval, kindly sign one copy and return it to us, attaching the other copy to your original contract.

To those who did not sign and return the amendment, the following letter was written in 1933 and subsequently:

It has been called to our attention that our standard form of contract covering newspaper automatic wire tying machines might possibly be interpreted to obligate the user of these machines to buy from us not only wire used with the automatic wire tying machine placed by us with the user, but also ordinary baling wire or wire used with some other type of wire machine, automatic or otherwise. It was not and is not our intention to so interpret our contract; all we expect is that machines placed by us shall be used with wire supplied by us.

We are writing you so that you may attach this letter of interpretation to your copy of the automatic wire tying machine contract. Will you kindly acknowledge receipt of this letter.

PAR. 7. There are some 12 companies in the United States engaged in the sale or leasing of tying machines and appliances, and the gross volume of business done by the industry, including the sale of wire and strapping, amounts to approximately $9,000,000 annually. Some two-thirds to three-fourths of the business, however, is confined to 3 companies, these being the respondent, the Acme Steel Co. (respondent in the Commission's proceeding under Docket No. 3818), and the Gerrard Co., Inc. (respondent in the Commission's proceeding under Docket No. 3498). Respondent and the Acme Co. each do some 20 to 30 percent of the total volume of business in the industry, and the Gerard Co. does some 10 to 20 percent of the total volume. A fourth company does approximately the same amount of business as the Gerrard Co.

Like the respondent, the Acme and Gerard companies lease their machines and do not sell them outright. The lease agreements used by both of these companies contain conditions prohibiting the lessee from using in the machine any strapping or wire other than that supplied to the lessee by the company furnishing the machine.

PAR. 8.The revenue received by respondent from the renting or leasing of its machines and appliances is of minor importance as compared with the revenue received from the sale of wire and strapping. The primary purpose of leasing the equipment is to enable respondent to sell the wire and strapping used in or with the equipment. This is evident from a comparison of the gross revenue received by respondent from the two sources during the years 1936, 1937, and 1938. The figures for these years are as follows:

	Sales of steel strapping and wire	Rental of tools, appliances, and machines (exclusive of automatic wire-tying machines)	Rentals and deposits on automatic wire-tying machines
1936	$2,197,346.95	$63,862.02	$25,235.00
1937	2,623,271.24	94,672.22	87,575.00
1938	1,739,085.42	86,640.01	55,300.00

PAR. 9. There is on the market an ample supply of steel strapping and wire suitable for use in or with respondent's machines and appliances, such strapping and wire being for sale both by concerns which sell or lease tying machines and by concerns which do not sell or lease such machines. These concerns are prepared to and have attempted to sell such strapping and wire to lessees of respondent's machines and appliances, but have found themselves precluded from such sale by reason of the restrictive conditions in respondent's lease contracts.

PAR. 10. The Commission finds that the practice of respondent in requiring that the lessees of its machines and appliances use in or with such machines and appliances no wire or strapping other than that supplied by respondent, results in the exclusion from the market of numerous parties who, in the absence of such restrictions, would be prospective and potential purchasers of tying wire and strapping from respondent's competitors. Competition in the tying wire and strapping market is restricted and contracted in direct proportion to the extent to which respondent is successful in leasing its machines and appliances under agreements containing such restrictive conditions.

PAR. 11. There are many ways of preparing boxes, bundles, and packages for shipment, and there are also many devices and tools used by shippers for this purpose. Rope, twine, gummed tape, etc., are used in many cases, and where metal reinforcement is desired there are many devices and tools which may be and are used in doing the work, such as pliers, nippers, buckles, wire twisters, and hammer and nails. Many shippers also use specially made boxes, containers, barrels, etc., which either do not need additional reinforcement or are reinforced during the process of manufacture. It is contended by the respondent that metal tying machines and appliances constitute such a small part of the entire tying field that the practices of respondent and the other leading tying-machine companies can have no substantial effect upon competition in the tying field.

PAR. 12. Most of the devices and methods referred to, however, are of a more or less primitive or outmoded nature, and in many cases

are being supplanted by modern tying machines such as those manufactured by respondent and the other tying-machine concerns. In fact, the very existence of the tying-machine industry depends upon its ability to convince shippers that the tying machine is an improvement over these other methods. That the industry has been able to make substantial inroads into the tying field and to supplant the more primitive methods in many instances is attested by the substantial volume of business done by respondent and by the tying-machine industry as a whole.

PAR. 13. The Commission is of the opinion from the evidence, and finds, that the tying-machine industry constitutes a field distinct from the general tying field, and that it is a line of commerce within the meaning of the Clayton Act.

PAR. 14. While the restrictive conditions in respondent's contracts do not expressly provide that the lessees of respondent's machines, appliances, and tools shall not use the wire and strapping of respondent's competitors, the practical effect of such conditions is to preclude such lessees from using such wire and strapping. The Commission further finds that the effect of such restrictive conditions, under the circumstances set forth herein has been, is, and may be, to substantially lessen competition in the aforesaid line of commerce. Such effect is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the three leading companies in the tying-machine industry upon competition in said line of commerce.

CONCLUSION

Through the use of the acts and practices described herein the respondent has violated and is now violating section 3 of the act of the Congress of the United States entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act.

MODIFIED ORDER TO CEASE AND DESIST [1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, a stipulation as to the facts entered into between the respondent and W. T. Kelley, Chief Counsel for the Commission, briefs filed by the attorney for the Commission and the attorneys for the respondent, and oral argument before the Commission, and the Commission having made its findings as to the facts and its conclusion

[1] Order published as modified as of October 29, 1941.

that said respondent has violated the provisions of that certain act of the Congress of the United States entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act.

It is ordered, That the respondent, Signode Steel Strapping Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the leasing, sale, or making of any contract for the sale, of respondent's machines, appliances, and tools in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Leasing, selling, or making any contract for the sale of, respondent's machines, appliances, or tools on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use in or with such machines, appliances, or tools any wire or strapping other than that acquired from respondent, or from any other source designated by respondent.

2. Enforcing, or continuing in operation or effect, any condition, agreement, or understanding in or in connection with any existing lease or sale contract, which condition, agreement, or understanding is to the effect that the lessee or purchaser of respondent's machines, appliances, or tools shall not use in or with such machines, appliances, or tools any wire or strapping other than that acquired from respondent.

It is further ordered, That said 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

ACME STEEL COMPANY

COMPLAINT, FINDINGS, AND MODIFIED ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 3818. Complaint, June 14, 1939—Decision, Aug. 20, 1941

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—FIELDS OF COMPETITION—IF MODERN AND SPECIALIZED SERVICE FRACTIONAL PART ONLY OF OLDER GENERAL FIELD—WHETHER SUBSTANTIAL COMPETITIVE EFFECT POSSIBLE.

As respects a contention that metal tying machines constitute such a small part of the entire tying field that the practice of the leading tying-machine concerns can have no substantial effect upon competition in that field, it is to be noted that most of the devices and methods used for tying purposes—such as rope, twine, gummed tape, etc., tools for metal reinforcing such as pliers, nippers, twisting bars, and hammer and nails, and including also prefabricated containers which either do not need reinforcing or are reinforced in the process of manufacture—are of a more or less primitive or out-moded nature and, in many instances, are being supplanted by modern tying machines, such as those made by the instant concern and others. The very existence of the tying-machine industry, in fact, depends upon its ability to convince shippers that the tying machine is an improvement over such other methods. That it has been able to make substantial inroads into the tying field to supplant the more primitive methods in many instances is attested by its steady and rapid growth.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—WHETHER "LINE OF COMMERCE"—TYING MACHINES.

The tying-machine industry constitutes a field distinct from the general tying field, and is a line of commerce within the meaning of the Clayton Act.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—RESTRICTIVE CONDITIONS—IF PRACTICAL EFFECT TO PRECLUDE LESSEES' USE OF SUPPLIES, ETC., OF LESSOR'S COMPETITOR.

While the form of a lease contract used by lessor company in leasing its metal tying machines, providing that no wire other than that supplied by the company should be used in the operation of the machine and that, in the event of a breach of said condition, lessee's right to possess or use a machine should terminate forthwith, did not expressly provide that lessees of its machines and appliances should not use the wire of its competitors, the practical effect of said condition was to preclude such lessees from using competitors' wire.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—LEASE OF MACHINES PERFORMING MODERN SPECIALIZED SERVICES IN ORDER GENERAL FIELD ON CONDITIONS PRECLUDING USE OF COMPETITORS' SUPPLIES.

Where a corporation engaged in manufacturing tying tools, machines, and appliances and the steel straps and bands used in operation thereof, and in the

interstate sale and distribution of its steel strapping and in leasing such tools and machines to lessees in other States for revenues which were of minor importance compared with those received from the sale of the strapping, which constituted the primary purpose of such leasing; doing from 20 to 30 percent of the business in the industry and, along with 2 other companies out of some 12 in the United States, controlling from 20 to 30 percent of the total volume of business, and, like said 2, leasing its machines only—

Leased its said machines upon the condition that no steel strapping other than that purchased from it should be used therewith, and that, in the event of a breach of such condition, right of lessee to possession might be terminated and such equipment be repossessed by it, and thereby excluded from the market numerous parties who, in the absence of such restriction, would be potential purchasers of tying wire from its competitors, and restricted competition in the tying-wire market in direct proportion to the extent to which it was successful in leasing its machines under such restrictive agreements;

With the result that the effect of such restrictive condition, under the circumstances set forth, materially increased as a part of the cumulative effect upon competition of the practices of said three leading companies, might be to substantially lessen competition in line of commerce concerned:

Held, That such acts and practices described constituted violations of Section 3 of the Clayton Act.

Mr. George W. Williams for the Commission.

Davis, Lindsey, Smith & Shonts, of Chicago, Ill., and *Mr. Francis D. Thomas*, of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Acme Steel Co., a corporation, hereinafter referred to as respondent, has violated the provisions of section 3 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, and commonly known as the Clayton Act, hereby issues this its complaint against said respondent and states its charges in respect thereto as follows, to wit:

PARAGRAPH 1. Respondent, Acme Steel Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business at 2840 Archer Avenue, city of Chicago, State of Illinois, and branch offices and warehouses located in Brooklyn, State of New York, Atlanta, State of Georgia, Los Angeles and San Francisco, State of California, and Seattle, State of Washington.

Respondent is now, and for many years last past has been, engaged in the business of manufacturing steel strap and band-tying tools, machines, and equipment, and the steel straps, bands, and seals used in the operation thereof, and in the business of leasing, and licensing

the use of, said tools, machines, and equipment, and in selling and supplying of the steel straps, bands, and seals used in the operation of said tools and machines. Said tools, machines, and equipment and said steel straps, bands, and seals, are used by lessees, licensees, and vendees in the tying or binding of boxes, packages, and bundles. In connection with the making of such leasing and license agreements, respondent has caused, and still causes, said tools, machines, and equipment, when leased or licensed, and said straps, bands, and seals, when sold, to be transported from its principal place of business or its branch plant at Riverdale, Ill., to the aforesaid licensees, lessees and vendees, located at various points in the several States of the United States and in the District of Columbia, and there is now, and has been for more than 3 years last past, a constant current of trade and commerce in said products between and among the various States of the United States, the Territories thereof, and in the District of Columbia.

In the course and conduct of its business, said respondent has been, in the last several years, in competition with firms, partnerships, corporations, and individuals engaged in the selling, leasing, and licensing of steel strap tying tools, machines, and equipment and the selling of steel straps, bands, and seals used in the operation thereof, as aforesaid, in commerce between and among the various States of the United States, the Territories thereof, and in the District of Columbia.

Said respondent is now, and has been for several years last past, the largest manufacturer and distributor of said steel strap and band tying tools, machines, and equipment and the straps, bands, and seals used in connection therewith, in the United States, and now occupies a dominant position in said industry, and is the largest in the whole tying-tool, machine, and equipment and tying supply business in the United States.

Respondent manufactures two types of tying machinery; one being known as hand-tying tools and the other as unit-loading tool equipment, the former being used in connection with the tying of ordinary bundles, packages, and boxes, and the latter principally in connection with the tying of bundles for loading on railroad cars and the like.

PAR. 2. Respondent, in the course and conduct of its said business, hereinabove described in paragraph 1, has, during the last several years, leased, and licensed the use of, its said tools, machines, and equipment for use in the several States and Territories of the United States, and the District of Columbia, on the condition, agreement, or understanding that the lessees or licensees or other users thereof will use with the said tools, machinery, and equipment only strapping

and seals purchased from respondent, reserving the right to terminate the lease at any time; and has, during the last several years, leased, or licensed the use of, its said unit-load tool equipment on the condition, agreement or understanding that the lessees or licensees or other users thereof will purchase their entire requirements of bands and seals for use in the operation thereof from respondent as long as they are in the possession of said lessees and licensees and on the further condition, agreement, or understanding that if such lessees or licensees should use any such material in the operation of any of said machines and equipment other than that purchased from or supplied by respondent, the right to the use and possession of such machines and equipment may be terminated and that such machines and equipment may be immediately repossessed by respondent.

PAR. 3. The effect of said leases and licenses, entered into on the said condition, agreement, or understanding set forth in paragraph 2 hereof, may be to substantially lessen competition in commerce in the leasing and selling of said hand-tying and unit-loading tools and equipment and the sale of said supplies and tying material hereinabove described, namely, straps, bands, and seals, between respondent and said competitors, or tend to create a monopoly in respondent, in commerce, between and among the various States of the United States, and the District of Columbia, in said products.

PAR. 4. The aforesaid acts, practices, and methods of respondent constitute a violation of the provisions of section 3 of the hereinbefore mentioned act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of that certain act of the Congress of the United States entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission on June 14, 1939, issued and subsequently served its complaint in this proceeding upon the respondent, Acme Steel Co., a corporation, charging it with the violation of the provisions of section 3 of said act. After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation as to the facts was entered into between W. T. Kelley, chief counsel for the Commission, and Glen E. Smith and Messrs. Davis, Lindsey, and Shonts, attorneys for the respondent, which provided, among other things, that a certain statement of facts stipulated to in the

Commission's proceeding against Signode Steel Strapping Co. (Docket No. 3688) may be made a part of the record herein and may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint and in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences which may be drawn from said stipulated facts), and its conclusion based thereon, the parties reserving, however, the right to file briefs and present oral argument in said Signode case, Docket No. 3688. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation (no brief having been filed by the attorneys for the respondent and no oral argument having been made by such attorneys); and the Commission having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Acme Steel 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 located at 2840 Archer Avenue, Chicago, Ill. Respondent also maintains branch offices and warehouses located in Brooklyn, N. Y.; Atlanta, Ga.; Los Angeles, Calif.; San Francisco, Calif.; and Seattle, Wash.

Respondent is now, and for many years last past has been, engaged in the business of manufacturing tying tools, machines, and appliances and the steel straps and bands used in the operation thereof, and in the business of leasing such tools, machines, and appliances, and in the selling of the steel straps and bands used in the operation thereof. Said tools, machines, and appliances and said steel straps and bands, commonly called steel strapping, are used in the tying or binding of boxes, packages, and bundles.

PAR. 2. In the course and conduct of its business the respondent causes, and for many years last past has caused, its said tools, machines, and appliances, when leased, and its said steel strapping, when sold, to be transported from its principal place of business in Chicago, Ill., or from its branch plant located at Riverdale, Ill., or from its branch offices and warehouses located in the States of New York, Georgia, California, and Washington, to the aforesaid lessees and vendees located in various States of the United States other than the States in which such shipments originate, and in

the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. There are in the United States other corporations, and individuals, firms, and partnerships, who have been and are engaged in the sale, in commerce among and between the various States of the United States and in the District of Columbia, of steel strapping suitable for use in and with respondent's machines, appliances, and tools. But for the restrictive conditions in respondent's lease contracts, as hereinafter set forth, respondent would have been and would now be in active and substantial competition with such corporations, individuals, firms, and partnerships in the sale of steel strapping to the lessees of respondent's machines, appliances and tools.

PAR. 4. Tying machines and appliances are divided into two general classes, those which use or are used with flat strips or bands of steel, and those which use or are used with steel wire. The general purpose of the machines and appliances, whether used separately or in combinations, is the tying or reinforcing of boxes, bales, bundles, etc., so that such containers and their contents may be transported or stored more efficiently and with greater safety and satisfaction. Essentially, the machines perform two operations: First, the tightening or tensioning of the wire or strapping around the bundle, and second, the tying or fastening of the wire or strapping.

PAR. 5. Respondent does not sell any of its machines or appliances but supplies such machines and appliances to users thereof under certain lease agreements. All of such leases include (or until recently did include) conditions or agreements prohibiting the lessee from using in or with such machines and appliances any steel strapping other than that purchased from respondent. Such leases further provide that if such lessees should use in the operation of respondent's machines and appliances any material other than that purchased from respondent, the right of the lessee to the possession of the machine or appliance may be terminated and that such equipment may be repossessed by respondent.

PAR. 6. There are some 12 companies in the United States engaged in the sale or leasing of tying machines and appliances, and the gross volume of business done by the industry, including the sale of wire and strapping, amounts to approximately $9,000,000 annually. Some two-thirds to three-fourths of the business, however, is confined

to 3 companies, these being the respondent, the Signode Steel Strapping Co. (respondent in the Commission's proceeding under Docket No. 3688), and The Gerrard Co., Inc. (respondent in the Commission's proceeding under Docket No. 3498). Respondent and the Signode Co. each do some 20 to 30 percent of the total volume of business in the industry, and the Gerrard Co. does some 10 to 20 percent of the total volume. A fourth company does approximately the same amount of business as the Gerrard Co.

Like the respondent, the Signode and Gerrard companies lease their machines and do not sell them outright. The lease agreements used by both of these companies contain conditions prohibiting the lessee from using in the machine any strapping or wire other than that supplied to the lessee by the company furnishing the machine.

PAR. 7. The revenue received by respondent from the leasing of its machines and appliances is of minor importance as compared with the revenue received by it from the sale of its steel strapping. The primary purpose of leasing the machines and appliances is to enable respondent to sell the steel strapping used in or with the equipment.

PAR. 8. There is on the market an ample supply of steel strapping suitable for use in or with respondent's machines and appliances, such strapping being for sale both by concerns which sell or lease tying machines and by concerns which do not sell or lease such machines. These concerns are prepared to and have attempted to sell such strapping to lessees of respondent's machines and appliances, but have found themselves precluded from such sale by reason of the restrictive conditions in respondent's lease contracts.

PAR. 9. The Commission finds that the practice of respondent in requiring that the lessees of its machines and appliances use in or with such machines and appliances no strapping other than that supplied by respondent, results in the exclusion from the market of numerous parties who, in the absence of such restrictions, would be prospective and potential purchasers of strapping from respondent's competitors. Competition in the strapping market is restricted and contracted in direct proportion to the extent to which respondent is successful in leasing its machines and appliances under agreements containing such restrictive conditions.

PAR. 10. There are many ways of preparing boxes, bundles, and packages for shipment, and there are also many devices and tools used by shippers for this purpose. Rope, twine, gummed tape, etc., are used in many cases, and where metal reinforcement is desired there are many devices and tools which may be and are used in doing

the work, such as pliers, nippers, buckles, wire twisters, and hammer and nails. Many shippers also use specially made boxes, containers, barrels, etc., which either do not need additional reinforcement or are reinforced during the process of manufacture. It is contended by the respondent that metal tying machines and appliances constitute such a small part of the entire tying field that the practices of respondent and the other leading tying-machine companies can have no substantial effect upon competition in the tying field.

PAR. 11. Most of the devices and methods referred to, however, are of a more or less primitive or out-moded nature, and in many cases are being supplanted by modern tying machines such as those manufactured by respondent and the other tying-machine concerns. In fact, the very existence of the tying-machine industry depends upon its ability to convince shippers that the tying machine is an improvement over these other methods. That the industry has been able to make substantial inroads into the tying field and to supplant the more primitive methods in many instances is attested by the substantial volume of business done by respondent and by the tying machine industry as a whole.

PAR. 12. The Commission is of the opinion from the evidence, and finds that the tying-machine industry constitutes a field distinct from the general tying field, and that it is a line of commerce within the meaning of the Clayton Act.

PAR. 13 While the restrictive conditions in respondent's contracts do not expressly provide that the lessees of respondent's machines, appliances, and tools shall not use the strapping of respondent's competitors, the practical effect of such conditions is to preclude such lessees from using such strapping. The Commission further finds that the effect of such restrictive conditions, under the circumstances set forth herein, has been, is, and may be, to substantially lessen competition in the aforesaid line of commerce. Such effect is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the three leading companies in the tying-machine industry upon competition in said line of commerce.

CONCLUSION

Through the use of the acts and practices described herein the respondent has violated and is now violating section 3 of the act of the Congress of the United States entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act.

MODIFIED ORDER TO CEASE AND DESIST [1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and a stipulation as to the facts entered into between the respondent and W. T. Kelley, chief counsel for the Commission, which provided, among other things, that a certain statement of facts stipulated to in the Commission's proceeding against Signode Steel Strapping Co. (Docket No. 3688), may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of that certain act of the Congress of the United States entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act.

It is ordered, That the respondent, Acme Steel Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the leasing, sale, or making of any contract for the sale, of respondent's machines, appliances, and tools in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Leasing, selling, or making any contract for the sale of, respondent's machines, appliances, or tools on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use in or with such machines, appliances, or tools any strapping other than that acquired from respondent, or from any other source designated by respondent.

2. Enforcing, or continuing in operation or effect, any condition, agreement, or understanding in or in connection with any existing lease or sale contract, which condition, agreement, or understanding is to the effect that the lessee or purchaser of respondent's machines, appliances, or tools shall not use in or with such machines, appliances, or tools any strapping other than that acquired from respondent.

It is further ordered, That said 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.

[1] Order published as modified as of October 29, 1941.

Syllabus

IN THE MATTER

ORA R. YATES AND CHARLES W. MILLER, TRADING AS MONARCH PRINTERS AND BINDERS

MONARCH PRINTERS & BINDERS

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

Docket 4339. Complaint, Oct. 9, 1940—Decision, Aug. 20, 1941

Where two individuals engaged in competitive interstate sale and distribution of sales promotion cards so designed and arranged as to involve the use of games of chance, gift enterprises, or lottery schemes when used by dealers in promoting and increasing sales of their merchandise to consuming public, typical one involving plan, as explained on card, under which customer or dealer using such cards was entitled to a "Treasure Chest receipt" with each 25 cents spent, and had the option, upon the pasting of such receipts on the 100 spaces provided on the card, of receiving cash redemption value of 15 cents or of exchanging the card for articles of merchandise or cash awards varying from 50 cents to $5 called for by legend under card's seal—

(a) Sold such cards to wholesalers and jobbers and, directly and indirectly, to retailers, who distributed them to customers and honored awards as shown when seals were broken, in accordance with above plan, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of their merchandise, 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 offer or sell cards or devices so designed and arranged as to involve a game of chance, gift enterprise, or lottery scheme, refrain therefrom;

With the result that the consuming public was induced to purchase merchandise from dealers using their cards in preference to those using devices of their competitors, because of said game of chance, and dealers were consequently induced to purchase their said cards in preference to devices of their competitors, and with effect of unfairly diverting trade in commerce to them from their said competitors, to the injury of competition in commerce; and

(b) Represented that they were printers and binders of their said merchandise, owning, operating, and controlling the plant in which it was printed and bound, through using words "Printers and Binders" in their trade name set forth on display cards, letterheads, said sales-promotion cards and other printed matter which they caused to be distributed;

When, in fact, they filled orders with merchandise which was printed and bound in a plant which they did not own, operate, or control, and were not printers and binders, preferentially dealt with by substantial portion of the consuming public and dealers as affording, in their belief, lower prices, elimination of middlemen's profits, superior products, and other advantages;

With tendency and capacity to mislead and deceive prospective purchasers into the belief that they were the printers and binders of their merchandise, and to cause them to buy their said articles because of such mistaken and erroneous belief:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and consti-

tuted 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., and *Mr. J. V. Mishou* for the Commission.
Reams, Bretherton & Neipp, of Toledo, 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 Ora R. Yates and Charles W. Miller, individually and trading as Monarch Printers and Binders, 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, Ora R. Yates and Charles W. Miller, are individuals trading as Monarch Printers and Binders, with their principal office and place of business located at 812 Hunt Street, Adrian, Mich. Respondents are now and for more than 3 years last past have been engaged in the sale and distribution of sales-promotion cards and other articles of merchandise to wholesale dealers, jobbers, and retail dealers. Respondents cause and have caused said merchandise, when sold, to be transported from their aforesaid place of business in the State of Michigan to purchasers thereof, at their respective points of location, in the various States of the United States other than Michigan 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 their business, respondents are and have been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold cards so designed and arranged as to involve the use of games of chance, gift enterprises, or lottery schemes when used by dealers in promoting and increasing sales of their merchandise to the consuming public. A sales-promotion card in one such group is herein described for the purpose of showing arrangement, design, and principle involved.

The said card contains 100 ruled spaces for pasting thereon receipts which are given by the said dealers to customers with each 25-cent purchase. The card contains a legend or instructions as follows:

TREASURE CHEST

Plan and Governing Rules

You will be given one TREASURE CHEST receipt with each 25¢ spent with us. Be sure to paste receipts in this booklet. Under the seals of some TREASURE CHEST booklets are listed valuable Food products. Under the others is listed cash in amounts of 50¢, $1, $2, or $5. THERE ARE NO BLANKS! When completely filled with 100 receipts, return this booklet to us with the Seal unbroken. This booklet will then have a cash redemption value of 15¢. We will then break the Seal on page 2 that you may see what is printed under it and, if you wish, you may exchange the cash redemption value for whatever the opening of the Seal discloses. NO DRAWINGS—NO JUDGINGS—NO DISAPPOINTMENTS!

This booklet accepted subject to above conditions

The prizes or premiums are allotted to the said customers or purchasers in accordance with the above legend or instructions.

Under the seal is the following legend:

1 lb.
Pomco
Vac. Can
Coffee
2 cans
Pomco
Tall Milk

The articles of merchandise called for under the said seals vary with the individual card and the cash awards vary from 50 cents to $5. The legend under the seal is effectively concealed until the seal has been opened and the amount which the holder of said card will receive in merchandise or cash is thus determined wholly by lot or chance.

The respondents sell and distribute and have sold and distributed various sales-promotion cards which involve the use of games of chance, gift enterprises, or lottery schemes when used by dealers to promote the sale of their merchandise to the consuming public. Such cards are similar to the one hereinabove described and vary only in detail.

Respondents furnish their customers with various display posters and advertisements to be used by retail merchants in distributing and using said cards.

PAR. 3. Sales of assortments of said sales-promotion cards are and have been made to wholesale dealers, jobbers, and retail dealers. The

retail dealers who directly or indirectly purchase respondents' said cards distribute the same to their customers and prospective customers and honor the awards as shown when the seals are broken open in accordance with the plan hereinabove set forth. The respondents thus supply to, and place in the hands of, others the means of and instrumentalities for 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 designing and arranging their said cards and distributing the same for redistribution to the public 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. There are in competition with respondents various manufacturers and distributors of sales-promotion cards, premium cards, price concession cards, coupons, and trading stamps, which when used by dealers do not involve a lottery scheme, game of chance, or a gift enterprise. Many persons, firms, and corporations who sell and distribute various cards or devices for promoting or increasing the sales of dealers are unwilling to offer for sale or sell cards or devices so designed and arranged as above alleged, or otherwise designed and arranged as to involve a game of chance, gift enterprise, or lottery scheme, and such competitors refrain therefrom.

The consuming public is induced to deal with or purchase merchandise from dealers using respondents' cards in preference to purchasing merchandise from dealers using the devices of respondents' competitors because of the games of chance, gift enterprise, or lottery scheme connected with respondents' said cards. By reason thereof dealers are induced to purchase respondents' said cards in preference to devices of competitors of the respondents. The use by respondents of said method in designing and arranging their said cards and distributing them as aforesaid 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 injury is being and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their business as aforesaid, respondents in soliciting the sale of and in selling their merchandise, as above described, have caused display cards, letterheads, the aforesaid sales-promotion cards, and other printed matter to be distributed

through the United States mail and by other means to customers and prospective customers located in States other than the State of Michigan and in the District of Columbia. The aforesaid printed matter contains thereon the firm name of the respondent, Monarch Printers and Binders. The use of the words "Printers and Binders" in respondents' firm name serves as a representation that respondents are the printers and binders of their aforesaid merchandise and that respondents own and operate or control the plant wherein such merchandise is printed and bound.

PAR. 6. In truth and in fact, respondents do not own, operate or control a plant for the printing and binding of sales-promotion cards and other merchandise which they sell and distribute, as herinabove alleged, but respondents have filled and now fill orders for such articles of merchandise with merchandise which is printed and bound in a plant which they neither own, operate, nor control.

PAR. 7. There has long been a preference on the part of a substantial portion of the purchasing and consuming public and of dealers for dealing directly with a printer and binder, such preference being due in part to a belief that lower prices, elimination of middlemen's profits, superior products, and other advantages can thereby be obtained.

PAR. 8. The use by the respondents of the words "Printers and Binders" in their firm name, as hereinabove alleged, has had and now has the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them mistakenly and erroneously to believe that the respondents are the printers and binders of such merchandise and own and operate or control the plant wherein such merchandise is printed and bound, and to purchase respondents' articles on account of such mistaken and erroneous belief.

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 October 9, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Ora R. Yates and Charles W. Miller, individually and trading as Monarch Printers and Binders, 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 L. P. Allen, attorney for the Commission, and in opposition to the allegations of the complaint by Frazier Reams, attorney for the respondents, before W. W. Sheppard, a trial examiner of the Commission theretofore duly designated by it (which testimony and other evidence consisted of a stipulation of facts upon the record supplementing the answer filed by the respondents), and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer thereto, 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 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. Respondents, Ora R. Yates and Charles W. Miller, are individuals trading as Monarch Printers and Binders, with their principal office and place of business located at 812 Hunt Street, Adrian, Mich. Respondents are now, and for more than 3 years last past have been, engaged in the sale and distribution of sales-promotion cards and other articles of merchandise to wholesale dealers, jobbers, and retail dealers. Respondents cause and have caused said merchandise, when sold, to be transported from their aforesaid place of business in the State of Michigan to purchasers thereof, at their respective points of location, in the various States of the United States other than Michigan 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 their business, respondents are and have been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, respondents sold cards so designed and arranged as to involve the use of games of chance, gift enterprises, or lottery schemes when used by dealers in promoting and increasing sales of their merchandise to the consuming public. A sales-promotion card in one such group is herein described for the purpose of showing arrangement, design, and principle involved. The said card contained 100 ruled spaces for pasting thereon receipts which were given by the said dealers to customers with each 25-cent purchase. The card contained a legend or instructions as follows:

TREASURE CHEST

Plan and Governing Rules

You will be given one TREASURE CHEST receipt with each 25¢ spent with us. Be sure to paste receipts in this booklet. Under the seals of some TREASURE CHEST booklets are listed valuable Food products. Under the others is listed cash in amounts of 50¢, $1, $2, or $5. THERE ARE NO BLANKS! When completely filled with 100 receipts, return this booklet to us with the Seal unbroken. This booklet will then have a cash redemption value of 15¢. We will then break the Seal on page 2 that you may see what is printed under it and, if you wish, you may exchange the cash redemption value for whatever the opening Seal discloses. NO DRAWINGS—NO JUDGINGS—NO DISAPPOINTMENTS!

This booklet accepted subject to above conditions.

The prizes or premiums were allotted to the said customers or purchasers in accordance with the above legend or instructions.

Under the seal was the following legend:

1 lb.
Pomco
Vac. Can
Coffee
2 cans
Pomco
Tall Milk

The articles of merchandise called for under the said seals varied with the individual card and the cash awards varied from 50 cents to $5. The legend under the seal was effectively concealed until the seal had been opened and the amount which the holder of said card received in merchandise or cash was thus determined wholly by lot or chance.

The respondents sold and distributed various sales-promotion cards which involved the use of games of chance, gift enterprises, or lottery schemes when used by dealers to promote the sale of their merchandise to the consuming public. Such cards were similar to the one hereinabove described and varied only in detail.

Respondents furnished their customers with various display posters and advertisements to be used by retail merchants in distributing and using said cards.

PAR. 3. Sales of assortments of said sales-promotion cards were made to wholesale dealers, jobbers, and retail dealers. The retail dealers who directly or indirectly purchased respondents' said cards distributed the same to their customers and prospective customers and honored the awards as shown when the seals were broken open in accordance with the plan hereinabove set forth. The respondents thus supplied to, and placed in the hands of, others the means of and instrumentalities for 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 designing and arranging their said cards and distributing the same for redistribution to the public 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. There are in competition with respondents various manufacturers and distributors of sales-promotion cards, premium cards, price concession cards, coupons, and trading stamps, which when used by dealers do not involve a lottery scheme, game of chance, or a gift enterprise. Many persons, firms, and corporations who sell and distribute various cards or devices for promoting or increasing the sales of dealers are unwilling to offer for sale or sell cards or devices so designed and arranged as to involve a game of chance, gift enterprise, or lottery scheme, and such competitors refrain therefrom.

The consuming public is induced to deal with or purchase merchandise from dealers using respondents' cards in preference to purchasing merchandise from dealers using the devices of respondents' competitors because of the games of chance, gift enterprise, or lottery scheme connected with respondents' said cards. By reason thereof dealers are induced to purchase respondents' said cards in preference to devices of competitors of the respondents. The use by respondents of said method in designing and arranging their said cards and distributing them as aforesaid 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 injury is being and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their business as aforesaid, respondents in soliciting the sale of and in selling their merchandise, as above described, caused display cards, letterheads, the aforesaid sales-promotion cards and other printed matter to be distributed through the United States mail and by other means to customers and prospective customers located in States other than the State of Michigan and in the District of Columbia. The aforesaid printed matter contained thereon the firm name of the respondent Monarch Printers and Binders. The use of the words "Printers and Binders" in respondents' firm name serves as a representation that respondents are the printers and binders of their aforesaid merchandise and that respondents own and operate or control the plant wherein such merchandise is printed and bound.

PAR. 6. In truth and in fact, respondents do not own, operate, or control a plant for the printing and binding of sales-promotion cards and other merchandise which they sell and distribute, but instead respondents have filled and now fill orders for such articles of merchandise with merchandise which is printed and bound in a plant which they neither own, operate, nor control.

PAR. 7. There has long been a preference on the part of a substantial portion of the purchasing and consuming public and of dealers for dealing directly with a printer and binder, such preference being due in part to a belief that lower prices, elimination of middlemen's profits, superior products, and other advantages can thereby be obtained.

PAR. 8. The use by the respondents of the words "Printers and Binders" in their firm name, has had and now has the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them mistakenly and erroneously to believe that the respondents are the printers and binders of such merchandise and own and operate or control the plant wherein such merchandise is printed and bound, and to purchase respondents' articles on account of such mistaken and erroneous belief.

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 on the complaint of the Commission, answer of the respondents, testimony, and other evidence before W. W. Sheppard, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto. report of the trial examiner 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 respondents, Ora R. Yates and Charles W. Miller, individuals trading as Monarch Printers and Binders or under any other trade name, and their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of sales-promotion cards and other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing 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 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, to conduct a lottery, game of chance, or gift enterprise when distributed to the consuming public.

3. Using the words "Printers" or "Binders" or any other words of similar import or meaning in respondents' trade name or representing through any other means or device, or in any manner, that the respondents are printers and binders unless and until the respondents actually own and operate or directly and absolutely control a plant for the printing and binding of sales-promotion cards and other merchandise sold and distributed by them.

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

IN THE MATTER OF

ARTHUR G. SPANGLER, ERNEST D. SPANGLER, AND MRS. FAIE SPANGLER, TRADING AS SPANGLER 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 4540. Complaint, July 16, 1941—Decision, Aug. 20, 1941

Where three partners engaged in the manufacture of candy, and in the competitive interstate sale and distribution of certain assortments thereof packed and assembled so as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, a typical assortment including a number of small pieces of uniform size and shape, together with a push card for use in their sale under a plan by which purchaser received for 1 cent paid, from 1 to 20 pieces, in accordance with the concealed legend punched from the disk selected, such as "Touchdown," "Drop Kick," "Safety," etc., person making the last purchase in each of the card's first 3 sections received 5 pieces, and the person making the last on the card received 15—

Sold and distributed such assortments to dealers, including retailers, by whom they were exposed and sold to the purchasing public in accordance with sales plan aforesaid, involving a game of chance or sale of a chance to procure pieces of candy at much less than their normal retail price, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of their candy, as above set forth, contrary to an established public policy of the United States Government, and in competition with many unwilling to use any sales method involving chance, or contrary to public policy, and who refrain therefrom;

With the result that many persons, attracted by said sales plan or method and by the element of chance involved therein, were thereby induced to buy and sell their candy in preference to that of their said competitors, and with tendency and capacity to unfairly divert trade in commerce to them from said competitors:

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

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Arthur G. Spangler, Ernest D. Spangler, and Mrs. Faie Spangler, individually and as copartners trading under the name of Spangler Candy Co., herein-

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

PARAGRAPH 1. Respondents, Arthur G. Spangler, Ernest D. Spangler, and Mrs. Faie Spangler, are individuals doing business as copartners under the name of Spangler Candy Company, with their principal office and place of business located at 420 West Edgerton Street, Bryan, Ohio. Respondents also maintain a place of business in Toledo, Ohio. Respondent Ernest D. Spangler resides at 232 East Wayne Street, Maumee, Ohio. 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 transported from their principal place of business in Bryan, Ohio, to purchasers thereof at their respective points of location in the various States of the United States other than the State of Ohio, and in the District of Columbia. There is now, and for more than 1 year 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, 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 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 as follows:

This assortment consists of a number of small pieces of candy of uniform size and shape, together with a device commonly called a push card. The push card contains 100 partially perforated disks, on the face of each of which is printed the word "PUSH." Sales are 1 cent each. Concealed within each of the said disks is a legend, which corresponds to a legend appearing on the face of said card. The legends or instructions on the face of the card are as follows:

FOOTBALL 1¢

TOUCHDOWN receives	20	PIECES
DROP KICK receives	10	
SAFETY receives	10	
FIELD GOAL receives	5	
FORWARD PASS receives	5	
END RUN receives	3	
LINE BUCK receives	3	
FAKE PASS receives	2	
OFF SIDE receives	1	
Last Sale First 3 Sections receives	5	
Last Sale on Card receives	15	

No. 200

Sales of respondents' candy by means of said push cards are made in accordance with the above legend or instructions. The legends or instructions aforesaid are effectively concealed from purchasers and prospective purchasers until a purchase has been made and the disk separated or removed from said card. The number of said pieces of candy to be procured by a purchaser for 1 cent is thus determined wholly by lot or chance.

The respondents sell and distribute, and have sold and distributed, various assortments of candy involving lot or chance features, 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 plan 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 plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their candy, 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. The sale of candy to the purchasing public by the sales plan or method hereinabove alleged involves a game of chance or the sale of a chance to secure pieces of candy at a price 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 sales plan or 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 said sales plan or method employed by respondents in the sale and distribution of their candy and by 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 an equivalent method. The use of said method by respondents, because of said game of chance, has a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States to respondents from their said competitors who do not use the same or equivalent methods.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 16, 1941, issued and thereafter served its complaint in this proceeding upon respondents Arthur G. Spangler, Ernest D. Spangler, and Mrs. Faie Spangler, individually and as copartners trading under the name of Spangler Candy Co., charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 1, 1941, 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, Arthur G. Spangler, Ernest D. Spangler, and Mrs. Faie Spangler, are individuals doing business as copartners under the name of Spangler Candy Co., with their principal office and place of business located at 420 West Edgerton Street, Bryan, Ohio. Respondents also maintain a place of business in Toledo, Ohio. Respondent Ernest D. Spangler resides at 232 East

Wayne Street, Maumee, Ohio. 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 transported from their principal place of business in Bryan, Ohio, to purchasers thereof at their respective points of location in the various States of the United States other than the State of Ohio, and in the District of Columbia. There is now, and for more than 1 year 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, 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 dealers certain assortments of candy so packed and assembled as to involve the use of games of change, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is as follows:

This assortment consists of a number of small pieces of candy of uniform size and shape, together with a device commonly called a push card. The push card contains 100 partially perforated disks, on the face of each of which is printed the word "PUSH." Sales are 1 cent each. Concealed within each of the said disks is a legend, which corresponds to a legend appearing on the face of said card. The legends or instructions on the face of the card are as follows:

FOOTBALL 1¢

TOUCHDOWN receives	20	PIECES
DROP KICK receives	10	
SAFETY receives	10	
FIELD GOAL receives	5	
FORWARD PASS receives	5	
END RUN receives	3	
LINE BUCK receives	3	
FAKE PASS receives	2	
OFF SIDE receives	1	
Last Sale First 3 Sections receives	5	
Last Sale on Card receives	15	

No. 200

Sales of respondents' candy by means of said push cards are made in accordance with the above legend or instructions. The legends or instructions aforesaid are effectively concealed from purchasers and

prospective purchasers until a purchase has been made and the disk separated or removed from said card. The number of said pieces of candy to be procured by a purchaser for 1 cent is thus determined wholly by lot or chance.

The respondents sell and distribute, and have sold and distributed, various assortments of candy involving lot or chance features, 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 plan 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 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.

PAR. 4. The sale of candy to the purchasing public by the sales plan or method hereinabove described involves a game of chance or the sale of a chance to secure pieces of candy at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy in competition with respondents, as above described, are unwilling to adopt and use said sales plan or 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 said sales plan or method employed by respondents in the sale and distribution of their candy and by 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 an equivalent method. The use of said method by respondents, because of said game of chance, has a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States 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 acts and practices in commerce within the intent and meaning of the Federal 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 duly 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 Arthur G. Spangler, Ernest D. Spangler, and Mrs. Faie Spangler, individually and as copartners trading under the name of Spangler Candy 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 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 are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of others assortments of any merchandise together with push or pull cards, punchboards, or other devices which said push or pull cards, punchboards, or other devices are to be used or may be used in selling or distributing said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

3. Supplying to or placing in the hands of others, push or pull cards, punchboards, or other devices either with assortments of candy or other merchandise or separately, which said push or pull cards, punchboards, or other devices are to be used or may be used in selling or distributing said candy or other merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

It is further ordered, That the 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

SCHNECK-WAYNE COMPANY, INC., AND GUSTAVE B. WAYNE AND FRANK J. SCHNECK

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

Docket 3441. Complaint, May 23, 1938—Decision, Aug. 21, 1941

Where a corporation and two officers and owners thereof, who formulated and directed its policies, acts, and practices, engaged in competitive interstate sale and distribution of various articles of merchandise, including clocks, watches, fountain pens, electrical appliances, radios, traveling bags, blankets, and silverware, and, as thus engaged, in carrying on their business under a general plan by which they entered into agreements with fraternal or charitable organizations to conduct for them money-raising enterprises, such as fairs and carnivals, upon profit-sharing basis, and under which they cooperated with the particular local organization and managed the enterprise and the sale and distribution of their merchandise—

Used and caused others to use various devices and plans of merchandising involving the operation of games of chance, gift enterprises, or lottery schemes in the sale and distribution of their said products, through forwarding to the organization sales literature and material, including pull cards and circulars illustrating their merchandise and explaining their plan of awarding it as prizes to purchasers selecting, from list of feminine names on a card, the same name as that concealed under the card's master seal, who received their choice of any gift illustrated in the "Purchasers Gift Folder" and the operators of cards—usually members of the organization—received a similar choice, and under which the cost of a chance was dependent upon the number under the tab adjoining the name selected, and each purchaser of a chance received also a ticket representing credit on the price of admission to the carnival and bearing a number participating in the special drawing for a grand award of an automobile which usually climaxed the event; and thereby

Supplied to and placed in the hands of others means of conducting lotteries in the sale of their merchandise in accordance with aforesaid plan under which articles of greater value than the cost of a single pull were sold and distributed wholly by lot or chance, contrary to an established policy of the United States Government, and in competition with many who, unwilling to use any method involving a game of chance or contrary to public policy, refrain therefrom;

With the result that many persons were attracted by their said sales method and by the element of chance involved therein, and were thereby induced to buy and sell their said merchandise in preference to that offered and sold by their said competitors, and with tendency and capacity to divert trade unfairly to them from such 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.

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

Mr. D. C. Daniel for the Commission.

Nash & Donnelly, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the Schneck-Wayne Co., Inc., and Gustave B. Wayne and Frank J. Schneck, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Schneck-Wayne Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, and has its principal office and place of business located at 261 Fifth Avenue, in the city of New York, State of New York. Respondents Gustave B. Wayne and Frank J. Schneck are, respectively, president and secretary-treasurer of the Schneck-Wayne Co., Inc., and have their office and principal place of business at 261 Fifth Avenue in the city of New York, State of New York. The individual respondents named herein direct and control the sales policies and general business activities of respondent corporation and participated in the acts and practices herein charged. Respondents are now, and for more than 1 year last past have been, engaged in offering for sale and selling general merchandise to purchasers thereof located in the various States of the United States and the District of Columbia. They cause, and have caused, said merchandise, when sold, to be shipped or transported from their place of business in the State of New York into and through other States of the United States and in the District of Columbia, to purchasers thereof at their respective points of location. There is now, and has been for some time past, a course of trade in such merchandise sold by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their business, respondents are in competition with other individuals, partnerships, and corporations engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as herein described, and in soliciting the sale and in selling and distributing their merchandise, respondents have furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes. The method and sales plan adopted and used by respondents were and are substantially as follows:

Respondents contact fraternal and charitable organizations located at various points throughout the United States and offer to put on, conduct, or promote a so-called fair or carnival for such organizations, the proceeds of which are to be divided upon a basis theretofore agreed upon between respondents and the organizations. Thereafter, respondents cause, and have caused, certain advertising literature, including, among other things, pull cards, order blanks, advertising literature containing illustrations of their merchandise, and circulars explaining respondents' plan of selling said merchandise and of awarding it as premiums or prizes to purchasers and to the operators of said pull cards to be distributed to the purchasing public through the particular fraternal or charitable organizations. Said pull cards bear a number of feminine names, with a blank space opposite each for writing in the name of the customer. Said pull cards have a corresponding number of partially perforated disks, on each of which is printed one of the feminine names appearing alphabetically elsewhere in the pamphlet or brochure. Concealed underneath each disk is a number which is disclosed when the disk is pulled or separated from the card.

The pull cards have a master seal concealed within which is one of the feminine names appearing elsewhere on the said cards.

Appearing on the back of the pamphlet or brochure are legends or instructions, of which the following is representative:

DIRECTIONS

The Subscription Book has 99 Girls' Names with numbers. The amount of each subscription ranges from 1¢ to 35¢. No higher—No subscription over 35¢. No. 25 & 50 each receive a Parker made Pen.

As each person selects a Girl's Name, the amount to subscribe appears under the tab. For instance, if number one (1) is selected, the amount to subscribe is one cent. If number fourteen (14) the amount is 14 cents, etc. up to number thirty-five (35) which is 35 cents.

THOSE SELECTING NUMBERS OVER 35 SUBSCRIBE ONLY 35 CENTS

Write the name of the person making the Subscription on the proper line opposite the Girl's Name and on the ticket stub, and give them one of the Credit Tickets to the *Shriners' Frolic and Streets of Bagdad.*

Each ticket holder participates in the choice awarding of a *Latest Model Chevrolet, Plymouth or Ford 2-door Sedan, Fully Equipped.*

When the entire Book is completed, you will have collected $28.70. Turn the receipts in at Campaign Headquarters at once.

Remove the Seal at the top of Book. The person who selected the Girl's Name under the Seal is entitled to the choice of any Gift illustrated in the *Purchasers Gift Folder,* absolutely free. For disposing of the Subscription Book and upon receipt of the $28.70 at the Headquarters, you will also receive your choice of any Gift illustrated in the Special Books Seller's Gift Folder. All Gifts are on display at Headquarters, Suite 222 and 223, Riviera Hotel, Newark, N. J.

Do not remove the seal until all subscriptions have been received.

THE COMMITTEE.

Sales of respondents' products by means of said pull cards are made in accordance with the specified legends or instructions. The articles of merchandise sold and distributed by respondents vary in value but each of the articles of merchandise is of greater value than the cost of a single pull from said pull cards. The purchasing public is thus induced and persuaded to purchase pulls from said cards in the hope that they may pull a prize winning name or number and thus obtain an article of merchandise of a greater value than the amount paid. The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance is also determined wholly by lot or chance.

PAR. 3. Within the above referred to pamphlet or brochure containing the pull chances appear the following:

Every subscriber Receives Credit Admission Ticket to Shriners' Frolic and Streets of Bagdad and Participates in the choice award of a 1937 Chevrolet, Plymouth or Ford 2-door sedan.

The above language is always modified or changed to show the name of a particular organization for which the fair or carnival is being conducted.

The fair or carnival conducted or promoted for fraternal and charitable organizations by respondents is concluded by a gala night event. The credit admission ticket above referred to plus a definite sum of cash admits the holder of such credit admission ticket to the closing event of fair or carnival. On this particular night, the so-called "Grand Award" is made. The grand award consists of, among other things, a 2-door Ford, Plymouth, or Chevrolet sedan automobile.

PAR. 4. The persons to whom respondents furnish the said pull cards use the same in purchasing, selling, and distributing a greater part of 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 herein 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 and through the aid of said method, is a practice which is contrary to an established public policy of the Government of the United States, and is contrary to the criminal statutes.

PAR. 5. 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 therefor.

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 any other method that 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 thereof in the manner herein set forth, 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, divert trade unfairly to respondents from their competitors who do not use the same or an equivalent method. As a consequence thereof, injury has been, and is being, done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 23, 1938, issued and thereafter served its complaint in this proceeding upon the respondents, Schneck-Wayne Co., Inc., and Gustave B. Wayne and Frank J. Schneck, individually and as officers of the Schneck-Wayne Company, Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After

the issuance of the complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission (no testimony or other evidence having been introduced by respondents), before Miles J. Furnas, 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 complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested); and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Schneck-Wayne 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 261 Fifth Avenue, New York, N. Y. Respondents Gustave B. Wayne and Frank J. Schneck are the owners of all the capital stock of the corporate respondent and are president and secretary-treasurer, respectively, of the corporation. They formulate the policies and direct, dominate, and control the acts and practices of the corporation. They have their offices at the same address as that of the corporate respondent.

PAR. 2. Respondents are now, and since 1937 have been, engaged in the sale and distribution of various articles of merchandise, including among other things, clocks, watches, fountain pens, electrical appliances, radios, traveling bags, blankets, and silverware. Respondents cause, and since 1937 have caused their merchandise, when sold, to be shipped or transported from their place of business in the State of New York or from the places of manufacture of such merchandise, to purchasers thereof located in various States of the United States other than the State of New York, and other than the States in which such merchandise is manuactured. Respondents maintain, and since 1937 have maintained, a course of trade in their merchandise in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business respondents are, and since 1937 have been, in active competition with other corpora-

tions, and individuals, and with firms and partnerships, engaged in the sale and distribution of similar articles of merchandise in commerce among and between the various States of the United States.

PAR. 4. The Commission finds that in the course and conduct of their business and in selling and distributing their merchandise, and in offering such merchandise for sale, the respondents have used, and have caused others to use, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes. The method or sales plan used by the respondents is substantially as follows:

Respondents contact various fraternal and charitable organizations located at various points throughout the United States and offer to conduct or promote for such organizations, various money-raising enterprises such as fairs and carnivals. The proceeds derived from the operation of such enterprises are divided between the respondents and the organization upon a basis theretofore agreed upon. Upon the consummation of the agreement the respondents forward to the organization certain advertising and sales literature and material, including among other things, pull cards, advertising circulars illustrating respondents' merchandise, and circulars explaining respondents' plan of selling such merchandise and of awarding it as premiums or prizes to persons purchasing chances on such pull cards, and to the persons operating such pull cards and selling the chances thereon. Respondents also forward, or cause to be forwarded, to the organization the merchandise to be awarded as prizes or premiums during the enterprise.

The respondents cooperate with the local organization and manage and direct the enterprise and the sale or distribution of the merchandise. The pull cards are usually placed in the hands of certain members of the organization, who proceed to contact other members of the organization and members of the general public and undertake to sell to such persons the chances on the pull cards.

The pull cards bear a number of feminine names, with a blank space opposite each name in which is to be written the name of the purchaser of the chance. The card also has a corresponding number of partially perforated disks on each of which is printed a feminine name corresponding to one of the names appearing elsewhere on the card. Under each disk is a number which is disclosed when the disk is pulled or separated from the card. The card also bears a master seal under which is concealed a feminine name corresponding to one of the names under the disks. The names under the disks are effectively concealed from purchasers and prospective purchasers until after a purchase has been made and the disk pulled or separated from

the card. Likewise, the name under the master seal is concealed from purchasers and prospective purchasers until all of the chances appearing on the card have been purchased and all of the disks have been pulled or separated from the card.

On the back of the pull card (referred to by respondents as a "Subscription Book") appear legends containing directions to be followed in the operation of the sales plan and in the sale of the chances. The following is typical of such legends.

DIRECTIONS

The Subscription Book has 99 girls' Names with numbers. The amount of each subscription ranges from 1c. to 35c. No higher—No Subscription over 35c. No. 25 & 50 each receive a Parker made Pen.

As each person selects a Girl's Name, the amount to subscribe appears under the tab. For instance, if number one (1) is selected, the amount to subscribe is one cent. If number fourteen (14), the amount is 14 cents, etc. up to number thirty-five (35) which is 35 cents.

THOSE SELECTING NUMBERS OVER 35 SUBSCRIBE ONLY 35 CENTS

Write the name of the person making the Subscription on the proper line opposite the Girl's Name and on the ticket stub, and give them one of the Credit Tickets to the * * * *Frolic and Streets of Bagdad.* Each ticket holder participates in the choice awarding of a *Latest Model Chevrolet, Plymouth or Ford 2-Door Sedan, Fully Equipped.*

When the entire Book is completed, you will have collected $28.70. Turn the receipts in at Campaign Headquarters at once.

Remove the Seal at the top of Book. The person who selected the Girl's Name under the Seal is entitled to the choice of any Gift illustrated in the *Purchasers Gift Folder*, absolutely free. For disposing of the Subscription Book and upon receipt of the $28.70 at the Headquarters, you will also receive your choice of any Gift illustrated in the Special Book Seller's Gift Folder. All Gifts are on display at Headquarters * * *.

Do not remove the seal until all subscriptions have been received.

Sales of respondents' merchandise by means of the pull cards are made in accordance with these instructions. The various articles of merchandise sold and distributed by means of the cards vary in value but each of the articles is of a value greater than the cost of a single pull from the pull card. Members of the purchasing public are induced to purchase pulls from the card in the hope that they may pull a prize-winning name or number and thus obtain an article of merchandise of a value greater than the amount paid. The articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the purchaser pays for a chance is also determined wholly by lot or chance.

PAR. 5. Each purchaser of a chance on the pull card receives also a ticket purporting to represent a credit on the price of admission

to the fair or carnival. Each of these tickets bears a different number. The fair or carnival is usually climaxed by a special night event at which there is a drawing for a "Grand Award," usually an automobile. The holder of the ticket bearing the lucky number receives the Grand Award.

PAR. 6. The persons to whom respondents furnish the pull cards through the local organization, use the cards in 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 respondents' merchandise in accordance with such sales plan.

PAR. 7. The Commission finds that the sale of merchandise to the purchasing public in the manner herein described involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. The use by respondents of such method in the sale of their merchandise and the sale of respondents' merchandise by and through the use and aid of such method is a practice of a sort which is contrary to an established public policy of the Government of the United States.

Among the persons, firms, and corporations who sell and distribute merchandise in competition with respondents, as above set forth, are those who are unwilling to adopt and use the method used by respondents or any method involving a game of chance or any other method which is contrary to public policy, and such competitors refrain therefrom.

Many persons are attracted by respondents' sales method and by the element of chance involved in the sale of respondents' merchandise, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by respondents' competitors who do not use such method or any equivalent method.

PAR. 8. The Commission therefore finds that the use of such method by respondents has the tendency and capacity, because of such game of chance, to divert trade unfairly to respondents from their said competitors. In consequence thereof, substantial injury has been done and is being done by the respondents to competition in commerce among and between the various States of the United States.

CONCLUSION

The 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 taken before a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (no testimony or other evidence having been offered by respondents), report of the trial examiner upon the evidence, and brief of counsel for the Commission (no brief having been filed by 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 the respondents, Schneck-Wayne Co., Inc., a corporation, its officers, and Gustave B. Wayne and Frank J. Schneck, individually and as officers of said corporation, and respondents' 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 their clocks, watches, fountain pens, electrical appliances, radios, traveling bags, blankets, silverware, or any other merchandise, do forthwith cease and desist from:

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

PHILIP HARRY KOOLISH AND SARA ALLEN KOOLISH, INDIVIDUALLY AND TRADING AS STANDARD 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 4135. Complaint, May 18, 1940—Decision, Aug. 21, 1941

Where two individuals, husband and wife, engaged in interstate sale and distribution of flashlights, electric mixers, sport jackets, cosmetics, cameras, billfolds, pen and pencil sets, bedspreads, radios, raincoats, watches, clocks, silverware, vacuum cleaners, and other articles of merchandise;

In carrying on their business pursuant to a scheme, as below set forth, under which they distributed more than a million merchandise offers, received orders for such merchandise from thousands of individuals, dealers, and others to whom such offers were made, making sales during a recent 12-month period amounting to about $1,800,000, and receiving orders from approximately 1 percent of those to whom said offers were sent, and reorders or additional orders from about 25 percent of those to whom sales had been made—

Made use of selling plan or method which involved distribution by mail to individuals, without prior receipt of any request therefor, of certain literature and instructions, including, among other things, push cards, order blanks, illustrations, and descriptions of articles of merchandise and circulars explaining their plan for the sale thereof and allotting premiums or prizes and which included, as typical, offer of certain portable radio receiving sets by mail through an explanatory letter accompanied by an illustrative and descriptive advertisement, a push card and a printed order form for the purchase of the two radios involved and four combinations of pen and pencil at a total price of $16.95 (as called for by said card), together with a business reply envelope addressed to said individuals under their trade name, and plan under which, as explained to recipient, person selecting from list of feminine names displayed on card that name, after sale of all chances, found to correspond with name concealed under card's seal, received one of said radios, amount paid by each customer or purchaser was dependent upon number disclosed through disk selected in accordance with feminine name chosen, and operator of card, i. e., recipient of particular offer, was compensated, upon remitting to said individuals the total sum thus called for, by the right to retain one of said radios, upon the shipment to him of said various merchandise, for distribution to customers secured by him in response to the invitation and suggestion contained in the circular letter and as above set forth; and thereby

Supplied to and placed in the hands of others, means of conducting lotteries in the sale of merchandise through sales plan aforesaid, under which many of the individuals, dealers, and others to whom said individuals furnished said push cards made use thereof to purchase, sell, and dis-

tribute merchandise bought by them from said individuals, and involving the sale of merchandise to the public by game of chance to procure an article at much less than its normal retail price, contrary to the established public policy of the United States Government and in violation of the criminal laws and in competition with many who, unwilling to use such or other method contrary to public policy, refrain therefrom;

With result that many persons were attracted by their said sales plan or method and element of chance involved therein, and were thereby induced to buy and sell their merchandise in preference to that of their said competitors, whereby substantial trade in commerce was unfairly diverted from said competitors to them, and substantial injury done to competition in commerce:

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

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

Mr. L. P. Allen, Jr., and *Mr. D. C. Daniel* for the Commission.

Mr. Albert A. Jones, of Washington, D. C., and *Mr. Jacob Rabkin*, 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 Philip Harry Koolish and Sara Allen Koolish, individually and trading as Standard Distributing 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, Philip Harry Koolish and Sara Allen Koolish, are individuals trading as Standard Distributing Co. The principal place of business of the respondents was formerly 6227 Broadway, Chicago, Ill. The principal place of business of respondents is now located at 2222 Diversey, Chicago, Ill. Respondents are now, and for more than 1 year last past, have been engaged in the sale and distribution of flashlights, electric mixers, sport jackets, cosmetics, cameras, billfolds, pen and pencil sets, bedspreads, radios, raincoats, watches, clocks, silverware, vacuum cleaners, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their aforesaid places of business in the State of Illinois to purchasers thereof, at their respective points of location,

in various States of the United States other than the State of Illinois, and in the District of Columbia. There is now, and for more than 1 year 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 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 or the United States and in the District of Columbia.

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

Respondents distribute, and have distributed, to the purchasing public certain literature and instructions, including among other things push cards, order blanks, illustrations of their said merchandise, and circulars explaining respondents' plan of selling merchandise and allotting it as premiums or prizes to the operators of said push cards. One of respondents' 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 small partially perforated disks on the face of which is printed the word "Push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card bears a legend or instructions as follows:

NAME UNDER SEAL RECEIVES A
PICKWIK
CANDID CAMERA
With Roll of Film
No. 19 Receives a Combination Pen & Pencil
Do Not
Remove Seal
Until Entire
Card is Sold
No. 1 pays 1¢; No. 19 pays 19¢;
No. 27 pays 27¢; No. 29 pays 29¢;
All others pay 29¢. NONE HIGHER

Push Out
With Pencil

Sales of respondents' merchandise by means of said push card are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

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

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

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute merchandise in competition with the respondents, as above alleged are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or 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 substantial 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 commerce within the intent and meaning of the Federal Trade Commission 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 18, 1940, issued and subsequently served its complaint in this proceeding upon Philip Harry Koolish and Sara Allen Koolish, individually, and trading as Standard Distributing 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 attorneys for the Commission and in opposition to the allegations of the complaint by attorneys for the respondents before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and the said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the 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 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. Respondents, Philip Harry Koolish and Sara Allen Koolish, are individuals trading as Standard Distributing Co. and having their principal place of business at 2222 Diversey, Chicago, Ill. Respondent Sara Allen Koolish is the wife of respondent Philip Harry Koolish. Respondents are now, and since January 1939 have

been, engaged in the sale and distribution of flashlights, electric mixers, sport jackets, cosmetics, cameras, billfolds, pen and pencil sets, bedspreads, radios, raincoats, watches, clocks, silverware, vacuum cleaners, and other articles of merchandise.

PAR. 2. In the course and conduct of their business respondents cause, and have caused, articles of merchandise, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois and in the District of Columbia. There is now, and for more than 1 year 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.

PAR. 3. The selling plan or method used by respondents in the sale and distribution of merchandise is to distribute by mail to individuals, without the prior receipt of any request therefor, certain literature and instructions including among other things push cards, order blanks, illustrations, and descriptions of articles of merchandise, and circulars explaining their plan for the sale of such merchandise and of allotting premiums or prizes. A typical instance of respondents' merchandising plan is illustrated by the offering for sale of certain portable radio receiving sets by mailing to various individuals a circular letter which stated in part:

HERE'S ALL YOU NEED TO DO TO GET YOUR RADIO:

Merely show the enclosed illustration to your friends * * * neighbors * * * relatives * * * folks you work with * * * persons you trade with and so on; and explain to them how they may obtain one of these KENT RADIOS.

The sales card contains a list of girls' names and under each seal is a concealed number. Numbers are not consecutive. Person selecting No. 1 pays 1¢, No. 5 pays 5¢, No. 9 pays 9¢, No. 15 pays 15¢, No. 19 pays 19¢, No. 22 pays 22¢, all others pay only 29¢. NONE HIGHER.

HOW TO SEND FOR YOUR RADIO: Simply fill out enclosed order form. Immediately upon receipt of your order we will RUSH to you 2 KENT RADIOS and 4 COMBINATION PEN & PENCILS. You may keep one RADIO and may give the other RADIO to the party who selected the name which is found under the large seal.

This letter was accompanied by an illustrated and descriptive advertisement of the radio receiving sets offered for sale and by a push card having on its face 62 partially perforated small disks each printed with the word "Push" and a feminine name and having concealed within it a number which is disclosed when the disk is pushed or separated from the card. The card also has on its face a partially perforated large disk with the notation, "Do not remove seal until entire card is sold," the statement, "NAME UNDER SEAL

RECEIVES A KENT RADIO," an illustration of the radio receiving set, and a statement similar to that set out in the extracts from the letter quoted above showing the amounts to be paid by players and bearing the notation that Nos. 1, 9, 19, and 29 each receive a combination pen and pencil. The back of the card has the same feminine names printed on it as appear on the partially perforated disks on the face of the card, each followed by a blank space intended for the use of the operator of the card in writing in the name of the player pushing each of the 62 partially perforated disks, together with a further explanation of the nature of the card and the statement:

Upon receipt of your order we immediately ship you the articles indicated on order blank. This card is given to you absolutely free. If you wish you can use this as a sales card.

The above-described material is accompanied by a printed order form for the purchase of two Kent radios and four combination pen and pencils at a total price of $16.95, together with a business reply envelope addressed to respondents under their trade name, Standard Distributing Co. The sum of the payments called for by the push card is $16.95.

The offerings made by respondents of other articles of merchandise are in substantially the same form, varying only in detail. In each instance the total amount of the payments called for by the push card is exactly equal to the amount stated on the printed order form addressed to respondents as the price for the principal article of merchandise and such subsidiary prizes or premiums as are provided for on the push card, plus one additional article of merchandise identical to the principal prize or premium named on the push card. It is intended and provided by respondents' sales plan that one of the two identical principal articles of merchandise shall be retained by the operator of the push card and the other, and such subsidiary prizes or premiums as may be provided in the particular offer, shall be allotted to the player or players selecting the concealed numbers which correspond to the predetermined number or numbers entitling the player or players to such prizes or premiums as may be specified.

PAR. 4. Respondents have distributed more than a million of the aforesaid merchandise offers accompanied by push cards in substantially the form described above and have received orders for such merchandise from thousands of individuals, dealers, and others to whom such offers were mailed. Respondents' sales of merchandise pursuant to the aforesaid plan for the 12 months ending November 30, 1940, amounted to approximately $1,800,000. In most

instances the orders for merchandise received by respondents are for precisely the articles of merchandise listed on the printed order form mailed out with a push card and cover two identical principal articles of merchandise and such subsidiary premiums or prizes as are named on the push card. Respondents receive such orders for merchandise from approximately 1 percent of the individuals, dealers, or others to whom push cards are sent, and when the shipments are made to such purchasers respondents send with such shipments other literature and push cards offering different types of merchandise under the same plan. Reorders or additional orders are received from about 25 percent of those to whom a sale has been made.

PAR. 5. The Commission concludes that many of the individuals, dealers, and others to whom respondents furnished said push cards have used, and do use, the same in purchasing, selling, and distributing merchandise which they buy from respondents. The sale of merchandise to the purchasing public according to respondents' sales plan 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. Respondents thus supply to and place in the hands of others means of conducting lotteries in the sale of merchandise. The use by respondents of the aforesaid sales plan or method in the sale and distribution of their merchandise, and the sale of such merchandise by the aid of and through the use thereof, is a practice contrary to the established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 6. In the sale and distribution of their various articles of merchandise respondents are in competition with many other persons, firms, and corporations who sell and distribute like merchandise, some of whom are unwilling to adopt and use a sales plan or method similar to that used by respondents, or any method involving a game of 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 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 to respondents from their said competitors who do not use the same or equivalent methods substantial trade in commerce between and among the various States of the

United States and in the District of Columbia, and as a result thereof substantial injury has been done, and is being done, by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal 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, 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 Philip Harry Koolish and Sara Allen Koolish, individually, and trading as Standard Distributing Co., or under any other name, jointly or severally, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of any merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

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

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

INLAID OPTICAL CORPORATION

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

Docket 4178. Complaint, July 11, 1940—Decision, Aug. 21, 1941

Where a corporation engaged in the interstate sale and distribution of lenses and eyeglasses, including reading glasses and sunglasses, importing uncut lenses from Japan, and processing and mounting them in frames, in course of which the label attached to each bearing legend "Made in Japan," was removed, and also manufacturing and purchasing lenses of domestic origin with which it customarily intermingled the processed Japanese lenses in its ready-to-wear glasses—

(*a*) Sold and distributed said glasses to chain stores and dealers, without any label, mark or words thereon indicating the Japanese or foreign origin of lenses above referred to, frames of which were made in the United States; and

(*b*) Represented, through salesmen and representatives, that its eyeglasses, assembled from lenses intermingled as above set forth and of which about 25 percent contained such imported lenses, were of domestic origin;

With effect of misleading and deceiving a substantial portion of the purchasing public, which has a decided preference for products made in the United States over those made in Japan and many other foreign countries, and members of which have become accustomed to examining articles prior to purchase for indication of foreign origin, in absence of which they assume such products to be domestic, into the erroneous belief that its said eyeglasses were wholly of domestic origin, thereby inducing such public to purchase its said products, and placing in the hands of unscrupulous and uninformed dealers means to mislead and deceive members of said public:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Adler & Flint, 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 Inlaid Optical 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, Inlaid Optical Corporation, is a corporation organized, existing, and doing business under and by virtue

of the laws of the State of Rhode Island, with its principal office and place of business located at 1058 Broad Street, in the city of Providence of said State. Said respondent is now, and for some time past has been, engaged in the business of selling and distributing lenses and eyeglasses, including reading glasses and sunglasses, in commerce among and between the various States of the United States and in the District of Columbia. Respondent has maintained, and maintains, a course of trade in said products in said commerce, and has caused, and now causes, said products, when sold or ordered, to be shipped and transported from its place of business in the State of Rhode Island to purchasers, including retailers, resellers, and users thereof, located in various States of the United States other than the State of Rhode Island, and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as above described, and in connection with the sale and distribution of its said products in said commerce, respondent has caused certain quantities of lenses for said eyeglasses and sunglasses to be imported from the country of Japan. At the time of importation into the United States, said lenses have been, and are, all labeled or marked with the word or words "Japan" or "Made in Japan," indicating that the country of origin is Japan. After said lenses were and are received by respondent, as so marked, it thereafter caused and causes the said labeling or marking to be removed from said lenses, and thereafter offered and offers for sale, and sold and sells, the same mounted in frames, to the aforesaid purchasers, including dealers, resellers, and users thereof, without any label, mark, or words thereon indicating the Japanese or foreign origin of the said lenses.

PAR. 3. By virtue of the practice, heretofore and now established, of imprinting and otherwise labeling or marking products of foreign origin, and their containers, with the name of the country of their origin, in legible English words, in a conspicuous place, and as required by law, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling, or marking, and is influenced thereby, to distinguish and discriminate between competing products of foreign and domestic origin, inclusive of eyeglasses and sunglasses having foreign-made or imported lenses. When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce throughout the United States and its territorial possessions, and in the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are imprinted, labeled, or

marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin, and not of domestic origin.

At all times material to this complaint there has been, and now is, among said members of the buying and consuming public, including purchasers and users of eyeglasses and sunglasses, in and throughout the United States and its territorial possessions, and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of Japanese or foreign manufacture or origin.

PAR. 4. The practice of respondent, as aforesaid, in offering for sale, selling, and distributing its eyeglasses, including reading glasses and sunglasses, made of lenses having Japanese or foreign origin, without any imprinting, labeling, or marking thereon to indicate to purchasers that the said lenses or glasses are of Japanese or foreign origin, has had, and has, the tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that the said glasses, and all the parts thereof, are wholly of domestic manufacture and origin, and into the purchase thereof in the reliance upon such erroneous belief.

The aforesaid practice further places in the hands of retailers and resellers of respondent's said products a means wherewith to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that the said glasses referred to, and all the parts thereof, are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 11, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Inlaid Optical Corporation, 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were

introducted by Merle P. Lyon, attorney for the Commission, and in opposition to the allegations of the complaint by Walter Adler, attorney for the respondent, 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 proceding 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, 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, Inlaid Optical Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 1058 Broad Street in the city of Providence, in the State of Rhode Island.

PAR. 2. Respondent is now, and for more than 3 years last past has been, engaged in the sale and distribution of lenses and eyeglasses, including reading glasses and sunglasses, in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes its said products, when sold, to be transported from its place of business in the State of Rhode Island 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. In the course and conduct of its business the respondent purchases and imports uncut lenses manufactured and fully ground in Japan. When such lenses are imported into the United States they bear a label or tag attached to each lens bearing the legend "Made in Japan" and usually bear a further label or tag giving the focal strength of said lenses, although sometimes the information as to the focal strength appears upon the package instead of the lens itself.

When such lenses are so received, they are further processed by the respondent, which processing consists of cleaning and cutting said

lenses to the desired shape and size, finishing the edges, drilling such holes as may be necessary, and attaching to frame or mounting. In the course of this processing, the labels or tags bearing the legend "Made in Japan" are removed from such lenses, and thereafter said lenses so mounted are sold and distributed to chain stores and other dealers without any label, mark, or words thereon indicating the Japanese or foreign origin of said lenses. The frames to which said lenses are mounted are made in the United States and the completed eyeglasses retail for from 25 cents to $1, depending on the frame used. Approximately 25 percent of the ready-to-wear glasses sold and distributed by the respondent contain lenses imported from Japan.

In addition to the lenses imported from Japan, the respondent also manufactures and purchases lenses of domestic origin for use in its ready-to-wear glasses. It is customary for the respondent, after processing the uncut lenses imported from Japan, to intermingle such imported lenses with lenses of its own manufacture and those purchased from domestic sources. In the offering for sale, sale, and distribution of its ready-to-wear glasses assembled from such intermingled lenses, the respondent has represented, through salesmen and representatives, that its eyeglasses were of domestic origin.

PAR. 4. 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 and many other foreign countries. Members of the purchasing public have become accustomed to examining articles prior to purchase for markings or tags which indicate that the product is of foreign origin, and when products bear no markings indicating that they are of foreign origin the purchasing public assumes that such products are of domestic origin.

PAR. 5. The practice of respondent in obliterating or obscuring from its lenses the legend "Made in Japan" and in offering for sale, selling, and distributing such lenses mounted on frames without disclosing that the lenses are made in Japan 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 eyeglasses are wholly of domestic origin and manufacture. As a result of such erroneous and mistaken belief engendered as herein set forth, a substantial portion of the purchasing public are induced to, and do, purchase respondent's products.

By the use of the practices herein set forth, respondent has also placed in the hands of unscrupulous and 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 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, answer of the respondent, testimony and other evidence taken before Lewis C. Russell, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner thereon and brief filed in support of the complaint, 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, Inlaid Optical Corporation, a corporation, its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of lenses and eyeglasses, including reading glasses and sunglasses, and other similar products 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 lenses or eyeglasses including reading glasses and sunglasses, or other similar products, which are manufactured in whole or in part in Japan or any other foreign country, without clearly disclosing the foreign origin of such products.

2. Representing in any manner whatsoever that respondent's products are made in the United States when in fact such products are manufactured in whole or in part in Japan or any other foreign country.

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

IN THE MATTER OF

REED-HARLIN GROCER COMPANY AND JOHN R. REED AND ORR M. REED, TRADING AS WEST PLAINS BROKERAGE COMPANY, ET AL.

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

Docket 4486. Complaint, Apr. 9, 1941—Decision, Aug. 21, 1941

Where some six corporate or partnership concerns, engaged in selling foodstuffs, groceries, and allied products to numerous buyers, including a corporate grocery business operating warehouses in Missouri and Arkansas, which placed orders for a substantial portion of its requirements through a brokerage firm owned by two individuals, one of whom was the president and active manager of said corporate grocery business, owning 86 percent of its outstanding stock, the other being director, secretary, salaried employee, and stockholder therein—

(*a*) Transmitted and paid to said two individuals, engaged under a separate trade name in said brokerage business, so-called brokerage fees and commissions in substantial amounts, which were a certain percentage of the quoted sale prices agreed upon between each of said sellers and said individuals:

Held, That said concerns violated the provisions of subsection (c) of section 2 of the Clayton Act, as amended, by so granting and paying fees and commissions as brokerage to said corporate grocer and said two individuals; and

Where said corporate grocery concern and said individuals, acting in fact on behalf of said corporate grocery business—

(*b*) Accepted from sellers aforesaid so-called brokerage fees and commissions:

Held, That said corporate grocery business and individuals violated the provisions of subsection (c) of section 2 of said statute by receiving and accepting fees and commissions as brokerage upon purchases from sellers.

Mr. John T. Haslett for the Commission.

Mr. A. W. Landis, of West Plains, Mo., for Reed-Harlin Grocer Co., John R. Reed and Orr M. Reed.

Mr. W. D. Wright, Jr., of Denver, Colo., for Ady & Milburn, Inc., William D. Wright and Frank E. Hockensmith.

Rose, Loughborough, Dobyns & House, of Little Rock, Ark., for Arkansas State Rice Mill Co.

Farrar & Martin, of Denver, Colo., for Great Western Sugar Co.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described since June 19, 1936, have violated and are now violating the provisions of 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. Respondent, Reed-Harlin Grocer Co., is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 200 Washington Avenue, West Plains, Mo. Respondent operates and maintains branch warehouses in various towns and cities in the States of Missouri and Arkansas.

PAR. 2. Respondent, John R. Reed, an individual residing in the city of West Plains, Mo., is now and has been since June 19, 1936, president, director, and majority stockholder in Reed-Harlin Grocer Co. Said respondent, John R. Reed, owns and controls approximately 56 percent of the outstanding capital stock and actively manages and conducts the business of Reed-Harlin Grocer Co.

Respondent, Orr M. Reed, an individual residing in the city of West Plains, Mo., is now and since June 19, 1936, has been director, secretary, a salaried employee of, and a stockholder in respondent Reed-Harlin Grocer Co.

Respondents, John R. Reed and Orr M. Reed, are in active charge of the management of the business of respondent West Plains Brokerage Co.

PAR. 3. Respondent, Ady and Milburn, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Colorado with its principal office and place of business located at 1900 15th Street, Denver, Colo.

Respondent, Arkansas State Rice Mill Co., is a corporation organized and existing under and by virtue of the laws of the State of Arkansas with its principal office and place of business at Abbeyville, La.

The individual respondents, William D. Wright and Frank E. Hockensmith, are engaged in the business of jobbing a variety of dried beans under the firm name and style of Midwest Bean Co., and have their principal office and lace of business at 2030 Blake Street, Denver, Colo.

Respondent, The Great Western Sugar 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 1530 Sixteenth Street, Denver, Colo.

Respondent, Inness Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Missouri

with its principal office and place of business located at 106 East Fifth Street, Kansas City, Mo.

The individual respondents, Louis S. Taube, Theodore Taube, and Lloyd B. Holden, are engaged in the business of jobbing potatoes, watermelons, and allied products under the firm name and style of L. S. Taube & Co., and have their principal office and place of business located at 113–115 East Third Street, Kansas City, Mo.

The respondents named in this paragraph will hereinafter be refererd to as "seller respondents." Each of the seller respondents named in this paragraph is engaged in the business of selling commodities, particularly foodstuffs, groceries, and allied products, to numerous buyers, including the respondent Reed-Harlin Grocer Co. The sales made by such seller respondents to respondent Reed-Harlin Grocer Co. are effectuated through the brokerage firm conducted by respondents John R. Reed and Orr M. Reed under the firm name and style of West Plains Brokerage Co.

PAR. 4. Respondent, Reed-Harlin Grocer 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 located in States of the United States other than the State in which the said Reed-Harlin Grocer Co. is located, among whom are the seller respondents herein named, through the brokerage firm of John R. Reed and Orr M. Reed, trading as West Plains Brokerage Co. As a result of the transmission and execution of said orders as aforesaid, goods, wares, and merchandise particularly foodstuffs, are sold, transported, and delivered by such sellers to the various places of business of the respondent Reed-Harlin Grocer Co. from the sellers' places of business in other States.

PAR. 5. In the course and conduct of the buying and selling transactions in interstate commerce hereinabove referred to, since June 19, 1936, said seller respondents have transmitted, paid, and delivered and do transmit, pay, and deliver to said individual respondents John R. Reed and Orr M. Reed, trading as West Plains Brokerage Co., so-called brokerage fees and commissions in substantial amounts, the same being a certain percentage of the quoted sales prices agreed upon between each of said sellers and individual respondents John R. Reed and Orr M. Reed trading as West Plains Brokerage Co., and the same have been received by John R. Reed, Orr M. Reed, and Reed-Harlin Grocer Co. through the West Plains Brokerage Co.

PAR. 6. In all of the transactions of purchase and sales hereinabove referred to, since June 19, 1936, the respondents John R. Reed and Orr M. Reed have acted in fact for and on behalf of the Reed-Harlin Grocer Co.

PAR. 7. The transmission and payment of said brokerage fees or commissions by the seller respondents and the receipt and acceptance of said brokerage fees or commissions by said respondents John R. Reed and Orr M. Reed, trading as West Plains Brokerage Co., upon the purchases of the Reed-Harlin Grocer Co., and the receipt and acceptance of brokerage fees or commissions by said respondent Reed-Harlin Grocer Co. upon its own purchases 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 the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act) as amended by section 1 of an act entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission, on April 9, 1941, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violating the provisions of paragraph (c) of section 2 of the said act as amended.

After the issuance and service of said complaint, answers admitting all the material allegations of the complaint were filed on behalf of respondents Reed-Harlin Grocer Co.; John R. Reed and Orr M. Reed, individuals trading under the firm name and style of West Plains Brokerage Co.; Inness Bros., Inc.; and Louis S. Taube, Theodore Taube, and Lloyd B. Holden, individuals trading under the firm name and style of L. S. Taube & Co. Answers admitting and denying various material facts alleged in the complaint were filed on behalf of all other respondents. Thereafter, the Commission, by order entered herein, granted respondents Ady & Milburn, Inc., a corporation; Arkansas State Rice Milling Co., a corporation; William D. Wright and Frank E. Hockensmith, individuals trading under the firm name and style of Midwest Bean Co., and The Great Western Sugar Co., a corporation, upon motion, permission to withdraw their said answers, and to substitute therefor answers admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearings as to said facts, and expressly waiving the filing of briefs and oral argu-

ments. Said substitute answers were duly filed in the office of the Commission. The respondents Arkansas State Rice Milling Co. and The Great Western Sugar Co., in their answers, stated they had no knowledge that the West Plains Brokerage Co. was not independent of the Reed-Harlin Grocer Co., or that the brokerage was used for the benefit of respondent Reed-Harlin Grocer Co.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, the answers of the respondents Reed-Harlin Grocer Co., a corporation, and John R. Reed and Orr M. Reed, individuals trading under the firm name and style of West Plains Brokerage Co., and the substitute answers of all other respondents, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Reed-Harlin Grocer Co., is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 200 Washington Avenue, West Plains, Mo. Respondent operates and maintains branch warehouses in various towns and cities in the States of Missouri and Arkansas.

PAR. 2. Respondent, John R. Reed, an individual residing in the city of West Plains, Mo., is now and has been since June 19, 1936, president and director of respondent Reed-Harlin Grocer Co., he owns and controls approximately 56 percent of the oustanding capital stock of said corporation and actively manages and conducts its business.

Respondent Orr M. Reed, an individual residing in the city of West Plains, Mo., is now and since June 19, 1936, has been director, secretary, a salaried employee of, and a stockholder in respondent Reed-Harlin Grocer Co.

Respondents, John R. Reed and Orr M. Reed, are in active charge of the management of the business of respondent West Plains Brokerage Co.

PAR. 3. Respondent, Ady and Milburn, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Colorado with its principal office and place of business located at 1900 Fifteenth Street, Denver, Colo.

Respondent, Arkansas State Rice Milling Co. (named in the complaint as Arkansas State Rice Mill Co.), is a corporation organized

and existing under and by virtue of the laws of the State of Arkansas with its principle office and place of business at Abbeyville, La.

Respondents, William D. Wright and Frank E. Hockensmith, under the firm name and style of Midwest Bean Co. are engaged in the business of jobbing a variety of dried beans. Their principal office and place of business is located at 2030 Blake Street in Denver, Colo.

Respondent, The Great Western Sugar 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 1530 Sixteenth Street, Denver, Colo.

Respondent, Inness Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 106 East Fifth Street, Kansas City, Mo.

Respondents, Louis S. Taube, Theodore Taube, and Lloyd B. Holden, under the firm name and style of L. S. Taube & Co. are engaged in the business of jobbing potatoes, watermelons, and allied products. Their principal office and place of business is located at 113-115 East Third Street, Kansas City, Mo.

The respondents named in this paragraph will hereinafter be referred to as "seller respondents." Each of the seller respondents named in this paragraph is engaged in the business of selling commodities, particularly foodstuffs, groceries, and allied products, to numerous buyers, including the respondent Reed-Harlin Grocer Co. The sales made by such seller respondents to respondent Reed-Harlin Grocer Co. are effectuated through the brokerage firm conducted by respondents John R. Reed and Orr M. Reed under the firm name and style of West Plains Brokerage Co.

PAR. 4. Respondent, Reed-Harlin Grocer Co., places orders for a substantial portion of the goods, wares, and merchandise, particularly foodstuffs, required in the ordinary conduct of its business, through the brokerage firm of respondents John R. Reed and Orr M. Reed trading as West Plains Brokerage Co., with sellers who are located in States of the United States other than the State in which the said Reed-Harlin Grocer Co. is located, among whom are the seller respondents herein named. As a result of the transmission and execution of said orders as aforesaid, goods, wares, and merchandise, particularly foodstuffs, are sold, transported, and delivered by such sellers to the various places of business of the respondent Reed-Harlin Grocer Co. from the sellers' places of business in other States.

PAR. 5. In the course and conduct of the buying and selling transactions in interstate commerce hereinabove referred to, since June 19,

1936, said seller respondents have transmitted, paid, and delivered and do transmit, pay, and deliver to respondents John R. Reed and Orr M. Reed, trading as West Plains Brokerage Co., so-called brokerage fees and commissions in substantial amounts, the same being a certain percentage of the quoted sales prices agreed upon between each of said sellers and respondents John R. Reed and Orr M. Reed trading as West Plains Brokerage Co., and the same have been received by John R. Reed, Orr M. Reed, and Reed-Harlin Grocer Co. through the West Plains Brokerage Co.

PAR. 6. In all of the transactions of purchase and sales hereinabove referred to, since June 19, 1936, the respondents John R. Reed and Orr M. Reed have acted in fact for and on behalf of the Reed-Harlin Grocer Co.

CONCLUSIONS

Under the facts and circumstances set forth in the foregoing findings of fact, the Commission concludes that Ady and Milburn, Inc., a corporation; Arkansas State Rice Milling Co., a corporation; William D. Wright and Frank E. Hockensmith, individuals trading under the firm name and style of Midwest Bean Co.; The Great Western Sugar Co., a corporation; Inness Bros., Inc., a corporation; and Louis S. Taube, Theodore Taube, and Lloyd B. Holden, individuals trading under the firm name and style of L. S. Taube & Co., have violated and are now violating the provisions of subsection (c) of section 2 of the Clayton Act as amended, by granting and paying fees and commissions as brokerage to the respondents Reed-Harlin Grocer Co., a corporation, and John R. Reed and Orr M. Reed, individuals trading under the firm name and style of West Plains Brokerage Co., upon the purchases of the Reed-Harlin Grocer Co.

The Commission further concludes that the respondents John R. Reed and Orr M. Reed, individuals trading under the firm name and style of West Plains Brokerage Co., and the Reed-Harlin Grocer Co., a corporation, have violated, and are now violating the provisions of subsection (c) of section 2 of said statute by receiving and accepting fees and commissions as brokerage upon purchases from the seller respondents and other sellers.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers filed herein by respondents Reed-Harlin Grocer Co., a corporation; John R. Reed and Orr M. Reed, individuals trading under the firm name and style

of West Plains Brokerage Company; Inness Bros., Inc.; and Louis S. Taube, Theodore Taube, and Lloyd B. Holden, individuals trading under the firm name and style of L. S. Taube & Co.; and the substitute answers of all the other respondents, admitting all the allegations of the complaint to be true: And the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of an act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended by the Robinson-Patman Act approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That respondents Ady and Milburn, Inc., a corporation; Arkansas State Rice Milling Co., a corporation; William D. Wright and Frank E. Hockensmith, individuals trading under the firm name and style of Midwest Bean Co.; The Great Western Sugar Co., a corporation; Inness Bros., Inc., a corporation; and Louis S. Taube, Theodore Taube, and Lloyd B. Holden, individuals trading under the firm name and style of L. S. Taube & Co., their officers, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the sale and distribution of commodities in commerce, as "commerce" is defined in said act, do forthwith cease and desist from:

(*a*) Paying or granting, directly or indirectly, to respondents Reed-Harlin Grocer Co., a corporation, and John R. Reed and Orr M. Reed, individuals trading under the firm name and style of West Plains Brokerage Co., or under any other name, any brokerage and any allowances and discounts in lieu of commissions, brokerage or other compensation, upon the purchases made by respondents Reed-Harlin Grocer Co. and John R. Reed and Orr M. Reed, individuals trading under the firm name and style of West Plains Brokerage Co.

(*b*) Paying or granting to any buyer or to any agent, representative, or other intermediary therein, wherein such intermediary is in fact acting for or in behalf of, or is subject to the direct or indirect control of such buyer in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage or other compensation, or any allowance, or discount in lieu thereof, upon purchase of commodities made for such buyer's own account.

It is further ordered, That in purchasing commodities in commerce, as "commerce" is defined in said act, for their own account, the respondents Reed-Harlin Grocer Co., a corporation, and John R. Reed and Orr M. Reed, individuals trading under the firm name and style

of West Plains Brokerage Co., their representatives, agents, and employees, do forthwith cease and desist from:

(*a*) Accepting from sellers, directly or indirectly, any brokerage, and any allowances and discounts in lieu of brokerage, in whatever manner or form such allowances and discounts may be offered, allowed, granted, paid, or transmitted.

(*b*) Accepting from sellers, in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon purchases of commodities made for respondents' own account.

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

IN THE MATTER OF

JAMES J. COLLINS, CHARLES J. HEPP AND CATHERINE HEPP, TRADING AS ROCKDALE 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 4404. Complaint, Dec. 6, 1940—Decision, Aug. 22, 1941

Where a firm engaged in the interstate sale and distribution of imitation granite monuments and markers; by means of advertisements in periodicals of general circulation and in circulars, catalogs and other advertising media, directly and by implication—

(a) Represented that the prices at which they offered their products were wholesale and special or reduced, and substantially lower than those at which they sold said products in the usual course of business, and that they were the only dealers offering a plan by which monuments and markers could be purchased at low prices on the installment plan; facts being the prices in question were the regular and customary prices, and many other dealers sold such products at low prices and on installments;

(b) Represented that their said products were of natural granite, of a permanent nature, and of certain specified weights; when they were not natural granite, monuments and markers of which have an established reputation for beauty, durability, and other preeminent qualities and are consequently decidedly preferred over those of cast or artificial stone, but were made of a mixture of cement and granite chips molded into the desired form and ground and polished to resemble natural granite, would deteriorate much more rapidly than natural granite, and in many instances were substantially less in weight than represented; and

(c) Made use in their advertising literature of drawings and cuts purporting to show the size, color, nature, and quality of their monuments, when in fact said products were not of the size, color, nature, and quality illustrated;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of causing it, because of such belief, to purchase substantial quantities of their said products:

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

Before *Mr. Andrew B. Duvall*, trial examiner.
Mr. B. G. Wilson for the Commission.
Mr. Frank E. & Arthur Gettleman, 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 James J. Collins, Charles J. Hepp, and Catherine Hepp, individually and trading as

Rockdale Monument 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, James J. Collins, Charles J. Hepp, and Catherine Hepp, are individuals trading as Rockdale Monument Co., with their office and principal place of business in Joliet, Ill. Respondents are now, and for more than 2 years last past have been, engaged in the business of manufacturing and selling imitation granite monuments and markers in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause their said products, when sold, to be shipped from their said place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said monuments and markers 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, and to induce the purchase of their said products, the respondents have disseminated false and misleading statements and representations with respect to said products, such statements and representations being inserted in magazines having a general circulation and in circulars, catalogs, and other advertising matter, distributed among prospective purchasers. Among and typical of such false and misleading representations, are the following:

You buy from us at wholesale prices.

Special Offer. Rockdale marker (as illustrated) specially priced, $12.50—$25.00 value.

We are the only company offering an easy payment plan on the purchase of monuments or markers by mail at the low prices as shown in our catalog.

Rockdale monuments and markers have been skillfully designed and executed by expert stone cutters.

They have been styled and cut by expert artisans.

Dignified beauty and dependable durability.

Flint-like hardness. Made of the finest grades of granite aggregates.

A lasting memorial that will endure through the years.

Model A–10 * * * Approximate weight, 470 lbs.

Model A–11 * * * Approximate weight, 600 lbs.

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 implications, that the prices at which respondents offer their products for sale are

wholesale prices and are special or reduced prices, being substantially lower than the prices at which such products are sold by respondents in the usual course of business; that respondents are the only dealers offering a plan by which monuments and markers may be purchased at low prices on the installment plan; that respondents' products are of natural granite; that said products are of a permanent nature; that said monuments and markers are of certain specified weights.

PAR. 4. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the prices at which respondents offer their products for sale are not wholesale prices, nor are said prices special or reduced prices but are the regular and customary prices at which such products are offered for sale and sold by respondents in the usual and ordinary course of business. Repondents are not the only dealers offering monuments and markers for sale at low prices on the installment or partial payment plan, there being many other dealers who sell such products at low prices and on the installment plan. Respondents' products are not of natural granite but are cast stone or artificial stone, said products being made of a mixture of cement and granite chips molded into the desired forms, and ground and polished to resemble natural granite. Respondents' products are not of a permanent nature but deteriorate much more rapidly than natural granite. In many instances the monuments and markers represented by respondents as being of certain specified weights are substantially lighter in weight than represented.

A further practice on the part of the respondents is the use in their advertising literature of drawings, cuts, and picturizations purporting to represent the size, color, nature, and quality of respondents' products, when in fact such products are not of the size, color, nature, or quality so represented.

PAR. 5. Monuments and markers of natural granite have established among the members of the purchasing public a reputation for beauty, durability, and other preeminent qualities, and as a result of such reputation the purchasing public has a decided preference for such products over monuments and markers which are cast stone or artificial stone.

PAR. 6. The use by the respondents of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief, that such statements and representations are true, and to cause the public, because of such erroneous and mistaken belief, to purchase 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 December 6, 1940, issued, and subsequently served its complaint in this proceeding upon the respondents James J. Collins, Charles J. Hepp, and Catherine Hepp, individually and trading as Rockdale Monument Co., charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 26, 1940, the respondents filed their answer in this proceeding. Thereafter, at a hearing held in Chicago, Ill., on May 22, 1941, before Andrew B. Duvall, an examiner of the Commission, theretofore duly designated by it, certain testimony was received and a stipulation was entered into whereby it was stipulated and agreed that, subject to the approval of the Commission, a statement of facts read into the record may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its findings as to the facts (including the inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and issue its order disposing of this proceeding without the presentation of argument or the filing of briefs. Counsel for respondents expressly waived the filing of the trial examiner's report upon the evidence. Thereafter, this proceeding came on for final hearing before the Commission on said complaint, answer, testimony, and stipulation as to the facts, said stipulation having been approved, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Charles J. Hepp, Catherine Hepp, and James J. Collins, are individuals who, prior to October 15, 1940, composed a partnership trading under the name Rockdale Monument Co., with their office and principal place of business at Joliet, Ill. On October 15, 1940, respondent James J. Collins severed his connection with the partnership and he has not since that date been inter-

ested in the business conducted under the name Rockdale Monument Co. All of said individuals, for more than 2 years prior to October 15, 1940, had been engaged in, and the respondents Charles J. Hepp and Catherine Hepp are now engaged in, the business of manufacturing and offering for sale and selling imitation granite monuments and markers in commerce between and among the various States of the United States and in the District fo Columbia.

Respondents Charles J. Hepp and Catherine Hepp now cause their said products, and all of said respondents prior to October 15, 1940, caused their said products, when sold, to be shipped from said place of business in the State of Illinois to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondents, during the respective periods of time above mentioned, maintained a course of trade in said monuments and markers 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, prior to October 15, 1940, and for the purpose of inducing the purchase of said products, the respondents disseminated false and misleading statements and representations with respect to said products. Such statements and representations were inserted in magazines having a general circulation and in circulars, catalogs, and other advertising media distributed among prospective purchasers. Among and typical of such false and misleading representations are the following:

You buy from us at wholesale prices.

Special Offer. Rockdale marker (as illustrated) specially priced, $12.50—$25.00 value.

We are the only company offering an easy payment plan on the purchase of monuments or markers by mail at the low prices as shown in our catalog.

Rockdale monuments and markers have been skillfully designed and executed by expert stone cutters.

They have been styled and cut by expert artisans.

Dignified beauty and dependable durability.

Flint-like hardness. Made of the finest grades of granite aggregates.

A lasting memorial that will endure through the years.

Model A–10 * * * Approximate weight, 470 lbs.

Model A–11 * * * Approximate weight, 600 lbs.

PAR. 3. Through the use of the foregoing representations, and others of similar import and meaning not specifically set out herein, the respondents represented, directly and by implication, that the prices at which respondents offered their products for sale were wholesale prices and were special or reduced prices, substantially lower than the prices at which such products were sold by respondents in the usual course of business; that respondents were the only dealers offering a

plan by which monuments and markers could be purchased at low prices on the installment plan; that respondents' products were of natural granite; that said products were of a permanent nature; and that said monuments and markers were of certain specified weights.

PAR. 4. The foregoing representations were false and misleading. In truth and in fact, the prices at which respondents offered their products for sale were not wholesale prices, nor were said prices special or reduced prices but the regular and customary prices at which such products were offered for sale and sold by respondents in the usual and ordinary course of business. Respondents were not the only dealers offering monuments and markers for sale at low prices on the installment or partial payment plan, there being many other dealers who sell such products at low prices and on the installment plan. Respondents' products were not natural granite but were cast stone or artificial stone; said products were made of a mixture of cement and granite chips molded into the desired forms, and ground and polished to resemble natural granite. Respondents' products were not of a permanent nature but would deteriorate much more rapidly than natural granite. In many instances, the monuments and markers represented by respondents as being of certain specified weights were substantially less in weight than represented.

A further practice on the part of respondents was the use in their advertising literature of drawings, cuts, and picturizations purporting to show the size, color, nature, and quality of respondents' products, when in fact respondents' products were not of the size, color, nature, and quality illustrated in said drawings, cuts, and picturizations.

PAR. 5. Monuments and markers of natural granite have established among the members of the purchasing public a reputation for beauty, durability, and other preeminent qualities, and as a result of such reputation the purchasing public has a decided preference for such products over monuments and markers which are cast stone or artificial stone.

PAR. 6. The use by the respondents of the aforesaid false and misleading statements and representations had the tendency and capacity to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and caused the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' products.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and constitute unfair

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and a stipulation as to the facts entered into 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 theron 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, James J. Collins, Charles J. Hepp, and Catherine Hepp, individually and trading as Rockdale Monument 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 monuments and markers in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that usual and customary prices at which said products are sold are "wholesale," special or reduced prices or anything other than the regular retail prices for said products.

2. Representing that respondents are the only dealers in monuments offering such products for sale at low prices on the installment plan.

3. Representing that said products are natural granite, or that said products are of permanent nature.

4. Representing that the weight of any of said monuments is greater than the actual weight of such monument.

5. Using cuts, drawings, or picturizations of monuments to show the size, color, nature, or quality of respondents' products which do not accurately reflect the actual size, color, nature, or quality of the monuments so illustrated.

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

SCIENTIFIC APPARATUS MAKERS OF AMERICA, 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 3092. Complaint, Mar 29, 1937—Decision, Aug. 25, 1941

Where a number of corporations and concerns which controlled and dominated the manufacture, sale, and distribution of products used by surveyors, engineers, builders, the drafting profession and others, such as prepared tracing papers, tracing cloth, blueprint papers and cloths, other reproduction papers and cloths, field books for engineers, drawing instruments and tools, blueprinting machines and equipment, surveying instruments, forestry instruments, current meters, and water-stage registers, etc.; doing the majority of the volume of such business in the United States and especially of that in blueprint and other reproduction papers and cloths, and prior to the acts and practices below set forth, in active and substantial competition with each other and with others in the interstate sale of their products; and which subsequently became members of an association organized for the purpose, among others, of conducting scientific research relating to the production and improvement of scientific instruments, promotion and betterment of the industry involved, prevention of unfair methods of competition, etc., and, by virtue of being engaged as aforesaid, were members of the "Surveying-Drafting-Coaters Section" of said association—

(*a*) Entered into various agreements and understandings directed to the fixing, enhancing, and maintenance of prices, beginning with a meeting in June or July 1932, at which adherence to a certain price list involving substantially higher prices than those then prevailing, and the division

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[1] Parties in instant proceeding were substituted by Commission order dated September 28, 1938, as follows:

This matter coming on to be heard by the Commission upon the motion of Charles W. Speidel and Walter A. Kohn, copartners trading as Chas. W. Speidel & Co., requesting that they be substituted as parties respondent in lieu and instead of Chas. W. Speidel & Co., a corporation, and for permission to withdraw their answer to the complaint herein filed on June 22, 1937, and in lieu thereof to substitute the answer dated September 19, 1938, and annexed to said motion, and it appearing to the Commission that Chas. W. Speidel & Co. is erroneously described in said complaint as a corporation; that Charles W. Speidel and Walter A. Kohn are copartners trading as Chas W. Speidel & Co.; and that said copartners have accepted service of the complaint issued herein erroneously directed to Chas. W. Speidel & Co., a corporation, and that the said Charles W. Speidel and Walter A. Kohn have heretofore entered their appearance in this proceeding, and the Commission having duly considered the said motion and the record herein, and being now fully advised in the premises;

It is ordered, That the motion of Charles W. Speidel and Walter A. Kohn, copartners trading as Chas. W. Speidel & Co., that they be substituted as parties respondent in this proceeding in lieu and instead of Chas. W. Speidel & Co., a corporation, be, and the same hereby is, granted, and the said Charles W. Speidel and Walter A. Kohn are substituted as parties respondent in this proceeding in lieu and instead of Chas W. Speidel & Co., a corporation; and

It is further ordered, That the motion of respondents Charles W. Speidel and Walter A. Kohn, copartners trading as Chas. W. Speidel & Co., that they be permitted to withdraw their answer filed herein on June 22, 1937, and to file in lieu thereof their answer dated September 19, 1938, and annexed to said motion, be, and the same hereby is, granted.

of the United States into price zones, was agreed upon, and including other meetings and undertakings after the National Industrial Recovery Act had been declared unconstitutional, to continue in force the Code of Fair Competition for the industry involved and its amendment, calling for price filing and observance of prices filed, and adopting rules of fair competition directed to the same end and covering related matters; and in pursuance of such various agreements and in furtherance thereof—

(1) Agreed to and did fix and maintain the prices at which their products were sold;

(2) Agreed to and did fix and maintain the terms and conditions, including the classification of customers, freight allowances, and duration of and optional clauses in contracts, in connection with sales of their products;

(3) Exchanged information among themselves with regard to the prices, discounts, terms, and conditions of sale to be submitted by them when bids for their products were requested, and agreed to and did submit identical, or substantially identical, bids on said products;

(4) Filed with said "Surveying-Drafting-Coaters Section" price lists including discounts, terms, and conditions at which they would sell their products, for dissemination by it among its members; and

(5) Agreed not to and did not sell their products at a price less, or a discount greater, or on terms and conditions more favorable to the purchaser, than those contained in any of the price lists so filed, and that published by the seller; and

Where their said section controlled and directed by its executive committee—

(*b*) Received from its members and disseminated among them information as to the prices, discounts, terms, and conditions of sale; and

(*c*) Adopted and agreed upon, in cooperation with such members, rules and regulations designed to prevent any deviation by members from the prices, discounts, terms, and conditions of sale fixed and agreed upon as above set forth;

With the result that trade in commerce in products in question was unduly and unlawfully restricted and restrained, prices to the consumer were substantially enhanced and maintained at artificial levels, public was also deprived of benefits which would follow from normal competition among said concerns, and competition was eliminated and there was a tendency and capacity to create in said corporations and concerns a monopoly in sale of said products:

Held, That said understandings, agreements, combinations, and conspiracies, and the things done, pursuant thereto, under the circumstances set forth, constituted unfair methods of competition in commerce.

Before *Mr. John W. Addison* and *Mr. W. W. Sheppard*, trial examiners.

Mr. Edw. W. Thomerson for the Commission.

Hewes, Prettyman, Awalt & Smiddy, of Washington, D. C., for Scientific Apparatus Makers of America, Carl S. Hallauer, R. E. Gillmor, and John M. Roberts.

Gerdes & Montgomery, of New York City, for Karl L. Keller and Keuffel & Esser Co.

Mr. Howard P. Beckett, of Philadelphia, Pa., for Surveying-Drafting-Coaters Section of the Scientific Apparatus Makers of America, Arthur L. Parker, Paul J. Bruning, and Frederick Post Co., and, along with—

Mr. Robert J. Holmes, of Boston, Mass., for W. A. Berger, and *Mayer, Magaziner & Brunswick*, of Philadelphia, Pa., for Charles W. Speidel and Walter A. Kohn.

Pam, Hurd & Reichmann, of Chicago, Ill., and *Mr. William E. Lamb*, of Washington, D. C., for R. Fred Allin and Eugene Dietzgen Co.

Mr. Thomas H. Fisher and *Mr. Arthur Fisher*, of Chicago, Ill., for Huey Co., Economy Blue Print Products, Inc., and United States Blue Print Paper Co.

Mr. Richard W. Thorington, of Philadelphia, Pa., for Alphonse A. Brunner, Jacob H. Weil, Edwin H. Weil, and Manfred Krauskopf.

Pope, Ballard & Loos, of Washington, D. C., for The C. F. Pease Co.

COMPLAINT

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the corporations, the association, and the individuals hereinafter described and named as respondents, and the corporations and individuals in the classes hereinafter described of whom those named as respondents are representatives, have been and are now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Scientific Apparatus Makers of America is a corporation existing under and by virtue of the laws of the State of Illinois, with its principal office at 20 North Wacker Drive, Chicago, Ill. Respondent Scientific Apparatus Makers of America was organized and for the past several years has acted as a trade association for the promotion and protection of interests of the respondents hereinafter described as being members of the Surveying-Drafting-Coaters Section of said respondent and others not named as respondents. The businesses of the members of the respondent Scientific Apparatus Makers of America is varied and is generally referred to as that of manufacturing and distributing scientific and technical apparatus

and supplies. Said respondent has classified the businesses of its several members and grouped its members into sections, which are as follows: Industrial Instrument Section; Laboratory Furniture Section; Laboratory Supplies Section; Mechanical & Electrical Specialties Section; Optical Instrument Section; Steam and Fluid Specialties Section; Surveying-Drafting-Coaters Section.

Each of these sections is and acts as a trade association for the members of the respondent Scientific Apparatus Makers of America whose business has been classified as belonging to a particular section. Respondent Scientific Apparatus Makers of America aided, abetted, and encouraged the Surveying-Drafting-Coaters Section in planning and doing the things and acts hereinafter alleged to have been done and performed.

PAR. 2. Respondents Carl S. Hallauer, R. E. Gillmor, and John M. Roberts are president, vice president and secretary-treasurer respectively, of the respondent Scientific Apparatus Makers of America, and respondent Karl L. Keller is one of the members of the board of directors, consisting of 11 members, the membership of which changes from time to time so that it is impracticable to name said directors as parties respondent and bring them before the Commission without manifest inconvenience and delay, and the said respondent Karl L. Keller is named as a respondent herein individually and as a member of said board of directors and as representing each and all of the other members thereof. The officers named and said board of directors control and direct the policies, practices, and activities of said respondent Scientific Apparatus Makers of America and the things and acts hereinafter alleged were done and performed under their control and direction.

PAR. 3. Respondent Surveying-Drafting-Coaters Section, one of the "sections" of the respondent Scientific Apparatus Makers of America hereinabove described, hereinafter referred to as respondent association, is an unincorporated trade association for certain members of the respondent Scientific Apparatus Makers of America, whose business consists in part of the sale and distribution of one or more of the following products: prepared tracing papers; tracing cloths; blue print papers and cloths, other reproduction papers and cloths; profile and cross section papers and cloths in sheets and rolls, coordinate papers—graph sheets (except ruled sheets), for engineering and drafting purposes; field books for engineers; drawing instruments; drawing tools (scales, triangles, T-squares, curves) and drafting machines; blueprinting machines and equipment; drawing boards and tables; filing cabinets for drawings and blueprints; lettering

devices and lettering pens for the drafting profession; slide rules; planimeters and integrators; surveying instruments; surveying barometers; forestry instruments; such as tree-calipers, hypsometers, increment borers, etc.; current meters and water stage registers; rods and poles for surveyors use; tapes, chains, and plumb bobs, for surveyors, engineers, and builders use.

PAR. 4. Respondents, Arthur L. Parker and Paul J. Bruning are manager and chairman of the executive committee of the respondent association respectively and respondents Karl L. Keller, W. A. Berger, and R. Fred Allin are members of the executive committee of the association respondent. These respondents and their predecessors and successors in office have and do control and direct the policies, practices, and activities of said respondent association in doing the things and acts hereinafter alleged to have been done and performed. The predecessors and successors in office of these respondents are so numerous and change so often that it is impracticable to name them as parties respondent and bring them before the Commission without manifest inconvenience and delay and the respondents Paul J. Bruning, Karl L. Keller, W. A. Berger, and R. Fred Allin are made parties herein individually, as members of said executive committee, and as representatives of the other members past, present, and future.

PAR. 5. Respondent, Charles Bruning 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 at 102 Reade Street, New York, N. Y., and with offices and places of business in various States of the United States which it operates and controls through wholly owned subsidiary corporations.

Respondent, The Huey Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 17 South Wabash Avenue, Chicago, Ill.

Respondent, The Frederick Post Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 3636 North Hamlin Street, Chicago, Ill.

Respondent, Eugene Deitzen Co., is a corporation organized and existing under and by virtue of the laws of Delaware with its office and principal place of business at 218 East Twenty-third Street, New York, N. Y., and with branches at other points in the United States.

Respondent, Economy Blue Print Products, Inc., is a corporation organized and existing under and by virtue of the laws of the State

of Illinois, with its office and principal place of business at 1714 North Damen Avenue, Chicago, Ill.

Respondent, Keuffel & Esser Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey with its office and principal place of business at 300 Adams Street, Hoboken, N. J.

Respondent, Alphonse A. Brunner, is an individual trading under the name and style Keystone Blue Paper Co. with his office and principal place of business at 910 Filbert Street, Philadelphia, Pa.

Respondent, The C. F. Pease Co., 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 813 North Franklin Street, Chicago, Ill.

Respondent, Chas. W. Speidel & Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business at 112 North Twelfth Street, Philadelphia, Pa.

Respondent, United States Blue Print Paper Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its office and principal place of business at 207 Wabash Avenue, Chicago, Ill.

Respondent, Jacob H. Weil, Edwin H. Weil, and Manfred R. Krauskopf, are individuals trading under the name and style J. H. Weil & Co. and have their office and principal place of business at 1315 Cherry Street, Philadephia, Pa.

These respondents will hereinafter be referred to as the member respondents and all of them are now or have been members of the respondent Scientific Apparatus Makers of America and the respondent Surveying-Drafting-Coaters Section, hereinabove described. The members of the respondent Surveying-Drafting-Coating Section are approximately 40 in number, which number varies from time to time by the dropping out of old and the addition of new members and they constitute a class so numerous that it is impracticable at any given time to name as parties respondent and bring before the Commission each and all of said members without manifest inconvenience and delay, and the members named are made parties respondent separately and as representatives of each and all other members as a class.

PAR. 6. The above-described member respondents are all engaged in the sale and distribution of one or more of the products described in paragraph 3 hereof to wholesalers of, dealers in, and consumers of, such products located throughout the United States, and pursuant to such sales, and as a part thereof, regularly have

shipped and do ship such products to their said customers at their said respective places of business located at various points in the several States of the United States other than in the States of the origin of such shipments.

Prior to the adoption of the practices hereinafter alleged, these member respondents were in active and substantial competition with each other, and with other members of the industry, some of whom have been members of the respondent association and others of whom have not been members of the respondent association, in making and seeking to make sales of their said products in such commerce, and, but for the facts hereinafter alleged, such active and substantial competition would have continued to the present time, and the said member respondents would now be in active and substantial competition with each other and with members of the industry not presently members of the respondent association. Said member respondents now constitute, and have during all of the times mentioned herein constituted substantially all of the sellers to wholesalers of, dealers in, and consumers of, said products and especially so in regard to blueprint paper, and other reproduction papers and cloths. Said member respondents control and dominate said industry in the United States and thereby control the practices of the industry as a whole.

Blueprint paper, together with many of the other products sold and distributed by the member respondents, is used extensively throughout the United States by manufacturers, builders, and others in drafting, preparing and reproducing designs, plans, and specifications for new and changed productions of whatever nature. Many manufacturers, builders, and others, including the United States and State Governments and municipalities, or some agency thereof, because of the substantial quantity used, purchase blueprint paper and others of said products only as the result of the submission of bids by the member respondents and others, from which bids is selected the member of the industry from whom purchases of said products will be made for a given time or in a stated quantity.

PAR. 7. Prior to the formation of the respondent association, member respondents Charles Bruning Co., Inc., The Huey Co., The Frederick Post Co., Eugene Deitzen Co., Inc., and other members of the industry, on or about July 15, 1932, entered into and thereafter carried out an understanding, agreement, combination, and conspiracy for the purpose and with the effect of restricting, restraining, and monopolizing, and eliminating competition in, the sale of blueprint paper, and others of the products hereinabove mentioned, in trade and commerce between and among the several States of the United

States and in the District of Columbia. From time to time members of the industry other than those herein named as respondents became parties to, and carried out, said understanding, agreement, combination, and conspiracy.

PAR. 8. Pursuant to said understanding, agreement, combination, and conspiracy, and in furtherance thereof, the said member respondents Charles Bruning Co., Inc., The Huey Co., The Frederick Post Co., Eugene Deitzen Co., Inc., and the other members of the industry parties thereto, have done and performed and still do and perform the following acts and things:

1. Agreed to fix and maintain and have fixed and maintained the prices at which said products are sold.

2. Agreed to fix and maintain and have fixed and maintained uniform terms and conditions for all sales made, including, but without limitation, classification of customers, freight allowances, duration of and optional clauses in contracts.

3. Agreed to induce and have, through threats, coercion, and persuasion, induced members of the industry, not parties to said understanding, agreement, combination, and conspiracy, to participate in and cooperate with the parties thereto in carrying out said understanding, agreement, combination, and conspiracy.

4. Agreed to require and have required dealers purchasing said products for resale to consumers to maintain the prices fixed and agreed upon by the respondents.

5. Agreed to submit and have submitted uniform and identical bids on said products when requests were made for such bids.

6. Agreed to and have interfered with the source of supply of raw paper of certain members of the industry who did not adhere to the schedule of prices fixed and agreed upon by the said respondents.

PAR. 9. Subsequent to the entering into and carrying out of the aforementioned understanding, agreement, combination, and conspiracy by the parties thereto, the respondent association was formed by the respondents Scientific Apparatus Makers of America and the member respondents and thereafter, and on or about the 3d day of June 1935 and on divers days and dates thereafter, the said respondents entered into and thereafter carried out understandings, agreements, combinations, and conspiracies for the purpose and with the effect of restricting, restraining, and monopolizing, and eliminating competition in, the sale of blueprint paper and the other products described in paragraph 3 hereof in trade and commerce between and among the several States of the United States and in the District of Columbia. Pursuant to said subsequent understand-

ings, agreements, combinations, and conspiracies and in furtherance thereof the said respondents have done and performed and still do and perform the acts and things done and performed pursuant to the understanding, agreement, combination, and conspiracy mentioned in paragraph 8 hereof and do and perform in addition thereto the following acts and things:

1. Each of the members of the respondent association agreed to and does file with the respondent association a schedule of the prices, including discounts and the terms and conditions of all sales, at which such member will and does sell said products.

2. Each of said members of respondent association agreed that the prices filed by the respective members could be deviated from only under certain conditions, but agreed that under those conditions they would not and they do not sell at a price less, a discount greater, or on more favorable terms and conditions than those granted by the terms of the price list filed by any other member respondent showing the lowest price, the greatest discount and the most favorable terms of sale.

3. The respondent association collects from and disseminates among the member respondents information as to prices, discounts and the terms and conditions of sales which enables each of said member respondents to know what prices will be charged by all of the other member respondents. Said member respondents exchange information among themselves in regard to the price discounts and terms and conditions of sale to be submitted by such members when bids are requested.

4. In many instances the respondents declare the bids requested by purchasers to be "open," because some member of the industry bidding in such instances is not a participant in the carrying out of said understandings, agreements, combinations, and conspiracies and is selling the products of the industry at prices less than those fixed by the member respondents, and in such cases the member respondents collusively submit identical bids at prices lower than those that would be otherwise submitted so as to prevent such nonparticipating member of the industry from securing any substantial amount of business and to compel such member to become a party to said understandings, agreements, combinations, and conspiracies.

5. Said member respondents and the respondent association have adopted and agreed upon detailed rules and regulations designed and intended to prevent any deviation on the part of the member respondents from the price fixed and agreed upon as hereinabove alleged.

6. Said respondents used and are using other methods and means designed to suppress and prevent competition and restrict and restrain the sale of said products in said commerce.

PAR. 10. Each of said respondents acted in concert and in cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 11. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting and restraining trade and commerce in said products between and among the several States of the United States and in the District of Columbia; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition among and between the member respondents; of eliminating competition, with the tendency and capacity of creating a monopoly in the sale of said products in said commerce. Said understandings, agreements, combinations and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as above alleged, constitute unfair methods of competition within the intent and meaning of an Act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and are to the prejudice of the public.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 29th day of March, A. D., 1937, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of answers thereto by all the respondents except Carl S. Hallauer, R. E. Gillmor, The Huey Co., Economy Blue Print Products, Inc., and the United States Blue Print Paper Co.—(answers filed by the three last-named respondents were stricken by the Commission)—testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition to the allegations of the complaint by attorneys for the respondents, before duly appointed trial examiners of the Commission theretofore 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 upon the said complaint, the answers thereto, the testimony and other evidence, briefs in support of the complaint and in opposition thereto, the report of the trial examiners and the exceptions thereto, and oral arguments of the attorney for the Commission and attorneys 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. Respondent, Scientific Apparatus Makers of America is a nonprofit membership corporation without capital stock; for brevity it will hereinafter be referred to as "SAMA." It was incorporated on January 20, 1936, under the laws of the State of Illinois, and its principal office is located at No. 20 North Wacker Drive, in Chicago, Ill. At the time of the issuance of the complaint herein its officers were respondents Carl S. Hallauer, president; R. E. Gillmor, vice president, and John M. Roberts, secretary-treasurer; its board of directors consisted of its said officers, together with four directors at large and the chairmen of the respective executive committees of the several sections hereinafter mentioned.

PAR. 2. The corporate respondent, SAMA, and its predecessor, an unincorporated association bearing the same name, were organized for the purpose of scientific research relating to the production and improvement of scientific instruments, the promotion and betterment of the industry, the prevention of unfair methods of competition, and the dissemination of scientific, structural, and other information relating to the promotion of the industry. The membership of the unincorporated association was as first limited to those engaged in the production of strictly scientific instruments, such as microscopes, clinical thermometers, test tubes, etc. Later, it and its successor, respondent corporation SAMA, extended the scope of its membership and classified the various groups into sections, according to their respective lines of business, namely; Individual Instrument Section; Clinical Thermometer Section; Automatic Control Section; Optical Instrument Section; Aeronautical, Nautical and Military Instrument Section; Laboratory Supply Section; Laboratory Furniture Section; Steam Fluid Specialty Section, and Surveying-Drafting-Coaters Section.

PAR. 3. Respondent, Surveying-Drafting-Coaters Section, of Scientific Apparatus Makers of America is an unincorporated trade association, organized in June 1933, which for brevity will be hereinafter referred to as respondent "Association." Its principal office is located in Philadelphia, Pa. It has approximately 40 members, but the number fluctuates, because of withdrawals and additions from time to time. Respondent Arthur L. Parker, at the time of the issuance of the complaint herein, was, since said date has been, and now is, the manager of respondent Association. Respondent Karl Keller (named in the complaint as Karl L. Keller), from September 27, 1933, until April 30, 1936, was chairman of its executive committee, and was succeeded on May 1, 1936, by respondent Paul J. Bruning, who since said date has been chairman of said committee. The members of the executive committee of respondent Association until April 30, 1937, were respondents Karl Keller, Paul J. Bruning, W. A. Berger, and R. Fred Allin. Respondent Association's membership is composed of those members of SAMA who are engaged in making, selling, and distributing one or more of the various products used by surveyors, engineers, builders, the drafting profession, and others, to wit: Prepared tracing papers, tracing cloths, blueprint papers and cloths, other reproduction papers and cloths, profile and cross-section papers and cloths in sheets and rolls, coordinate papers—graph sheets (except rolled sheets) for engineering and drafting purposes, field books for engineers, drawing instruments, drawing tools (scales, triangles, T-squares, curves), drawing machines, blueprinting machines and equipment, drawing boards and tables, filing cabinets for drawings and blueprints, lettering devices and lettering pens for the drafting profession, slide rules, planimeters and integrators, surveying instruments, surveying barometers, forestry instruments such as tree calipers, hypsometers, increment borers, current meters and water-stage registers, rods, and poles for surveyor's use, tapes, chains, and plumb bobs.

PAR. 4. Respondent Association's members have shipped and do ship their products as set forth in paragraph 3 hereof, to purchasers thereof at their respective places of business located in various States of the United States other than the States wherein said respondents' places of business are located and in which such shipments originate.

PAR. 5. Respondent, Charles Bruning Co., Inc., is a corporation organized under the laws of the State of New York, with its office and principal place of business in the city and State of New York, and with offices and places of business in various States of the United

States, which it operates and controls through wholly owned subsidiary corporations.

Respondent, The Huey Co., is a corporation organized under the laws of the State of Illinois, with its office and principal place of business in Chicago, Ill.

Respondent, The Frederick Post Co., is a corporation organized under the laws of the State of Illinois, with its office and principal place of business in Chicago, Ill.

Respondent, Eugene Dietzgen Co. (named in the complaint as "Deitzen"), is a corporation organized under the laws of the State of Delaware, with its office and principal place of business in Chicago, Ill., and with branches at other points in the United States.

Respondent, Economy Blue Print Products, Inc., is a corporation organized under the laws of the State of Illinois, with its office and principal place of business in Chicago, Ill.

Respondent, Keuffel & Esser Co., is a corporation organized under the laws of the State of New Jersey, with its office and principal place of business in Hoboken, N. J. Respondent, Keuffel & Esser Co., the New Jersey corporation, owns the capital stock of a New York corporation with the same name, and the business of said respondent, except for sales made in New York, is conducted through branches operated by the subsidiary corporation.

Respondent, Alphonse A. Brunner, is an individual trading under the name Keystone Blue Paper Co., with his offce and principal place of business in Philadelphia, Pa.

Respondent, C. F. Pease Co., is a corporation organized under the laws of the State of Delaware with its office and principal place of business in Chicago, Ill.

Respondent, Charles W. Speidel and Walter A. Kohn, are individuals trading under the name Chas. W. Speidel & Co., with their office and principal place of business in Philadelphia, Pa.

Respondent, United States Blue Print Paper Co., is a corporation organized under the laws of the State of Illinois, with its office and principal place of business in Chicago, Ill.

Respondents, Jacob H. Weil, Edwin H. Weil and Manfred Krauskopf (named in the complaint as Manfred R. Krauskopf), are individuals trading under the name J. H. Weil & Co., and have their office and principal place of business in Philadelphia, Pa.

All of the aforenamed respondents were, at the date of the issuance of the complaint, members of respondent SAMA and of the respondent Association, and were and are engaged in the sale and distribution of some of the merchandise described in paragraph 3

hereof, and sell and distribute their merchandise as set forth in paragraph 4 hereof.

Respondent, Paul J. Bruning, is president of respondent Charles Bruning Co., Inc. Respondent, Karl Keller, is president of respondent Keuffel & Esser Co. Respondent, W. A. Berger is secretary of C. L. Berger & Sons, Inc., which is a member of the corporate respondent SAMA and of respondent Association. Respondent, R. Fred Allin, is vice president of respondent Eugene Dietzgen Co.

PAR. 6. In June or July 1932, representatives of respondent corporations Charles Bruning Co., Inc., The Frederick Post Co., Eugene Dietzgen Co., United States Blue Print Paper Co., and The Huey Co., together with 7 to 10 other manufacturers of blueprint paper and other products described in paragraph 3 hereof, held a meeting in the Statler Hotel, in Detroit, Mich., and but for 1 dissenter (not listed above), agreed that in the sale of their said products they would adhere strictly to the prices, discounts, terms, and conditions of sale shown on the price list circulated among them which respondent Eugene Dietzgen Co. had prepared, to become effective on July 10, 1932. The list designated territories into which the United States should be divided, and specified prices for each territory. The prices shown on the list were substantially higher than the demoralized prices at which sales were being made in Detroit at the time of this meeting. One popular grade of paper which had been selling to dealers and large consumers at $2.95 a roll was raised in central territory to $4.87½ to large consumers and $4.16 to dealers.

Other meetings were held during the following 5 or 6 months, and a committee functioned to stabilize, generalize, and maintain the prices named on the Dietzgen list, with the result that other sellers decided to adhere to the prices, discounts, terms, and conditions of sale named in said list, and the prices so named became substantially the prevailing prices charged by all the respondents and other dealers—except the respondents The C. F. Pease Co. and Chas. W. Speidel & Co., and some discount modifications by Keuffel & Esser Co.—until respondent Eugene Dietzgen Co. issued a new list, which was likewise adopted and adhered to by all the respondent sellers and others, except as hereinabove stated, until the enactment of the National Industrial Recovery Act.

PAR. 7. From November 1933, to May 27, 1935, when the Supreme Court declared the National Industrial Recovery Act unconstitutional, all respondent dealers and members of respondent Association conducted their business in accordance with the provisions of the Code of Fair Competition for the Scientific Apparatus Industry and

its amendment, and pursuant thereto, they were required to do and did do the following things:

Filed with the manager of respondent Association from time to time their published price lists, terms, and conditions of sale, and a copy of all changes therein; refrained from selling or offering for sale their said products, directly or indirectly, at a price lower or a discount greater, or on more favorable terms than those provided in their respective current price lists, discount sheets, and terms and conditions of sale on file with said manager, except that from time to time, to meet existing competition, they sold their respective products at prices below those contained in their respective filed and published price lists, but did not sell below the lowest published net prices then in effect, filed with said manager by other members of the industry; used uniform terms and conditions for all sales made, including classification of customers; refused to make contracts for a period of more than 1 year, or allow options for any additional period, or additional quantity of merchandise.

The manager of respondent Association from time to time disseminated among the membership of said Association the information contained in the price lists, discount sheets, and terms of sale so filed.

PAR. 8. After the National Industrial Recovery Act had been declared unconstitutional, a meeting of respondent Association was held in Atlantic City, N. J., on June 3, 1935, at which respondent Karl Keller presided. Twenty-one members of respondent Association were present; the corporate respondents represented were, Eugene Dietzgen Co., Charles Bruning Co., Inc., The C. F. Pease Co., and The Frederick Post Co.; respondent Manfred Krauskopf represented the respondent partners composing the firm of J. H. Weil & Co.; respondents, W. A. Berger, Paul J. Bruning, R. Fred Allin, and Alphonse A. Brunner, were present.

By unanimous vote of the members present at said meeting, it was agreed to continue in force all the provisions of the Code referred to in paragraph 7 hereof, the only modification being that the provision relating to adherence to prices on file with the manager of respondent Association should be referred to the executive committee to be rewritten in a legally acceptable form and then submitted to respondent Association.

PAR. 9. On October 29, 1935, respondent Association held a meeting in Cleveland, Ohio, at which respondent Karl Keller presided. Listed as present at this meeting were 19 corporations and partnerships and 22 individuals. Included in the corporations and firms represented at this meeting were respondents The Huey Co., United

State Blue Print Paper Co., The Frederick Post Co., The C. F. Pease Co., Charles Bruning Co., Inc., Kueffel & Esser Co., Eugene Dietzgen Co., and J. H. Weil & Co.; among the individuals present were respondents, W. A. Berger, Edwin H. Weil, and R. Fred Allin. The manager of respondent Association was also present.

At this meeting rules of fair competition were adopted by unanimous vote of the members present, which, among other things, makes it unfair practice to:

Sell, or offer to sell, products on which price information has been filed and published, at less than the lowest net price filed and published by any member on such product or products; nor sell, or offer to sell, special products which are covered by his filed and published price lists at net prices more favorable to the purchaser than the lowest filed and published net prices for a similar item of comparable grade.

To offer to consumers more favorable to them than "Net 30 days," nor more favorable terms to dealers than "2% cash discount on the 10th prox."

To take contracts for a period of more than 1 year, or allow options for any additional period or additional quantity of merchandise.

PAR. 10. On June 1, 1936, a meeting of the respondent Association was held in Chicago, Ill., at which respondent, Paul J. Bruning, presided. Seventeen corporations were listed as being present at this meeting, and 25 individuals, including the following respondent corporations: Charles Bruning Co., Inc.; Eugene Dietzgen Co., The Huey Co., Keuffel & Esser Co., The C. F. Pease Co., The Frederick Post Co., and the United States Blue Print Paper Co. Among the individuals present were respondents, W. A. Berger, Paul J. Bruning, and R. Fred Allin. Rules of fair competition were adopted at this meeting to supersede those currently in effect. The practices described below were declared to be unfair and destructive to Industry welfare:

Sell, or offer to sell, directly or indirectly, any product of the section on which price information had been published, at less than the lowest net price published by any member on such product or products; nor sell, or offer to sell, products which are not covered by such price lists but which are similar to listed products, at net prices more favorable to the purchaser than the lowest published net price.

These rules also provide that:

No member shall quote a lump-sum price on any schedule of products of this Industry which does not itemize, or which is lower than, the sum of such member's unit selling prices of the articles comprising the schedule; and when quoting a combined bid, including purchased materials, no member shall quote prices for such purchased material less than the published resale price of the manufacturer thereof applicable to the trade factor making the purchase. Any adjustment for units withdrawn must be at quoted prices.

It is also provided in these rules, that:

When the quotations are made f. o. b. shipping point, the shipping point is defined to be "the location of the manufacturing plants, branches or warehouses of the member."

At this meeting a motion was adopted in which it is provided that:

All members of the section shall file with the manager for distribution, the conditions of sale and cash terms pertaining to the products they manufacture, and also the conditions of sale and cash terms pertaining to the rest of the items in that line.

The rules also provide that:

Each quotation shall define terms and conditions of sale.

Each quotation shall be a firm proposal, subject to revision only to correct errors.

Invoices shall bear the date on which delivery is made to the carrier at the point of shipment. Invoices shall not be post-dated.

PAR. 11. Prior to the meeting held in Detroit in June or July 1932, and referred to in paragraph 6 hereof, all the respondents and the other members of respondent Association were in active and substantial competition with each other and with other members of the Industry, in the sale of their products, but since said meeting respondents and the other members of respondent Association have observed and adhered to the rules and practices set forth in paragraphs 8, 9, and 10 hereof, and the prices charged for their said products, and the terms and conditions of sale thereof, have been substantially the same, and as a result, competition between said respondents and other members of respondent Association has been eliminated.

The respondent Association has been active in the attempt to have its members observe the said rules and practices. The following is a letter dated February 24, 1936, from respondent, Karl Keller, to respondent, Arthur L. Parker, manager of respondent Association, concerning a member of the Association:

Information has reached us that the B. K. Elliott Co. of Pittsburgh are furnishing a 35% rag blueprint paper in 25 lb. weight. The tests we have made on their paper confirm that information.

According to our trade Code and blueprint standards, such paper should not be sold as our trade standardized on a 24 lb. paper, either 25% rag or 50% rag.

Furthermore, the B. K. Elliott Co. is selling the 35% rag paper at their standard price for a 25% rag paper.

Please write to them, giving them the above information and ask them for an explanation.

PAR. 12. Exhibits in evidence showing tabulations of bids made by respondents prior to the June or July 1932, meeting referred to

in paragraph 6 hereof show that a highly competitive condition existed in the industry and that the submission of identical bids by two or more of the respondents was the exception rather than the rule. Exhibits in evidence, showing tabulations of bids made by the respondents after the issuance of the Dietzgen Co. price list approved at the 1932 meeting show that the prices quoted in that list and the amended price list issued in 1933 were used by the respondents in the submission of bids and that the submission of bids at identical prices became the rule and a variation from the prices shown in the Dietzgen lists by even a single bidder the exception. That the effect of the practices of respondents, as herein found, has been to eliminate in its entirety the competition as to price that existed prior to the commencement of such practices is clearly shown by exhibits in evidence reflecting bids made to State and Federal agencies for their requirements after the National Industry Recovery Act was declared unconstitutional.

On May 18, 1936, respondents Eugene Dietzgen Co., Keuffel & Esser Co., Charles Bruning Co., Inc., Keystone Blue Paper Co. (trade name of respondent Alphonse A. Brunner), and five other members of the Industry submitted bids on blueprint paper to the executive department of the State of New York. Except for the bid of the Keystone Blue Paper Co., which was for $18,722.23, each of the bids was for $18,721.48.

In May 1936, respondents Charles Bruning Co., Inc., Eugene Dietzgen Co., Economy Blue Print Products, Inc., The Huey Co., Keuffel & Esser Co., The C. F. Pease Co., United States Blue Print Paper Co., J. H. Weil & Co., Keystone Blue Paper Co., Chas. W. Speidel & Co., and a number of other dealers, submitted bids on blueprint paper to the United States Navy Department, as follows:

On lot 574, the identical bid of $15,867 was submitted by respondents Eugene Dietzgen Co., Economy Blue Print Products, Inc., The Huey Co., Keuffel & Esser Co., The C. F. Pease Co., United States Blue Print Paper Co., J. H. Weil & Co., and by three other dealers.

On lot 575, the same respondents and another member of respondent Association, who bid on lot No. 574, each submitted a bid of $34,095.50.

On lot No. 576, an identical bid of $15,184 was submitted by each of the respondents, Eugene Dietzgen Co., The Huey Co., Keuffel & Esser Co., The C. F. Pease Co., United tates Blue Print Paper Co., J. H. Weil & Co., and by another member of respondent Association. Respondent Economy Blue Print Products, Inc., bid $15,160.

On lot No. 577, a bid of $30,624.10 was submitted by each of the respondents Charles Bruning Co., Inc., Eugene Dietzgen Co., Economy

Blue Print Products, Inc., The Huey Co., Keuffel & Esser Co., The C. F. Pease Co., The Frederick Post Co., Charles W. Speidel & Co., J. H. Weil & Co., and two other members of respondent Association.

On lot No. 578, a bid of $3,675.60 was submitted by each of 17 bidders, included in which were respondents Charles Bruning Co., Inc., Economy Blue Print Products, Inc., The Huey Co.; Keuffel & Esser Co., Keystone Blue Paper Co., The C. F. Pease Co., The Frederick Post Co., Charles W. Speidel & Co., J. H. Weil & Co., and 3 other members of respondent Association.

On lot No. 579, there were 14 bidders, at $5,672.51 each. Among those making this identical bid were respondents Charles Bruning Co., Inc., Eugene Dietzgen Co., The Huey Co., Keuffel & Esser Co., The C. F. Pease Co., The Frederick Post Co., Chas. W. Speidel & Co. and J. H. Weil & Co., and 3 other members of respondent Association.

On lot No. 580, there were 14 bids, each for $6,107.35. Among those submitting this identical bid were respondents Charles Bruning Co., Inc., Eugene Dietzgen Co., The Huey Co., Keuffel & Esser Co., Keystone Blue Paper Co., The C. F. Pease Co., The Frederick Post Co., Chas. W. Speidel & Co., J. H. Weil & Co., and three other members of respondent Association.

On lot No. 581 there were 17 bids submitted, 15 of which were for $6,883.29 each. There was 1 bid for $6,881.85, and 1 for $5,223.25. Among those submitting the bid of $6,883.29 were respondents Charles Bruning Co., Inc., Eugene Dietzgen Co., The Huey Co., Keuffel & Esser Co., Keystone Blue Paper Co., The Frederick Post Co., Chas. W. Speidel & Co., J. H. Weil & Co., and three other members of respondent Association.

On lot No. 582 14 bids were submitted, each of which was for $26,922.51. The respondents submitting identical bids on this lot were Charles Bruning Co., Inc., Eugene Dietzgen Co., The Huey Co., Keuffel & Esser Co., Keystone Blue Paper Co., The C. F. Pease Co., The Frederick Post Co., Chas. W. Speidel & Co. and J. H. Weil & Co., and 3 other members of respondent Association.

On July 1, 1937, respondents The Huey Co., Chas. W. Speidel & Co., Charles Bruning Co., Inc., Eugene Dietzgen Co., The Frederick Post Co., J. H. Weil & Co., and 3 other members of respondent Association, each submitted to the Navy Department a bid for $29,112.91, on lot No. 513.

Thirteen bids, each for $3,441.20, were submitted on lot No. 514, and of this number, 6 were submitted by the respondent bidders on lot No. 513, and 3 other members of respondent Association.

Ten bids of $3,750.00 each were submitted on lot No. 515, the same respondents bidding as in the two immediately preceding lots, and two other members of respondent Association.

Ten bids of $5,767.74 each were submitted in lot No. 516. The respondents submitting this bid were The Frederick Post Co., The Huey Co., Eugene Dietzgen Co., and Charles Bruning Co., Inc., together with two other members of respondent Association. Respondents, Chas. W. Speidel & Co. and J. H. Weil & Co., each bid $5,757.74.

Twelve bids, each for $6,692.75 were submitted on lot No. 517; among those submitting this bid were respondents Charles Bruning Co., Inc., Eugene Dietzgen Co., The Frederick Post Co., The Huey Co., Chas. W. Speidel & Co., J. H. Weil Co., and 3 other members of respondent Association.

Twelve bids of $6,112.44 each were submitted on lot No. 518. The respondents making this bid were Charles Bruning Co., Inc., Eugene Dietzgen Co., The Huey Co., The Frederick Post Co., Chas. W. Speidel & Co., J. H. Weil & Co., Keuffel & Esser Co., and three other members of respondent Association.

On lot No. 519, 13 bids were submitted, each for $23,488.11. Among those submitting this bid were the respondents who submitted identical bids on lot No. 518, and 3 other members of respondent Association.

Twelve bids of $23,211.76 each were submitted on lot No. 752. Among those submitting this bid were respondents Eugene Dietzgen Co., Economy Blue Prints Products, Inc., The Huey Co., The Frederick Post Co., Chas. W. Speidel & Co., J. H. Weil & Co., and two other members of respondent Association.

While the illustrations above set out relate to reproduction papers only, the evidence establishes the same uniformity of prices on the other items sold by the respondents.

Bids substantially identical in all instances and identical to the penny in most instances on various types of reproduction paper, where the quantity involved in the several lots ranges from $3,441.20 to $34,095.50, are not the result of a uniformity of the cost of production as contended by respondents but are the result of concerted action on the part of the respondents, as hereinabove found.

PAR. 13. Pursuant to said understandings, agreements, arrangements, combinations, and conspiracies, as set forth in paragraphs 6, 8, 9, and 10 hereof, and in furtherance thereof, said respondents have done and performed, and still do and perform the following acts and things:

(*a*) Agreed to fix and maintain, and have fixed and maintained, the prices at which said products are sold by them.

(*b*) Agreed not to sell, and have not sold their said products at a price less, or a discount greater, or on terms and conditions more favorable to the purchaser than those contained in any of the price lists so filed.

(*c*) Agreed not to make contracts for a longer period than 1 year, nor to extend any such contract for a longer period, nor to include additional merchandise therein.

(*d*) Agreed to fix and maintain, and have fixed and maintained, uniform terms and conditions of sales made by them, including classification of customers and freight allowances.

(*e*) Have exchanged information among themselves with regard to the price, discount and terms and conditions of sale to be submitted by them when bids are requested, and have submitted uniform and identical bids on said products when requests have been made for bids.

(*f*) Have filed with respondent Association schedules of their prices or price lists and agreed to file, and did file, with the respondent Association schedules showing the terms and conditions of sale at which they will, and do, sell said products.

PAR. 14. Respondent Association, through its manager, receives from its respondent members, information as to their prices, discounts, terms and conditions of sale, and disseminates such information among its members.

PAR. 15. Respondent Association and its respondent members have adopted and agreed upon rules and regulations designed and intended to prevent any deviation on the part of respondent members from the prices, discounts, terms, and conditions of sale fixed and agreed upon as above set forth.

PAR. 16. The policies, practices, and activities of respondent Association are controlled and directed by its executive committee.

PAR. 17. The respondents named in paragraph 5 hereof control and dominate the industry in which they are engaged, and their sales to wholesalers and dealers in, and consumers of, the products mentioned in paragraph 3 hereof constitute the majority of the volume of business in such products in the United States, especially with respect to blueprint and other reproduction papers and cloths.

PAR. 18. Many manufacturers, builders, and others, including United States and State Governments and municipalities, purchase blueprint paper and other products mentioned in paragraph 3 hereof only upon the submission of bids by the respondents named in para-

graph 5 hereof and others engaged in said industry, from which bids is selected the member of the industry from whom purchase of said products will be made for a given time or in a stated quantity.

PAR. 19. Prior to the adoption of the herein described practices and the acts of the respondents herein set forth, the respondents mentioned in paragraph 5 hereof were in active and substantial competition with each other and with others engaged in the industry described in paragraph 3, in making and seeking to make sales of their products to customers located in various States of the United States and in the District of Columbia, and would have continued to be in such competition had such respondents not adopted and carried out the herein described acts and practices.

PAR. 20. Said understandings, agreements, arrangements, combinations, and conspiracies and the things done thereunder and pursuant thereto, as herein set forth, have and had the effect of unduly and unlawfully restricting and restraining trade and commerce in said products described in paragraph 3 hereof, between and among the several States of the United States and in the District of Columbia; of substantially enhancing prices to the consumer; of maintaining prices at artificial levels and otherwise depriving the public of benefits which would follow from normal competition among and between the respondents named in paragraph 5 hereof; of eliminating competition, with the tendency and capacity of creating in respondents a monopoly in the sale of said products in such commerce.

CONCLUSION

Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove found, constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, the testimony and other evidence taken before duly appointed trial examiners of the Commission theretofore designated by it to serve in this proceeding, the report of the trial examiners thereon and the exceptions to said report, briefs filed herein by the attorney for the Commission and attorneys for the respondents, and the oral arguments by the respective attorneys, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent members of the respondent Association, Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, Charles Bruning Co., Inc., The Frederick Post Co., The Huey Co., Eugene Dietzgen Co., Economy Blue Print Products, Inc., Keuffel & Esser Co., The C. F. Pease Co., Charles W. Speidel and Walter A. Kohn, trading as Chas. W. Speidel & Co., United States Blue Print Paper Co., Jacob H. Weil, Edwin H. Weil, and Manfred Krauskopf, trading as J. H. Weil & Co., Alphonse A. Brunner, trading as Keystone Blue Paper Co., and all other present and future members of respondent Association, of which members the aforenamed respondents are representative, their officers, directors, representatives, agents, and employees, forthwith cease and desist from:

Directly or indirectly, jointly or severally, entering into or carrying out any understanding, agreement, arrangement, combination, or conspiracy, with each other or with any other person or persons, association or corporation, to restrict, restrain, monopolize or to hinder or suppress, competition in the sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act of prepared tracing papers, tracing cloths, blueprint papers and cloths, other reproduction papers and cloths, profile and cross-section papers and cloths in sheets and rolls, coordinate papers—graph sheets (except rolled sheets) for engineering and drafting purposes, field books for engineers, drawing instruments, drawing tools (scales, triangles, T-squares, curves), drawing machines, blueprinting machines and equipment, drawing boards and tables, filing cabinets for drawings and blueprints, lettering devices and lettering pens for the drafting profession, slide rules, planimeters and integrators, surveying instruments, surveying barometers, forestry instruments such as tree calipers, hypsometers, increment borers, current meters and water-stage registers, rods and poles for surveyors' use, tapes, chains, and plumb bobs, and particularly in pursuance of any such understanding, agreement, arrangement, combination, or conspiracy, from directly or indirectly:

1. Fixing and maintaining, or agreeing to fix and maintain the prices at which said products will be sold by them.

2. Fixing and maintaining, or agreeing to fix and maintain the terms and conditions, including the classification of customers, freight allowances, and duration of and optional clauses in contracts, in connection with any sales by them of their said products.

3. Exchanging information among themselves with regard to the prices, discounts, terms, and conditions of sale to be submitted by them when bids for their products are requested, and submitting or

agreeing to submit identical, or substantially identical, bids on said products when requests for bids have been received.

4. Filing with respondent Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, price lists including discounts, terms, and conditions at which they will sell their products, for dissemination by said respondent Association among its members.

5. Agreeing not to sell their said products at a price less, or a discount greater, or on terms and conditions more favorable to the purchaser than those contained in any of the price lists filed with respondent Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, or agreeing not to sell said products at a price less or discount greater than or on terms and conditions of sale more favorable to the purchaser than those contained in the price list published by the seller.

It is further ordered, That respondent association, Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, Arthur L. Parker, its manager and his successors, Karl Keller, Paul J. Bruning, R. Fred Allin, and W. A. Berger, members of its executive committee and their successors, forthwith cease and desist from, directly or indirectly, jointly or severally, aiding and assisting the members of said respondent association in carrying out or engaging in any of the acts and practices hereinbefore set forth, and from performing any service or function in the furtherance of said acts and practices, and particularly from—

1. Adopting any rule or regulation designed or intended to prevent any deviation on the part of the members of said respondent Association from the prices, discounts, and terms fixed and agreed upon by them, as hereinbefore set forth.

2. Receiving from the individual members of said respondent association price lists, including discounts, terms, and conditions of sale, and disseminating such information among said respondent association members.

It is further ordered, That the complaint herein be and the same hereby is dismissed as to respondents Scientific Apparatus Makers of America, its officers and directors, and respondents Carl S. Hallauer, R. E. Gillmor, and John M. Roberts, the evidence being insufficient to establish the charges of the complaint with respect to these respondents.

It is further ordered, That the respondents shall, within 60 days after the service upon them of a copy 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

HAMILTON, HARRIS & CO.

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

Docket 4253. Complaint, Aug. 21, 1940—Decision, Aug. 26, 1941

Where a corporation engaged in competitive interstate sale and distribution of fishing tackle, pipes, robes, cameras, and other articles, and of certain assortments of said merchandise so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, a typical assortment including a number of pipes with a punchboard for use in their sale and distribution to the consuming public under a plan, as thereon explained, by which selection of certain lucky numbers entitled purchasers to receive one of said pipes, value of which was in excess of the 5 cents paid, and purchasers failing thus to qualify received nothing for their money other than the privilege of making a punch—

Sold such assortments to dealers and jobbers and, directly or indirectly, to retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, involving chance to procure an article at much less than its normal price, and thereby supplied to and placed in the hands of others a means of conducting lotteries in the sale of its merchandise, 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 a method of sale involving a game of chance and refrain therefrom;

With the result, because of such game of chance, of unfairly diverting trade in commerce 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 and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

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

Mr. L. P. Allen, Jr., and *Mr. J. V. Mishou* for the Commission.

Matson, Ross, McCord & Ice, of Indianapolis, Ind., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Hamilton, Harris & 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, Hamilton, Harris & 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 302 West South Street, Indianapolis, Ind. The respondent has branch offices and places of business located at Terre Haute, Kokomo, South Bend, and Richmond, Ind. Respondent is now and for more than 2 years last past has been engaged in the sale and distribution of fishing tackle, pipes, robes, cameras, and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from its places of business as aforesaid to purchasers thereof, at their respective points of location, in the various States of the United States other than the State of Indiana and in the District of Columbia. There is now and has been for more than 2 years last past a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other corporations and with individuals and with partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers and retail dealers, certain assortments of merchandise so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment consists of a number of pipes, together with a device commonly called a punchboard. Said pipes 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 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a pipe. 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 pipes are worth more than 5 cents each, and the purchaser who obtains one of the numbers calling for one of the pipes receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The said pipes are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of 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 directly or indirectly purchase respondent's said 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 its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of its merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said method, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 21, 1940, issued and subsequently served its complaint in this proceeding upon respondent Hamilton, Harris & 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 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 attorney for the respondent 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 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 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, Hamilton, Harris & 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 302 West South Street, Indianapolis, Ind. The respondent has branch offices and places of business located at Terre Haute, Kokomo, South Bend, and Richmond, Ind.

PAR. 2. Respondent is now, and for several years last past has been engaged in the sale and distribution of fishing tackle, pipes, robes,

cameras, and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from its places of business as aforesaid to purchasers thereof at their respective points of location in the various States of the United States other than the State of Indiana and in the District of Columbia. There is now, and has been for several years last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business respondent is, and has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its said business the respondent has sold to wholesale dealers, jobbers, and retail dealers certain assortments of merchandise so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes, when sold and distributed to the consumers thereof. Illustrative of the method used by the respondent is the sale of an assortment consisting of a number of pipes and a device commonly called a punchboard. Such pipes were sold and distributed to the consuming public by means of said punchboard device in the following manner: Sales were 5 cents each and when a punch was made from the board a number was disclosed. The numbers began with 1 and continued to the number of punches there were on the board, but the numbers were not arranged in numerical sequence. The board carried the statement or statements that certain specified numbers entitled the purchaser thereof to receive a pipe. A purchaser who did not qualify by obtaining one of the lucky numbers received nothing for his money other than the privilege of punching a number from the board. The pipes were worth more than 5 cents each and the purchaser who obtained one of the numbers calling for one of the pipes received the same for the price of 5 cents. The numbers were effectively concealed from purchasers and prospective purchasers until a punch or selection was made and the particular punch separated from the board. The said pipes were thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sold and distributed various assortments of merchandise, together with punchboards, involving a lot or chance feature similar to the one above described and varying therefrom only in detail, to purchasers in States other than the State of Indiana and in the District of Columbia prior to July 10, 1939. Subsequent to the

said date respondent has sold and distributed, and sells and distributes, various assortments of merchandise with punchboard to purchasers within the State of Indiana.

PAR. 5. Retail dealers outside the State of Indiana who directly or indirectly purchased respondents said merchandise prior to July 10, 1939, and dealers within the State of Indiana who purchased respondent's merchandise subsequent to said date exposed and sold the same 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 merchandise in accordance with the sales plan above set forth. The use by respondent of said method of sale, and the sale of said merchandise by and through the use thereof and by the aid of said method, is a practice 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 sale of merchandise to the purchasing public by the aforesaid method 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. Others who sell or distribute merchandise in competition with the respondent are unwilling to adopt and use a method of sale involving a game of chance and refrain therefrom. The use of said method by respondent, because of the same game of chance, has the tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or an equivalent method. As a result thereof substantial injury has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

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 acts and practices in Commerce within the intent and meaning of the Federal 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, 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, Hamilton, Harris & 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of fishing tackle, pipes, robes, cameras, or any other merchandise, do forthwith cease and desist from:

1. Selling or distributing any merchandise so packed or assembled that sale 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 punchboards, push or pull cards, pull tabs, or other lottery devices, either with assortments of merchandise or separately, which said punchboards, push or pull cards, pull tabs, 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 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

SANFORD MILLS, AND L. C. CHASE & 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 4084. Complaint, Apr. 5, 1940—Decision, Aug. 27, 1941

Where a corporation and its wholly owned sales subsidiary, engaged in manufacture and interstate sale and distribution of its "Velmo" mohair upholstery fabric; in advertising in trade journals and in copies thereof which they supplied to their customers, furniture manufacturers, and upholstery supply companies, and on labels and tags which they also furnished to such customers to be attached to the furniture delivered to consumers—

Represented that their said upholstery fabrics were "mothproof" and would not be attacked or destroyed by moths, through use of such terms as "guaranteed moth-proofed," "MOTH-PROOF GUARANTEE * * * PERMANENTLY," "A TROUBLE-PROOF LABEL * * * PERMANENTLY!", "Swatting the moth question BEFORE IT HATCHES," facts being the mohair fabric concerned had not been rendered immune from all moth damage by the processes to which said manufacturer had subjected it, and said corporations had received claims for damage to fabrics in question, certain of which it found to be legitimate and satisfied under its guarantee to make good any claim for legitimate damage;

With tendency and capacity to mislead and deceive a substantial number of retail dealers and the purchasing public into the erroneous belief that their said product was permanently free from damage by moths, and to induce the purchase of substantial quantities of their fabrics because of such belief, and with result that trade in commerce was diverted unfairly to them from competitors in commerce:

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

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

Mr. D. E. Hoopingarner for the Commission.

Kent, Hazzard & Jaeger, of White Plains, 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 Sanford Mills, a corporation and L. C. Chase & Co., Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Sanford Mills, is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of Maine, with its principal office and place of business located in Sanford, in the State of Maine. It is now, and for a number of years last past has been, engaged in the manufacture of a mohair upholstery fabric and in the sale and delivery thereof under the brand name of "VELMO," in commerce, between and among the various States of the United States and in the District of Columbia, through the medium of its wholly owned subsidiary, respondent L. C. Chase & Co., Inc.

PAR. 2. Respondent, L. C. Chase & Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business located at 295 Fifth Avenue, New York City, in the State of New York, and is engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of mohair fabrics manufactured by the respondent Sanford Mills, a corporation.

PAR. 3. In the regular and usual course of business respondent Sanford Mills ships the said fabric, namely, mohair fabric used in upholstering furniture, from its said place of business in the State of Maine to its said subsidiary and exclusive sales agent, namely, respondent L. C. Chase & Co., Inc., in the State of New York; and the latter, in turn, sells, and for a number of years last has sold and transported said product to purchasers, generally to retail dealers, located in the various States of the United States, and in the District of Columbia.

In the course and conduct of their business, the respondents are now and during all the times mentioned herein have been engaged in competition with other corporations and with individuals, firms, and partnerships, likewise engaged in the sale and distribution of similar products, in commerce, among and between various 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, among and between the various States of the United States, and in the District of Columbia.

PAR. 4. In the course and conduct of their business, as hereinabove described, respondents cause advertisements and advertising matter to be inserted in newspapers and in trade journals of the type which reaches users of upholstery material and generally in the name of respondent L. C. Chase & Co., Inc. Respondents also furnish advertising matter to retail customers for their use, and the same has been used by them during the last several years in advertising their

furniture upholstered with the mohair fabric purchased and delivered to them by said respondents.

Typical of said advertising matter is the following:

Swatting the MOTH QUESTION BEFORE IT HATCHES

Moths have good taste; they will eat woolens, feathers, furs, mohairs * * * any fine fibre * * * unless the diet is made unpleasant for them. And about the most distasteful diet in the world for a moth is Velmo mohair velvet!

A MOTH-PROOF GUARANTEE * * * PERMANENTLY!

Twelve years ago, Goodall-Sanford began subjecting every yard of Velmo to a solution that renders it permanently moth-resistant. Since then, moth trouble has been so negligible that the guarantee is given, not for a term of years, but for the life of the fabric * * * permanently.

A TROUBLE-PROOF LABEL * * * PERMANENTLY!

The Velmo label is supplied with each five-yard purchase. When it is sewn under furniture all responsibility ends on the part of manufacturer, or retailer. It swats moth-trouble before it hatches! It puts future liability where Goodall-Sanford thinks it belongs * * * on the weaver. A customer merely has to be told, "This beautiful mohair velvet has been moth-proofed at the mill, as the label states. If *at any time* moth-damage appears, communicate with L. C. Chase & Company, Inc., New York." Simple, direct, and red-tape-proof!

VELMO

Product of Goodall-Sanford Industries

L. C. CHASE & CO., INC., selling division of Goodall-Sanford,
295 Fifth Avenue, New York.
Boston Chicago · Detroit San Francisco

(LABEL)

A Goodall-Sanford
product
*
CHASE
VELMO
MOHAIR FABRIC
Guaranteed
MOTH-PROOFED
L. C. Chase & Co.,
Inc.,
Selling Division

In said advertisement the words:

Swatting the MOTH QUESTION before it hatches * * * A MOTH-PROOF GUARANTEE * * * PERMANENTLY! A TROUBLE-PROOF LABEL * * * PERMANENTLY!

are in display type, as above depicted, and are therefore featured very prominently therein; all other lettering is in small type.

Typical of other advertising published or caused to be published by respondents is the following:

VELMO Quality * * * increases merchant's sales

Velmo upholstered furniture sells readily because of its lasting durability and decorative value. Velmo on a sofa or chair—identified by the Velmo label—means satisfaction for the customer and protection for the merchant.

To protect the requirements of customers with limited budgets, Velmo has styled several low-priced coverings. They, however, maintain the same high quality of all Velmo coverings.

Angora Satin, Aristocrat, Bethel, Cavalier, Crochette, Debonaire, Fiesta, Gros Point, Molano, Serenade and Twistone are some Velmo coverings styled and priced to help the furniture merchant increase his sale of furniture. These items, in their various price brackets, always mean quality.

We will be glad to furnish, upon request, samples of Velmo fabrics with the names of the firms manufacturing Velmo upholstered furniture.

CHASE
VELMO
MOHAIR VELVET
L. C. CHASE & COMPANY, 295 Fifth Avenue, at 31st Street,
New York City, 1849 Merchandise Mart, Chicago, Ill.
Selling Division of Goodall-Sanford Industries.
BOSTON DETROIT LOS ANGELES

On the left-hand side of the above advertising matter appears a reproduction of a label supplied by said respondents, accompanied by other advertising matter reading as follows:

THIS GUARANTEE
IS YOUR
PROTECTION
A Goodall-Sanford
Product
*
CHASE
VELMO
mohair fabric
GUARANTEED
MOTH-PROOFED

* "Velmo Mohair Velvet is guaranteed moth-proofed. We will at any time make good the claim of any dealer or customer who has a legitimate complaint of moths attacking Velmo. This guarantee is backed by the reputation of the largest mohair fabric weavers in the world—the Goodall-Sanford Industries."

Typical of certain other advertising matter supplied or caused to be used by respondents is the following:

Series of tags—

A GOODALL-SANFORD
PRODUCT
* * *
CHASE
VELMO
Mohair Fabric
GUARANTEED
MOTH-PROOFED
L. C. CHASE & CO., INC.
Selling Division
No Strings * * * No Red Tape * * * Tied to the
VELMO MOTH-GUARANTEE

The above label is supplied with each 5-yard purchase of Velmo, to be sewn under furniture. When this is done, all responsibility ends on the part of furniture manufacturer, decorator, or retailer. It puts future liability squarely where Goodall-Sanford believes it belongs . . . on the weaver. Just tell your customers, "This mohair velvet has been moth-proofed at the mill. It is fully guaranteed. If at any time moth-damage appears, communicate with L. C. Chase & Company, New York." Could any form of guarantee be more clear and complete?

L. C. CHASE & CO., INC., selling division of Goodall-Sanford,
295 Fifth Avenue, New York.
BOSTON CHICAGO DETROIT SAN FRANCISCO

Respondents also supply in connection with the sale and offering for sale of said product a cloth label approximately 4 inches long and 1 inch wide containing the following language and figures:

A GOODALL-SANFORD
PRODUCT
CHASE
VELMO
Reg. U. S. PAT. OFF.
Mohair Fabrics
GUARANTEED
MOTH-PROOFED
L. C. CHASE & CO., INC.
Selling Division
D32362

Respondents supply to retail dealers, to be attached to furniture upholstered in Chase Velmo, a round heavy paper tag approximately 4 inches in diameter containing the following language:

The Mohair Upholstery
on this furniture is
CHASE VELMO
made by Goodall-Sanford Mills, and
GUARANTEED
MOTH-PROOFED

The Goodall-Sanford Mills will, at any time, make good any claim of anyone who finds cause for legitimate complaint of moths attacking this piece of Velmo.

Refer the matter promptly to
L. C. CHASE & CO., INC.,
295 Fifth Ave., N. Y.

All of the guarantees hereinabove set forth are prominently featured by large type and placement in the advertisements and on the tags and labels, as above indicated.

By the use of said advertisements, tags, and labels, and by other means, to describe the quality, durability, and desirability of their said products, respondents represent to retailers and the consumer public that their mohair upholstery fabric is permanently moth-proof and moth-resistant, when in truth and in fact their said fabric is not permanently moth-proof and moth-resistant, but is, in fact, subject to moth attack and destruction thereby.

By the use of this practice of supplying retail dealers and manufacturers with false and misleading labels, tags, and advertising matter, the respondents place 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 respondents' fabric is permanently immune from attacks, damage and destruction by moths, when in truth and in fact it is not permanently free from such attacks, damage, and destruction.

PAR. 5. Mohair is the hair or wool taken from the Angora goat, and the fabrics made thereof are subject to the attack of the moth larvae. By reason of its susceptibility to such attacks, furniture users have been reluctant to use this fabric for upholstering purposes. In any circumstances, consumers have a preference for mohair fabrics that are understood to be completely and entirely moth-proof or moth-resistant, and the advertising and offering for sale of mohair and mohair-upholstered furniture as being treated in such a way as to make the same permanently free from attack and destruction by moth has offered great and additional inducement for the

purchase of respondents' mohair fabrics in preference to the fabrics of those who do not represent their products to be permanently free from attack, damage, and destruction by moths.

PAR. 6. The use by the respondents of the aforesaid acts and practices of designating and describing its said product as being permanently free from attack, damage, and destruction by moths, has had, and now has, the tendency and capacity to mislead and deceive retail dealers, and a substantial portion of the purchasing public, into the erroneous and mistaken belief that said product is rendered permanently free from attack, damage, and destruction by moths, and to induce the purchase of respondents' fabric because of such erroneous belief. As a direct result thereof, trade in commerce has been diverted unfairly to the respondent from its competitors who are likewise engaged in the sale and distribution of similar products in commerce among and between the various States of the United States and who do not falsely represent the quality and durability of their products. As a consequence thereof injury has been and is being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 5th day of April 1940, issued and served its complaint in this proceeding upon the said respondents Sanford Mills, a corporation, and L. C. Chase & Co., Inc., a corporation, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 24, 1940, the respondents filed their answer in this proceeding. Thereafter, at a hearing duly scheduled and held in this proceeding, a stipulation was entered into by and between counsel for the Commission and counsel for the respondents, subject to the approval of the Commission, whereby it was agreed that a statement of facts thereupon read into the record may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in

opposition thereto, and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, or 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 and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Sanford Mills, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business located in Sanford, in the State of Maine. It is now, and for a number of years last past has been, engaged in the manufacture of a mohair upholstery fabric and in the sale and delivery thereof under the brand name of "VELMO," in commerce between and among the various States of the United States and in the District of Columbia, through the medium of its wholly owned subsidiary respondent, L. C. Chase & Co., Inc.

PAR. 2. Respondent, L. C. Chase & Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business located at 295 Fifth Avenue, New York City, in the State of New York, and is engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of mohair fabrics manufactured by the respondent Sanford Mills, a corporation.

PAR. 3. In the regular and usual course of business respondent, Sanford Mills, shipped said mohair fabric used in upholstering furniture from said place of business in the State of Maine to purchasers thereof in the several States of the United States and in the District of Columbia on orders obtained by its exclusive sales agent, L. C. Chase & Co., Inc., which has an office in the city and State of New York.

In the course and conduct of their business the respondents are now and during all the times mentioned in the complaint have been engaged in competition with other corporations and with individuals,

firms, and partnerships also engaged in the sale and distribution through the usual channels of similar products in commerce among and between various 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 among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business as hereinabove described respondents, during the period from 1934 to 1939, caused advertisements and advertising matter, generally in the name of L. C. Chase & Co., Inc., to be inserted in trade journals of the type which reached users of upholstery material. During such period respondents furnished copies of such advertising matter to their customers, furniture manufacturers, and upholstery supply companies.

1. The following representations are typical of the representations made by respondent in said advertising matter:

(a) For Twelve Years THE MOTH QUESTION HAS BEEN ANSWERED in mohair velvets with the famous VELMO LABEL * * *

While it is true that moths will attack woolens, furs, or any animal fibre with the same zest that they show for mohair—and while the manufacturers of most of these products have never attempted to moth-proof their articles, the Goodall-Sanford Mills, makers of Chase Velmo, began proofing their velvets as early as 1923 with a solution chemically proved to be moth-resistant.

The VELMO LABEL is also trouble-proof!

There is no limit in years to the plain statement on the Velmo label * * * "Guaranteed Moth-Proofed." Because moth damage has been practically negligible as far as Velmo is concerned, the Goodall-Sanford Mills will, at any time, make good any claim of anyone, dealer or customer, who finds cause for legitimate complaint of moths attacking a piece of Velmo.

The Velmo label is supplied with each five-yard purchase of the fabric. If it is sewn under a piece of furniture, the manufacturer's and the retailer's responsibility ends right there. It is the belief of the Goodall-Sanford Mills that their own liability to the final user of the fabric is direct, simple, clear and without cumbersome "red tape." The salesman has only to say to a customer, "This velvet is moth-proofed at the mill, as you will see by this label. If at any time you are troubled with moths, you can communicate with L. C. Chase & Company, New York."

VELMO

Product of Goodall-Sanford Industries L. C. Chase & Company, Inc., selling division of Goodall-Sanford.

(b) Swatting the moth question BEFORE IT HATCHES.

Moths have good taste; they will eat woolens, feathers, furs, mohairs * * * any fine animal fibre * * * unless the diet is made unpleasant for them. And about the most distasteful diet in the world for a moth is Velmo mohair velvet!

A MOTH-PROOF GUARANTEE * * * PERMANENTLY!

Twelve years ago, Goodall-Sanford began subjecting every yard of Velmo to a solution that renders it permanently moth-resistant. Since then, moth-trouble has been so negligible that the guarantee is given, not for a term of years, but for the life of the fabric . . . permanently.

A TROUBLE-PROOF LABEL . . . PERMANENTLY!

(c) No Strings * * * No Red Tape * * * Tied to the VELMO-MOTH GUARANTEE.

(d) For Fourteen Years THE MOTH QUESTION HAS BEEN ANSWERED.

(e) This Guarantee is your Protection

VELMO LABEL

"Velmo Mohair Velvet is guaranteed moth-proofed. We will at any time make good the claim of any dealer or customer who has a legitimate complaint of moths attacking Velmo."

YEARS AGO we considered the plan of insuring or guaranteeing our Goodall-Sanford upholstery fabrics against moths.

Frankly, we have felt that we, perhaps, of all firms, were in an admirable position to do this because (1) Our fabrics are scientifically proofed and finished to resist moths; (2) In more than ten years, claims for moth damage have been practically negligible. * * *

USE THE VELMO LABEL

Goodall-Sanford has successfully proofed its fabrics against moths—since 1923.

2. During the period aforesaid respondent also furnished labels and tags to the manufacturers and upholsterers of furniture, which were attached to furniture delivered to consumers; typical of which are the following:

(a) A cloth label containing the following:

A Goodall-Sanford
Product
CHASE
VELMO
Reg. U. S. PAT. OFF.
Mohair Fabrics
GUARANTEED
MOTH-PROOFED
L. C. CHASE & CO., INC.
Selling Division.

(b) A paper tag containing a picture of an Angora goat on one side and on the opposite side the following:

The Mohair Upholstery
on this furniture is
CHASE VELMO
Made by Goodall-Sanford Mills, and
GUARANTEED
MOTH-PROOFED

The Goodall-Sanford Mills will, at any time, make good any claim of anyone who finds cause for legitimate complaint of moths attacking this piece of Velmo. Refer the matter promptly to * * *

L. C. CHASE & CO., INC., 295 Fifth Ave., N. Y.

PAR. 5. Mohair is the hair or wool taken from the Angora goat and the fabrics made thereof are subject to the attack of the moth larvae. By reason of its susceptibility to such attacks furniture users have been reluctant to use this fabric for upholstery purposes. Consumers have a preference for mohair fabrics that are permanently moth-proof or moth-resistant.

PAR. 6. The Commission finds that substantial numbers of the purchasing public, both retailers and ultimate consumers, have been induced to believe, through the use by respondents of the terms "Moth-Proofed," "Guaranteed Moth-Proofed," "A Moth-Proof Guarantee—Permanently," "A Trouble-Proof Label—Permanently," "Swatting the Moth Question Before It Hatches," in connection with, or in referring to, the moth-resistant or moth-repellent properties of their fabric, that the fabric so referred to is moth-proof and that moths will not attack or destroy it.

PAR. 7. The aforesaid statements and representations are exaggerated, misleading, and deceptive. While the respondent, Sanford Mills, since the year 1923, has subjected the mohair fabric known as "Velmo" to processes which respondent believed to be effective in preventing moth damage and has guaranteed to make good any claim of anyone who found cause for legitimate complaint because of moth damage, said processes have not, in fact, rendered said product immune from all moth damage and respondents have received claims of moth damage to said fabrics and have found certain of said claims to be legitimate and have satisfied them.

PAR. 8. The use by the respondents of the aforesaid practices and the aforesaid statements and representations with respect to the moth-proof and moth-resistant properties and characteristics of their said fabric has had the tendency and capacity to mislead and deceive a substantial number of retail dealers and a substantial portion of the purchasing public into the erroneous and mistaken belief that said product is permanently free from attack, damage, and destruction by moths and to induce the purchase of substantial quantities of respondents' fabrics because of such erroneous belief. As a result thereof, trade in commerce has been diverted unfairly to the respondents from 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 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 answer of the respondents and a stipulation entered into by and between counsel for the Commission and counsel for the respondents, wherein it was stipulated and agreed that a statement of facts read into the record may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission may proceed upon such statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, or any other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Sanford Mills, a corporation, and L. C. Chase & Co., Inc., a corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of mohair upholstery fabrics, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the term "mothproof" to designate, describe, or in any way refer to upholstery fabrics which are not in fact mothproof, or otherwise representing that upholstery fabrics which are not permanently immune from attack or destruction by moths are mothproof.

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

Syllabus

IN THE MATTER OF

LILLIAN M. GRANGER, L. H. MURRAY, CLARA FEITLER, AND ADOLF FEITLER, TRADING AS G. & F. 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 4155. Complaint, June 4, 1940—Decision, Aug. 27, 1941

Where four individuals, engaged during different periods, in competitive interstate sale and distribution of radios, watches, clocks, knives, pen and pencil sets, and other articles, and of assortments of their 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, a typical assortment consisting of a number of tins of peanuts and a radio, together with a punchboard for use in their sale to the consuming public, as explained thereon, under a plan by which a purchaser secured one of said tins—value of which was in excess of the 5 cents paid—in accordance with success in selecting certain numbers, and received the radio by selecting the number corresponding to that under the board's seal, and those failing to qualify by obtaining one of the lucky numbers received nothing for their money, other than the privilege of punching a number—

Sold such assortments to wholesalers and jobbers and, directly or indirectly, to retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, involving sale of a chance to procure one of said articles at much less than its normal price, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of their merchandise, 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 method involving chance or contrary to public policy, and refrain therefrom;

With the result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell said individual's merchandise in preference to that offered and sold by said competitors, and with tendency and capacity, because of said game of chance, unfairly to divert trade in commerce to them from said competitors; to the substantial injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

Mr. L. P. Allen, Jr., and *Mr. J. V. Mishou* for the Commission,

West & Eckhart, of Chicago, Ill., for Lillian M. Granger and L. H. Murray.

Mr. Samuel G. Clawson, of Chicago, Ill., for Clara Feitler and Adolph Feitler.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Lillian M. Granger, L. H. Murray, Clara Feitler, and Adolf Feitler, individually and trading as G. & F. 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. Respondents, Lillian M. Granger, L. H. Murray, Clara Feitler, and Adolf Feitler, are individuals trading as G. & F. Sales Co. with their principal office and place of business formerly located at 2300 South Canal Street, Chicago, Ill. The present office and place of business of the respondents is located at 35 South Franklin Street, Chicago, Ill. Respondents are now, and for more than 4 years last past have been, engaged in the sale and distribution of radios, watches, clocks, knives, 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 merchandise when sold, to be transported from their aforesaid places of business in Chicago, Ill., to the purchasers thereof, at their respective points of location, in the various States of the United States other than Illinois and in the District of Columbia. There is now, and has been for more than 4 years last past, a course of trade by respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are and have been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and 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 a number of tins of peanuts and a radio, 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 5 cents each and when a punch is made from the board a number is disclosed. The numbers begin with 1 and continue to number of punches there are on the board but the numbers are not arranged in numerical sequence. The board bears a legend or statements informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive one of the tins of peanuts. The said 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. There is also a seal on the board which conceals a number. When all of the punches on the board have been made the seal is removed disclosing the number thereunder. The person punching the number from the board corresponding to the number under the seal receives the said radio. 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 5 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 5 cents. 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 June 4, 1940, issued and thereafter served its complaint in this proceeding upon respondents, Lillian M. Granger, L. H. Murray, Clara Feitler, and Adolf Feitler, individually and trading as G. & F. 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. The respondent, Clara Feitler, filed an answer, in which answer she admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts and in which answer she further stated that the respondent Adolf Feitler, died on March 9, 1941, and that the respondents, Lillian M. Granger and L. H. Murray, have not been interested in any way in the business operated under the name G. & F. Sales Co. since August 1, 1939. The respondents,

Lillian M. Granger and L. H. Murray, filed a separate answer in which they generally denied the allegations of the complaint but admitted that they were copartners in the business operated under the name G. & F. Sales Co. prior to August 1, 1939. Subsequently a stipulation as to the facts with respect to the extent of the participation of the respondents, Lillian M. Granger and L. H. Murray, in the business operated under the name G. & F. Sales Co. was read into the record at a hearing duly held in Chicago, Ill., on June 12, 1941. In such stipulation respondents, Lillian M. Granger and L. H. Murray, stipulated the facts alleged in the Commission's complaint are true with the exception that such respondents disposed of all interest in the business operated under the name of G. & F. Sales Co. on August 1, 1939, and have not participated in the operation of such business since that date. Respondents, Lillian M. Granger and L. H. Murray, further specifically waived the filing of a trial examiner's report upon the evidence, the filing of briefs and oral argument. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, answers thereto and the said stipulation as to the facts, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Prior to August 1, 1939, respondents, Lillian M. Granger, L. H. Murray, Clara Feitler, and Adolph Feitler, were individuals trading as G. & F. Sales Co., having their principal office and place of business located at 2300 South Canal Street, Chicago, Ill., and subsequently at 35 South Franklin Street, Chicago, Ill. On August 1, 1939, respondents, Lillian M. Granger and L. H. Murray, sold, transferred, and assigned to respondents Clara Feitler and Adolf Feitler all their right, title, and interest in and to the aforesaid G. & F. Sales Co. and since that date have had no interest in nor any relation with the said company. On March 9, 1941, respondent, Adolf Feitler, died and since that date the surviving partner, respondent, Clara Feitler, has been conducting the affairs of the said G. &. F. Sales Co. Respondent, Clara Feitler is now, and for more than 4 years last past has been, engaged in the sale and distribution of radios, watches, clocks, knives, 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, Lillian M. Granger and L. H.

Murray, for more than 3 years prior to August 1, 1939, and respondent, Adolf Feitler, for more than 4 years prior to March 9, 1941, were likewise engaged. Respondent, Clara Feitler, causes and has caused, and respondents, Lillian M. Granger, L. H. Murray, and Adolf Feitler, have caused said merchandise, when sold, to be transported from their aforesaid places of business in Chicago, Ill., to the purchasers thereof, at their respective points of location, in the various States of the United States other than Illinois and in the District of Columbia. There is now a course of trade by respondent, Clara Feitler, and in the past there has been a course of trade by all of the respondents herein named 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, Clara Feitler, is and all respondents herein named have been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondent, Clara Feitler, sells and all of the respondents herein named 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 a number of tins of peanuts and a radio, 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 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 legend or statements informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive one of the tins of peanuts. The said 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. There is also a seal on the board which conceals a number. When all of the punches on the board have been made, the seal is

removed, disclosing the number thereunder. The person punching the number from the board corresponding to the number under the seal receives the said radio. 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 5 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 5 cents. The said articles of merchandise are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent, Clara Feitler, sells and distributes and all of the respondents herein named have sold and distributed various assortments of merchandise along with punchboards involving a lot or chance feature; such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' said merchandise directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent, Clara Feitler, thus supplies to and places, and all the respondents herein named thus supplied to and placed 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 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 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.

CONCLUSION

The aforesaid acts and practices of respondents as herein set forth 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 respondent, Clara Feitler, in which answer such respondent admits all the material allegations of fact set forth in said complaint and states that she waives all intervening procedure and further hearing as to said facts, and upon the joint answer of respondents, Lillian M. Granger and L. H. Murray, and a stipulation as to the facts agreed upon between counsel for the Commission and counsel for said respondents, Lillian M. Granger and L. H. Murray, which stipulation was read into the record herein, 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 Clara Feitler, Lillian M. Granger, and L. H. Murray, individually and trading as G. & F. Sales Co., or trading under any other name, their agents, representatives, 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, watches, clocks, knives, pen and pencil sets, or other articles of merchandise in commerce as commerce is defined by the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing radios, watches, clocks, knives, pen and pencil sets, or any other merchandise so packed and assembled that sales thereof are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of others assortments of radios, watches, clocks, knives, pen and pencil sets, or any other merchandise together with push or pull cards, punchboards, or other devices, which said push or pull cards, punchboards, or other devices are to be used or may be used in selling or distributing said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

3. Selling to or placing in the hands of others, push or pull cards, punchboards, or other devices either with assortments of radios, watches, clocks, knives, pen and pencil sets, or other merchandise or separately, which said push or pull cards, punchboards or other devices are to be used or may be used in selling or distributing said radios, watches, clocks, knives, pen and pencil sets, or other merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to respondent, Adolf Feitler, due to his death on March 9, 1941.

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

R. C. WILLIAMS & 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 4279. Complaint, Aug. 28, 1940—Decision, Aug. 27, 1941

Where a corporation engaged in importing and exporting food products, purchasing a substantial proportion of its requirements from sellers in other States—

Received and accepted allowances and discounts in lieu of brokerage in substantial amounts through purchasing commodities at prices lower than those at which such commodities were sold to other purchasers by an amount which reflected all or a portion of the brokerage currently being paid by the sellers to their respective brokers for effecting sales of such commodities to such other purchasers:

Held, That in so receiving and accepting allowances and discounts in lieu of brokerage, from sellers upon purchases, as above set forth, it violated section 2 (c) of the Clayton Act, as amended.

Mr. John T. Haslett for the Commission.

Mr. Jules Jacobs, 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 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, R. C. Williams & Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 265 Tenth Avenue, New York, N. Y. Respondent is engaged in the business of importing and exporting food products.

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchases commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. Since June 19, 1936, in connection with the purchase of its requirements in interstate commerce, as aforesaid, respondent has

received and accepted allowances and discounts in lieu of brokerage in substantial amounts.

Usually, the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage is accomplished by respondent by purchasing commodities at prices lower than the prices at which such commodities are sold to other purchasers thereof by an amount which reflects all or a portion of the brokerage currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers.

PAR. 4. The receipt and acceptance of allowances and discounts in lieu of brokerage by respondent as set forth in paragraph 3 hereof is in violation of subsection (c) of section 2 of the Clayton Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C. title 15, sec. 13), the Federal Trade Commission on the 28th day of August 1940 issued and thereafter served its complaint in this proceeding upon respondent, R. C. Williams & Co., Inc., a corporation, charging the respondent with violation of the provisions of subsection (c) of section 2 of the 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 hearings as to said facts and expressly waiving the filing of briefs and oral argument, 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, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, R. C. Williams & Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 265 Tenth

Avenue, New York, N. Y. Respondent is engaged in the business of importing and exporting food products.

PAR. 2. In the course and conduct of its said business respondent purchases a substantial portion of its requirements from sellers located in States other than the State in which the respondent is located, pursuant to which purchases commodities are caused to be shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. Since June 19, 1936, in connection with the purchase of its requirements in interstate commerce, as aforesaid, respondent has received and accepted allowances and discounts in lieu of brokerage in substantial amounts.

Usually the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage is accomplished by respondent by purchasing commodities at prices lower than the prices at which such commodities are sold to other purchasers thereof by an amount which reflects all or a portion of the brokerage currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers.

CONCLUSION

In receiving and accepting allowances and discounts in lieu of brokerage fees or commissions from sellers upon purchases of commodities, as set forth in paragraph 3 hereof, the respondent has violated the provisions of subsection (c) of section 2 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).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearings 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 that said respondent has violated the provisions of subsection (c) of section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopo-

lies, 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).

It is ordered, That in the course of commerce, as commerce is defined in the aforesaid Clayton Act, the respondent, R. C. Williams & Co., Inc., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. Receiving or accepting, directly or indirectly, any allowance or discount in lieu of brokerage fees or commissions in whatever manner or form said allowances, discounts, brokerage fees, or commissions may be offered, allowed, granted, paid, or transmitted.

2. Receiving or accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage fee, or other compensation, or any allowance or discount in lieu thereof upon purchases of commodities made by respondent.

It is further ordered, That the said 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

CONTINENTAL BRIAR PIPE 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 4293. Complaint, Aug. 30, 1940—Decision, Aug. 27, 1941

Where a corporation engaged in the manufacture of pipes and other articles, and in the competitive interstate sale and distribution of its merchandise, including certain assortments thereof so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, a typical assortment consisting of a number of pipes, together with a punchboard for use in their sale to consumers under a plan by which, as thereon explained, those securing certain numbers were entitled to a pipe, the value of which exceeded the 5 cents paid for a chance, and purchasers who did not thus qualify received nothing for their money other than the privilege of a punch—

Sold such assortments to wholesalers and jobbers and, directly or indirectly, to retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, involving game of chance to procure a pipe at much less than its normal price, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its merchandise, contrary to an established public policy of the United States Government, and in competition with many who were unwilling to use a method involving chance or contrary to public policy, and refrained therefrom;

With the result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell its merchandise in preference to that of aforesaid competitors, and with the effect, through use of said method and because of said game of chance, of unfairly diverting trade in commerce 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 and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. Andrew B. Duvall*, trial examiner.

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.

Mr. W. Lee Helms, 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 Continental Briar Pipe Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the

Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Continental Briar Pipe Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 80 York Street, Brooklyn, N. Y. Respondent is now and for more than 8 years last past has been engaged in the manufacture and in the sale and distribution of pipes and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from its place of business as aforesaid to purchasers thereof at their respective points of location in the various States of the United States other than the State of New York, and in the District of Columbia. There is now and for more than eight years 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 said business respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers and retail dealers certain assortments of merchandise so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment consists of a number of pipes, together with a device commonly called a punchboard. Said pipes 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 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing purchasers and prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a pipe. Purchasers who do not qualify by obtaining one of the lucky numbers receive nothing for their money other than the privilege of punching a number from the board. The pipes are worth more than 5 cents each and the purchaser who obtains

one of the numbers calling for one of the pipes receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The said pipes are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of merchandise along with punchboards involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in details.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said 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 its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of its merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said method, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of 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 pipes at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent, who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia, to respondent from its said competitors who do not use the same or an equivalent method. As a result thereof, substantial injury is being and has been done by respondent to competition in commerce

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 30, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Continental Briar Pipe 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. The respondent did not file an answer to the complaint. Thereafter, the case being regularly set down for the taking of testimony in the city of New York, State of New York, on June 26, 1941, during the course of such hearing, counsel for the Commission and counsel for the respondent entered into an agreement on the record wherein the respondent stipulated the material facts set forth in the complaint and waived all intervening procedure and further hearing as to the facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and stipulation as to the facts, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Continental Briar Pipe Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 80 York Street, Brooklyn, N. Y. For about one year prior to the fall of 1939, respondent was engaged in the manufacture and in the sale and distribution of pipes and other articles of merchandise. Respondent caused said merchandise when sold to be transported from its place of business as aforesaid to purchasers thereof at their respective points of location in the various States of the United States other than the State of New York. There was a course of

trade by said respondent in such merchandise in commerce between and among various States of the United States. In the course and conduct of said business, respondent has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as heretofore described, respondent 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. A representative assortment is hereinafter described for the purpose of showing the method used by the respondent, and is as follows: This assortment consists of a number of pipes, together with a device commonly called a punchboard. Said pipes 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 a number is disclosed. The numbers begin with 1 and continue to the number of punches that are on the board, but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing purchasers and prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a pipe. Purchasers who do not qualify by obtaining one of the lucky numbers generally receive nothing for their money other than the privilege of punching a number from the board. The pipes are worth considerably more than 5 cents each, and the purchaser who obtains one of the numbers calling for one of the pipes receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The said pipes are thus distributed to purchasers of punches from the board wholly by lot or chance.

PAR. 3. Retail dealers who directly or indirectly purchased respondent's said merchandise exposed and sold the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinbefore set forth. The use by respondent of said method in the sale of its merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said method, was a practice of a sort which was and is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public, in the manner above found, involved a game of chance or the sale of a chance to procure one of the said pipes at a price much less than the normal retail price thereof. There were dealers in said merchandise who sold or distributed said merchandise in competition with the respondent, as above found, who were 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 refrained therefrom. Many persons were attracted by said sales plan or method employed by respondent in the sale and distribution of its merchandise, and the element of chance involved therein, and were thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent, who did not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, had a tendency and capacity to, and did, unfairly divert trade in commerce between and among various States of the United Sates, to respondent from its said competitors who did not use the same or an equivalent method. As a result therefore, substantial injury was 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 acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission and a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent wherein it was agreed that the material facts alleged in the Commission's complaint are true, and all intervening procedure and further hearing as to said facts were 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, Continental Briar Pipe Company, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the

offering for sale, sale and distribution of pipes or any other articles of merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing pipes or any other merchandise so packed and assembled that sales thereof are to be made or may be made by means of a lottery, game device, or gift enterprise.

2. Supplying to or placing in the hands of others, assortments of pipes or any other merchandise together with push or pull cards, punchboards or other devices, which said push or pull cards, punchboards or other devices are to be used, or may be used, in selling or distributing said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

3. Selling to or placing in the hands of others, push or pull cards, punchboards or other devices, either with assortments of pipes or other merchandise, or separately, which said push or pull cards, punchboards or other devices are to be used, or may be used, in selling or distributing said pipes or other merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

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

IN THE MATTER OF

DETROIT CANDY & TOBACCO JOBBERS ASSOCIATION, 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 4321. Complaint, Sept. 19, 1940—Decision, Aug. 27, 1941

Where an association which had as its members most of the wholesalers or jobbers of candies, tobaccos, and groceries in Detroit and the surrounding area, consisting of about 30 "regular" members who bought direct from the manufacturers, and 125 "associate" members who bought from the "regular" members—

(*a*) Cooperatively coerced, induced, and persuaded jobbers, wholesalers, manufacturers, and suppliers of candies, tobaccos, and groceries located in States other than Michigan to refrain from selling or offering to sell direct to competitors or prospective competitors of its members, or upon the same terms and conditions as they sold to members, by indicating to said suppliers and their sales representatives that it disapproved of sales to such competitors and prospective competitors, and that its members were opposed to such sales, and by various other means and methods, for the purpose and with the effect of unduly suppressing competition; and

Where said members—

(*b*) Used said association, its officers and directors, as a vehicle and implement for the furtherance of their cooperative activities as above set forth; and

Where said association, its officers and directors—

(*c*) Cooperated with said members in the carrying out and furtherance of the aforesaid cooperative efforts, joint purposes and activities;

Dangerous tendency and effect of which acts and practices were to suppress and lessen competition between and among said members in the purchase of candies, tobaccos, and groceries in commerce, and to place in them the power to determine who in Detroit and the surrounding trade area should buy candies, tobaccos, and groceries direct from suppliers thereof located in States other than Michigan, and to unreasonably restrain interstate commerce in said products and deprive the purchasing public of the benefit of full and free competition between and among said members and their competitors:

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

Mr. Lynn C. Paulson for the Commission.

Mr. J. Thomas Smith, of Detroit, Mich., for respondents, with the exception of Jacob Starkstein, Morris Starkstein, and William Starkstein, who were represented by *Butzel, Eaman, Long, Gust & Bills*, of Detroit, Mich.

COMPLAINT

Pursuant to the provisions of the Federal 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 persons, partnerships and corporations named or included by reference 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, Detroit Candy & Tobacco Jobbers Association, Inc., hereinafter referred to as respondent association, is an incorporated voluntary trade association organized, not for profit, under the laws of the State of Michigan. It has about 30 regular members and 125 associate members. The regular members are persons, partnerships, and corporations engaged in the business of buying and selling candies and tobaccos (some also handle groceries) in wholesale quantities in Detroit, Mich., and the surrounding trade area. The associate members are persons, partnerships, and corporations engaged in the same type of business as the regular members, except that they are subjobbers or subwholesalers. The first group in general buy from manufacturers and resell to the second group and to retailers. The second group in general buy from the first group and resell to retailers. Each person, partnership, or corporation belonging to the second group is sponsored for membership by one of the first group. The said respondent association has its principal office at 921 Fox Theatre Building, Detroit, Mich. Respondents Calvin J. Gauss, Vene G. Perry, Jacob Starkstein, Archie Cherrin, Harry T. Bump, and Joseph Bianco, are president, first vice president, second vice president, secretary, secretary, and treasurer, respectively, of said respondent Association, Inc., and respondents Charles Nalbandian, B. J. Mendel, Joel Levy, and V. H. Nalbandian are directors of said respondent association.

PAR. 2. Respondents, Morris Starkstein, William Starkstein and Jacob Starkstein, are individuals trading jointly as the General Tobacco & Grocery Co. They have their office and principal place of business at 5280 Fourteenth Street, Detroit, Mich.

Respondent, Archie Cherrin, is an individual trading as Joseph Kohn & Co., with his office and principal place of business at 1365 Gratiot Avenue, Detroit, Mich.

Respondent, Joseph Bianco, is an individual trading as B. & G. Candy Co., with his office and principal place of business at 444 East Jefferson Street, Detroit, Mich.

Respondent, Charles Nalbandian, is an individual trading as N. Nalbandian with his office and principal place of business at 9111 Joseph Campau Avenue, Detroit, Mich.

Respondent, Joel Levy, is an individual trading and doing business as Auto City Candy Co., with his principal office and place of business at 2937 St. Aubin Street, Detroit, Mich.

Respondent, V. H. Nalbandian, is an individual trading as Chaffee & Co., Inc., with his principal office and place of business at 11736 East Jefferson Street, Detroit, Mich.

Respondent, Vene G. Perry, is an individual trading as Detroit Candy Co., with his office and principal place of business at 1528 Gratiot Avenue, Detroit, Mich.

Respondent, Calvin J. Gauss, is an individual trading as Charles Gauss Co., with his principal office and place of business at 2155 Grand River Avenue, Detroit, Mich.

The above named respondents do not constitute the entire membership of respondent association, but are representative members thereof. All members of respondent association are made parties respondent herein as a class of which those specifically named are representative of the whole. For convenience the above named respondents and the other members of the respondent association of whom those named are representative, will hereinafter be referred to as member respondents.

PAR. 3. The membership of respondent association, comprises a majority of the persons, partnerships and corporations engaged in buying and selling candies and tobaccos in wholesale quantities in Detroit, Mich., and the surrounding trade area, and a majority of the persons, partnerships, and corporations engaged in buying and selling such commodities on a subjobbing or subwholesaling basis are associate members. Together, these members and associate members do an annual volume of business with approximately 12,000 retail stores averaging approximately $30,000,000 at wholesale prices.

In the course and conduct of their respective businesses, member respondents and associate members purchase substantial quantities of candies, tobaccos, and groceries from manufacturers, producers, and suppliers thereof located in the States of New York, Ohio, Pennsylvania, and other States of the United States, and ship or cause to be shipped such commodities into the city of Detroit, Mich., and the surrounding trade area for resale and distribution. For several

years last past and at all times specified or referred to in this complaint, they have been and are engaged in commerce in candies and tobaccos (and some have been engaged in commerce in groceries) between and among the various States of the United States.

Respondent association, its officers and directors, promote the mutual interests of its members and aids them in the doing and carrying out of their individual and joint purposes and plans.

PAR. 4. For more than 4 years last past respondents have maintained and now have in effect an understanding, combination, and agreement among themselves to hinder, lessen, restrict, and restrain competition and trade in the sale and distribution of candies, tobaccos and groceries in commerce among and between the several States of the United States and to monopolize to themselves the business in commerce among and between the several States of the United States, of buying and selling in wholesale quantities candies, tobaccos, and groceries for resale and distribution in Detroit, Mich., and the surrounding trade area.

Pursuant to, and in furtherance of, said understanding, combination, and agreement, respondents have done and are now doing many acts and things and have used and are now using many methods of competition among which are the following:

1. Member respondents attempt to, and do, limit the number of persons, partnerships and corporations engaged in the business of purchasing, in wholesale quantities, candies, tobaccos, and groceries from the manufacturers and suppliers thereof, many of whom are located in the States other than the State of Michigan, and selling said products in Detroit, Mich., and the surrounding area by:

(*a*) Determining and agreeing among themselves as to who shall enter or remain in said business.

(*b*) Interfering with the sources of supply of those whom they determine should not enter or remain in the said business, by boycotting, intimidating, and threatening to boycott said manufacturers and suppliers, and persuading them not to sell or offer to sell to such concerns.

(*c*) Refusing to sell to persons, firms and corporations not selected by said member respondents to enter or remain in the aforesaid business; and

(*d*) Coercing and persuading jobbers, wholesalers, and suppliers of candies, tobaccos, and groceries located in cities adjacent to Detroit and in States other than the State of Michigan, to refrain from making or soliciting sales in Detroit, Mich., and the surrounding trade area.

2. Member respondents concertedly classify customers, allocate business, fix discounts and enter into numerous understandings and agreements regarding their respective business and sales problems and have sought to and have concertedly enforced adherence to agreements and understandings which they have from time to time made.

3. Member respondents have harassed competitors and interfered with the conduct of their businesses by spying on their shipments, sent or received, upon their truck deliveries and other business operations.

4. Member respondents have used respondent association, together with its officers and directors as a vehicle or implement for the furtherance of their joint purposes, plans and activities hereinbefore described, and in furtherance of the aforesaid understanding, combination and agreement.

5. Respondent association, its officers and directors, have cooperated with member respondents in the carrying out and furtherance of the said understanding, combination, and agreement and have classified members, nonmembers, competitors of members, customers and prospective customers, held meetings, printed customer cards, written letters, delivered messages, made contacts with manufacturers and suppliers of candies, tobaccos, and groceries in aid of the said understanding, combination and agreement and in the furtherance of the acts and things done by member respondents hereinbefore described, and have in other ways helped and aided in making effective the said understanding, combination and agreement.

PAR. 5. The said understanding, combination, and agreement and the doing and performing of the acts and things and the use of the methods set forth in the preceding paragraphs hereof, tend to have, have had and now have the effect of unduly and unlawfully restricting and restraining interstate trade and commerce in candies, tobaccos, and groceries between, among and in the several States of the United States; of preventing, hindering, and restraining other persons, firms, corporations, and partnerships than the respondents engaged in trade and commerce in such commodities in the United States in the conduct of their respective businesses; of substantially reducing, lessening, stifling, and eliminating competition in candies, tobaccos and groceries between and among member respondents and between and among themselves and the firms, partnerships, corporations, and individuals in the same or similar lines of business in Detroit, Mich., and the surrounding trade area; of stabilizing prices and maintaining discounts and commissions received by themselves in the conduct of their business at levels and amounts inconsonant with

levels and amouts that would exist in the presence of full and free competition; and of destroying, eliminating and causing to be diminished the competition to which the consuming public and retailers of candy, tobacco and groceries are entitled to expect in conformance with the public policy and the laws of the United States.

PAR. 6. The acts and practices and methods of respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to, and have, actually hindered and prevented competition in the sale and distribution of candies, tobaccos, and groceries in commerce within the intent and meaning of the Federal Trade Commission Act; and have unreasonably restrained such commerce in candies, tobaccos, and groceries, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 19th day of September 1940, issued and served its complaint in this proceeding upon respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On October 10, 1940, respondent Detroit Candy & Tobacco Jobbers Association, Inc., its officers: president, Archie Cherrin, first vice president, Vene G. Perry, secretary, V. H. Nalbandian, secretary, Harry T. Bump; its directors: Calvin Gauss, Vene G. Perry, Archie Cherrin, Joseph Bianco, V. H. Nalbandian, Charles Nalbandian, Budd Mendel, Joel Levy, filed their answer in this proceeding by their attorney, Harrison T. Watson. On October 9, 1940, respondents Morris Starkstein, William Starkstein and Jacob Starkstein filed their answer in this proceeding by their attorneys Butzel, Eamon, Long, Gust & Bills. On February 14, 1941, Attorney J. Thomas Smith entered his appearance for respondent Detroit Candy & Tobacco Jobbers Association, Inc., and its aforesaid officers and directors, and Attorney Harrison T. Watson consented to the substitution. 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 attorneys aforesaid and William T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding, solely for the purpose of this proceeding, the enforcement or review thereof in the circuit courts of appeal and for any review in the Supreme Court of the United States or for any other court pro-

ceeding which may be brought or instituted by virtue of authority contained in the Federal Trade Commission Act as amended and approved March 21, 1938, and for no other purpose whatsoever, and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument, the filing of briefs or 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, Detroit Candy & Tobacco Jobbers Association, Inc., hereinafter referred to as respondent Association, is an incorporated association organized under the laws of the State of Michigan, not for profit, having as its members most of the individuals, partnerships, and corporations located in the city of Detroit, engaged in the business of wholesaling or jobbing candies, tobaccos, and groceries in the city of Detroit and the surrounding area, some of which members buy direct from manufacturers and are designated as "regular" members, and others of whom buy from the so-called regular members, and are designated as "associate" members. Respondent Association has approximately 30 "regular" members and 125 "associate" members. Its principal purpose and function is to promote the mutual interests of its members.

The said respondent Association has its principal office at 921 Fox Theatre Building, Detroit, Mich. Its principal offices are those of president, first vice president, second vice president, secretary, and treasurer. It has a board of directors, consisting of eight members. Different members have held different offices or served on the board of directors at different times during the period of time embraced by the complaint in this proceeding. At the time of the issuance of the complaint, the officers were as follows: president, Archie Cherrin; first vice president, Vene G. Perry; secretary, V. H. Nalbandian; secretary, Harry T. Bump; its directors were as follows: Calvin J. Gauss, Vene G. Perry, Archie Cherrin, Joseph Bianco, V. H. Nalbandian, Charles Nalbandian, Budd Mendel (an employee of Lee &

Cady, a corporation), and Joel Levy. Among those who had, within the period of time embraced by this complaint, previously served as officers is respondent Jacob Starkstein, who served as second vice president for a period of time ending February 2, 1940.

PAR. 2. The "regular" members, both present and past of respondent association, all of whom are respondents in this action, are as follows:

Atlas Candy Co., having its office and principal place of business at 4155 St. Aubin Street, Detroit, Mich.

Ben Schebches, trading as Advance Candy & Tobacco Co., having its office and principal place of business at 8740 West Vernor Highway, Detroit, Mich.

Auto City Candy Co., a corporation, having its office and principal place of business at 2937 St. Aubin Street, Detroit, Mich.

B. & G. Candy Co., a corporation, having its office and principal place of business at 110 West Woodbridge Street, Detroit, Mich.

Charles F. Becker, trading and doing business as Becker Cigar Co., having his office and place of business at 439 East Congress Street, Detroit, Mich.

Bunte Bros., a corporation, having its office and principal place of business at 226 West Larned Street, Detroit, Mich.

Cecil Chocolate Co., a corporation, having its office and principal place of business at 4800 St. Aubin Street, Detroit, Mich.

Chaffee & Co., Inc., a corporation, having its office and principal place of business at 11736 East Jefferson Avenue, Detroit, Mich.

Andrew Condiky, trading as Andrew Condiky, having his office and principal place of business at 358 East Larned Street, Detroit, Mich.

A. C. Courville Co., a corporation, having its office and principal place of business at 4541 Grand River Avenue, Detroit, Mich.

Herman Dekosky, trading as Detroit Agents Supply Co., having its office and principal place of business at 3405 St. Aubin Street, Detroit, Mich.

Detroit Candy Co., a corporation, having its office and principal place of business at 1528 Gratiot Avenue, Detroit, Mich.

Charles Gauss Co., a corporation, having its office and principal place of business at 2159 Grand River Avenue, Detroit, Mich.

Morris Starkstein, doing business as General Tobacco & Grocery Co., having his principal office and place of business at 5280 Fourteenth Street, Detroit, Mich. On or about February 2, 1940, the said business was incorporated and became the General Tobacco & Grocery Co., a Michigan corporation. However, said corporation was never a member of the aforesaid association and Morris Starkstein has not been a member thereof since February 2, 1940. Jacob

Starkstein was an employee of Morris Starkstein prior to February 2, 1940, and thereafter was an employee of the General Tobacco & Grocery Co., a corporation.

B. L. Howes and Cole Shoemaker, a partnership, trading as Howes Shoemaker Co., having its office and principal place of business at 2373 Seventeenth Street, Detroit, Mich.

Abram Haig, trading as Highland Park Tobacco & Candy Co., having its office and principal place of business at 15 Victor Street, Highland Park, Mich.

Joseph Kohn, trading as Joseph Kohn, having his office and principal place of business at 2448 Market Street, Detroit, Mich.

Budd Mendel, an employee of Lee & Cady, a corporation, having his office and principal place of business at 1778 West Fort Street, Detroit, Mich.

Lee & Cady, a Michigan corporation, having its office and principal place of business at 1778 West Fort Street, Detroit, Mich.

National Tobacco & Grocery Co., a corporation, having its office and principal place of business at 3749 Woodward Avenue, Detroit, Mich.

Charles Feucht, trading as Motor City Tobacco Co., having its office and principal place of business at 4728 Chene Street, Detroit, Mich.

Nishan Nalbandian, trading as N. Nalbandian Co., having its office and principal place of business at 9111 Jos. Campau Avenue, Detroit, Mich.

Harry Ernstine and Abe Ernstine, partners, trading as Northway Tobacco Co., having its office and principal place of business at 4628 Michigan Avenue, Detroit, Mich.

Ray Yoogabian, trading as Ray's Tobacco & Candy Co., having its office and principal place of business at 3927 Fenkell, Detroit, Mich.

L. Schiappaccasse, trading as L. Schiappaccasse Co., having its office and principal place of business at 322 Woodward Avenue, Detroit, Mich.

Manuel Michaels and George Michaels, partners, trading as James Seraph Co., having its office and principal place of business at 134 East Jefferson Avenue, Detroit, Mich.

I. D. Sheplow, an individual, trading as I. D. Sheplow, having his office and principal place of business at 8709 Oakland, Detroit, Mich.

Andrew Shezas, an individual, trading as Andrew Shezas, having his office and principal place of business at 112 Monroe Street, Detroit, Mich.

William Fiedler and Charles Fiedler, partners, trading as Standard Candy Co., having its office and principal place of business at 3138 St. Aubin Street, Detroit, Mich.

Jacob Harvith, trading as Wolverine Cigar Co., having its office and principal place of business at 2686 Eighteenth Street, Detroit, Mich.

Woodhouse Cigar Co., a corporation, having its office and principal place of business at 37 West Jefferson Avenue, Detroit, Mich.

Jack Welsh, trading as Dearborn Candy & Tobacco Co., having its office and principal place of business at 14346 West Warren Avenue, Dearborn, Mich.

Whitfield Water & Dawon, a corporation, having its office and principal place of business at Pontiac, Mich.

In addition to the "regular" members aforesaid, there are some 125 other persons, partnerships, and corporations who are now or have been "associate" members of respondent Association.

PAR. 3. In the course and conduct of their respective businesses, respondents, with the exception of respondent association, have purchased and do purchase substantial quantities of candies and tobaccos and groceries from manufacturers, producers, and suppliers thereof located in States other than the State of Michigan, and have shipped or caused such commodities to be shipped into the city of Detroit and the surrounding trade area.

PAR. 4. In the course and conduct of their aforesaid businesses, respondent association and the members thereof, all of whom are respondents herein (all of which members are hereafter referred to as member respondents) for more than 4 years last past have cooperatively, coerced, induced, and persuaded jobbers, wholesalers, manufacturers, and suppliers of candies, tobaccos, and groceries located in States other than the State of Michigan to refrain from selling or offering to sell to competitors or prospective competitors of member respondents, direct or upon the same terms and conditions as they sell to the member respondents, by indicating to the sales representatives of said jobbers, wholesalers, manufacturers, and suppliers that they disapprove of sales to said competitors and prospective competitors, and by bringing home to such manufacturers, wholesalers, jobbers, and suppliers that member respondents are opposed to such sales, and by various other means and methods for the purpose and with the effect of unduly suppressing competition.

Said member respondents have used respondent association, together with its officers and directors, as a vehicle and implement for the furtherance of their said cooperative efforts, joint purposes, and activities as hereinbefore referred to.

Respondent association, its officers and directors, have cooperated with member respondents in the carrying out and furtherance of the aforesaid cooperative efforts, joint purposes, and activities.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public; have a dangerous tendency to and have actually hindered, prevented, suppressed and lessened competition between and among respondents in the purchase of candies, tobaccos and groceries in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to determine what persons, partnerships and corporations in the city of Detroit and the surrounding trade area shall buy candies, tobaccos and groceries direct from jobbers, wholesalers, manufacturers and suppliers thereof located in States other than the State of Michigan; have unreasonably restrained interstate commerce in candies, tobaccos and groceries; have deprived the purchasing public of the benefit of full and free competition between and among the respondents and competitors and prospective competitors of the respondents, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of certain respondents, and stipulation as to the facts entered into between counsel for certain of the respondents herein and William T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence, presentation of argument, the filing of briefs, or other intervening procedure, the Commission may issue and serve upon such 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 such respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Detroit Candy & Tobacco Jobbers Association, Inc., its officers and directors, its agents, employees, or representatives, directly or through any corporate or other device, in connection with the purchase, sale, and distribution of candies, tobaccos, and groceries in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Coercing, inducing, or persuading, or attempting to coerce, induce, or persuade, sellers of candies, tobaccos, and groceries located in States other than the State of Michigan to refrain from selling or offering to sell to competitors or prospective competitors of members of respondent association, or by such means controlling, or attempting to control, the terms and conditions upon which such sellers make sales to competitors or prospective competitors of members of respondent association.

2. Cooperating with any of its members or others to perform any of the acts and practices prohibited in paragraph 1 hereof.

It is further ordered, That the case growing out of the complaint herein be, and the same hereby is, closed as to members of the Detroit Candy & Tobacco Jobbers Association, Inc., in their individual capacities, 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.

It is further ordered, That the respondent Detroit Candy & Tobacco Jobbers Association, Inc., 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

JOSEPH H. KEVORKIAN, JOSEPH D. KEVORKIAN AND LOUIS STONE, TRADING AS STOMAR 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 4272. Complaint, Aug. 27, 1940—Decision, Aug. 28, 1941

Where a firm engaged in manufacture and in interstate sale and distribution of steel kitchen graters and shredders; in advertisements in periodicals and in circulars and other advertising literature distributed among their distributors and dealers, who redistributed them to the purchasing public, and in statements on display cards and on envelopes enclosing such products—

Represented that their graters and shredders were made of stainless steel, and would successfully resist rust, tarnish, stain and corrosion, through such legends and statements as "Stomar Stainless Safety Grater and Shredder," "Wont Rust Won't Tarnish Won't Corrode";

Facts being their said products were not made of the more expensive stainless steel or alloy, generally associated with term "stainless," which resists effects of food acids, dampness and water and weather conditions generally, to a much greater degree than does ordinary carbon steel, but were made of latter less expensive product plated with tin, and were not stainless in fact, but, as disclosed by Bureau of Standards tests, would not successfully resist rust, tarnish, or corrosion;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said products possessed qualities which they did not in fact possess, and to cause it, because of such belief, to purchase substantial quantities of said products:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Charles S. Cox for the Commission.

Scarborough & Creamer, of Philadelphia, Pa., for Joseph H. Kevorkian and Joseph D. Kevorkian.

Mr. Nathan Markmann, of Philadelphia, Pa., for Louis Stone.

COMPLAINT

Pursuant to the provisions of the Federal 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 H. Kevorkian, Joseph D. Kevorkian, and Louis Stone, individually and as copartners trading as Stomar Manufacturing Co., have violated the provisions of said act, and it appearing to the Commission that a pro-

ceeding by 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 H. Kevorkian, Joseph D. Kevorkian, and Louis Stone, are individuals trading as a copartners under the firm name, Stomar Manufacturing Co., with their office and principal place of business located at 1027 Ridge Avenue, Philadelphia, Pa.

PAR. 2. Respondents are now and for more than 2 years last past have been engaged in manufacturing, selling, and distributing graters and shredders. Respondents cause said graters and shredders when sold by them to be transported from their place of business located in the State of Pennsylvania to purchasers thereof at their respective points of location in the various States of the United States other than the State of Pennsylvania, and in the District of Columbia.

PAR. 3. Respondents' said graters and shredders are sold to various distributors, department and chain stores and retailers who in turn resell the same to the purchasing public. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said graters and shredders in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Stainless steel is an alloy produced from iron, chromium and carbon, and sometimes containing other minor alloying elements. Through long commercial usage, the alloy so produced has become known to manufacturers, to the trade and to the consuming public by the term "Stainless." This term as applied to steel indicates a very specific type of chromium-steel alloy which has the quality of resisting oxidation and corrosion against most media. Stainless steel resists alkaline materials, fruit acids, dampness and water, salt air and salt water and weather conditions, including rain and snow, to a markedly greater degree than is true of carbon steel. Stainless steel, in fact, is either wholly or substantially immune to the action of nearly a hundred corrosive agents. It is a much more expensive product to manufacture than carbon steel, and this is particularly true in relation to articles used in the ordinary kitchen.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of said products, respondents, through advertisements inserted in newspapers and periodicals having a general circulation and also through circulars and other advertising matter, and on various carton and container labels, all of which are distributed in commerce among and between various States of the United States, and through other means, have made misleading statements and representations to the purchasing public concerning certain of their said graters and shredders. Among and

typical of such misleading statements and representations so disseminated are the following:

Stomar Stainless Safety Grater
Stomar Stainless Safety Grater and Shredder
Won't Rust
Won't Tarnish
Won't Corrode

Respondents by the use of the term "Stainless" thereby have falsely represented and do falsely represent to prospective purchasers that their aforesaid grater is such a product as is known to the trade and to the general public as stainless steel, when in truth and in fact said grater so described and designated by respondent is made from ordinary carbon steel wire with a retinned finish.

Respondents' use of the terms or expressions "Stainless," "Won't Rust," "Won't Tarnish," and "Won't Corrode" in describing, designating, or referring to their said product, creates the impression upon the trade and the general public, and causes the trade and general public to believe, that said grater is so made and is of such quality, as that it successfully resists rust, stain and corrosion.

PAR. 6. In truth and in fact repondents' said grater is not stainless, nor does it possess the qualities and characteristics of being immune to, or of successfully resisting rust, tarnish, and corrosion, but on the contrary said product will and does rust and stain when brought in contact with agencies which do not rust or blemish stainless steel. Respondents' said graters are not stainless in fact.

PAR. 7. The aforesaid acts and practices of the respondents in connection with the offering for sale, sale, and distribution of their said graters and shredders, as aforesaid, have had, and now have, the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers thereof into the erroneous an mistaken belief that the aforesaid misleading and deceptive representations are true, and cause a substantial number of the purchasing public, because of said mistaken and erroneous belief so engendered, to purchase a substantial amount of respondents' said products.

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 August 27, 1940, issued and thereafter served its complaint in this proceeding upon the respondents,

Joseph H. Kevorkian, Joseph D. Kevorkian, and Louis Stone, individually and as copartners trading as Stomar 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 respondents' answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Charles S. Cox, attorney for the Commission, and in opposition to the allegations of the complaint by Fred B. Creamer and Nathan Markmann, attorneys for the respondents, before Arthur F. Thomas, a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answers thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. From approximately June 1, 1939 to approximately May 16, 1940 the respondents, Joseph H. Kevorkian, Joseph D. Kevorkian, and Louis Stone, were engaged in business as copartners under the firm name Stomar Manufacturing Co., with their office and principal place of business located at 1027 Ridge Avenue, Philadelphia, Pa. Respondents were engaged in the manufacture and in the sale and distribution of certain steel kitchen utensils known as graters and shredders.

Respondents sold their graters and shredders to various distributors, and to department stores, chain stores and other retailers who in turn resold such products to the purchasing public. Respondents caused their said products, when sold, to be transported from their 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. Respondents 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.

On or about May 16, 1940, respondents Joseph H. Kevorkian and Louis Stone severed their connection with the business, and since

that date the business has been operated, and is now operated, by respondent Joseph D. Kevorkian who is the sole owner thereof. The said Joseph D. Kevorkian has continued the use of the trade name, Stomar Manufacturing Co.

PAR. 2. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, the respondents (originally all of the respondents and subsequently respondent Joseph D. Kevorkian) have advertised their products in periodicals having a general circulation throughout the United States. Respondents have also made use of circulars and other pieces of advertising literature which have been distributed by respondents among their distributors and dealers and by such distributors and dealers to members of the purchasing public. Respondents have also caused legends and statements to be placed on display cards on which respondents' products are displayed for sale to the public, and on envelopes enclosing such products. Among and typical of the various legends and statements appearing in such advertisements and advertising material were the following:

Stomar Stainless Safety Grater
Stomar Stainless Safety Grater and Shredder
Won't Rust
Won't Tarnish
Won't Corrode

Through the use of these legends and of others similar thereto, the respondents have represented that their graters and shredders are made of stainless steel, and that such graters and shredders will sucessfully resist rust, tarnish, stain, and corrosion.

PAR. 3. The Commission finds that stainless steel is an alloy produced from iron, chromium and carbon, and sometimes other minor alloying elements. Through long commercial usage the alloy so produced has become known generally to manufacturers, to the trade and to the consuming public by the term "stainless."

This term, as applied to steel and particularly to household utensils, indicates a specific type of chromium-steel alloy which has the quality of resisting oxidation and corrosion. Stainless steel resists the effects of fruit acids, dampness and water, and weather conditions generally to a much greater degree than is true of ordinary carbon steel. Stainless steel is more expensive to produce than carbon steel and this is particularly true of the articles used as ordinary kitchen utensils.

PAR. 4. While the respondents have not used in their advertising material the specific word "steel" after the word "stainless," the testimony in the record shows, and the Commission finds, that the word

"stainless" as used by respondents on their graters and shredders is understood by a substantial portion of the purchasing public as indicating and representing that such graters and shredders are made of stainless steel. And the effect of the use of the word "stainless" in this manner is accentuated by reason of the fact that in much of respondents' advertising material the word is followed by the legends "Won't Rust," "Won't Tarnish," and "Won't Corrode."

PAR. 5. Respondents' graters and shredders are not made of stainless steel but are made of ordinary carbon steel and are plated with tin. Nor are respondents' graters and shredders stainless in fact. Tests conducted by the United States Bureau of Standards disclose, and the Commission finds, that respondents' products will not successfully resist rust, tarnish, or corrosion. The Commission therefore finds that the representations of respondents are misleading and deceptive.

PAR. 6. The Commission further finds that the use by respondents of such representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' products possess qualities which they do not in fact possess, and the tendency and capacity to cause such portion of the public, as a result of such erroneous and mistaken belief, to purchase substantial quantities of respondents' products.

CONCLUSION

The 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 respondents, testimony and other evidence taken before Arthur F. Thomas, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence, 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 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, Joseph H. Kevorkian, Joseph D. Kevorkian, and Louis Stone, individually and trading as Stomar Manufacturing Co., or trading under any other name, and their 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 their kitchen utensils known as graters and shredders, do forthwith cease and desist from:

1. Using the word "stainless" to designate or describe respondents' products, or otherwise representing that said products are made from stainless steel or that they are stainless in fact.

2. Representing that respondents' products will not rust, tarnish or corrode.

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

HASKELITE MANUFACTURING CORPORATION

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

Docket 4442. Complaint, Dec. 31, 1940—Decision, Aug. 29, 1941

Where a corporation engaged in the manufacture and interstate sale and distribution to department stores, gift shops, and other retail establishments, of serving trays made of a single ply of poplar, basswood, or other similar veneer covered top and bottom, with specially processed paper, so colored and finished as to simulate walnut or copomo grain with nothing to indicate that any other material than wood had been used in their manufacture;

In advertising mats which it supplied to dealers for their use in advertising such trays in local newspapers, the expense of which it bore in whole or in part depending upon the quantity purchased, and in advertising booklets, leaflets, and circulars—

Falsely represented that said trays were made entirely of wood and finished with walnut or copomo wood, through such legends and statements as "Simulated walnut grain finish that looks exactly like fine wood inlay," "Hardwood with simulated walnut grain surface," "Made of selected wood veneer with simulated walnut grain finish," "Selected wood construction," "Available in walnut or copomo grains," and "Wood inlay on walnut grained surface * * * also in plain simulated walnut," and

Failed to disclose affirmatively that the surfaces of its said trays were made of paper, through use of word "Simulated" in such statements as "Simulated walnut grain surface," etc., which were insufficient to disclose to a substantial portion of the purchasing public the actual nature of said products;

With result of thereby placing in the hands of unscrupulous or uninformed retailers means to mislead or deceive members of the purchasing public, and with tendency and capacity to mislead and deceive a substantial portion of such public into the erroneous belief that its said trays were made entirely of wood, and to cause it to purchase substantial quantities of its products as a result of such mistaken belief:

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

Before *Mr. William C. Reeves*, trial examiner.
Mr. Eldon P. Schrup for the Commission.
Fyffe & Clarke, 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 Haskelite Manufacturing Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it ap-

pearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Haskelite Manufacturing 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 208 West Washington Street, in the city of Chicago, State of Illinois.

Said respondent operates a factory located at Grand Rapids, Mich., wherein are manufactured, among other products, wooden serving and lap trays, together with the products designated by respondent as Hasko De Luxe Buffet Trays.

Respondent, Haskelite Manufacturing Corporation, is now and for a number of years last past has been engaged in the business of the offering for sale and the sale of the aforedescribed products to retail merchants, and through and by use of the United States mails and respondent's salesmen, said respondent contacts and has contacted for such purpose, various such merchants located throughout the United States and in the District of Columbia. Respondent in response to and in fulfillment of orders thereby obtained has caused and now causes said products when sold to be transported from its place of business in Chicago, Ill., or Grand Rapids, Mich., to the purchasers thereof located in a State or States other than the State or States wherein such shipments from the respondent originated, or in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said products so sold and distributed by it in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent in aid of the offering for sale and the sale of Hasko De Luxe Buffet Trays in the conduct and course of its business in trade as aforedescribed, has stated in advertising mats, copy, booklets, and other materials furnished retail merchants through and by means of the United States mails, respondent's salesmen and otherwise, and has thereby caused to be stated in newspapers and other advertising media employed by respondent's said merchant customers, that Hasko De Luxe Buffet Trays, among other things with reference to their manufacture, construction and materials, are:

Hardwood with simulated Walnut grained surface.

Made of attractive simulated Walnut grained hardwood.

Selected wood construction * * * available in Walnut or Mexican Copomo grains.

PAR. 3. Respondent through and by use of the statements hereinabove set forth and by means of other statements similar thereto not specifically set out herein, represents and implies and causes to be represented and implied to retail merchants purchasing respondent's said products for resale, and through and by means of such merchants' advertising media, has caused and causes to be stated, represented and implied, to the purchasing public, that Hasko De Luxe Buffet Trays are manufactured and constructed of hardwood, that said trays are of selected wood construction, and that the surface of said trays is composed of hardwood material finished to simulate Walnut or Mexican Copomo grains.

Respondent's said statements, representations, and implications made and caused to be made as aforesaid with reference to the manufacture, construction, and materials contained in Hasko De Luxe Buffet Trays are grossly exaggerated, false, misleading, deceptive, and untrue.

In truth and in fact, Hasko De Luxe Buffet Trays are not manufactured and contructed of hardwood, are not of selected hardwood construction, and the surface of said trays is not composed of hardwood material finished to simulate walnut or Mexican copomo wood grains. Hasko De Luxe Buffet Trays as manufactured and constructed by the respondent, are composed of a core of poplar softwood material, said core being covered with a surface of paper which has been processed and printed to resemble Walnut or Mexican copomo wood grains in appearance, and said trays do not contain nor are their surfaces composed of hardwood materials of any description whatsoever.

PAR. 4. Respondent's said statements, representations, and implications to retail merchants and to the purchasing public, made and disseminated as aforedescribed, have had and now have the capacity to and do mislead and deceive a substantial number of such merchants and the purchasing public into the erroneous and mistaken belief and impression that the statements and representations contained in respondent's advertising mats, copy, booklets and other materials furnished such merchants, and in such merchants' newspaper and other advertising media, are true, and many of such merchants and many members of the purchasing public have been and are thereby influenced and induced both directly and indirectly to purchase from respondent or from such merchants, the respondent's aforesaid products.

Respondent's said acts and practices, as hereinabove detailed, further serve to place in the hands of unscrupulous or uninformed retail merchants a means and instrumentality whereby in the sale of

respondent's said products such merchants may mislead and deceive the purchasing public in manner and method as hereinbefore described.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 31, 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Haskelite Manufacturing Corporation, 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 the complaint were introduced by Eldon P. Schrup, attorney for the Commission, before William C. Reeves, a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission (no testimony or other evidence having been offered by respondent). Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and briefs in support of the complaint and in opposition thereto (oral arugment 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, Haskelite Manufacturing Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 208 West Washington Street, in the city of Chicago, Ill. Respondent also operates a manufacturing plant located in Grand Rapids, Mich. Respondent is engaged in the manufacture and in the sale and distribution of serving trays, including certain trays designated as "Hasko De Luxe Buffet Trays" or "Hasko Trays."

PAR. 2. Respondent causes its trays, when sold, to be transported from its places of business in the States of Illinois and Michigan to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its trays in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent sells its trays to department stores, gift shops, and other retail establishments, and the trays are resold by such retail establishments to the purchasing public. In the course and conduct of its business, and for the purpose of inducing the purchase of its trays by the purchasing public, the respondent supplies to dealers purchasing its trays advertising mats which are used by such dealers in advertising respondent's trays in local newspapers, most of which have general circulation among various States of the United States. The expense of these advertisements is borne in whole or in part by respondent, depending upon the quantities of the trays purchased by the respective dealers. In addition to such newspaper advertisements, respondent also uses booklets, leaflets and circulars to advertise its products among prospective purchasers. Among and typical of the legends and statements appearing in such newspaper advertisements and other advertising material are the following:

Simulated walnut grain finish that looks exactly like fine wood inlay
Hardwood with simulated walnut grain surface
Made of selected wood veneer with simulated walnut grain finish
Selected wood construction
Available in walnut or copomo grains
Wood inlay on walnut grained surface * * * also in plain simulated walnut
Made of wood finished in walnut
Made of attractive simulated walnut grain hardwood
Made of fine selected wood in simulated walnut grain

Through the use of these legends and statements and of others similar thereto, the respondent represents that its trays are made entirely of wood and are finished or covered with walnut or copomo wood.

PAR. 4. Respondent's trays are made of a single ply of wood veneer, usually poplar, basswood, or other similar material, which forms what is known as the core of the trays, and the outer surfaces of the trays, both top and bottom, are covered with specially processed paper. This paper is colored and finished in such manner that it closely simulates walnut or copomo grain, as the case may be. The paper appears to be a part of the wood itself, and there is nothing

on or about the trays to indicate that they are covered with paper or that any material other than wood has been used in their manufacture.

In some of its advertising the respondent has used in connection with the description of its trays the word "simulated," as "simulated walnut grain surface," and respondent insists that the use of this word is sufficient to apprise prospective purchasers of the fact that the surfaces of the trays are not wood but are of some other material. The Commission is of the opinion, however, from the evidence, and finds, that to a substantial portion of the purchasing public the use of such term is insufficient to disclose the actual nature of the trays.

PAR. 5. The Commission further finds that the use by respondent of the representations herein set forth, and the failure of respondent to disclose affirmatively that the surfaces of its trays are made of paper, serve to place in the hands of unscrupulous or uninformed retail dealers a means and instrumentality whereby such dealers may be enabled to mislead and deceive members of the purchasing public.

PAR. 6. The Commission further finds that the acts and practices of the respondent, including the failure of respondent to disclose the true nature of its trays, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's trays are made entirely of wood, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST [1]

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, trial examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint (no testimony or other evidence having been offered by respondent), 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 made its findings as

[1] Published as modified by order of October 25, 1941.

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, Haskelite Manufacturing Corporation, a corporation, and 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 serving trays in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that trays made in part of paper are made entirely of wood.

2. Using the words "wood," "hardwood," "walnut," or "copomo," or any other word descriptive of wood, to designate or describe trays having paper surfaces, unless there appear in immediate connection or conjunction with such words other words clearly indicating that the surfaces of such trays are made of paper.

3. Selling or distributing trays having surfaces of paper which simulates wood, without clearly disclosing by means of legends imprinted upon such trays or upon the individual cartons in which said trays are packed and sold at retail to the ultimate consumer, that such surfaces are made of paper.

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

SCHULER CHOCOLATES, INC., ALSO DOING BUSINESS AS SCHULER 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 4385. Complaint, Nov. 23, 1940—Decision, Sept. 5, 1941

Where a corporation engaged in competitive interstate sale and distribution of candy and confectionery products, including certain assortments so packed and assembled as to involve a game of chance, gift enterprise, or lottery scheme, in resale thereof to the consuming public, and distributing push cards and punchboards for use in such sale and distribution, typical assortments consisting of—

(1) A number of bars of candy of uniform size and shape and a number of boxes of candy, together with a push card for use in sale and distribution of said bars under a plan, as explained thereon, by which customer received, for 5 cents paid, a box of chocolates, two 5-cent bars or three 5-cent bars, depending on the number he secured by chance, the last punch in first section entitled purchaser also to a box of chocolates, and the last punch on the board secured purchaser the large box of chocolates, all others receiving one of said bars; and

(2) A number of boxes of candy, together with a three-section punchboard for use in their sale under a plan by which the chance selection of certain specified numbers entitled purchaser to receive one of said boxes, value of which was in excess of the 5 cents paid, the person punching the last number in each of the three sections also received a box, and others received nothing for their money other than the privilege of making a punch—

Sold such assortments to wholesalers, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its candy, contrary to an established public policy of the United States Government, and in competition with many who do not use method involving chance or any other method contrary to public policy;

Use of which methods, because of said games of chance, had a tendency and capacity unfairly to divert trade in commerce to it from competitors who did not use the same or equivalent methods:

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 acts and practices therein.

Before *Mr. W. W. Sheppard*, trial examiner.
Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.
Lamberton & Lamberton, of Winona, 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 Schuler

Chocolates, Inc., a corporation, doing business under that name and as Schuler 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. Schuler Chocolates, Inc., also trading under the name Schuler Candy Co., is a corporation organized and doing business under the laws of the State of Minnesota, with its office and principal place of business located at Winona, Minn. Respondent is now, and for more than 6 years last past has been, engaged in the sale and distribution of candy and confectionery products to wholesale dealers, jobbers, and retail dealers. The respondent causes and has caused said products, when sold, to be transported from its principal place of business in the city of Winona, 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 for more than 6 years last past has been a course of trade by respondent in such 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 corporations and with partnerships and individuals engaged in the sale and distribution of candy and confectionery products 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 distributes and has distributed various push cards and punchboards for use, and which are used, 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 these are not all-inclusive of the various assortments, nor do they include all 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 number of bars of candy of uniform size and shape, and a number of boxes of candy, together with a device commonly called a push card. The push card contains

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:

5¢ Fairplay Assortment 5¢
No. 5—10—15 take One Box Delicious Chocolates.
Nos. 20—25—30—35—40 take Two 5c Bars.
Nos. 45—50 take Three 5c Bars.
Last punch in first section takes One Box Chocolates.
Last punch on board takes Large Box Chocolates.
All other numbers take 5c 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 bars or 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.

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 number of 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 such 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 purchaser thereof to receive 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 a box of candy or the last punch in one of said sections receives the same for the price of 5 cents. The numbers are effectively con-

cealed 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.

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 directly or indirectly purchase respondent's said candy 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 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 and confectionery products in competition with respondent, as above alleged, are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance, or any other method contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of 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 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 respondent from its said competitors who do not use the same or equivalent methods. As a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 23, 1940, issued and subsequently served its complaint in this proceeding upon said respondent Schuler Chocolates, 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, certain facts were stipulated in the record by the attorney for the respondent and the attorney for the Commission at a hearing before an examiner of the Commission theretofore duly designated by it, and said record and other evidence were duly filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the facts stipulated in the record 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, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Schuler Chocolates, Inc., also trading under the name Schuler Candy Co., is a corporation organized and doing business under the laws of the State of Minnesota, with its office and principal place of business located at Winona, Minn. Respondent is now, and for more than 6 years last past has been, engaged in the sale and distribution of candy and confectionery products to wholesale dealers, jobbers, and retail dealers. The respondent causes, and has caused, said products, when sold, to be transported from its principal place of business in the city of Winona, 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 for more than 6 years last past has been, a course of trade

by respondent in such 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 its business in commerce, as aforesaid, respondent has sold to wholesale dealers certain assortments of candy packed and assembled in a manner designed and intended for use in the resale thereof to the consuming public by means of a game of chance, gift enterprise, or lottery scheme. Respondent has also distributed various push cards and punchboards designed for use in the sale and distribution of its said assortments of 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.

One assortment consisted of a number of bars of candy of uniform size and shape and a number of boxes of candy, together with a device commonly called a push card. The push card contained 60 partially perforated disks and on the face of each of said disks the word "Push" was printed. Concealed within the said disks were numbers which were effectively concealed from purchasers or prospective purchasers until a push or selection had been made and the selected disk pushed or separated from the card. Sales were 5 cents each. The following legend appeared on the face of said card:

5¢ *Fairplay Assortment* 5¢

Nos. 5–10–15 take One Box Delicious Chocolates.
Nos. 20–25–30–35–40 take Two 5¢ Bars.
Nos. 45–50 take Three 5¢ Bars.
Last punch in first section takes One Box Chocolates.
Last punch on board takes Large Box Chocolates.
All other numbers take 5¢ Bar.

Respondent has sold and distributed various other assortments of candy with push cards involving a lot or chance feature, but such assortments were similar to the one above described and varied only in detail.

Another of the assortments sold and distributed by respondent consisted of a number of boxes of candy, together with a device commonly called a punchboard. When a punch was made from the board a number was disclosed. The numbers began with 1 and continued to the number of punches there were on the board, but the numbers were not arranged in numerical sequence. Sales were

5 cents each. The board was divided into three sections and bore a statement which provided that the person who punched the last number in each of the three sections received one of said boxes of candy and that certain specified numbers entitled the purchaser thereof to receive one of said boxes of candy. It was further provided that a purchaser who did not qualify by obtaining one of the lucky numbers or the last punch in one of said sections received nothing for his money other than the privilege of punching a number from the board. The said boxes of candy were worth more than 5 cents each and a purchaser who obtained one of the numbers calling for a box of candy or the last punch in one of said sections received same for the price of 5 cents. The numbers were effectively concealed until a punch or selection had been made and the said punch separated from the board. The plan or design thus provided for the distribution of said candy wholly by lot or chance to purchasers of punches from the board. Respondent has sold and distributed various other assortments of candy along with punchboards involving a lot or chance feature, but such assortments were similar to the one hereinabove described and varied only in detail.

PAR. 3. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of its candy in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of its candy is a practice of a sort which is contrary to an established public policy of the Government of the United States. Many persons and corporations who sell and distribute candy and confectionery products in competition with respondent do not adopt and use said methods, or any method involving a game of chance or the sale of a chance to win something, or any other method contrary to public policy. The use of said methods by respondent, because of said games of chance, has a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from competitors who do not use the same or equivalent methods.

CONCLUSION

The aforesaid acts and practices of respondent are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce 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, certain facts stipulated in the record and other evidence, and briefs 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 conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent Schuler Chocolates, Inc., a corporation, also trading as Schuler Candy Co., or 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, or 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 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 punchboards, push or pull cards, pull tabs, or other lottery devices, either with assortments of merchandise or separately, which said punchboards, push or pull cards, pull tabs, 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 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

OZON CHEMICAL COMPANY, INC., ALSO TRADING AS DUNCAN CHEMICAL CO.

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

Docket 4421. Complaint, Dec. 17, 1940—Decision, Sept. 5, 1941

Where a corporation engaged in interstate sale and distribution of its "Duncan's Ozon"; by means of newspaper advertisements and circular letters, directly or by implication—

Represented that its said preparation constituted a cure or remedy and competent and effective treatment for colds, coughs, sore throat, athlete's foot, and poison ivy, and that it was an effective preventive of coughs and sore throat, facts being the product in question, which was made from a variety of pine oil and was a counter-irritant and aromatic, possessing slight expectorant and antiseptic properties, was of no therapeutic value in the treatment of poison ivy, athlete's foot, or sore throat, was not an effective preventive thereof or of coughs, and did not constitute a cure for colds, although capable of affording some relief from the symptoms thereof because of such expectorant properties;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that its said preparation possessed therapeutic properties which it did not in fact possess, and to cause it to purchase substantial quantities of said preparation as a 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.

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

Mr. Charles S. Cox for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Ozon Chemical Co., Inc., a corporation, also trading as Duncan Chemical Co., 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, Ozon Chemical Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, and having its principal place of business at 607 Delmonte Way, St. Louis, Mo. Respondent also trades from said address as Duncan Chemical Co.

PAR. 2. The respondent is now and for more than two years last past has been engaged in the business of selling and distributing a medicinal preparation designated as "Duncan's Ozon." In the course and conduct of its business, respondent causes its said medicinal preparation, when sold, to be transported from its place of business in the State of Missouri to the purchasers thereof located in various States of the United States, other than the State of Missouri, and in the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its 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 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 literature, are the following:

For * * * poison ivy, athlete's foot.

Now is the time of the year when your demand for COLD remedies should begin to grow.

DUNCAN'S OZON *is* one of the best preventives and treatments of sore throat and coughs, that is known. It is a natural household remedy and no family medicine chest can afford to be without a bottle.

At the first sign of approaching sore throat, this medicine can be applied with a swab and instantly relief is had, and in most cases, infection is stopped and cold avoided.

By the same method of treatment it can be used as a COUGH MEDICINE and in most cases will stop a cough instantly.

Prescribed by physicians and hospitals.

Manufactured and distributed by
DUNCAN CHEMICAL CO.,
607 Delmonte Way,
St. Louis, Missouri.

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 or by implication, that its said preparation constitutes a cure or remedy and a competent and effective treatment for colds, coughs, sore throat, athlete's foot, and poison ivy, and is an effective preventive of colds, coughs and sore throat; that said preparation is recommended by physicians generally and is in general use in hospitals. Respondent further represents that it manufactures or compounds its said preparation.

PAR. 5. The aforesaid representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation does not constitute a cure or remedy nor a competent or effective treatment for colds, coughs, sore throat, athlete's foot or poison ivy, nor is said preparation an effective preventive of colds, coughs, or sore throat. Said preparation is composed principally of pine oil, and is of no substantial therapeutic value in either the treatment or the prevention of any of the ailments or conditions mentioned. Said preparation is not recommended by physicians generally, nor is it in general use in hospitals. Respondent does not manufacture or compound said preparation but obtains said preparation from other sources.

PAR. 6. The use by the respondent of the foregoing false and misleading 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 representations are true, and to cause the public, because of such erroneous belief, to purchase 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 December 17, 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Ozon Chemical Co., Inc., a corporation, also trading as Duncan Chemical 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 (no answer being filed by re-

spondent), testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before Robert S. Hall, a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, testimony and other evidence, report of the trial examiner upon the 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, Ozon Chemical Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Missouri and having its principal place of business at 607 Delmonte Way, St. Louis, Mo. Respondent also trades under the name Duncan Chemical Co.

PAR. 2. Respondent is now, and since May 1938 has been, engaged in the sale and distribution of a medicinal preparation designated as "Duncan's Ozon." In the course and conduct of its business respondent causes its preparation, when sold, to be transported from its place of business in the State of Missouri to purchasers thereof located in various other States of the United States, including, among others, the States of Illinois, Kentucky, Tennessee, and Alabama. Respondent maintains, and since May 1938 has maintained, a course of trade in its preparation in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its business respondent advertises its preparation by means of advertisements inserted in newspapers which have general circulation among and between various States of the United States. Respondent also makes use of circular letters, which are sent by it through the United States mails to purchasers and prospective purchasers of its preparation. All of respondent's advertisements and advertising material are for the purpose of inducing, and are likely to induce, directly or indirectly, the purchase of respondent's preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical

of the statements and representations appearing in such advertisements and advertising material are the following:

For * * * poison ivy, athlete's foot.

Now is the time of the year when your demand for COLD remedies should begin to grow.

DUNCAN'S OZON is one of the best preventives and treatment of sore throat and coughs, that is known. It is a natural household remedy and no family medicine chest can afford to be without a bottle.

At first sign of approaching sore throat, this medicine can be applied with a swab and instantly relief is had, and in most cases, infection is stopped * * *.

By the same method of treatment it can be used as a COUGH MEDICINE and in most cases will stop a cough instantly.

PAR. 4. Through the use of these statements and representations, and others of similar import, the respondent represents and has represented, directly or by implication, that its preparation constitutes a cure or remedy and a competent and effective treatment for colds, coughs, sore throat, athlete's foot, and poison ivy, and that it is an effective preventive of coughs and sore throat.

PAR. 5. Respondent's preparation is made from a certain kind or variety of pine oil. The oil is made from long leaf yellow pine, being steam distilled from the wood. The oil is removed from the wood by subjecting the ground-up wood to the action of live steam. The oil is volatilized along with the steam, after which it condenses.

PAR. 6. The expert testimony in the record shows, and the Commission finds, that respondent's preparation is a rubifacient or counter-irritant, that it is aromatic, and possesses expectorant properties to a slight degree. It also possesses antiseptic properties but not to any substantial degree, and it is seldom prescribed by physicians for that purpose, there being other drugs which are much more effective.

The preparation is of no therapeutic value in the treatment of poison ivy or athlete's foot. Athlete's foot is a fungus infection of the skin and in order to treat the condition successfully it is necessary to destroy the fungi. To do this the drug used must be able to penetrate the dead skin which contains the fungi, and must be sufficiently antiseptic to destroy the fungi. While pine oil is mildly antiseptic and will penetrate the skin to a limited extent, these properties are insufficient to reach and kill all of the fungi in the deeper layers of the skin.

Nor is respondent's preparation of any therapeutic value in the treatment of sore throat. Sore throat is caused by an infection either of the tonsils or the mucous membrane of the throat. The properties of pine oil are not sufficient to have any substantial effect upon the condition. Nor is pine oil an effective preventive of sore throat.

While certain pine oil products are sometimes incorporated in cough remedies, they are usually combined with expectorants, sedatives, or other drugs, these being more effective than the pine oil constituent. Used alone, pine oil has no therapeutic value in the treatment of coughs in excess of such relief as may be afforded by its expectorant properties, which may tend to afford some comfort to the patient. Pine oil is not an effective preventive of coughs.

Pine oil does not constitute a cure or remedy for colds, although it is capable of affording some relief for the symptoms of colds.

PAR. 7. The Commission therefore finds that respondent's representations with respect to its preparation, as set forth in paragraphs 3 and 4 hereof, are grossly exaggerated, misleading, and deceptive, and constitute false advertisements.

PAR. 8. The Commission further finds that the use by respondent of these false advertisements 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 preparation possesses therapeutic properties and values which it does not in fact possess, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's preparation as a result of such belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (no answer having been filed by respondent), testimony and other evidence taken before Robert S. Hall, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence, and 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 the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Ozon Chemical Co., Inc., a corporation, also trading as Duncan Chemical Co., and its officers, representatives, agents, and employees, directly or through any cor-

porate or other device, in connection with the offering for sale, sale or distribution of its medicinal preparation designated "Duncan's Ozon," 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, sore throat, poison ivy, or athlete's foot.

(*b*) That said preparation constitutes a cure or remedy for colds or coughs, or that it possesses any therapeutic value in the treatment of coughs in excess of such comfort as it may afford by reason of its expectorant properties.

(*c*) That said preparation is an effective preventive of sore throat or coughs.

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

CONTINENTAL PREMIUM MART

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

Docket 4462. Complaint, Feb. 11, 1941—Decision, Sept. 5, 1941

Where a corporation engaged in the competitive interstate sale and distribution of novelty jewelry, fountain pens, billfolds, knives, wearing apparel, carnival supplies, lamps, premium novelties and other merchandise, including three assortments of its merchandise 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 consumer, and which consisted of a large cardboard carton enclosing a pull card and a number of smaller cartons, each containing an article of merchandise, and bearing on the end a number, function of which was to determine the chance recipient of the particular article, dependent upon the securing of the corresponding number from the pull card so that which of such articles—many of greater retail value than the 10 cents paid for a chance—purchaser received was determined wholly by lot—

Sold such assortments, directly or indirectly, to dealers and retailers by whom they were exposed for sale and sold to the purchasing public in accordance with the aforesaid sales plan, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale and distribution of its merchandise, 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 any sales methods involving chance or contrary to public policy, and refrain therefrom;

With the result that many dealers in and ultimate consumers of said merchandise were attracted by its said sales plans, and were thereby induced to buy its said merchandise in preference to that of aforesaid competitors, with effect of unfairly diverting trade to it from them; to the substantial injury of competition in commerce:

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

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

Mr. D. C. Daniel for the Commission.

Mr. Joseph H. Bilansky, 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 Continental Premium Mart, a corporation, hereinafter referred to as respondent, has violated the provisions of said act and it appearing to the Com-

mission 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, Continental Premium Mart, is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 822 North Third Street, Milwaukee, Wis. Respondent is now and for more than 3 years last past has been engaged in the sale and distribution of novelty jewelry, fountain pens, bill folds, knives, wearing apparel, carnival supplies, lamps, premium novelties, and other merchandise to dealers and other purchasers. Respondent causes and has caused said merchandise when sold to be transported from its aforesaid place of business in the State of Wisconsin 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 3 years last past has been a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to dealers and other purchasers certain assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the purchaser or consumer thereof. One of the said assortments is and has been sold and distributed to the purchasing public in substantially the following manner.

This assortment consists of a large cardboard carton in which is contained a number of smaller cartons, each of which smaller cartons contains an article of merchandise and on the end of each of said smaller cartons there appears a number. One end of said large carton is so constructed as to constitute a device commonly known as a pull card. Said pull card contains a number of partially perforated pull tabs and on the reverse side of each of said tabs there appears a number which corresponds to the number appearing on the end of one of said smaller cartons. Sales are 10 cents each and each purchaser pulls one of said tabs from the pull card. The purchaser is entitled to and receives the smaller carton bearing the number which corresponds to the number appearing on the reverse side of the tab

pulled by such purchaser. The numbers on the reverse sides of said tabs are effectively concealed from purchasers and the prospective purchasers until selections have been made and the tabs have been separated or removed from the said card. Many of the said articles of merchandise contained in this assortment have a normal retail value greater than 10 cents. The fact as to which of said articles of merchandise a purchaser is to receive and whether or not he receives an article of merchandise of greater retail value than the amount to be paid therefor are thus determined wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of its merchandise, together with devices for use in the sale or distribution of such merchandise, to the purchasing public by means of a game of chance, gift enterprise or lottery scheme but the sales plans or methods employed in connection with each of said assortments are substantially the same as the sales plans or methods hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's said assortments of merchandise, either directly or indirectly, expose for sale 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 merchandise in accordance with the sales plans or methods hereinabove described. The use by respondent of said sales plans or methods in the sale of its merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and 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 merchandise are attracted by said sales plans or methods employed by respondent and the element of chance involved therein and are thereby induced to buy respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent

sales plans or methods. The use of said sales plans or methods by respondent because of said game of chance has a tendency and capacity to and does unfairly divert trade to respondent from its said competitors who do not use the same or equivalent sales plans or methods and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 11, 1941, issued and on February 12, 1941, served its complaint in this proceeding upon the respondent, Continental Premium Mart, a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said act. On March 21, 1941, respondent filed its answer in this proceeding. A hearing was held in this matter on June 5, 1941, at which time a stipulation as to the facts, entered into by and between counsel for the Commission and counsel for the respondent, was read into the record and certain testimony was introduced by respondent. The filing of briefs and the presentation of oral argument in support of and in oposition to the allegations of said complaint were waived. Thereafter this proceeding came on for final hearing before the Commission on said complaint, answer, stipulation and testimony, 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, Continental Premium Mart, is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 822 North Third Street, Milwaukee, Wis. Respondent is now, and for more than 3 years last past has been, engaged in the sale and distribution of novelty jewelry, fountain pens, bill folds,

knives, wearing apparel, carnival supplies, lamps, premium novelties, and other merchandise to dealers and other purchasers. Respondent causes and has caused said merchandise when sold to be transported from its aforesaid place of business in the State of Wisconsin 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 3 years last past has been, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to dealers and other purchasers three assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the purchaser or consumer thereof. Such assortments were and are known as "Captain Kidd's Bazaar," "Trading Post" and "Play Ball" and are and have been sold and distributed to the purchasing public in substantially the following manner:

Each of said assortments consists of a large cardboard carton in which is contained a number of smaller cartons, each of which smaller cartons contains an article of merchandise and on the end of each of said smaller cartons there appears a number. One end of said large carton is so constructed as to constitute a device commonly known as a pull card. Said pull card contains a number of partially perforated pull tabs and on the reverse side of each of said tabs there appears a number which corresponds to the number appearing on the end of one of said smaller cartons. Sales are 10 cents each and each purchaser pulls one of said tabs from the pull card. The purchaser is entitled to and receives the smaller carton bearing the number which corresponds to the number appearing on the reverse side of the tab pulled by such purchaser. The numbers on the reverse sides of said tabs are effectively concealed from purchasers and the prospective purchasers until selections have been made and the tabs have been separated or removed from the said card. Many of the said articles of merchandise contained in this assortment have a normal retail value greater than 10 cents. The facts as to which of said articles of merchandise a purchaser is to receive and whether or not he receives an article of merchandise of greater retail value

than the amount he paid therefor are thus determined wholly by lot or chance. The said assortments, when purchased by respondent, were packed and assembled as above described.

PAR. 3. The Commission finds that retail dealers who purchase respondent's said assortments of merchandise, either directly or indirectly, expose for sale and sell the same to the purchasing public in accordance with the aforesaid sales plans or methods. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale and distribution of its merchandise in accordance with the sales plans or methods hereinabove described. The use by respondent of said sales plans or methods in the sale of its merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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

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 com-

petitors 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 respondent, a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent and certain testimony introduced by respondent, 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, Continental Premium Mart, 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 novelty jewelry, fountain pens, bill folds, knives, wearing apparel, carnival supplies, lamps, premium novelties 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 are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of others, assortments of any merchandise, together with push or pull cards or any other device, which said push or pull cards or other device are to be used or may be used in selling or distributing said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

3. Supplying to or placing in the hands of others push or pull cards or other devices either with assortments of merchandise or separately which said push or pull cards or other devices are to be used or may be used in selling or distributing such merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

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

Syllabus

IN THE MATTER OF

W. HILLYER RAGSDALE, ANNIE M. RAGSDALE, MARSHALL D. RAGSDALE, AND IDA J. RAGSDALE, DOING BUSINESS AS W. HILLYER RAGSDALE, W. HILLYER RAGSDALE, INC., AND RAGSDALE CANDIES

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

Docket 4472. Complaint, Mar. 19, 1941—Decision, Sept. 5, 1941

Where four individuals engaged in interstate sale and distribution of outfits, courses of instruction, supplies, and material represented to give men and women an opportunity to establish themselves in the business of making and selling home-made candy; in letters and circulars, and in advertisements in periodicals—

(a) Represented and implied that their outfits and instruction afforded an opportunity to all, regardless of prior training and experience or amount of their capital, to enter the business of making and selling home-made candies, and that, upon the purchase of such outfits and instruction, all such men and women, would thereby and by reason of their help, be enabled to set themselves up in a profitable business, which could be operated from or in the home;

(b) Represented and implied that through the use of such method and instruction and the assistance which they gave by mail, and the equipment and supplies which they furnished, all such men and women were assured by them of success in the candy business and of a steady income and profits from the start, whether they took up such occupation as a part-time or full-time business;

(c) Represented and implied that the equipment and supplies which they furnished were the same as, and included, all the professional confectioners' tools, equipment, supplies, and materials, used in the most modern home-made candy kitchens, and required in making home-made candy and preparing it for sale, except certain inexpensive materials; and

(d) Represented and implied that a purchaser of their outfits and instruction would have nothing else to buy at the start, except "sugar, flavoring, etc."—represented by them to be only inexpensive minor items—inasmuch as they furnished sufficient tools, supplies and raw materials, except such "inexpensive items," to make over $40 worth of candy, which they represented to be enough to give the purchaser a good start;

Facts being the instruction and equipment which they furnished were not sufficient to assure the acquisition of the necessary skill in the manufacturing and merchandising of candy, or to permit a person having such skill to put into operation and operate an establishment in which enough candy could be made to meet the requirements of such business, or to supply candy that could be sold for enough money to assure a successful business or the earning of a steady income; the tools and equipment furnished by them did not include all those necessary to make home-made candy and prepare it for sale, but much additional expensive equipment would be necessary; the

raw materials not furnished by them were not inexpensive but relatively expensive, and those furnished were not sufficient to enable the purchaser to make, even after the addition of materials not furnished, enough candy to start a business from which $40 or any other definite amount could be earned in any given length of time, since such candy, like all fresh home-made candy, would be subject to deterioration from fermentation and drying out, if not properly made or promptly sold; other factors, not indicated in their representations, enter into the difficulty of selling such candy; and their representations as to the opportunity afforded and certainty of success as above set forth had no basis in fact; and

(*e*) Falsely represented and implied that a large number of men and women had, by following their method, achieved success in the candy business and made a good steady income and profits, both as a part-time and as a full-time business; which statement, considering the number who had purchased their course, was without basis in fact;

Capacity, tendency and effect of which acts and practices were to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations and implications were true, and to cause many members of said public, because of such belief, to purchase their outfits, courses of instruction, supplies and materials:

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. W. W. Sheppard*, trial examiner.

Mr. D. E. Hoopingarner for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that W. Hillyer Ragsdale, Annie M. Ragsdale, Marshall D. Ragsdale, and Ida J. Ragsdale, individually and doing business under the names and styles of W. Hillyer Ragsdale, W. Hillyer Ragsdale, Inc., and Ragsdale Candies, 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, W. Hillyer Ragsdale, Annie M. Ragsdale, Marshall D. Ragsdale and Ida J. Ragsdale, are individuals trading and doing business under the names and styles of W. Hillyer Ragsdale, W. Hillyer Ragsdale, Inc., and Ragsdale Candies, with their office and principal place of business at 307 North Walnut Street in the city of East Orange, State of New Jersey.

For more than 2 years last past respondents have been, and are now, engaged in the sale and distribution of outfits, courses of instruction, supplies, and materials which are represented by respondents to give men and women an opportunity to establish for themselves and in their homes the business of manufacturing and merchandising home-made candy. In the course and conduct of said business respondents have been and are now causing their said outfits, courses of instruction, supplies and materials, when sold, to be transported from their said place of business in the State of New Jersey to purchasers thereof located in various 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 outfits, courses of instruction, supplies and materials in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business and for the purpose of inducing the purchase of their said outfits, courses of instruction, supplies and materials, respondents, by means of letters and circulars and by means of advertisements appearing in magazines and periodicals, all of which were circulated between and among the various States of the United States and in the District of Columbia, have made various representations with respect to their said outfits, courses of instruction, supplies and materials. Among said representations are the following:

(a) We help start you in business, furnishing outfits and instruction, operating "Specialty Candy Factory" home. Men—women opportunity to earn good steady income. All or spare time.

(b) Profits in "Specialty Candies" in a business for both men and women.

(c) A Ragsdale "New System Specialty Candy Factory" will help set you up in a business of your own almost immediately.

(d) By the Ragsdale Original Method, your home kitchen, spare room or basement can be fitted up as a complete candy work-shop or candy studio.

(e) By using the methods as outlined in our instruction, you should be assured of a cash income daily.

(f) With our personal assistance by mail, it will be next to impossible for you to fail to make money.

(g) Only a few pounds sold daily will net you a good income.

(h) By the Ragsdale method you should begin making and selling the delicious Specialty Candies within a few days after starting.

(i) A Ragsdale "New System Specialty Candy Factory" makes it possible to turn your spare time into cash profits.

(j) You should begin to make money almost from the first day you start.

(k) Complete course in professional and home-made candy manufacturing—professional confectioners' big outfit of tools—professional confectioners' outfit of materials and supplies.

(l) Professional confectioners' big tool outfit. This outfit consists of the following standard full-size professional equipment, the same as used in the best candy factories and candy kitchens. It should not be confused with cheap home candy outfits.

(m) To further help you get a quick and successful start in this profitable business with the least possible outlay of money, we are going to ship sufficient supplies and raw materials with the course and outfits, free of extra cost, to help make over $40.00 worth of candy. A list of these supplies is enclosed with this letter. There will be nothing else to buy at the start except sugar, flavorings, etc. These you may already have in your home. You should begin to make and sell candy at a large profit from the first week.

(n) The supplies and tools which we furnish free of extra cost with the coarse and outfits will help make up over $40.00 worth of candy. This will give you a good start and enable you to buy future supplies in large quantities.

(o) The successful operators of our "New System Specialty Candy Factories" are divided into two classes—men and women who are making candy during their spare time at home to earn extra money, and those who have taken up the work of a permanent full-time business. Whichever plan you choose you cannot go wrong.

(p) These people are making money through the Ragsdale original method of candy making.

Through the statements, claims and representations aforesaid, and others of similar import and meaning not herein set out, respondents have represented and implied that their outfits and instruction afford an opportunity to all men and women, regardless of their prior training and experience or the amount of their capital, to enter the business of making and selling home-made candies; that all such men and women, upon the purchase of such outfits and instructions, will thereby and by reason of respondents' help be enabled to set themselves up in a profitable business; that by respondents' method of making and selling candy, such business can be operated from or in the home; and by use of such method as outlined in their instruction and by reason of their outfits and instruction, and the assistance which they give by mail, and the equipment, tools, supplies and raw materials which they furnish with their instruction, all such men and women are assured by respondents of success in the candy business and of a steady income and profits from the start, whether they take up such business as a part-time or a full-time business.

Respondents have also represented and implied that the tools, equipment, supplies and materials that they furnish are the same as, and include, all the professional confectioners' tools, equipment, supplies, and materials, except certain inexpensive materials, used in the most modern home-made candy kitchens and that are required in the making of home-made candy and the preparing of it for sale.

Respondents have also represented and implied that a purchaser of their outfits and instruction will have nothing else to buy at the

start, except "sugar, flavoring, etc.," which have been represented by respondents to be only inexpensive minor items, inasmuch as they also furnish, free of extra cost, sufficient tools, supplies and raw materials, except said inexpensive items, to make over $40.00 worth of candy, which respondents have represented to be enough candy to give the purchaser a good start in the candy business.

Respondents have also represented and implied that a large number of the men and women who have purchased their course of instruction, have, by following their method of making and selling candy, achieved success in the candy business and, made a good steady income and profits, making and selling candy, both as a part-time and as a full-time business.

PAR. 2. There is no basis in fact for the many and various assurances that respondents give men and women that they can enter, or that there is an opportunity of entering, the candy business, by beginning in such limited way, suggested by respondents, or that such opportunity is afforded by respondents' furnishing outfits and instructions, or that they are thereby helped to start in business, or that by respondents' help they can set themselves up in a profitable business, or that by respondents' method of making and selling candy such business can be operated from or in the home, or that by following respondents' methods, or by reason of their outfits and instruction, or the assistance given by mail, or the equipment, tools, supplies and materials furnished, they can, or will, become successful in the candy business, or make a steady income, or profits, either as a part-time or as a full-time business.

The outfits and instruction, equipment, tools, supplies, and raw materials which respondents furnish are not sufficient, taken separately or as a whole, to assure the acquisition of the necessary skill in the manufacturing and merchandising of candy. They are not sufficient to permit a person having the necessary skill in the making and selling of candy to put into operation and operate an establishment in which sufficient candy can be made to meet the requirements of such business. They are not sufficient to supply enough candy that can be sold for enough money to assure the successful beginning of a candy business or the earning of a steady income.

The tools and equipment furnished by respondents are not the same, and do not include, all the tools and equipment necessary to make home-made candy and prepare such candy for sale. Much additional expensive equipment would be necessary. All the equipment, tools, supplies and materials furnished by respondents have a value of not to exceed $2.50. The raw materials which are not furnished by respondents are not inexpensive but are relatively ex-

pensive. The supplies and raw materials that respondents furnish are not sufficient to enable the purchaser to make, even after the addition of materials not furnished, enough candy to start a business from which $40 or any other definite amount can be earned in any given length of time. Such candy, like all fresh home-made candy, would be subject to becoming stale and hard and to deterioration from fermentation and drying out, if not properly made, or if not promptly sold. Other factors, which are not indicated in respondents' representations, enter into the difficulty of selling such candy.

There is also no basis in fact for respondents' statement that a large number of the men and women who have purchased their course of instruction, considering the number that have purchased it, have, by following their method of making and selling candy, achieved success in the candy business or made a steady income, making and selling candy, either as a part-time or as a full-time business.

The aforesaid representations and implications made and published by respondents as aforesaid are grossly exaggerated, false, misleading, and deceptive.

PAR. 4. The use by respondents of the acts and practices hereinabove mentioned in connection with the sale and distribution of their outfits, courses of instruction, supplies and materials, in 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 mistaken and erroneous belief, to purchase respondents' outfits, courses of instruction, supplies and materials.

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 19th day of March 1941, issued and served its complaint in this proceeding upon said respondents, W. Hillyer Ragsdale, Annie M. Ragsdale, Marshall D. Ragsdale, and Ida J. Ragsdale, individually and doing business under the names and styles of W. Hillyer Ragsdale, W. Hillyer Ragsdale, Inc., and Ragsdale Candies, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 8, 1941, the respondents filed their

answers in this proceeding. Thereafter, a stipulation was entered into by and between counsel for the Commission and the respondents, Marshall D. Ragsdale, acting for himself, and W. Hillyer Ragsdale, acting for himself, and Annie M. Ragsdale and Ida J. Ragsdale, subject to the approval of the Commission, whereby it was stipulated and agreed that a statement of facts thereupon read into and made a part of the record in this proceeding, 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 or 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, answers and stipulation, said stipulation having been approved and accepted and made a part of the record, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, W. Hillyer Ragsdale, Annie M. Ragsdale, Marshall D. Ragsdale and Ida J. Ragsdale, are individuals trading and doing business under the names and styles of W. Hillyer Ragsdale, W. Hillyer Ragsdale, Inc., and Ragsdale Candies, with their office and principal place of business at 307 North Walnut Street in the city of East Orange, State of New Jersey.

For more than 2 years last past respondents have been, and are now, engaged in the sale and distribution of outfits, courses of instruction, supplies and materials which are represented by respondents to give men and women an opportunity to establish for themselves and in their homes the business of manufacturing and merchandising home-made candy. In the course and conduct of said business respondents have been and are now causing their said outfits, courses of instruction, supplies and materials, when sold, to be transported from their said place of business in the State of New Jersey to purchasers thereof located in various 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 outfits, courses of instruction, supplies and materials in commerce

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

PAR. 2. In the course and conduct of their said business and for the purpose of inducing the purchase of their said outfits, course of instruction, supplies, and materials, respondents, by means of letters and circulars and by means of advertisements appearing in magazines and periodicals, all of which were circulated between and among the various States of the United States and in the District of Columbia, have made various representations with respect to their said outfits, courses of instruction, supplies and materials. Among said representations are the following:

(a) We help to start you in business, furnishing outfits and instruction, operating "Specialty Candy Factory" home. Men—women opportunity to earn good steady income. All or spare time.

(b) Profits in "Specialty Candies" in a business for both men and women.

(c) A Ragsdale "New System Specialty Candy Factory" will help set you up in a business of your own almost immediately.

(d) By the Ragsdale Original Method, your home kitchen, spare room or basement can be fitted up as a complete candy work-shop or candy studio.

(e) By using the methods as outlined in our instruction, you should be assured of a cash income daily.

(f) With our personal assistance by mail, it will be next to impossible for you to fail to make money.

(g) Only a few pounds sold daily will net you a good income.

(h) By the Ragsdale method you should begin making and selling the delicious Specialty Candies within a few days after starting.

(i) A Ragsdale "New System Specialty Candy Factory" makes it possible to turn your spare time into cash profits.

(j) You should begin to make money almost from the first day you start.

(k) Complete course in professional and home-made candy manufacturing—professional confectioners' big outfit of tools—professional confectioners' outfit of materials and supplies.

(l) Professional confectioners' big tool outfit. This outfit consists of the following standard full-size professional equipment, the same as used in the best candy factories and candy kitchens. It should not be confused with cheap home candy outfits.

(m) To further help you get a quick and successful start in this profitable business with the least possible outlay of money, we are going to ship sufficient supplies and raw materials with the course and outfits, free of extra cost, to help make over $40.00 worth of candy. A list of these supplies is enclosed with this letter. There will be nothing else to buy at the start except sugar, flavorings, etc. These you may already have in your home. You should begin to make and sell candy at a large profit from the first week.

(n) The supplies and tools which we furnish free of extra cost with the course and outfits will help make up over $40.00 worth of candy. This will give you a good start and enable you to buy future supplies in large quantities.

(o) The successful operators of our "New System Specialty Candy Factories" are divided into two classes—men and women who are making candy during their spare time at home to earn extra money, and those who have taken up the

work of a permanent full-time business. Whichever plan you choose you cannot go wrong.

(p) These people are making money through the Ragsdale original method of candy making.

Through the statements, claims and representations aforesaid, and others of similar import and meaning not herein set out, respondents have represented and implied that their outfits and instruction afford an opportunity to all men and women, regardless of their prior training and experience or the amount of their capital, to enter the business of making and selling home-made candies; that all such men and women, upon the purchase of such outfits and instruction, will thereby and by reason of respondents' help be enabled to set themselves up in a profitable business; that by respondents' method of making and selling candy, such business can be operated from or in the home; and by use of such method as outlined in their instruction and by reason of their outfits and instruction, and the assistance which they give by mail, and the equipment, tools, supplies, and raw materials which they furnish with their instruction, all such men and women are assured by respondents of success in the candy business and of a steady income and profits from the start, whether they take up such business as a part-time or a full-time business.

Respondents have also represented and implied that the tools, equipment, supplies and materials that they furnish are the same as, and include, all the professional confectioners' tools, equipment, supplies, and materials, except certain inexpensive materials, used in the most modern home-made candy kitchens and that are required in the making of home-made candy and the preparing of it for sale.

Respondents have also represented and implied that a purchaser of their outfits and instruction will have nothing else to buy at the start, except "sugar, flavoring, etc.," which have been represented by respondents to be only inexpensive minor items, inasmuch as they also furnish, free of extra cost, sufficient tools, supplies and raw materials, except said inexpensive items, to make over $40.00 worth of candy, which respondents have represented to be enough candy to give the purchaser a good start in the candy business.

Respondents have also represented and implied that a large number of the men and women who have purchased their course of instruction, have, by following their method of making and selling candy, achieved success in the candy business and made a good steady income and profits, making and selling candy, both as a part-time and as a full-time business.

PAR. 3. There is no basis in fact for the many and various assurances that respondents give men and women that they can enter,

or that there is an opportunity of entering, the candy business, by beginning in such limited way, suggested by respondents, or that such opportunity is afforded by respondents' furnishing outfits and instructions, or that they are thereby helped to start in business, or that by respondents' help they can set themselves up in a profitable business, or that by respondents' method of making and selling candy such business can be operated from or in the home, or that by following respondents' method, or by reason of their outfits and instruction, or the assistance given by mail, or the equipment, tools, supplies and materials furnished, they can, or will, become successful in the candy business, or make a steady income, or profits, either as a part-time or as a full-time business.

The outfits and instruction, equipment, tools, supplies and raw materials which respondents furnish are not sufficient, taken separately or as a whole to assure the acquisition of the necessary skill in the manufacturing and merchandising of candy. They are not sufficient to permit a person having the necessary skill in the making and selling of candy to put into operation and operate an establishment in which sufficient candy can be made to meet the requirements of such business. They are not sufficient to supply enough candy that can be sold for enough money to assure the successful beginning of a candy business or the earning of a steady income.

The tools and equipment furnished by respondents do not include all the tools and equipment necessary to make home-made candy and prepare such candy for sale. Much additional expensive equipment would be necessary. The raw materials which are not furnished by respondents are not inexpensive but are relatively expensive. The supplies and raw materials that respondents furnish are not sufficient to enable the purchaser to make, even after the addition of materials not furnished, enough candy to start a business from which $40 or any other definite amount can be earned in any given length of time. Such candy, like all fresh home-made candy, would be subject to becoming stale and hard and to deterioration from fermentation and drying out, if not properly made, or if not promptly sold. Other factors, which are not indicated in respondents' representations, enter into the difficulty of selling such candy.

There is also no basis in fact for respondents' statement that a large number of the men and women who have purchased their course of instruction, considering the number that have purchased it, have, by following their method of making and selling candy achieved success in the candy business or made a steady income, making and selling candy, either as a part-time or as a full-time business.

The aforesaid representations and implications made and published by respondents as aforesaid are grossly exaggerated, false, misleading, and deceptive.

PAR. 4. The use by respondents of the acts and practices hereinabove mentioned in connection with the sale and distribution of their outfits, courses of instruction, supplies, and materials, in 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 mistaken and erroneous belief, to purchase respondents' outfits, courses of instruction, supplies and materials.

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 answers of the respondents and a stipulation entered into by and between counsel for the Commission and the respondents, wherein it was stipulated and agreed that a statement of facts thereupon read into and made a part of the record in this proceeding may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission may proceed upon such statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs or of a report upon the evidence by the trial examiner, 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, W. Hillyer Ragsdale, Annie M. Ragsdale, Marshall D. Ragsdale, and Ida J. Ragsdale, individually and doing business under the names and styles of W. Hillyer Ragsdale, W. Hillyer Ragsdale, Inc., and Ragsdale Candies, or under any other trade name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of courses of instruction

for making candy or of supplies or materials intended for use in making candy, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist:

1. Representing that men and women who purchase respondents' outfits and instructions are afforded thereby an opportunity to enter the business of making and selling home-made candies; or that they will be enabled thereby and by respondents' help, to set themselves up in a profitable business; or that, through respondents' method of making and selling candy, such business can be operated successfully from or in the home; or that by the use of such method, or by reason of such outfits or instructions, or by the assistance given to purchasers by mail, or by the tools or equipment or supplies or raw materials furnished by respondents with their instructions, such purchasers will or should be successful in the candy business or will or should receive therefrom a steady income and profits.

2. Representing that the tools, equipment, supplies and materials furnished by the respondents include all the confectioners' tools, equipment, supplies, and materials, except certain minor inexpensive items, that are used in modern home-made candy kitchens or that they are all that are required in the making of home-made candy and in the preparing of it for sale, except minor inexpensive items; or that respondents furnish sufficient tools, supplies and raw materials, except for minor inexpensive items, to make over $40 worth of candy, or enough candy to give the purchaser a good start in the candy business.

3. Representing that a large number of men and women who have purchased respondents' courses of instruction, tools and equipment have, by following their method of making and selling candy, achieved success in the candy business and made a steady income and profits making and selling candy either as a part-time or as a full-time business.

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

Syllabus

IN THE MATTER OF

POND'S EXTRACT COMPANY

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

Docket 3427. Complaint, May 18, 1938—Decision, Sept. 10, 1941

Where a corporation engaged in manufacture, and in competitive interstate sale and distribution, of a line of cosmetics, including its liquefying cream, cold cream, vanishing cream, and "Danya Lotion," each ounce of which contained, since sometime in 1938, 3100 units of vitamin A and 165 units of vitamin D; in numerous advertisements in magazines of general circulation, and in radio programs—

(a) Represented that its creams were deep-reaching, going right to the user's underskin, which was thereby stirred to vigorous action and kept active, and that effect of use of one of its creams was to soften and loosen impurities within the skin, lifting them from the pores and thereby liberating the underskin and leaving it free to function actively again; and

(b) Represented that use of its said creams appeared to wipe away lines and blemishes, giving the skin a fresh, smooth appearance, and not only cleansing it but keeping away lines and blackheads;

Facts being the only effect of the use of said creams would be an emollient smoothing and cleansing action on the surface of the skin, the massaging of cold cream into the skin affecting the so-called under- or true skin to an extremely small degree only, and above statement as to the softening, loosening and lifting of dirt, etc., from within the skin, and liberating of the user's underskin, was incorrect; skin blemishes may be due to faulty diet or other causes in which use of cold creams is of no benefit, and lines and blemishes cannot be wiped away by use of the creams, and while use of cold cream may postpone time when wrinkles will be quite noticeable, such use alone will not retard appearance thereof; and

(c) Made representations and claims, since about July 1938, to the effect that the vitamin content of its creams, which it then described as "New Skin Vitamin Creams," nourished the skin of the user, that when it found a way to put this "skin vitamin" in its cream it gave to women an important new scientific aid to skin care, and that through use of its said lotion, the skin vitamin was put into and stored up in the hands of the user;

Facts being that, while vitamin A, when included in a suitable vehicle, may be absorbed by the skin of a human being in physiologically significant quantities, to accomplish such result enormous quantities of the vitamin must be added to the vehicle and applied to the skin for several hours, accompanied by considerable massaging, due to the relatively small absorption compared with oral administration, proper treatment for a deficiency; only in very small proportion of cases is a harsh, dry condition of the skin due to vitamin A deficiency, in which event a physician is needed; the most its creams could accomplish would be to postpone the day when lines and wrinkles would be quite noticeable; while application of its creams might be helpful in keeping the skin smooth and preventing excessive dryness, the vitamin A content would not increase said creams' emollient

properties, and it was not warranted in claiming that such content constituted an important new aid to skin care, or that vitamin A was the skin vitamin, since its activity was not limited to the skin, and its effect thereon was of minor consequence;

With effect of misleading and deceiving a substantial portion of the purchasing public, and of inducing them to purchase substantial quantities of such cosmetics in the mistaken belief that its representations were true, and with result, through use of such representations, of diverting trade 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.

As respects claim by seller of its so-called "New Skin Vitamin Creams," that their vitamin content nourished the skin of the user, that when seller found a way to put said "skin vitamin" in its creams it gave to women an important new scientific aid to skin care, and that through use of its said lotion the skin vitamin was put into and stored up in the hands of the user, (1) an experiment on a number of students, in which the vitamin was applied to the skin in enormous quantities and for several hours, was not acceptable evidence in support of seller's aforesaid advertising claims, since the conditions and treatment were too remote from customary method of use of its products to permit comparison, absorption, in any event, being of no consequence, since its action would be systemic and not local; (2) various case histories offered to support its contention would not permit conclusion that results there obtained justified claim made for its products, due to difference between the pathological conditions of the individuals concerned and their treatment, on the one hand, and the purpose for which its cosmetic products were offered to adult women of normal health, on the other; and (3) animal experiments submitted in support of its claims were equally inconclusive as approximating neither conditions under which cosmetics are offered to purchasing public, nor method of use by public.

Before *Mr. William C. Reeves* and *Mr. John J. Keenan*, trial examiners.

Mr. William L. Pencke for the Commission.

Blake & Voorhees, 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 Pond's Extract 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. Pond's Extract Co. is a corporation created by and existing under the laws of the State of Delaware, with its principal

offices and places of business located at 60 Hudson Street, New York, N. Y. and in Clinton, Conn.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the business of distributing and selling a line of cosmetics. Respondent causes said products when sold to be transported from its place of business in the State of New York or in the State of Connecticut to its customers located in other States of the United States and in the District of Columbia.

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

PAR. 3. In the course and conduct of its business respondent is in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of cosmetics in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said cosmetics, respondent has made, by means of advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers, circulated generally throughout the United States, many representations concerning the character and nature of said cosmetics, and concerning the results obtained from their use. Among said representations made by respondent are the following:

See smooth glowing cheeks return as deep-reaching cream stirs under skin back to vigorous action.

A cream that goes deep and keeps your under skin alive.

Pond's Cold Cream goes right to the underskin.

As you pat it into your skin, you feel the circulation freshened, stimulated. Dirt, make-up, all sorts of impurities from within the skin itself are softened, loosened, lifted from the pores. Your underskin is liberated, free to function actively again.

Take a look in your mirror, after a thorough, deep-skin cleansing and stimulation with this cream. How much fresher and clearer your skin is! With just one treatment!

Pond's Cold Cream is pure, germ-free. Use it daily. Every night before retiring to flush impurities away, free the skin, stimulate its under layers.

Remember, the healthy, vigorous underskin Pond's Cold Cream gives you is a sure means to the lovely, satiny outer skin every woman wants.

Pond's Cold Cream seems to wipe away lines and blemishes—gives the skin a fresh, smooth look.

Pond's not only cleans. It keeps away lines, blackheads and such.

The same way with practically all common skin faults. Blemishes, blackheads, sagging tissues—all start deep in your underskin where tiny glands, blood vessels, nerves, fibres begin to fail. Skin faults go—new ones can't

start. What your skin needs is a cream that does more than cleanse—a "deep-skin" cream that goes right down to the roots of those lines and blemishes—and fights them where they start. That's exactly what Pond's Cold Cream does.

Now you can get this wonderful "skin vitamin" in every jar of Pond's Cold Cream. Every time you pat in the new Pond's Cold Cream you're patting in some of the active "skin-vitamin" nourishing your skin.

Pond's new "skin-vitamin" Cold Cream is a great advance—a really scientific beauty care. It smooths out lines marvelously—makes texture seem finer. I'll never be afraid of sports or travel drying my skin, with this new cream to put the "skin-vitamin" back into it.

So when Pond's found a way to put this "skin-vitamin" in Pond's Creams, they certainly gave women an important new scientific aid to skin care.

When you eat foods containing this vitamin, one of its special functions is to help keep skin tissue healthy. But when this vitamin is applied right to the skin, it aids the skin more directly.

But there's an easy way to get rid of these little powder catchers. Just melt them away. You can do this instantly with a Keratolytic cream, Pond's Vanishing Cream. The moment it touches your skin, those rough dead cells on top melt off. And that uncovers the new young cells underneath.

DANYA—Pond's Cream Lotion

HANDS STORE UP ITS ACTIVE "SKIN-VITAMIN"

Latest research on vitamins as they affect the skin has brought about a new kind of skin care! A new type of preparation has been developed that will increase the stores of "skin-vitamin" in hands * * *

It brings to your hands the precious "skin-vitamin" which helps to renew skin tissue * * *

All of said statements, together with similar statements appearing in respondent's advertising literature purport to be descriptive of respondent's products and of their effectiveness in use. In all of its advertising literature and through other means respondent, directly or by inference, through statements and representations herein set out and other statements of similar import and effect, represents: that its cold cream is deep-reaching and stirs the underskin to vigorous action; that it goes deep and keeps the underskin alive and healthy; that the patting of Pond's Cold Cream on the skin will cause dirt, make-up and all kinds of impurities within the skin itself to be softened, loosened and lifted from the pores; that it is a sure means to a lovely, satiny outer skin; that it is germ-free; that it will wipe away and keep away facial lines, blemishes and skin faults and will prevent new ones from starting; that it nourishes the skin, smooths out lines and gives the skin a finer texture; that respondent, in finding a way to put the so-called skin-vitamin in its creams, has given women an important new scientific aid to skin care; that when vitamins are applied right to the skin, they aid the skin more directly than when vitamins are taken by way of the mouth; that Pond's Vanishing Cream melts away rough dead cells on the surface of the skin and uncovers the new young skin cells underneath; that "Danya," Pond's

Cream Lotion, enables hands to store up its so-called active skin-vitamin, and that this product has brought about a new kind of skin care.

PAR. 5. The representations made by respondent with respect to the nature and effect of its products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, Pond's Cold Cream is not a deep-reaching cream, nor does it stir the underskin back to vigorous action; it does not go deep and keep the underskin alive and healthy. The patting of Pond's Cold Cream on the skin will not cause dirt, make-up, and all sorts of impurities within the skin itself to become softened, loosened, and lifted from the pores. It will not give one a healthy vigorous underskin, or provide a sure means to a lovely, satiny outer skin. It is not germ-free. Pond's Cold Cream will not wipe away and keep away facial lines, blemishes, and skin faults nor prevent new ones from starting. Pond's Cold Cream does not nourish the skin, nor does it smooth out lines or make texture finer. Respondent, in finding a way to put the so-called skin-vitamin in its creams, did not give women an important new scientific aid to skin care, nor does the application of any vitamin to the skin in this way help the skin more directly than when such vitamin is taken by way of the mouth.

Pond's Vanishing Cream does not melt away rough dead cells on the surface of the skin, nor does it uncover the new young skin cells underneath.

"Danya," Pond's Cream Lotion, does not enable hands to store up its so-called active skin-vitamin, nor has this product brought about a new kind of skin care.

The true facts are that the ingredients of Pond's Cold Cream are not absorbed by or through the skin. While scientific literature contains no reference to a skin vitamin, it is possible that some types of vitamins may be absorbed through the skin. However, if vitamins are absorbed through the skin, they will not beneficially affect the local condition of the skin where applied. Any vitamin deficiency can be more scientifically treated by way of diet and by the introduction of vitamins and vitamin concentrates by way of the mouth.

PAR. 6. There are, among respondent's competitors, many who manufacture, distribute, and sell cosmetics, who do not in any way misrepresent the quality or character of their respective products, or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designing or describing its products, and their effectiveness when used, as hereinabove set out, was and is calculated to, and has 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. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's products, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of distributing and selling cosmetics, and who truthfully advertise their respective products and the effectiveness thereof when used. As a result thereof, injury has been done, and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 18, 1938, issued its complaint in this proceeding and subsequently caused it to be served upon the respondent, Pond's Extract Co., charging respondent with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of an answer thereto by the respondent, 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 said complaint, by Blake and Voorhees, attorneys for the respondent, before William C. Reeves and John J. Keenan, examiners of the Commission theretofore duly designated by it. Also, stipulations as to certain of the material facts were entered into by and between counsel for the Commission and counsel for the respondent, which stipulations were set out in the record. The testimony was also reduced to writing and filed in the office of the Commission, together with numerous pieces of documentary evidence received as exhibits. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the said complaint and answer thereto, the stipulations as to certain of the facts, the testimony and other evidence, briefs by counsel for the Commission and counsel for the respondent and the oral argument of the respective counsel, and the Commission, hav-

ing duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Pond's Extract Co., is a corporation organized under the laws of the State of Delaware, with principal places of business at 60 Hudson Street, New York, N. Y., and at Clinton, Conn. For a number of years respondent has been engaged in the business of the manufacture, sale and distribution of a line of cosmetics. Respondent has caused the cosmetics manufactured by it to be transported, when sold, from its places of business in the States of New York and Connecticut through and into various other States of the United States to the respective purchasers thereof. In the course and conduct of its business respondent has been and is now in substantial competition with various persons and partnerships and with other corporations also engaged in the manufacture, sale, and distribution, or the sale and distribution in commerce between and among various States of the United States and in the District of Columbia of cosmetics intended to be used, and used, for the same general purposes.

PAR. 2. Respondent in the course of its business manufactures and sells what it describes as a liquefying cream, a cold cream, a vanishing cream and a lotion, which it labels and describes as "Danya Lotion." Each ounce of these creams and the lotion, since some time in the year 1938, has contained 3.100 units of vitamin A and 165 units of vitamin D. One ounce of the cream when used as directed will last the average user approximately 1 week. Prior to the date in 1938 the creams and the lotion contained no vitamins, and since the vitamins have been added advertisements of the respondent have contained the statement that the formula for Pond's Cold Cream has not been changed in any way apart from the addition of these vitamins. No claims are made in the advertisements which respondent has caused to be published concerning the efficacy of the vitamin D content of the creams and lotion.

PAR. 3. In the course of its business and for the purpose of enhancing the sale of the cosmetics manufactured by it, respondent in the years 1935, 1936, 1937, and 1938, caused numerous advertisements to be published in various magazines and other periodicals having general circulation throughout the United States. Respondent also caused various radio programs to be broadcast advertising its products. In these advertisements and radio programs numerous claims

and representations were made concerning the nature of such cosmetics and the benefits that might be derived by their use, among which were claims and representations to the effect: That each of the creams was deep-reaching and when applied went right to the underskin of the user, and as a result the underskin was stirred to vigorous action and kept active; that when one of the creams was patted into the skin of a user she felt the circulation freshened and stimulated, and dirt, makeup and all sorts of impurities within the skin were softened, loosened, and lifted from the pores, and as a result the underskin was liberated and left free to function actively again; that the use of such creams seemed to wipe away lines and blemishes and give to the skin a fresh, smooth appearance; that by the use of such creams the skin was not only cleansed but lines and blackheads were kept away; that as a result of the use of such creams skin faults go and new faults cannot start. Since about July 1938, attention has been called in such advertisements to the fact that the creams manufactured by respondent contained what was described as a skin vitamin, and such creams were described as Pond's New Skin Vitamin Creams, and claims and representations were made to the effect that the vitamin content of such creams had the effect of nourishing the skin of the user; that when respondent found a way to put this skin vitamin in its cream, it gave to women an important new scientific aid to skin care. Reference was made in some of such advertisements to the lotion manufactured and sold by respondent and described as Danya, for which the claim was made that by its use the skin vitamin was put into and stored up in the hands of the user. Other claims and representations of like import concerning said creams and lotion were contained in such advertisements and radio broadcasts.

PAR. 4. Respondent concedes that certain advertisements published in 1935 contained claims and representations which were unwarranted, including the statements that respondent's cold cream is deep reaching, goes right to the underskin, seems to wipe away lines and blemishes, and keeps away lines. With respect to the skin lotion containing vitamin A, the statements that the hands will store up active "skin" vitamins and that the lotion will increase the store of "skin" vitamins in the hands are also conceded to be unwarranted.

PAR. 5. The several experts introduced as witnesses by the Commission include a practicing physician who for over ten years has specialized in dermatology. He is a Diplomate of the Board of Dermatology and Syphilology and a member of other medical and dermatological societies. Another physician has been practicing medicine for 23 years, is specializing in venereal and skin diseases, has taught der-

matology and cosmetics at Columbia University and other schools. He is the author of numerous papers and books, including works on cosmetic dermatology. A third witness is Chief Pharmacologist of the United States Public Health Service. He is the author of numerous scientific papers, and a specialist in vitamins, having written a number of papers on the subject of vitamins. Finally, there was introduced a physician who is a pathologist, clinical consultant and teacher at Harvard Medical School. He has been practicing medicine for over thirty years, is a member of all leading societies, has an international reputation, and is considered the leading authority in vitamin investigation. He has written and published hundreds of papers and books, including a number of papers on vitamin A. At least one of respondent's experts refers to him as being undoubtedly the leading figure in the vitamin field, and all of respondent's experts consider him an authority and greatly respect his opinions.

The respondent introduced as expert witnesses a research chemist who has been in this profession for 20 years and is a professor and director of the Department of Bio-chemistry of the New York Post Graduate Medical School. He performed a series of experiments on the absorption of vitamin A through the unbroken skin of rats. Another witness is an opthalmologist who is devoted largely to research work and who performed on a number of students a test designed to support the claims made by respondent. There were also introduced three practicing dermatologists, all of whom are well known in their profession, members of leading societies and authors of numerous papers and books devoted mostly to skin diseases. Another witness is a pathologist, at present head of the laboratories at Grassland Hospital, who for 10 years investigated vitamin deficiencies, mainly among the Eastern races. Finally, a physician employed by a large manufacturer testified with respect to a certain form of dermatitis, an industrial disease prevalent among the employees of such company.

PAR. 6. The testimony shows, and the Commission finds, that certain of the claims and representations contained in respondent's advertisements and radio broadcasts are false and misleading and that others of such claims and representations are grossly exaggerated.

Cold cream massaged into the skin can affect the so-called underskin or true skin only to an extremely small amount; and the cream alone would have no effect on the underskin, because whatever action it may have can only be a surface action. It is, therefore, incorrect to say that dirt, makeup and other impurities from within the skin are softened, loosened, and lifted from the pores, or that the underskin of users will be liberated and left free to function. The only

effect of the use of such creams will be an emollient, smoothing and cleansing action on the surface of the skin. Lines and blemishes cannot be wiped away by the use of the creams. Skin blemishes may be due to faulty diets or other causes in which the use of cold creams is not indicated and is of no beneficial effect. In fact, the use of cold cream in cases of blemishes and comedones may add to the clogging of the pores and may make such conditions worse. The age at which lines and wrinkles appear varies with different individuals, depending entirely upon the kind of skin they were born with, its texture and elastic tissue, and the use of cold cream alone will not retard the appearance of wrinkles but may postpone the time when they will be quite noticeable.

PAR. 7. The testimony shows, and the Commission finds, that while the authorities are not entirely in agreement as to the exact daily requirement of vitamin A for the average normal adult, it is conceded by all the experts testifying in the case to be approximately 3,000 international units. Only a gross deficiency of vitamin A will manifest itself in the appearance of the skin. There are other more specific symptoms of vitamin A deficiency. All of the witnesses are in agreement that if a deficiency exists, the proper treatment is to give large doses of vitamin A by mouth.

PAR. 8. The evidence shows, and the Commission finds, that vitamin A, when included in a suitable vehicle, may be absorbed by the skin of a human being in physiologically significant quantities. To accomplish this enormous quantities of the vitamin must be added to the vehicle and applied to the skin for several hours, accompanied by considerable massaging, for the reason that absorption is relatively small compared with oral administration. This was shown in an experiment on human subjects performed by the ophthalmologist called by the respondent. For the purpose of this experiment, a number of students were used. They were almost completely depleted of vitamin A, only about 150 units being given per day in the diet. The reason why they were not totally depleted was that total depletion might seriously affect their health. After carefully recorded dark adaptation tests had established definite deficiency, one group continued as a control, while the other group was given daily applications of 6 grams of ointment of petrolatum and lanoline fortified with 10,000 units of vitamin A per gram. This material was massaged into the skin of the abdomen for a period of 10 minutes, and thereafter covered and left in place for 6 hours. After the treatment had been continued for some length of time, the dark adaptation tests proved that vitamin A had been absorbed through the skin in substantial

quantities. No changes in the appearance of the skin were noted by the observer.

The Commission finds that this experiment cannot be accepted in support of respondent's advertising claims, for the reason that the conditions and treatment are too remote from the customary method of use of respondent's products, to permit of comparison. The small amount of vitamin A in respondent's creams is in contact with the skin for such a short time that no effective absorption by the skin can take place, and even if the entire vitamin A content of the cream applied should be absorbed by the skin and then carried into the blood stream, the effect would be of no consequence for the reason that its action would be systemic and not local. The use of the creams as directed will not prevent lines, wrinkles, or blemishes, and will not cause existing lines or wrinkles to disappear. The most that could be accomplished by the use of such creams would be to postpone the day when lines and wrinkles would be quite noticeable. Only in a very small proportion of cases is a harsh, dry condition of the skin of a human being due to a vitamin A deficiency, and whenever a definite deficiency exists the case is one for a physician and not a cosmetician. Nor will the vitamin content of the lotion Danya, when used as directed, be absorbed by the skin and stored up in the hands of users.

Many case histories were described to support the contention of the respondent not only that vitamin A deficiency will manifest itself in a rough, dry and scaly appearance of the skin, but also that vitamin A applied locally will be effective in pathological conditions caused by wounds, burns, and industrial dermatitis. The evidence shows that the skin symptoms of gross vitamin A deficiency occurred among the Hindus and Chinese and other oriental races whose diet was deficient in vitamin A, and that such cases were treated by administering vitamin A orally in doses many hundred times larger than the quantity contained in respondent's cream. Respondent adduced reports on the treatment of occupational dermatitis. The cases deal exclusively with industrial diseases, and it appears from the illustrations accompanying the reports that the skin lesions of the hands were unusually severe, and that the treatment was by intramuscular injections containing large quantities of vitamin A. Other histories deal with radiodermatitis usually caused by excessive exposure to X-rays. The treatment in these cases was with vitamin D rather than A, the latter being added merely as a supplemental treatment. The Commission finds that the difference between the various pathological conditions of these individuals and their treatment on the one hand, and the purpose for which respondent's cosmetic products are offered to adult women of normal health on the other hand, is too great to

permit the conclusion that the results obtained in the former conditions justify the claims made for the products in the latter instance.

The evidence further shows, and the Commission finds, that the various other scientific reports of cases of vitamin deficiency do not support the advertising claims made by the respondent with respect to cosmetic improvements. One of the investigators reported that Avitaminosis A is considered rare in this country, particularly among adults; that geographic location, economic status, age, sex, and occupation are of the greatest importance in the study of deficiency diseases; that a slight vitamin A deficiency was manifested in a somewhat lowered dark adaptation long before any other symptoms were apparent; and that in those cases where a deficiency was manifested by the skin, such manifestation was in the skin on the thighs, arms, and shoulders only.

The animal experiments which were submitted in support of the respondent's claims are equally inconclusive, because they approximate neither the conditions under which the cosmetics are offered to the purchasing public nor the method of use by the public. All of the animals used were depleted of vitamin A until a severe deficiency set in, and varying quantities of vitamin A were massaged into the skin. The animals improved according to the quantity of vitamin A contained in each application and the length of time of the massage. The disappearance of the deficiency symptoms shows that the action of vitamin A was systemic and not local. While respondent has shown that there may be a topical effect indicated by the increased metabolism of the tissue cells, such effect is demonstrable only under the microscope and there is evidence that an increased metabolism was shown in rats which were not deficient. The animal experiments further show that the addition of 110 units of Vitamin A to the gram of ointment had no effect on the growth curve, substantially larger doses being required for demonstrable results, and it is further shown that the feedings of minute quantities of vitamin A were more effective than the large quantities used in the local application. In fact, one International Unit given by mouth produced a therapeutic effect.

While the application of respondent's creams may be helpful in keeping the skin smooth and may prevent excessive dryness of the skin, the vitamin A content will not increase the emollient properties of such creams. The experts testifying at the instance of the Commission are in agreement in holding that the use of cold creams fortified with vitamin A in the quantities contained in respondent's creams will have no effect whatever upon the skin. The respondent's experts, while giving it as their opinion that the skin

should be benefited by the use of respondent's creams, were unable to testify that such effects are demonstrable or that the appearance of the skin is improved. The Commission, therefore, finds that respondent is not warranted in claiming that the vitamin content of the creams sold by it constitutes an important new aid to skin care. Nor is respondent warranted in claiming that vitamin A is the "skin" vitamin, for the reason that its activity is not limited to the skin, and its effects upon the skin in comparison with two other vitamins is of minor consequence.

PAR. 9. The claims and representations made by respondent concerning its cosmetics as set out herein, have had and now have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public, and as a result, such members of the public have been induced to purchase substantial quantities of such cosmetics in the mistaken belief that the claims and representations made by respondent are true. The use by respondent of such representations has, therefore, diverted trade unfairly to the respondent from its competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before William C. Reeves and John J. Keenan, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission and by Blake and Voorhees, 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, Pond's Extract Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of its cosmetic creams and lotions,

or any products of substantially similar composition or possessing substantially similar properties do forthwith cease and desist from:

1. Representing in any manner whatever that respondent's creams or lotions have any added beneficial value by reason of their vitamin A content.

2. Representing that respondent's cold cream causes lines, wrinkles or blemishes to disappear from the skin, or that it prevents the formation of lines, wrinkles or blemishes in the skin.

3. Representing that respondent's cold cream has any appreciable effect upon the underskin, that it liberates the underskin, or leaves the underskin free to function.

4. Representing that dirt, makeup, or other impurities below the surface of the skin may be softened, loosened, or lifted from the underskin through the use of respondent's cold cream.

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

Syllabus

IN THE MATTER OF

JERGENS-WOODBURY 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 3438. Complaint, May 21, 1938—Decision, Sept. 10, 1941

Where a corporation engaged in competitive interstate sale and distribution of cosmetics and soaps, including its "Facial Soap" which contained 1453 International Units of Vitamin D per cake, and including among its cosmetics a facial powder, "Cleansing Cream," "Facial Cream," "Tissue Cream," and "Cold Cream," each ounce of which contained 150 International Units of said vitamin; by means of advertisements in newspapers and periodicals of general circulation, and radio broadcasts—

(a) Represented that said facial powder and creams were sterile and germ-free, both before and during use, and guarded the skin against blemishes and infections from germs, which they killed under conditions of normal use; facts being no aseptic agent will guard against an infection of the skin, and representations to such effect and that such products would remain germ-free during use, and inhibit germ growth were, as shown by evidence, unwarranted and misleading;

(b) Represented that the powder would spread farther than competitive powders, facts being that at least one competitive powder spread farther, and a number of others were equal to it in such respect; and

(c) Represented that the appearance and beauty of the skin would be enhanced and improved by reason of its absorption of Vitamin D contained in the cold cream and facial soap, and that its respiration would be increased thereby; the facts being that in event of deficiency of vitamin D, large doses thereof are given by mouth, and its said cosmetic products, offered for purchase to the average healthy American woman, who obtains, presumably, a sufficient amount of vitamin D in her diet and through sunshine, would not accomplish such results; any slight vitamin D deficiency in an individual is not manifest in the appearance of the skin, which does not breathe, as commonly understood; while vitamin D, in large quantities in a suitable vehicle, may be massaged into and absorbed by the skin, its effect in such event will be systemic and not local, and its said products did not contain sufficient quantities nor did they constitute a good vehicle for such purpose; and its advertising claims with respect to benefits to be derived from the use of its products were unwarranted, exaggerated and misleading;

With effect of misleading and deceiving a substantial portion of the purchasing public, with the result that such members of the public were induced to purchase quantities of cosmetics and soap in the mistaken belief that such advertisements were true, and of thereby unfairly diverting trade 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.

As respects claim of a seller of cold creams and facial soaps that the appearance and beauty of the skin would be enhanced and improved and the skin's respiration would be increased by reason of the skin's absorption of their Vitamin D content, evidence offered by it in support of such claims, including (1) animal experiments, (2) treatment by a physician of a large number of premature rachitic infants, and (3) half-face experiments performed by a dermatologist at the request of an advertising firm, did not warrant the conclusion that use of seller's products by the average healthy woman would have any effect on the appearance of the skin.

Before *Mr. William C. Reeves* and *Mr. John J. Keenan*, trial examiners.

Mr. William L. Pencke for the Commission.

Mr. Jerome L. Isaacs of Rogers, Hoge & Hill, 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 Jergens-Woodbury Sales 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, Jergens-Woodbury Sales Corporation, is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its principal office and place of business at Spring Grove Avenue and Alfred Street in the city of Cincinnati, State of Ohio. Said respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a line of cosmetic products and soaps manufactured by John H. Woodbury, Inc., and Andrew Jergens Co., in commerce between and among the various States of the United States and the District of Columbia. It causes said products, when sold, to be shipped from its place of business in the State of Ohio to purchasers thereof located in a State or States of the United States other than the State of Ohio and in the District of Columbia.

There is now, and has been at all times herein mentioned, a course of trade in said cosmetic products and soaps so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations, and with individuals,

partnerships, and firms engaged in the sale and distribution of other cosmetic preparations and soaps in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, Jergens-Woodbury Sales Corporation, in connection with the sale and distribution of said cosmetic products, and for the purpose of inducing the purchase of said products, makes certain representations as to the chemical properties and bacteriological effects thereof in newspaper advertisements, radio broadcasts, pamphlets, and otherwise, of which the following are typical, but not all inclusive, examples:

As to its facial powder—

You'll look your loveliest with Woodbury's Germ-Free Powder.

And here's an exclusive advantage of using Woodbury's Facial Powder. It actually helps guard your skin against the most dreaded skin defect of all—blemishes! The kind of blemishes that germs from dust in the air or from a soiled powder puff so often cause. Woodbury's Facial Powder is the one and only face powder that stays germ-free to the very last time you fluff it on.

It's germ-free * * * the only powder that gives you hygienic protection against the surface germs that cause blemishes.

Proof that Woodbury's does not clog the pores.

Spread a pinch of Woodbury's on your wrist and smooth it upwards along your arm. Beside it a pinch of the face powder you've been using. You'll see at once how far Woodbury's spreads. Why is this? Because Woodbury's lies on the surface of your skin—does not cram down into the pores and clog them. The pores are free when you're wearing Woodbury's. They can breathe, stay fine, active, elastic.

But Woodbury's Facial Powder will keep your beauty serene. It clings—right through the day—until you wash it off. It spreads farther than other popular-priced face powders. Goes on smoothly, stays on evenly without risk of clogging your pores. Shine will not come through. Warmth will not make it mat. It keeps your skin alluring.

It is free from germ-growth both before and after use.

As to its cold cream—

Clear, Fresh Loveliness for Skins that have the GERM-FREE care—

Contains Exclusive Germ-Destroying Element.

Why, you may ask, does Woodbury's Cold Cream fulfill its beauty task more quickly, more surely than others? First, because of its germ-free quality. An exclusive ingredient keeps it free from germs to the very bottom of the jar.

Germs—a common cause of infection and blemish—are banished, even as you leave the jar uncovered. The last fingertipful of Woodbury's Germ-Free Cold Cream is as sterile and free from germ growth as the first.

Scientific Ingredient keeps these Beauty Creams GERM-FREE.

WHAT CAUSES BLEMISHES?

A blemish on the skin may be caused by impurities in the blood. No external treatment can prevent blemishes of this type. Many blemishes, however, occur from a surface bacterial infection * * * when germs invade some tiny

crack in the skin. Try to avoid this danger by using beauty creams that stay germ-free to the last.

Now a second important element in Woodbury's Cold Cream, will help you fulfill, quickly, your fondest hopes for beauty. Sunshine is vital to a good complexion. Certain rays, which produce Sunshine Vitamin D, keep the skin healthy and alive, functioning as it should because they help the skin to breathe!

As to its soap—

Bathe all your skin for Beauty in the "FILTERED SUNSHINE" of Woodbury's Gentle Lather.

Vitamin D is closely related to skin health. Certain rays of the sun produce this element in the skin, itself. And now, after long and costly research by Woodbury skin scientists and a leading American university, a way has been found to incorporate Sunshine Vitamin D in Woodbury's Facial Soap. This is done by the patented, "Filtered Sunshine" process, by which one of Woodbury's ingredients is now irradiated with gentle, non-burning rays.

Your skin, eager for its benefits, soaks up this "Filtered Sunshine" element from Woodbury's lather as you wash and bathe. This has positive proof in the records of important scientific tests.

Ingredient of the famous Woodbury's Facial Soap now irradiated with the kindly, skin-beautifying qualities of Sunshine.

At last a way has been found to irradiate the gentlest qualities of Sunshine into one of the ingredients of the world-famous Woodbury's Facial Soap.

Now, Winter or Summer, every time you wash or bathe, Woodbury's is ready to give your skin the glorious benefits of this kindly Sunshine element.

Everyone knows that Sunshine in careful measure, is a natural skin beautifier. And now by a marvelous new process, an exclusive patented process, the useful rays are irradiated into an ingredient of Woodbury's Facial Soap, which is readily absorbed by the skin. An important scientific work, by Woodbury skin scientists and a leading American university!

PAR. 4. All of said statements, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's products and their efficacy in use. In all of its advertising literature, respondent represents, through statements and representations herein set out and other statements of similar import and effect, that its "Facial Powder" (1) will guard the skin against blemishes and prevent surface infections from germs, (2) is sterile and germ-free both before and continuously during use, (3) will spread farther than competitive products and not clog the skin pores, and (4) is an antiseptic which possesses inhibitory properties and kills germs under conditions of normal use; that its "Cold Cream" (1) is sterile and germ-free both before and continuously during use, (2) will kill and banish germs and prevent infections and blemishes under conditions of normal use, and (3) is an antiseptic which possesses inhibitory properties and kills germs under conditions of normal use; that its "Facial Soap" (1) contains "filtered sunshine," (2) releases an invigorating "filtered sunshine" element, namely, vitamin

D, (3) the skin absorbs a sufficient amount of vitamin D through use of such soap to produce a substantial effect thereon.

PAR. 5. In truth and in fact, said statements and representations were and are false and misleading in that the said Woodbury's Facial Powder will not guard against or prevent skin blemishes or infections from germs. It is not antiseptic and will not stay germ-free. It will not spread over a greater surface than some of the powders manufactured and sold by respondent's competitors, and will not be free from germ growth after use. In truth and in fact, said Woodbury's Cold Cream will not banish germs and will not remain sterile and free from germ growth in all instances after it has been applied to the skin. Bacterial infection is not prevented by the use of said cream or said facial powder. Said facial cream will not kill bacterial organisms within a reasonable time under ordinary conditions of use. The skin will not absorb an appreciable amount of vitamin D through the use of respondent's cold creams and the claims and representations made by respondent with respect thereto are exaggerated and not justified. In truth and in fact, respondent's vitamin D Soap is not irradiated with skin-beautifying qualities of sunshine, and the alleged youthful rays of sunshine are not readily absorbed by the skin. The skin can not absorb an appreciable amount of vitamin D by simply washing the skin or taking a lather bath. Washing or bathing with a soap containing vitamin D does not cause or bring about such a substantial absorption of vitamin D by the skin as to produce any substantial beneficial result on the skin or to justify the claims and representations made by respondent.

PAR. 6. The true facts are that the ingredients of respondent's products are not absorbed by or through the skin. While scientific literature contains no reference to a skin vitamin, it is possible that some types of vitamins may be absorbed through the skin to some extent under certain conditions of application. However, if vitamins are absorbed through the skin, they will not beneficially affect the local condition of the skin where applied by washing or bathing with respondent's soap.

PAR. 7. In the course and conduct of its business as hereinbefore described, respondent is, and has been, in competition with corporations, partnerships, firms, and individuals engaged in the sale and shipment in commerce among and between the several States of the United States, and in the District of Columbia, of other cosmetic preparations and soaps, which said competitors do not misrepresent the extent of the beneficial or therapeutic effects of their said competitive preparations.

PAR. 8. The aforesaid misleading and deceptive statements and representations hereinabove set forth made by respondent in selling said cosmetic preparations and soaps have the capacity and tendency to, and do, mislead and deceive the purchasing public into buying said Woodbury's Facial Powder, Woodbury's Cold Cream and Woodbury's Vitamin D Soap, in the erroneous beliefs that such representations are true and that the use of said products will accomplish the results set out or indicated in said advertisements and statements. As a result of the aforesaid false and misleading statements, advertisements, and representations by the respondent with respect to said products, trade has been diverted unfairly to it from its said competitors, whose ability to compete successfully with respondent has been, and is, lessened and injured by the methods of the respondent hereinbefore set forth.

PAR. 9. The aforesaid acts and things done, or caused to be done, by the respondent, were and are each and all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the meaning and intent of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 21, 1938, issued its complaint in the above entitled proceeding and thereafter caused same to be served upon the respondent, Jergens-Woodbury Sales 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 the answer thereto by said respondent, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allegations of said complaint by Jerome L. Isaacs of the firm of Rogers, Hoge and Hills, attorneys for the respondent, before William C. Reeves and John J. Keenan, examiners for said Commission theretofore duly designated by it; also stipulations as to certain of the material facts were made and entered into by and between counsel for the Commission and counsel for the respondent, which stipulations were set out in the record, and the testimony so taken was reduced to writing and filed in the office of the Commission, together with numerous pieces of documentary evidence and samples of respondent's products, received as exhibits. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the said complaint and answer thereto, the stipulations as to certain of the facts, the testimony and other evidence, briefs by counsel for the Commission

and counsel for the respondent and oral argument of the respective counsel, and the Commission having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Jergens-Woodbury Sales Corporation, is a corporation organized under the laws of the State of Ohio, with its principal place of business at Cincinnati, in said State. For more than 1 year prior to the date of the issuance of the complaint herein, and since said date, said respondent has been engaged in the sale and distribution of cosmetics and a facial soap manufactured by John H. Woodbury, Inc., and the Andrew Jergens Co. Said respondent has caused said cosmetics and soap, when sold, to be transported from Cincinnati in the State of Ohio, through and into various other States of the United States, to the respective purchasers thereof. In the course and conduct of its said business said respondent has been, and is now, in active competition with numerous persons and partnerships, and other corporations, also engaged in the sale and distribution in commerce between and among the several States of the United States of cosmetics and soaps intended to be used and used, for the same general purposes.

PAR. 2. The respondent, in the course and conduct of its business, as set out in paragraph 1 hereof, has sold a soap described by it as "Woodbury's Facial Soap," which soap has been produced in cakes of 3⅞ ounces, each of which has contained 1,453 international units of vitamin D. Among the cosmetics sold by respondent were a facial powder, and certain creams designated as "Woodbury's Cleansing Cream," "Woodbury's Facial Cream," "Woodbury's Tissue Cream," and "Woodbury's Cold Cream." Each ounce of each of these items has contained 150 international units of vitamin D.

One ounce of the cream will last the average user for approximately 1 week, and one cake of the soap, used as a facial and bath soap, will last the average user about 10 days.

PAR. 3. In the course and conduct of its business in the years 1936, 1937, and 1938, and for the purpose of inducing members of the public to purchase the aforesaid cosmetics and soap, the respondent caused advertisements to be published in newspapers and other periodicals having a general circulation among various States of the United States, caused printed advertising matter to be distributed generally among the various States, and caused advertising

programs to be broadcast over radio stations in the various States. All of this advertising matter contained numerous claims and representations concerning certain of the ingredients of such cosmetics and soap and benefits that would be derived by the use of same. The claims and representations with respect to the facial powder and cold creams are to the effect that they are sterile and germ free both before use and continuously during use; that they guard the skin against blemishes and prevent infections from germs and will kill germs under conditions of normal use; that the powder will spread farther than competitive powders and will not clog the pores of the skin but will leave them free, enabling them to breathe, stay fine and active. Further claims and representations with respect to the creams and facial soap are that the presence of vitamin D in such creams will help users to fulfill their "fondest hopes for beauty"; that a way has been found to incorporate vitamin D in Woodbury's Facial Soap; and that this is done by the patented "filtered sunshine" process by which one of Woodbury's ingredients is irradiated with gentle, nonburning rays; that by the use of Woodbury's Facial Soap the skin of the user will absorb a sufficient amount of vitamin D to produce a substantial effect thereon; and that this element in the soap is readily absorbed by the skin; that certain rays which produce Sunshine vitamin D keep the skin healthy and alive, and functioning as it should because they help the skin to breathe. Other claims and representations of like import concerning such cosmetics and soap were contained in such advertisements, advertising matter and radio broadcasts.

PAR. 4. All the experts testifying at the instance of the Commission have been members of the medical profession for many years and include three dermatologists, a pharmacologist, and a specialist in public health research and X-ray work. They are members of numerous medical and scientific societies; and the dermatologists, in addition to an extensive hospital experience, have also made investigations and researches in the vitamin field, and have published many papers in scientific journals. One of the dermatologists has also specialized in cosmetology for about 12 years, published several books and papers on that subject, and given courses therein at medical schools in New York. The pharmacologist has served for over 20 years in the United States Public Health Service, is recognized as one of the foremost researchers in pharmacology and is credited with the discovery of vitamin B2.

The opinions of these experts with respect to the function of vitamin D may be summarized as follows: Vitamin D fixes and maintains the calcium and phosphorus supply in the bony structure.

Its lack results in rickets or osteomalacia. Vitamin D is supplied by the action of the ultraviolet rays of the sun upon the pro-vitamins, such as cholesterol, contained in the skin, and by certain foods rich in various sterols such as fish oils, certain fish, butter, and leafy vegetables. Medical authorities are not in agreement as to the daily requirement of vitamin D for the normal adult human being, the estimates running from 400 to 5,000 international units. Likewise there is some disagreement among the experts as to whether the average adult person in the United States is deficient in vitamin D. Generally the witnesses testifying at the instance of the Commission are of the opinion that the average person does get a sufficient supply in the two ways indicated. Several of the respondent's experts are of the opinion that a great many individuals are deficient. All of them are agreed that in the event of deficiency the most effective method of supplying vitamin D is by giving huge doses by mouth, external application, or inunction being both ineffective and expensive.

In substance respondent claims that the appearance and beauty of the skin will be enhanced and improved by reason of the absorption by the skin of vitamin D contained in the cold creams and facial soap, and that the respiration of the skin will be increased thereby.

The witnesses testifying at the instance of the Commission are in complete agreement that such results are not possible. There is nothing in scientific or medical literature indicating that local benefits may be derived through the use of cosmetic creams or soaps containing vitamin D in the quantities present in respondent's products. So far as is known, no authors or writers in dermatology ascribe any condition of the skin as being due to a lack of vitamin D.

Vitamin D, if contained in a suitable vehicle and massaged into the skin, may be absorbed by the skin. Such absorption, however, will not in any event affect the appearance of the skin, for the reason that if absorption takes place the vitamin will be absorbed into the blood stream, so that its action must be systemic and not local. The only exception occurs in instances when a pathological condition exists in the skin itself such as lesions caused by wounds or burns, and in that case huge doses of vitamin D contained in the vehicle are required. Nor will the use of respondent's products improve the appearance of the skin of persons who are slightly deficient in vitamin D, for the reason that such deficiency is not manifested in the skin. Neither the vehicle nor the quantity of vitamin D contained in respondent's creams and soap nor the method of application is conducive to permitting more than a negligible or infinitesimal amount of

vitamin D to be absorbed. In the average use of the cosmetics not more than 20 units of vitamin D will be applied to the face once or twice a day. The bulk of the material will be wiped off, with the result that only a minute quantity can possibly be absorbed by the skin.

With respect to the use of the soap, the experts introduced by the Commission are in complete agreement that so far as the absorption of vitamin D is concerned, it can have no demonstrable effect whatever. The skin is an organ of excretion. Soap is a cleansing agent. The small quantity of vitamin D which might be made available at each use would be contained in the lather and rinsed off before any absorption could take place. No medicaments contained in a soap can enter the body in sufficient quantity to have any medicinal or therapeutic effect.

The claim that vitamin D added to cosmetic creams will help the skin to breathe is wholly unwarranted. There is no scientific basis for such treatment. The skin does not breathe as breathing is commonly understood. In the sense of an interchange of gases the word "breathe" may be applied to all the tissues of the body. The respiration of the skin as compared with the amount of normal respiration is infinitesimal.

A certain experiment was adduced in which the metabolism of tissue was increased by the administration of vitamin D, this experiment being adduced in support of the claim that the use of respondent's cosmetic products containing vitamin D will likewise accelerate the rate of respiration of the tissue. It was shown that the condition of the tissue in the experiment was so abnormal that the increased metabolism may well have been due to other causes than to the administration of vitamin D. In any event, the effect is so slight that it can be demonstrated only under the microscope.

The appearance of the human skin in youth is smooth and without wrinkles and as individuals grow older, lines and wrinkles will appear and the tissues will lose their firmness. This physiological phenomenon can not be deferred or altered by the use of cosmetic creams. Moreover the appearance and texture of the skin are hereditary or congenital. Such characteristics cannot be overcome by treatment with cosmetic creams containing small quantities of vitamin D. In many instances the use of cold creams may even interfere with the activities of the skin. There are dermatologists who will inhibit the use of cosmetics in cases of skin disorders and there are no reports in medical literature in which the use of vitamin D by local application is indicated.

PAR. 5. To support its contentions with respect to the claims for its cosmetic products, the respondent called a number of experts. These

included several scientists, who, while they had done considerable research work in connection with subjects unrelated to the present case, had also devoted considerable time to experimental work dealing with the absorption of vitamin D by the skin and the effects thereon. Most of this work was done at the request of the respondent, or under fellowships established by the Andrew Jergens Co. In addition, there was called a practicing physician who had done some experimental work on vitamin absorption and a practicing dermatologist who had made certain experiments with the respondent's soap several years prior to the complaint.

With the exception of the testimony of the last mentioned witness, all of the expert testimony and opinion rendered by the witnesses is based on animal experiments and case histories of pathological skin conditions. In the tests conducted with animals, the experimental rats were depleted of vitamin D according to the approved methods prescribed by the U. S. Pharmacopoeia, resulting in severe vitamin D deficiencies manifested by rickets. A large number of experiments were performed which varied with respect to the quantity of vitamin D contained in the cream or soap and the length of time employed to massage the material into the skin of the rat. The applications were continued for a prescribed length of time until improvements in the rachitic condition of the rat were demonstrated. The various degrees of improvements were shown by X-ray pictures taken of the leg joints of the rats, showing calcium deposits due to the treatment with respondent's product. In fact, one international unit administered to an experimental rat depleted of vitamin D is sufficient to demonstrate a calcium deposit on the joint of the leg bone of the rat. In the experiments conducted with the facial soap a liquid solution of the soap containing vitamin D was massaged into the skin of the rats, and sufficient absorption took place to indicate some improvement in the rachitic condition of the animal. The ordinary manner in which the soap is used differs entirely from the method employed in the experiments.

In order to demonstrate that the local administration of vitamin D to the skin causes the skin to breathe more rapidly, the scientists placed a small segment of the skin of a rat under the microscope after vitamin D had been added to the tisses and compared it with a section from the skin of a rat that had not been treated with vitamin D. It was found that there was a slight increase in the metabolism of the skin tissue.

With respect to these animal experiments, the testimony shows, and the Commission finds, that vitamin D contained in a suitable vehicle and massaged into the skin may be obsorbed by the skin in quantities

sufficient to improve the condition of a rachitic rat; that the action of such absorption is systemic and not local; that the acceleration of skin respiration can be demonstrated only under the microscope and may be due to the abnormal condition of the excised tissue rather than to the administration of vitamin D; that for these reasons the experiments on test animals are not sufficiently persuasive to warrant the conclusion that the use of respondent's products by the average healthy, adult woman will have an effect in the appearance of the skin.

A practicing physician testified that he had supplied vitamin D to a large number of premature rachitic infants by treating them with local applications of olive oil containing 15,000 units of vitamin D per half ounce. The treatment, repeated twice a day, consisted of a cotton pleget immersed in ½ ounce of olive oil containing the vitamin being left on the body of the infant for some time, and it was calculated that approximately 22,000 units of vitamin D per day were absorbed. It appears from the evidence that several of the babies to whom Haliver Oil and Viosterol was fed did not respond as well as those who had been given the vitamin D externally, for the reason that their delicate stomachs did not tolerate the medicine. The evidence shows, and the Commission finds, that the difference between both the age and physical condition of the subjects and the method of application and the quantities of vitamin D contained in the vehicle is too great to permit a conclusion that because the condition of the infants was improved the claims with respect to the cosmetic properties are valid.

A dermatologist testified that about 5 years ago he performed half-face experiments with the facial soap on 29 women at the request of an advertising firm. The subjects were required to wash one-half of the face with the plain soap and the other half with the soap containing vitamin D. They were not advised which of the two cakes furnished them contained the vitamin. According to the testimony of the witness, 22 of the women preferred the soap containing vitamin D because their faces felt smoother and cleaner. However, the evidence shows that there was no supervision of the experiments or of the diet of the subject, nor were the individual conditions of the subjects taken into account. In order to determine the improvement, the witness found it necessary to use a magnifying glass under a good light. The evidence shows, and the Commission finds, that this experiment was not performed under such accepted and required scientific conditions as to support the cosmetic claims made for respondent's products.

PAR. 6. The evidence shows, and the Commission finds, that respondent's cosmetic products are offered for purchase to the average normal healthy, adult American woman who is presumed to obtain a sufficient amount of vitamin D in her diet and through sunshine. Any slight vitamin D deficiency in an individual will not be manifested in the appearance of the skin. When deficiency exists, large doses of vitamin D are given by mouth. Vitamin D, when contained in large quantities in a suitable vehicle and massaged into the skin, may be absorbed by the skin. When absorption takes place the action of vitamin D will be systemic and not local. Respondent's products do not contain sufficient quantities of vitamin D, nor do they constitute a good vehicle for purposes of absorption, nor is the method of application conducive to permit absorption to the extent of having any effect upon the condition or appearance of the skin of the user, and the advertising claims with respect to the benefits to be derived from the use of respondent's products are, therefore, unwarranted, exaggerated, and misleading.

PAR. 7. An associate bacteriologist of the Food and Drug Administration, who specializes in testing antiseptics and disinfectants, tested respondent's creams and facial powder to determine whether said products would remain germ-free both before and during use. The samples tested were all received in a germ-free condition. The witness added certain bacteria which are ordinarily found in the skin and in places that come in contact with the hands. He found that the organisms remained active in the creams up to seven hours and were still alive and active in the powder after 24 hours. It was his opinion that an infection might occur should organisms be carried to the face from the finger tips. With respect to the claim that the products will guard against infection, the evidence shows, and the Commission finds, that no aseptic agent will guard against an infection of the skin.

A chemist called by respondent also made extensive tests to determine the sterility of the products during use. His tests showed that organisms were killed between 3 and 5 hours after they had been added to the products. The evidence therefore shows, and the Commission finds, that the representations to the effect that the products will remain germ-free during use, will guard against infection, and inhibit germ growth, are unwarranted and misleading.

PAR. 8. The evidence shows, and the Commission finds, that the representation with respect to the spreading qualities of respondent's facial powder is exaggerated and misleading. A test performed at the request of the respondent demonstrated that one competitive powder spread farther than respondent's powder and that a number of

other competitive powders were equal to respondent's product in this respect.

PAR. 9. The claims and representations made by respondent in its advertisements and advertising matter concerning the cosmetics and soap sold by it have had and now have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public, and as a result such members of the public have been induced to purchase quantities of such cosmetics and soap in the mistaken belief that the statements and representations contained in such advertisements and advertising matter concerning such cosmetics and soap were true. Said representations have therefore unfairly diverted trade to the respondent from its competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before William C. Reeves and John J. Keenan, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission, and by Jerome L. Isaacs, 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, Jergens-Woodbury 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 in commerce, as commerce is defined in the Federal Trade Commission Act, of its soaps, cosmetic creams and face powders, or any products of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

1. Representing that its facial powder will guard against or prevent skin blemishes or infection from germs, or that said powder will remain germ-free during use.

2. Representing that its facial powder will spread farther than other competitive face powders of comparable quality.

3. Representing that its cold cream will remain sterile, or that said cream will kill germs or prevent germ growth, infections or blemishes under ordinary conditions of use.

4. Representing in any manner whatever that respondent's creams or soap have any added beneficial value upon the skin by reason of their vitamin content.

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

SPENCER SYSTEM, AND JOHN L. SHEA, WILLIAM J. HAGERTY, JEAN G. MITCHIE, AND GLENDA S. HILLS

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

Docket 4350. Complaint, Oct. 16, 1940—Decision, Sept. 12, 1941

Where a concern, organized as a Massachusetts trust, and four individuals in charge of its business, determining and carrying out its policies and practices, engaged in interstate sale of courses of instruction, including lesson sheets, tools, and materials, in the design and fabrication of arch supports and foot exercisers, and in a system of foot correction and culture; in circulars, letters and pamphlets, and in advertisements in periodicals of general circulation, directly and indirectly—

(*a*) Represented that the structure of the foot is simple, that anyone of ordinary intelligence who could read and write could readily master their courses and become proficient therein, that their treatment was infallible, that the instruction could be given by mail and the necessary knowledge and proficiency acquired in 10 weeks or less, and that by reason of such mastery and the use of their system of foot culture and arch supports made by their method, student would be able to determine whether or not a person required arch supports and prescribe, design and fabricate the proper supports, and diagnose as surgical or nonsurgical all foot ailments or conditions; and

(*b*) Represented further that student would be able to correct, overcome and cure all foot troubles, other than those requiring operative surgery, including flat foot, distorted toes, weak feet, painful heel, aching, sweaty or too dry feet, calluses, chilblains, foot neuralgia, hammer or Morton's toes, stretched ligaments, enlarged joints and bunions, and prevent the growth of corns and bunions;

The facts being the structure of the foot is not simple; adequate correction of arch troubles, diseases, and ailments of the feet, and the proper designing of arch supports, require a diagnosis which can be properly made only by one familiar not only with the structure and physiology of the feet but also of the rest of the body; the knowledge necessary for proper diagnosis of all foot troubles as surgical or nonsurgical, and the application of adequate corrective or curative methods to latter conditions by arch supports, exercises, or otherwise, cannot be imparted by mail, in the short time indicated, to the ordinary literate person, and cannot be acquired from their courses of instruction; proper arch support cannot be made by one without substantial practical experience and training, and those mastering the course cannot be assured, in all cases of nonsurgical foot conditions or diseases, of successful results from use of the corrective system as taught, either with or without use of exercises of their design or arch supports made and fitted in accordance with their instructions; and

(*c*) Falsely represented that the student would learn how to obtain trade without solicitation, delay, or expense, and was assured, by mastery of the course, of a paying business and large income;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers of their said courses of instruction into the erroneous belief that such representations were true, and to induce a substantial part of the public, because of such mistaken belief, to purchase the same:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. 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 Spencer System, a Massachusetts trust, John L. Shea, William J. Hagerty, Jean G. Mitchie, and Glenda S. Hills, individually and as trustees of said trust, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The said respondent, Spencer System, is a Massachusetts trust, organized under the laws of the Commonwealth of Massachusetts and having an office and principal place of business at 55 Belvidere Street in the city of Boston, Mass., with respondents John L. Shea, William J. Hagerty, Jean G. Mitchie, and Glenda S. Hills as its trustees. The said trustees are in charge of the business conducted by said trust, and determine and carry out its policies and practices.

PAR. 2. Respondents are now, and have been for more than 6 months last past, engaged in the business of selling courses of instructions and instructing students in the design and fabrication of arch supports and "foot exercisers" and in a system of foot correction and culture.

The conduct of such courses of instruction contemplates and results in the transportation from respondents' place of business in the Commonwealth of Massachusetts to students located in various States of the United States, of information, textual matter, charts, tools, materials and other things useful or necessary in such courses of study, and from students to respondents of reports and specimens of their work.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said courses, including said lesson sheets, tools, materials and other things, 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, and for the purpose of inducing the purchase of their said courses of instruction,

respondents have engaged in the practices of distributing circulars, letters, and pamphlets containing claims with respect to said courses, the proficiency and ability which will be acquired, and the financial rewards to be anticipated, by those who purchase and master said courses of instruction, to be distributed between and among the various States of the United States and in the District of Columbia, and of causing advertisements containing similar claims to be inserted in magazines and periodicals of general circulation between and among the various States of the United States, and in the District of Columbia.

Among and typical of such claims are the following:

We * * * teach you the simple construction of the foot, foot culture and the use of the exercisers * * *

The course of instructions is easy to master by anyone of ordinary intelligence who can read and write.

You can enter this new profession of arch support making and foot culture methods by becoming proficient in this system.

The foot exercisers are sold outright or rented to the customer, who uses them or any other instructions suggested to him, in his own home, a few minutes daily, which overcome flat foot, distorted toes, weak feet, painful heel, aching, sweaty, or too dry feet, callouses, chilblains, foot neuralgia, hammer or Morton's toes, prevents bunions, corns, etc. by correcting them at the source.

There are twenty-six delicately suspended small bones in the foot which are easily displaced. Falling arches, crooked toes, weak feet, flat foot, stretched ligaments, enlarged joints, callosities and bunions are not natural to the normal feet. Through the use of foot culture methods and adjustment by this system, in cases where operative surgery is not required, and by wearing made to individual impression arch supports, the results obtained are practically one hundred percent efficient.

In addition thereto you are instructed in foot culture methods and certain exercises that tend to correct foot troubles of every kind that do not require operative surgery * * *

The superior quality of the Spencer System for overcoming foot troubles of every kind that do not require operative surgery * * *

Instruction by correspondence in many lines is an established means today.

You can complete these instructions in your own home in ten weeks, or in a shorter period * * *

We also teach you a business plan that is successful, and brings customers without waiting for them to hear of your ability. Years of experience of other operators have shown how to get trade without soliciting, expense or delay.

You can have MORE INCOME.

* * * a new business that will earn you more than a good living anywhere * * *

There are no "ifs" about this business paying, it does it.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and indirectly, among other things, that the structure of the foot is simple; that anyone of ordinary intelligence who can read and write can readily

master respondents' courses of instruction in arch support making and foot culture and become proficient therein; that by reason of such mastery and the use of respondents' system of foot culture and arch supports made by respondents' method, the student will be able to determine whether or not a person requires arch supports, prescribe, design and fabricate the proper supports, diagnose as surgical or nonsurgical all foot ailments or conditions and correct, overcome and cure all foot troubles other than those requiring operative surgery, including flat foot, distorted toes, weak feet, painful heel, aching, sweaty or too dry feet, callouses, chilblains, foot neuralgia, hammer or Morton's toes, stretched ligaments, enlarged joints and bunions and prevent the growth of corns and bunions; that respondents' treatment is, to all practical intents and purposes, infallible; that this instruction can be given by mail and the necessary knowledge and proficiency acquired in ten weeks or less; that the student will learn how to obtain trade without solicitation, delay or expense and is assured, by the mastery of the course, of a paying business and a large income.

PAR. 5. The foregoing representations are false and misleading. In truth and in fact the structure of the foot is not simple. The adequate correction of arch troubles, diseases 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 of the rest of the body. The knowledge necessary for the proper diagnosis of all foot troubles as surgical or nonsurgical, and the application of adequate corrective or curative methods to nonsurgical conditions by arch supports, exercises, or otherwise, cannot be imparted by mail in the short time indicated by respondent to the ordinary literate person, and cannot be acquired from respondents' courses of instruction. A proper arch support cannot be made by one without substantial practical experience and training. Those mastering the course cannot in all cases of nonsurgical foot conditions or diseases, be assured of successful results from the use of the corrective system as taught, either with or without the use of exercisers of respondents' design or arch supports made and fitted in accordance with respondents' instructions. The student is not assured of a profitable business by completing the course, nor of a big income; neither is he assured that he will be able to obtain trade without solicitation, delay or expense.

PAR. 6. The use by respondents of the foregoing false and misleading misrepresentations as set forth herein, in connection with the offering for sale and sale of its said courses of instruction, has

had, and now has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true, and to induce a substantial part of the public, because of such erroneous and mistaken belief, to purchase respondents' courses.

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 October 16, 1940, issued and on October 17, 1940, served its complaint in this proceeding upon respondents Spencer System, a Massachusetts trust, and John L. Shea, William J. Hagerty, Jean G. Mitchie, and Glenna S. Hills (the individual referred to in the complaint as Glenda S. Hills), individually, and as trustees of said trust, charging them with the use of unfair and deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the respondents' answer, the Commission, by order entered herein, granted respondents' request for permission to withdraw said answer and substitute thereof an answer admitting all the material allegations of fact set forth in said complaint, except the allegation in paragraph 1 of the said complaint that Jean G. Mitchie and Glenna S. Hills are trustees of respondent Spencer System, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The said respondent, Spencer System, is a Massachusetts trust, organized under the laws of the Commonwealth of Massachusetts and having an office and principal place of business at 55 Belvidere Street in the city of Boston, Mass., with respondents John L. Shea and William J. Hagerty as its trustees. The said trustees are in charge of the business conducted by said trust and

they, and respondents Jean G. Mitchie and Glenna S. Hills, determine and carry out its policies and practices.

PAR. 2. Respondents are now, and have been for more than six months last past, engaged in the business of selling courses of instruction and instructing students in the design and fabrication of arch supports and "foot exercisers" and in a system of foot correction and culture.

The conduct of such courses of instruction contemplates and results in the transportation from respondents' place of business in the Commonwealth of Massachusetts to students located in various States of the United States of information, textual matter, charts, tools, materials, and other things useful or necessary in such courses of study, and from students to respondents of reports and specimens of their work.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said courses, including said lesson sheets, tools, materials, and other things, 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, and for the purpose of inducing the purchase of their said courses of instruction respondents have engaged in the practices of distributing circulars, letters, and pamphlets containing claims with respect to said courses, the proficiency and ability which will be acquired, and the financial rewards to be anticipated, by those who purchase and master said courses of instruction, to be distributed between and among the various States of the United States and in the District of Columbia, and of causing advertisements containing similar claims to be inserted in magazines and periodicals of general circulation between and among the various States of the United States and in the District of Columbia.

Among and typical of such claims are the following:

We * * * teach you the simple construction of the foot, foot culture and the use of the exercisers * * *

The course of instructions is easy to master by anyone of ordinary intelligence who can read and write.

You can enter this new profession of arch support making and foot culture methods by becoming proficient in this system.

The foot exercisers are sold outright or rented to the customer, who uses them or any other instructions suggested to him, in his own home, a few minutes daily, which overcome flat foot, distorted toes, weak feet, painful heel, aching, sweaty, or too dry feet, callouses, chilblains, foot neuralgia, hammer or Morton's toes, prevents bunions, corns, etc. by correcting them at the source.

There are twenty-six delicately suspended small bones in the foot which are easily displaced. Falling arches, crooked toes, weak feet, flat foot, stretched

ligaments, enlarged joints, callosities and bunions are not natural to the normal feet. Through the use of foot culture methods and adjustment by this system, in cases where operative surgery is not required, and by wearing made to individual impression arch supports, the results obtained are practically one hundred per cent efficient.

In addition thereto you are instructed in foot culture methods and certain exercises that tend to correct foot troubles of every kind that do not require operative surgery * * *

The superior quality of the Spencer System for overcoming foot troubles of every kind that do not require operative surgery * * *

Instruction by correspondence in many lines is an established means today.

You can complete these instructions in your own home in ten weeks, or in a shorter period * * *

We also teach you a business plan that is successful, and brings customers without waiting for them to hear of your ability. Years of experience of other operators have shown how to get trade without soliciting, expense or delay.

You can have MORE INCOME.

* * * a new business that will earn you more than a good living anywhere * * *

There are no "ifs" about this business paying, it does it.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and indirectly, among other things, that the structure of the foot is simple; that anyone of ordinary intelligence who can read and write can readily master respondents' courses of instruction in arch support making and foot culture and become proficient therein; that by reason of such mastery and the use of respondents' system of foot culture and arch supports made by respondents' method, the student will be able to determine whether or not a person requires arch supports, prescribe design and fabricate the proper supports, diagnose as surgical or nonsurgical all foot ailments or conditions and correct, overcome and cure all foot troubles other than those requiring operative surgery, including flat foot, distorted toes, weak feet, painful heel, aching, sweaty or too dry feet, callouses, chilblains, foot neuralgia, hammer or Morton's toes, stretched ligaments, enlarged joints, and bunions and prevent the growth of corns and bunions; that respondents' treatment is, to all practical intents and purposes, infallible; that this instruction can be given by mail and the necessary knowledge and proficiency acquired in ten weeks or less; that the student will learn how to obtain trade without solicitation, delay or expense and is assured, by the mastery of the course, of a paying business and a large income.

PAR. 5. The foregoing representations are false and misleading. In truth and in fact the structure of the foot is not simple. The

adequate correction of arch troubles, diseases 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 of the rest of the body. The knowledge necessary for the proper diagnosis of all foot troubles as surgical or nonsurgical, and the application of adequate corrective or curative methods to nonsurgical conditions by arch supports, exercises, or otherwise, cannot be imparted by mail in the short time indicated by respondent to the ordinary literate person, and cannot be acquired from respondents' courses of instruction. A proper arch support cannot be made by one without substantial practical experience and training. Those mastering the course cannot be assured in all cases of nonsurgical foot conditions or diseases, of successful results from the use of the corrective system as taught either with or without the use of exercisers of respondents' design or arch supports made and fitted in accordance with respondents' instructions. The student is not assured of a profitable business by completing the course, nor of a big income; neither is he assured that he will be able to obtain trade without solicitation, delay or expense.

PAR. 6. The use by respondents of the foregoing false and misleading representations as set forth herein, in connection with the offering for sale and sale of their said courses of instruction, has had, and now has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true, and to induce a substantial part of the public, because of such erroneous and mistaken belief, to purchase respondents' courses.

CONCLUSION

The aforesaid acts and practices of the respondents, Spencer System, a Massachusetts trust, John L. Shea and William J. Hagerty, individually, and as trustees of said trust, and Jean G. Mitchie and Glenna S. Hills, individually, as herein found, are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material al-

legations of fact set forth in said complaint, except the allegations that Jean G. Mitchie and Glenna S. Hills are trustees of respondent Spencer System, and 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, Spencer System, a Massachusetts trust, its trustees, officers, agents, representatives, and employees, and John L. Shea and William J. Hagerty, individually and as trustees of said trust, and Jean G. Mitchie and Glenna S. Hills individually, 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 instruction in the fabrication of foot supports and foot exercisers and in the treatment and correction of foot troubles, do forthwith cease and desist from directly or by implication:

1. Representing that respondents' 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 non-surgical foot troubles, regardless of origin or cause thereof.

(*c*) Effectively and successfully treat substantially all cases of foot troubles, conditions, or diseases, including flat foot, distorted toes, weak feet, painful heel, aching, sweaty, or too dry feet, callouses, chilblains, foot neuralgia, hammer or Morton's toe, stretched ligaments, enlarged joints, and bunions.

2. Representing that any purchaser who masters respondents' 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 respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

ROBERT E. OVERELL, TRADING AS COPINOL COMPANY

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

Docket 4431. Complaint, Dec. 21, 1940—Decision, Sept. 12, 1941

Where an individual engaged in interstate sale and distribution of his "Copinol" or "Copinol Nasal Medicine"; by advertisements through the mails and otherwise, including purported testimonials, directly or by implication—

(*a*) Represented that his said preparation was a cure and remedy for head colds, catarrh-choked nose or throat, nasal catarrh, and sinus congestion, and constituted a competent and effective treatment for such conditions, and that it would rid the nose and throat of, and protect nose from, germ-laden mucus and instantly clear the head, and would afford relief to congested nasal passages more quickly and for a longer period of time than other similar preparations;

Facts being said product, which was a mild, soothing, and cooling emollient and local constrictor of the small blood vessels, was not a cure or remedy for aforesaid conditions and had no therapeutic value in the treatment thereof in excess of furnishing temporary relief to congested nasal mucous membranes; it would not rid the nose and throat of, or protect nose from, germ-laden mucus, nor clear the head instantly; and had no special properties which would afford quicker or longer relief than other similar preparations; and

(*b*) Failed to reveal material facts and that use of said product, as prescribed, might result in injury to health, in that he included neither on the pasteboard container of said "Copinol," or in said advertisements, a warning statement to the effect that said preparation, which contained the drug ephedrine alkaloid, should not be used by persons suffering from heart trouble, high blood pressure, diabetes, or thyroid trouble except on competent advice, and that its use over a long period of time was likely to produce prolonged nasal constriction so as to cause tissue damage from anoxemia, with secondary inflammatory reaction, or a cautionary statement to the effect that said preparation should be used only as directed on the label, and failed on the cautionary statement in the circular which it enclosed with its said product to which label referred user, to set forth the full danger in use of said preparation over a long period of time, and sufficiently to warn persons suffering from aforesaid diseases that they should not use the product except on competent advice;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and that his said preparation was harmless and would accomplish the results claimed for it, and of inducing it, because of such belief, to purchase his said "Copinol" medicinal preparation:

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

Mr. 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 Robert E. Overell, individually and trading under the style and firm name of Copinol Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Robert E. Overell, is an individual trading under the style and firm name of Copinol Co. with his principal place of business located at Seventh and Main Streets, Los Angeles, Calif.

PAR. 2. Acting in his individual capacity and trading under the style and firm name of Copinol Co., respondent is now, and for more than 1 year last past has been, engaged in the advertising, sale, and distribution of a medicinal product or preparation designated as "Copinol" and sometimes designated as "Copinol Nasal Medicine," hereinafter referred to as "Copinol," in commerce among and between the various States of the United States.

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

Respondent maintains, and at all times mentioned herein, has maintained a course of trade in the 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 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 preparation by the United States mails and by various other means in commerce, as commerce is defined by 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 by 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:

TERRIBLE NOSE DISCHARGE EMBARRASSES LADY

Suffers from stuffy head colds, catarrh-choked nose and throat, nasal sinus, helped by Copinol. "I had a bad discharge from my right nostril and used from four to six handkerchiefs daily. It was terrible," writes Mrs. O. E. J., Ocean Beach, California.

"No words can express my embarrassment in company. Copinol relieved me instantly. My head is clear—the crackling is gone." The secret formula of seven scientific ingredients for Copinol Nasal Medicine is now revealed on the package.

SECRET FORMULA FOR NOSE CATARRH REVEALED AT LAST!

Special ingredient retains medication longer in nose—speeds relief in catarrh-choked nasal congestion, shrinks swollen membranes.

Sufferers from stopped up nasal passages—choked by disgusting mucus drippings in nose and throat—have gladly paid more for Copinol Nasal Medicine because it gave longer lasting relief. Now the secret is out. New laws require that Copinol reveal its treasured formula and now the whole world knows that LANOLIN, blended with six other scientific ingredients, is the amazingly effective mediament that insures such lasting relief from stuffy head colds, catarrh-choked nose and throat, nasal catarrh and sinus congestions. * * *

LONGER LASTING MEDICATION FOR YOUR NOSE

Sufferers from nasal congestion can rid nose of clogging mucus and get longer protection by using COPINOL NASAL MEDICINE.

NASAL HYGIENE COPINOL NASAL MEDICINE.

Rid nose of germ laden mucus! Loosen clogging congestion with COPINOL! Long lasting medication! A few drops will aid you in breathing freely again.

PAR. 4. Through the use of the statements and representations hereinabove set forth and in other and similar statements and representations not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of his said preparation, respondent represents, directly or by implication: That his said preparation is a cure and remedy for head colds, catarrh-choked nose or throat, nasal catarrh, or sinus congestion, and that it constitutes a competent and effective treatment for such conditions; that it will rid nose and throat of, and protect nose from, germ laden mucus, and instantly clear the head; and that said preparation will afford relief to congested nasal passages more quickly and for a longer period of time than other preparations.

PAR. 5. The aforesaid representations used and disseminated by respondent as aforesaid, are grossly exaggerated, false and misleading. Respondent's preparation "Copinol" is not a cure or remedy for head colds, nasal catarrh, or sinus congestion, and has no therapeutic value in the treatment of such conditions in excess of furnishing temporary relief to congested nasal mucus membranes. It will not rid the nose and throat of, or protect the nose from, germ laden mucus. It will not clear the head instantly. This preparation has no special therapeutic properties which will enable it to afford relief

more quickly or for a longer period of time than many other similar preparations on the market, affording temporary relief to congested nasal passages. It is nothing more than a mild antiseptic emollient and constrictor of the arterioles.

PAR. 6. Respondent's preparation contains the drug ephedrine alkaloid and the use of said preparation may be harmful to those suffering from heart trouble, high blood pressure, diabetes, or thyroid trouble and the use of this preparation over a long period of time is likely to produce such prolonged nasal constriction as to cause tissue damage from anoxemia with secondary inflammatory reaction, and may also cause nervousness, restlessness, or sleeplessness.

The advertisements disseminated by the respondent as aforesaid, contain no cautionary statements to the effect that this preparation should not be used by persons having heart trouble, high blood pressure, diabetes, or thyroid trouble or that its frequent or continued use may cause nervousness, restlessness, or sleeplessness, and consequently such advertisements constitute false advertising in that they fail to reveal facts material in the light of the representation 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. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, has had and now has, the capacity and tendency to and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparation "Copinol."

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 21st day of December 1940, issued, and on the 26th day of December 1940, served its complaint in this proceeding upon said respondent, Robert E. Overell, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

On January 15, 1941, 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, Robert E. Overell, and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and the said Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceedings without the presentation of argument or the filing of briefs and without the filing of 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 it findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Robert E. Overell, is an individual trading under the style and firm name of Copinol Co. with his principal place of business located at Seventh and Main Streets, Los Angeles, Calif.

PAR. 2. Respondent, acting in his individual capacity, and trading under the style and firm name aforesaid, is now and for more than 1 year last past has been engaged in the advertising, sale, and distribution of a medicinal preparation designated as "Copinol" and sometimes as "Copinol Nasal Medicine." Respondent causes said preparation, when sold, to be transported from his aforesaid place of business in the State of California to the purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business as aforesaid, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his said medicinal preparation, designated as aforesaid, by United States mails and by various means in commerce, as commerce is defined by the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now

causing the dissemination of, advertisements concerning his said medicinal preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said medicinal preparation, designated as aforesaid, in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated by the United States mails and various other means, are the following:

TERRIBLE NOSE DISCHARGE EMBARRASSES LADY

Sufferers from stuffy head colds, catarrh-choked nose and throat, nasal sinus, helped by Copinol. "I had a bad discharge from my right nostril and used from 4 to 6 handkerchiefs daily. It was terrible," writes Mrs. O. E. J., Ocean Beach, California.

"No words can express my embarrassment in company. Copinol relieves me instantly. My head is clear—the crackling is gone."

The secret formula of 7 scientific ingredients for Copinol Nasal Medicine is now revealed on the package.

SECRET FORMULA FOR NOSE CATARRH REVEALED AT LAST!

Special ingredient retains medication longer in nose—speeds relief in catarrh-choked nasal congestion, shrinks swollen membranes.

Sufferers from stopped up nasal passages—choked by disgusting mucus drippings in nose and throat—have gladly paid more for Copinol Nasal Medicine because it gave longer lasting relief. Now the secret is out. New laws require that Copinol reveal its treasured formula and now the whole world knows that LANOLIN blended with six other scientific ingredients is the amazingly effective medicament that insures such lasting relief from stuffy head colds, catarrh-choked nose and throat, nasal catarrh and sinus congestion. * * *

LONGER LASTING MEDICATION FOR YOUR NOSE.

Sufferers from nasal congestion can rid nose of clog and mucus and get longer protection by using COPINOL NASAL MEDICINE.

NASAL HYGIENE COPINOL NASAL MEDICINE

Rid nose of germ-laden mucus! Loosen cloggy congestion with COPINOL! A few drops will aid you in breathing freely again.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto but not specifically set out herein, all purporting to be descriptive of the therapeutic properties of the medicinal preparation "Copinol," respondent represents, directly or by implication, that his said preparation is a cure or remedy for head colds, catarrh-choked nose or throat, nasal catarrh, and sinus congestion, and that it constitutes a competent and effective treatment for such conditions that it will rid the nose and throat of, and protect nose from, germ-laden mucus, and instantly clear the head; and that said preparation will afford relief to congested nasal passages more quickly and for a longer period of time than similar preparations.

PAR. 5. The aforesaid representations, used and disseminated by respondent as aforesaid, are grossly exaggerated, false, and misleading.

Respondent's preparation Copinol, designated as aforesaid, is a mild soothing and cooling emollient and local constrictor of the small blood vessels. It is not a cure or remedy for head colds, catarrh-choked nose or throat, nasal catarrh, or sinus congestion, and it has no therapeutic value in the treatment of such conditions in excess of furnishing temporary relief to congested nasal mucous membranes. It will not rid the nose and throat of, or protect the nose from, germ-laden mucus. It will not clear the head instantly. This preparation has no special therapeutic properties which will enable it to afford relief more quickly or for a longer period of time than many other similar preparations affording temporary relief to congested nasal passages.

PAR. 6. Respondent's preparation contains the drug ephedrine alkaloid, and the use of this preparation may be harmful to those suffering from heart trouble, high blood pressure, diabetes, or thyroid trouble, and the use of this preparation over a long period of time is likely to produce such prolonged nasal constriction as to cause tissue damage from anoxemia with secondary inflammatory reaction and may also cause nervousness, restlessness, or sleeplessness.

PAR. 7. While the label now being used by respondent carries the statement,

See circular for full directions regarding use of Copinol,

it carries neither a warning statement to apprise the reader that there is potential danger in the use of said preparation to persons suffering from heart trouble, high blood pressure, or thyroid disease, and that this preparation should not be used over a long period of time, nor a cautionary statement specifically directing attention to a warning statement to such effect appearing in the accompanying labeling.

The circular now being packaged with respondent's preparation Copinol, contains directions for use and in connection therewith the following statement:

Care should be taken that this preparation is not used so continuously over a long period of time as to cause amassing of oily deposits in nose or lungs. Should be used with caution by persons subject to heart trouble, high blood pressure or thyroid disease. Consult your physicians, particularly regarding children's use.

In the light of the potential danger existing in this product as found in paragraph 6 hereof, the above statement appearing on the circular is inadequate as a warning. It fails to set forth the full danger existing in this preparation if used over a long period of time, and it does not constitute a sufficient warning to persons suffering from heart trouble, high blood pressure, diabetes, or thyroid diseases. This preparation should not be used by persons subject to these diseases except on competent advice.

The printed matter on the pasteboard box in which Copinol is now being packaged by respondent, and the advertisements disseminated by the respondent, as aforesaid, however, contain neither a statement to the effect that said preparation should not be used by persons suffering from heart trouble, high blood pressure, diabetes, or thyroid trouble except on competent advice and that its use over a long period of time is likely to produce prolonged nasal constriction as to cause tissue damage from anoxemia with secondary inflammatory reaction, nor a cautionary statement to the effect that said prepartion should be used only as directed on the label. 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. 8. The use by the respondent of the foregoing statements and representations, and others of a similar nature, 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 that respondent's preparation is harmless and will accomplish the results claimed for it, as found in paragraph 4 hereof, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondent's medicinal preparation "Copinol."

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 Richard P. Whiteley, assistant chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent findings as to the facts and its 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 the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Robert E. Overell, individually or trading under the name of Copinol 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 "Copinol," 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 that said preparation:

(*a*) Is a cure or remedy for head colds, catarrh-choked nose or throat, nasal catarrh, or sinus congestion, or has any therapeutic value in the treatment of such conditions in excess of furnishing temporary relief to congested nasal mucous membranes.

(*b*) Will rid the nose and throat of, or will protect the nose from, germ-laden mucus.

(*c*) Will instantly clear the head.

(*d*) Will afford relief to congested nasal passages more quickly and for a longer period of time than similar preparations.

2. 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 advertisement fails to reveal that respondent's medicinal preparation "Copinol" should not be used by persons suffering from heart trouble, high blood pressure, diabetes, or thyroid trouble, and that the use of said preparation over a long period of time is likely to produce prolonged nasal constriction resulting in tissue damage from anoxemia, provided, however, that if the label of said preparation contains a warning of the potential dangers in the use of said preparation, as hereinabove set forth, such advertisements need contain only the cautionary statement: CAUTION, USE ONLY AS DIRECTED ON THE LABEL.

3. 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 comply with the requirements set forth in paragraph 2 hereof.

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

BARD-PARKER COMPANY, INC., AND PARKER, WHITE & HEYL, INC.

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

Docket 4478. Complaint, Mar. 28, 1941—Decision, Sept. 15, 1941

Where a corporation and its subsidiary, engaged in interstate sale and distribution of their "Bard-Parker Formaldehyde Germicide," referred to sometimes as "Bard-Parker Germicide," and "B-P Germicide," and of "B-P Instrument Containers," "B-P Sterilizers," and "B-P Instrument Jars" for use therewith; by means of advertisements in pamphlets, circulars, medical journals, letterheads, and other advertising literature, and through imprinted or raised letterings on the sides of said instrument containers, and through photomicrographs, in pamphlets distributed by them, of the cutting edge of surgical blades, directly and by implication—

Represented that their said "Bard-Parker Formaldehyde Germicide" chemical solution was an efficient, practical and certain sterilization medium for the pre-operative preparation of surgical and dental instruments, and a safe, practical substitute for heat sterilization;

Facts being that, while their said solution had high germicidal and destructive bacteriological properties, it would not destroy all forms of bacteria when used in accordance with the customary sterilization technique; and it was not efficient, practical and certain, or a safe substitute for heat sterilization, unless the instruments remained continuously immersed therein for a period of 18 hours between usage;

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 chemical solution:

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.
Wiggin & Dana, of New Haven, 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 Bard-Parker Co., Inc., a corporation, and Parker, White & Heyl, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it

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

PARAGRAPH 1. The respondent, Bard-Parker Co., Inc., is a corporation with its principal office and place of business located at Danbury, Conn. The respondent, Parker, White & Heyl, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at Danbury, Conn. It is a subsidiary of the said Bard-Parker Co., Inc., and is engaged primarily as the selling and distributing agent for its principal. The said respondent corporations act in conjunction and cooperation with each other with respect to the acts and practices hereinafter set forth.

PAR. 2. Respondent, Parker, White & Heyl, Inc., and respondent, Bard-Parker Co., Inc., acting through its said subsidiary, are now, and for more than 1 year last past, have been engaged in the sale and distribution of the following Bard-Parker products:

(*a*) A chemical solution designated "Bard-Parker Formaldehyde Germicide," sometimes referred to as "Bard-Parker Germicide" and "B-P Germicide."

(*b*) Instrument containers designed and intended to be used in connection with the aforesaid "Bard-Parker Formaldehyde Germicide" designated as "B-P Instrument Containers" and "B-P Sterilizers."

(*c*) Instrument jars designed and intended to be used in connection with the said "Bard-Parker Formaldehyde Germicide" and designated as "B-P Instrument Jars."

Respondents cause their said products, when sold, to be transported from their said place of business in the State of Connecticut to the purchasers thereof at their respective points of location in various States of the United States, other than the State of Connecticut, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business the said respondents have disseminated and are disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said chemical solution "Bard-Parker Formaldehyde Germicide" 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 the United States mails, in pamphlets, circulars, advertisements in medical journals, letterheads, by statements imprinted on the various containers and by other advertising literature, are the following:

Studies on the Chemical Sterilization of Surgical Instruments.

The Improved Bard-Parker Formaldehyde Germicide—a highlight in the cavalcade of protective instrument sterilization methods.

Specifically developed as a more efficient, practical and economical sterilizing method that insures preservation of the factory new characteristics of delicate surgical instruments * * *.

Clinically and chemically stable. Does not lose germicidal efficiency or deteriorate with age or evaporation.

Greater and more rapid bactericidal and sporicidal effectiveness.

Destructive Factor Eliminated by the Modern B–P Instrument Sterilization Medium.

Sterilization by boiling is known to produce a progressively destructive action upon keen cutting edges and points.

Bard-Parker Germicide provides effective rust-proof sterilization.

* * * often far exceeds the nominal cost of this invaluable sterilizing medium.

No costly or intricate mechanical equipment is necessary for the satisfactory use of B–P Germicide. No occasion for functional failure due to temporary discontinuation of gas or electric service. No perpetual gas or electricity expense involved.

BARD-PARKER INSTRUMENT CONTAINERS designed to afford added measures of instrument protection during the sterilizing process.

A compact container of heavy duty "PYREX" glass, designed for use with B-P Germicide to facilitate the rust-proof sterilization of fine surgical instruments.

Of high germicidal potency * * * destructive to both vegetative and spore forms of bacteria.

It Sterilizes.

B-P Sterilizer.

Through the use of the statements and representations hereinabove set forth, and others of similar import not specifically set out herein, all of which purport to be descriptive of the destructive bacteriological properties of their said chemical solution, respondents represent, directly or through implication, that their said chemical solution "Bard-Parker Formaldehyde Germicide" is an efficient, practical and certain sterilization medium for surgical and dental instruments, and that it is a safe substitution for heat sterilization.

PAR. 4. The foregoing statements and representations, and others of similar import not specifically set forth herein, are grossly exaggerated, false, and misleading. While respondents' said preparation has

germicidal properties it will not, when used in accordance with the usual and customary technique ordinarily associated with sterilization, destroy all forms of bacteria. It is not an efficient, practical, and certain sterilization medium and is not a safe substitute for heat sterilization.

PAR. 5. 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' chemical solution "Bard-Parker Formaldehyde Germicide."

PAR. 6. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 28th day of March 1941, issued and served its complaint in this proceeding upon Bard-Parker Co., Inc., and Parker, White & Heyl, Inc., charging said respondents with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of said act.

On April 15, 1941, the respondents filed their answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and Richard P. Whiteley, assistant chief counsel for the Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, and without the filing of the 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, Bard-Parker Co., Inc., is a corporation with its principal office and place of business located at Danbury, Conn.

Respondent, Parker, White & Heyl, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at Danbury, Conn. It is a subsidiary of respondent, Bard-Parker Co., Inc., and is engaged primarily as the selling and distributing agent for its principal.

Respondents act in conjunction and cooperation with each other with respect to the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for more than 1 year last past, have been engaged in the sale and distribution of the following Bard-Parker products:

(*a*) A chemical solution designated "Bard-Parker Formaldehyde Germicide," sometimes referred to as "Bard-Parker Germicide" and "B-P Germicide."

(*b*) Instrument containers designed and intended to be used in connection with the aforesaid "Bard-Parker Formaldehyde Germicide," designated as "B-P Instrument Containers" and "B-P Sterilizers."

(*c*) Instrument jars designed and intended to be used in connection with the said "Bard-Parker Formaldehyde Germicide" and designated as "B-P Instrument Jars."

Respondents cause their said products, when sold, to be transported from their place of business in the State of Connecticut and from their place of business in the State of Pennsylvania, to the purchasers thereof at their respective points of location in the various States of the United States other than Connecticut and Pennsylvania, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 3 In the course and conduct of their aforesaid business the said respondents have disseminated and are disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said chemical solution "Bard-Parker Formaldehyde Germicide" by the United States mails and by various 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 disseminating 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.

PAR. 4. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated by respondents, as hereinabove set forth, by the United States mails, in pamphlets, circulars, advertisements in medical journals and periodicals, letterheads, and by other advertising literature, are the following:

1. Prior to the year 1939, as shown by Commission's exhibits 1 to 10, inclusive:

Studies on the Chemical Sterilization of Surgical Instruments.

The Improved Bard-Parker Formaldehyde Germicide—a highlight in the cavalcade of protective instrument sterilization methods.

Specifically developed as a more efficient, practical and economical sterilization method that insures preservation of the factory new characteristics of delicate surgical instruments * * *.

Destructive Factor Eliminated by the Modern B-P Instrument Sterilization Medium.

Bard-Parker Germicide provides effective rust-proof sterilization.

* * * often far exceeds the nominal cost of this invaluable sterilizing medium.

BARD-PARKER INSTRUMENT CONTAINERS designed to afford added measures of instrument protection during the sterilizing process.

A compact container of heavy duty "PYREX" glass, designed for use with B-P Germicide to facilitate the rust-proof sterilization of fine surgical instruments.

Of high germicidal potency * * * destructive to both vegetative and spore forms of bacteria.

It Sterilizes.

B-P Sterilizer.

2. Subsequent to the year 1939, as shown by respondents' exhibits Nos. A, B, C, and D:

Studies on the Chemical Sterilization of Surgical Instruments.

THE IMPROVED BARD-PARKER FORMALDEHYDE GERMICIDE

A Highlight in The Calvacade of *Protective* Methods For the Preoperative Preparation of Instruments.

Specifically developed as a more efficient, practical and economical disinfecting medium, capable of prolonging the factory-new characteristics of delicate surgical instruments—thus serving to safeguard the surgeon's or hospital's instrument investment.

DESTRUCTIVE FACTORS ELIMINATED BY THE MODERN B. P. INSTRUMENT-DISINFECTING MEDIUM.

Sterilization by boiling is known to produce a progressively destructive action upon keen cutting edges and points. The intense heat of autoclaving and boiling in oil jeopardize the temper of steel—the oil leaving a film which must be rinsed or wiped off. Most available chemical solutions of sufficiently high germicidal potency, such as formaldehyde U. S. P. carbolic acid, mercuric chloride, etc., exert a corrosive action on metal.

BARD-PARKER FORMALDEHYDE GERMICIDE PROVIDES EFFECTIVE RUSTPROOF PREPARATION OF INSTRUMENTS.

The solution will not rust, corrode or otherwise damage steel instruments, glass, or heat treated rubber, and is nondestructive to the keen cutting edges of B-P knives and scissors; the lumens and points of hypodermic and suture needles; glass syringes and suture tubes * * * throughout the disinfecting process. It preserves the temper of steel thus prolonging the useful life of instruments.

PAR. 5. In like manner and means in commerce, and for the same purpose, as is set forth in paragraph 3 hereof, respondents have also disseminated and are disseminating, and have caused and are now causing the dissemination of, false advertisements by the use of:

1. Imprinted or raised lettering on the sides of the Bard-Parker Instrument Containers, as illustrated in Commission's exhibits 1 to 9, inclusive, and in respondents' exhibits A and B, respectively, such as

B-P Sterilizer,

and

2. Photomicrographs of the cutting edge of surgical blades appearing in pamphlets distributed by respondents, as is shown by Commission's exhibit 1, 2, 3, and 9, respectively, and by respondent's exhibits A and B, respectively.

The photomicrographs are designated

(*a*) Edge of steel blade before sterilization;

(*b*) Edge of steel blade after boiling in water for five minutes, and

(*c*) Edge of steel blade after thirty-six hours in Bard-Parker Germicide, respectively.

and are arranged in sequence so as to demonstrate the nondestructive action of the aforesaid chemical solution on the cutting edge of surgical blades, as compared with the destructive action of sterilization by boiling.

PAR. 6. Through the use of the statements and representations contained in said false advertisements, as set forth in paragraphs 4 and 5 hereof, and others of similar import not specifically set-out herein, all disseminated and caused to be disseminated as aforesaid, respondents have represented directly, and are now representing indirectly and through implication and inference, that their said chemical solution "Bard-Parker Formaldehyde Germicide" was and is an efficient, prac-

tical and certain sterilization medium for the preoperative preparation of surgical and dental instruments and that it was and is a safe, practical substitute for heat sterilization.

PAR. 7. The aforesaid statements and representations disseminated as aforesaid, are grossly exaggerated, false, and misleading. While respondents' chemical solution, "Bard-Parker Formaldehyde Germicide," has high germicidal and destructive bacteriological properties, it will not, in the light of present scientific knowledge, when used in accordance with the usual and customary technique ordinarily associated with sterilization, destroy all forms of bacteria. It is not an efficient, practical and certain sterilization medium and it is not a safe substitute for heat sterilization unless the instruments, between usage, remain continuously immersed in the said solution for a period of eighteen hours.

PAR. 8. 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 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 were and are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' chemical solution "Bard-Parker Formaldehyde Germicide."

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 Richard P. Whiteley, assistant chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Bard-Parker Co., Inc., a corporation, and Parker, White & Heyl, Inc., 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 the chemical solution "Bard-Parker Formaldehyde Germicide," or any other preparation of substantially similar composition or possessing 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, indirectly, or through inference, that the said chemical solution Bard-Parker Formaldehyde Germicide is a sterilization medium for the preoperative preparation of surgical or dental instruments, or is a substitute for boiling or autoclaving of surgical or dental instruments, unless it is clearly and unequivocally stated in immediate connection with each such representation, in words of equal conspicuousness, that any instrument to be sterilized must remain continuously immersed in said chemical solution for not less than 18 hours.

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 chemical solution, Bard-Parker Formaldehyde Germicide, 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

RENAUD SALES COMPANY, INC., AND MURRAY W. MORIN, IRVING UNTERMAN, AND IRVING LIPSCHITZ

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

Docket 3500. Complaint, July 20, 1938—Decision, Sept. 16, 1941

Where, for a number of years ending in 1934, the perfumes, powders, and allied products of "Societe Anonyme Renaud Paris 1817" of Paris, France, had been sold and distributed in the United States by "Renaud et Cie of America," and said products and its perfumes known as "Sweet Pea," "Gardenia," "Narcisse," "Orchidee," "Ghedma," "Notchenka," and others, all further identified by name "Renaud," "Renaud Paris," or "Renaud Paris 1817," had acquired a reputation as high quality French perfumes with the trade and purchasing public in the United States, the "Sweet Pea" being particularly well and favorably known; and thereafter, a New York corporation and three officers thereof who controlled its business, engaged in competitive interstate sale and distribution of perfumes, powders and other products;

Following the insolvency, in 1934, of said "Renaud et Cie of America," and their purchase at assignee's sale of a substantial part of the stock of said Societe's products, together with the name and good will, and including also large numbers of Renaud bottles, containers, and labels, and, in the case of the perfumes purchased by them, substantial quantities of certain odors and small quantities of others such as "Sweet Pea," amounting to a few gallons only, which perfumes and other products they sold at much lower prices than had previously been obtained for said Societe's products—

(*a*) Bottled in containers bearing labels such as "Renaud Paris" and "Renaud Paris 1817," perfumes which they manufactured by mixing alcohol with perfume essences and essential oils purchased at the assignee's sale, and, when their supplies of perfumes of certain odors purchased at said sale became exhausted, bottled and sold, in containers bearing such labels, substitutes therefor which were made for them by a New York concern from essences, essential oils, or other products purchased from various sources, of which none were said Societe; and

(*b*) Made use, in continuing their sale and distribution of perfumes, including those compounded in the United States of alcohol with essences and essential oils, of containers simulating those previously used in the bottling and sale of products of said Societe, and of labels which bore the words "Renaud Paris" and "Made in France," together with depiction of a Norman crown and a woman's face superimposed thereon, or "Renaud Paris 1817" together with name of the odor "Sweet Pea," or the typical Norman crown with a woman's face superimposed thereon and the name "Renaud," simulating the labels formerly used on the products of said Societe; and made advertising allowances to retailers to assist in defraying the cost of advertisements circulated by the latter such as "Famous

in France RENAUD'S Perfume * * * famous for the subtlety of its scent, is now available in the three-ounce size (listed at 22.50) at about one-fifth of its value. * * *";

With effect of misleading and deceiving the purchasing public into believing that such perfumes were those of said Societe and were those made or compounded in France and imported, for which a substantial part of the consuming public has long had a marked preference, and with consequence that substantial numbers of such public bought their products and trade was thereby diverted to them from competitors who truthfully advertise their respective goods and refrain from representing, through labels or otherwise, that their perfumes have a value, merit, or origin contrary to the fact; to the substantial injury of competition in commerce:

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

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

Mr. Charles S. Cox for the Commission.

Munn, Anderson & Liddy and *Mr. Abraham B. Hertz*, of New York City, for Renaud Sales Co., Inc., Murray W. Morin and Irving Unterman.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Renaud Sales Co., Inc., a corporation, Murray W. Morin, Irving Unterman, and Irving Lipschitz, individually, and as officers of Renaud Sales Co., Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Renaud Sales Co., Inc., is and has been since the year 1934, a corporation organized and doing business under and by virtue of the laws of the State of New York with its principal place of business at 245 Fifth Avenue, New York, N. Y. Respondents, Murray W. Morin, Irving Unterman, and Irving Lipschitz, are, respectively, president, vice president, and secretary and treasurer of the said Renaud Sales Co., Inc., and individually, and as such officers, control and direct, and have controlled and directed, the policies, practices, and activities of said Renaud Sales Co., Inc., during the time hereinafter mentioned. Respondents are now and have been for more than 1 year last past engaged in the sale and distribution of domestic and imported perfumes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business respondents are now and have been in substantial competition with individuals, partnerships, firms, and corporations, likewise engaged in the business

of distributing and selling perfumes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. When said products are sold respondents transport or cause the same to be transported from their place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York, and in the District of Columbia.

PAR. 4. Respondents, in soliciting the sale and in the sale of their products, and for the purpose of creating a demand on the part of the consuming public for said commodities, have adopted and are employing a method or form of advertising the same in newspapers, on labels, containers, cartons, bottles, and otherwise, by the use of the trade name "Renaud" or "Renaud—Paris—1817," and by so doing the respondents create and have created in the general public, and among buyers of perfumes for retail stores, misleading conceptions with reference to said articles and commodities, in that the name "Renaud" in connection with perfumes and cosmetics implies to the public that said products are of a superior quality manufactured or sold by "Renaud—Paris—1817," of Paris, France. "Renaud—Paris—1817" is a French perfumer of international reputation, and for a number of years cosmetics and perfumes manufactured or sold by said concern and bearing that name have been imported into the United States, where they have been and are recognized by the buying public as high-grade French products of superior quality, and a substantial part of the buying public of the United States has shown and does show a decided preference for such products of "Renaud—Paris—1817."

PAR. 5. The said practices and said advertisements by respondents are misleading in that many of the products so advertised and thus labeled are not in truth manufactured or compounded by "Renaud—Paris—1817," and are not products manufactured or compounded in France at all, but are products wholly compounded or manufactured within the United States.

PAR. 6. For many years a substantial part of the consuming public of the United States has had, and still has, and has so expressed, a marked preference for perfumes which are manufactured or compounded in foreign countries, especially in France, and then imported into the United States.

PAR. 7. There are among the competitors of respondents manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and origin of their respective product. There are also among the competitors of respondents manufacturers and distributors of like and similar products who

refrain from advertising or representing, through their labels or otherwise, that the merchandise offered for sale by them has a value, merit, or origin that it does not have.

PAR. 8. The acts and practices of respondents, as hereinabove alleged, have had, and now have, the tendency and capacity to and do mislead and deceive a substantial part of the purchasing and consuming public and cause them mistakenly and erroneously to believe that said perfumes so sold and distributed by the respondents were and are manufactured in France and imported from that country into the United States; and as a result of such mistaken and erroneous belief to cause a substantial number of members of the purchasing and consuming public to purchase the products of the respondents.

PAR. 9. The aforesaid false and misleading statements and representations on the part of respondents have induced and still induce a substantial number of consumer purchasers of said products, as well as many purchasers for retail stores, to buy the products offered for sale and distributed by the respondents on account of the aforementioned erroneous belief. As a result thereof substantial trade in said commerce has been unfairly diverted to the respondents from their competitors, and as a consequence substantial injury has been and is being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 10. The aforementioned methods, acts, and practices of respondents are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 20, 1938, issued and subsequently served its complaint in this proceeding upon respondent, Renaud Sales Co., Inc., a corporation, and upon respondents Murray W. Morin, Irving Unterman, and Irving Lipschitz, individually and as officers of the corporate respondent, charging said respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by an attorney for the Commission and in opposition to the allegations of the complaint by attorneys for the respondents 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 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 examiner and exceptions thereto, 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, Renaud Sales Co., Inc., is and has been since 1934 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 at 245 Fifth Avenue, New York, N. Y. Respondents, Murray W. Morin, Irving Unterman, and Irving Lipschitz are, respectively, president, vice president, and secretary-treasurer of the corporate respondent, and individually and as such officers, control and direct, and have controlled and directed, the policies, practices, and activities of said Renaud Sales Co., Inc.

PAR. 2. Respondents have, during the time alleged in the complaint, been engaged in the sale and distribution of perfumes, powders, and other products. When sold, respondents transport or cause said products to be transported from their place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia. In the course and conduct of their said business respondents are now, and have been, in substantial competition with individuals, partnerships, firms, and corporations likewise engaged in selling and distributing like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. For a number of years ending in 1934 the perfumes, powders, and allied products of Societe Anonyme Renaud Paris 1817 of Paris, France, were sold and distributed in the United States by Renaud et Cie of America, which company had its principal place of business at 210 South Street, Boston, Mass. These products included perfumes known as "Sweet Pea," "Gardenia," "Narcisse," "Orchidee," "Ghedma," "Notchenka," and others, all further identified by the name "Renaud," "Renaud Paris," or "Renaud Paris 1817." These products acquired a reputation of being high quality French

perfumes and were so known to and accepted by the trade and the purchasing public in the United States. The perfume known as "Sweet Pea" was particularly well and favorably known.

In 1934, Renaud et Cie of America became insolvent, and at the assignee's sale of the assets of that company the respondents in this proceeding purchased certain of such assets, including the name and good will, a substantial part of the stock of perfumes of various odors and other products made by the Societe Anonyme Renaud Paris 1817, large numbers of empty perfume bottles and containers for Renaud products, and large quantities of Renaud labels for use on or with such bottles and containers. In the case of perfumes purchased by respondents there were substantial quantities of certain odors, and small quantities of other odors such as "Sweet Pea," in which instance the quantity purchased by respondents amounted to only a few gallons.

PAR. 4. After the aforesaid purchase respondents began selling the perfumes and other products acquired at said assignee's sale at much lower prices than had previously been obtained for products of Societe Anonyme Renaud Paris 1817, and began the manufacture of perfumes by mixing alcohol with perfume essences and essential oils purchased at the assignee's sale. Perfumes so manufactured were bottled in containers bearing labels such as "Renaud Paris" and "Renaud Paris 1817." Within a short time respondents removed their remaining stock of the products of the Societe Anonyme Renaud Paris 1817, containers, and labels to New York City; and when their supplies of perfumes of certain odors purchased at the assignee's sale became exhausted, they purchased substitutes therefor which were manufactured for them by Special Toiletries Corporation of New York City from essences, essential oils, or other products, purchased from various sources, none of which was the Societe Anonyme Renaud Paris 1817. Such essences, essential oils, or other products were combined with alcohol of domestic manufacture and the perfumes so manufactured were bottled and sold by respondents in containers bearing labels such as "Renaud Paris" and "Renaud Paris 1817."

PAR. 5. In the continuation of their business in the aforesaid manner respondents purchased large quantities of containers from glass manufacturers, which containers simulated in appearance the containers previously used in the bottling and sale of products of the Societe Anonyme Renaud Paris 1817. Respondents also purchased large quantities of labels simulating labels previously used on the products of the Societe Anonyme Renaud Paris 1817 and with which members of the trade and the purchasing public were familiar as identifying the products of the Societe Anonyme Renaud Paris 1817. For example, they purchased 100,000 labels from the Quality Seal & Engraving Company

of Framingham, Mass., bearing the words, "Renaud," "Paris," "Made in France," with a pictorial representation of a Norman crown and a woman's face superimposed thereon, which label is a simulation in size, shape, color, and appearance of the labels previously used on products of the Societe Anonyme Renaud Paris 1817. Respondents also purchased from the Foxon Company of Providence, R. I., 125,000 labels similar in size, shape, color, and appearance to those purchased from the Quality Seal & Engraving Company and having thereon a pictorial representation of a Norman crown with a woman's face superimposed, but with the words "Renaud Paris 1817" and the name of the odor "Sweet Pea" appearing near the edge of the label. At other times, but subsequent to the purchases specifically mentioned, respondents purchased quantities of labels similar in size, shape, color, and appearance to the labels described above. These additional labels bore the typical Norman crown with a woman's face superimposed and the name "Renaud" but did not bear the words "Paris" or "Made in France."

PAR. 6. In the sale and distribution of perfumes, including those manufactured or compounded in the United States by the mixing of alcohol with essences and essential oils and packed in containers simulating those used for the products of Societe Anonyme Renaud Paris 1817 and with labels simulating those used on the products of such company, respondents' direct and implied statements to retailers purchasing such products for sale to the public resulted in their being advertised and sold with representations such as:

Famous in France

RENAUD'S Perfume

This fine perfume, famous for the subtlety of its scent, is now available in the three-ounce size (listed at 22.50) at about one-fifth of its value! The gift bottle, of simulated quartz, is done in excellent taste. Your choice of Sweet Pea, Orchid or Gardenia.

Respondents further contributed to the circulation of advertisements containing such representations by making advertising allowances to retailers to assist in defraying the cost of so advertising and representing the products in question.

PAR. 7. For many years a substantial part of the consuming public has had, and still has, a marked preference for imported perfumes manufactured or compounded in foreign countries, especially in France.

PAR. 8. There are among the competitors of respondents manufacturers and distributors of perfumes who truthfully advertise the nature, merit, and origin of their respective products and who refrain from advertising or representing through their labels or otherwise

that the perfumes so offered for sale by them have a value, merit, or origin that they do not have.

PAR. 9. The acts and practices of respondents in offering for sale, selling, and distributing perfumes and other products not manufactured by Societe Anonyme Renaud Paris 1817 but packaged in containers simulating those in which Renaud et Cie of America sold and distributed the products of Societe Anonyme Renaud Paris 1817, with labels identical or closely simulating those used on such products, have the capacity and tendency to, and did, mislead and deceive the purchasing public into believing that such perfumes were the products of the Societe Anonyme Renaud Paris 1817. The offering for sale, sale, and distribution of perfumes which were manufactured or compounded in the United States, in the aforesaid containers and with the aforesaid labels, have the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that such perfumes are manufactured or compounded in France and imported into the United States. As a result of such acts and practices substantial numbers of the purchasing and consuming public have purchased the products of respondents under such erroneous belief and trade in commerce has been diverted from competitors of respondents, and as a consequence substantial injury has been done, and is being done, to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition within the intent and meaning of the Federal 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, report of the trial examiner and exceptions thereto, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Renaud Sales Company, Inc., a corporation, and respondents, Murray W. Morin, Irving Unterman,

and Irving Lipschitz, individually and as officers of the corporate respondent, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of perfumes and other products in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist, directly or indirectly:

1. From using the terms "Paris," "Renaud Paris," "Renaud Paris 1817," "Made in France," or any other terms, words, symbols, or pictorial representations indicative of French or other foreign origin, on or in connection with products which are made or compounded in the United States; *provided, however*, that the country or countries of origin of the various ingredients of any such product may be stated when immediately accompanied with a statement that such product is made or compounded in the United States.

2. From using the term "Renaud Paris" or "Renaud Paris 1817" on or in connection with products not made or compounded by the Societe Anonyme Renaud Paris 1817; or using on or in connection with such products containers or labels simulating the containers or labels used on or in connection with products of the Societe Anonyme Renaud Paris 1817; or otherwise representing, importing, or implying in any manner that products not made or compounded by the Societe Anonyme Renaud Paris 1817 are made or compounded by or are the products of that company.

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

DOMESART CORPORATION AND JOSEPH ZWEIGENTHAL AND WILLIAM M. SAFRIN, INDIVIDUALLY AND AS OFFICERS OF DOMESART CORPORATION

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

Docket 3620. Complaint, Oct. 3, 1938—Decision, Sept. 17, 1941

Where a corporation, and the two individuals who were its only officers and directors, and represented the ownership of its capital stock, engaged in competitive interstate sale and distribution of candy through agents or operators whose names and addresses it obtained from mailing list brokers—

Made use of sales method which involved the mailing to prospective agents of catalogs describing its product, its list of premiums, and its sales plan, involving use of pull cards in sale and distribution of its said candy, under which the amount paid by the purchaser was dependent upon the number disclosed beneath the feminine name he selected from those displayed on the tabs, the purchaser pulling a certain tab received in addition to the candy the pen and pencil set described in the catalog, and the agent or operator had choice of certain premiums for his services or alternative privilege of retaining $2 of the amount collected for said candies, customarily sold at retail for considerably less than the price listed; and

Placed in the hands of others thereby plans, methods, and devices which involved games of chance, gift enterprise, or lottery schemes for use in the sale and distribution of its product, notwithstanding "Notice to Purchasers" in the catalog advising purchaser of privilege of buying a box of candy at the price listed which, as far as appeared, was never shown to any purchaser of a pull;

With the result that many persons were attracted by said sales method and the element of chance involved therein, and were thereby induced to purchase its merchandise in preference to that of its competitors, including those who do not use such or a similar method and are unwilling so to do, and from whom, as a result, trade was thereby unfairly diverted to it:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors and contrary to an established public policy of the United States Government, and constituted unfair methods of competition in commerce.

Before *Mr. Randolph Preston*, 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 Domesart Corpora-

tion, a corporation, and Joseph Zweigenthal and William M. Safrin, individually and as officers of Domesart Corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Domesart Corporation, is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 130 West Seventeenth Street, New York, N. Y. Individual respondents, Joseph Zweigenthal and William M. Safrin, are the sole stockholders in, directors of, and president and secretary-treasurer respectively of corporate respondent, and have their offices at the same address as said corporation. Respondents Zweigenthal and Safrin formulate, control, and direct the practices and policies of respondent Domesart Corporation. All of said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for some time last past have been, engaged in the sale and distribution of candy 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 aforesaid place of business in the State of New York to purchasers thereof located in the various other States of the United States, and in the District of Columbia at their respective points of location. There is now and has been for some time last past, a course of trade by said 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 individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, said candy by means of a game of chance, gift enterprise, or lottery scheme. Respondents distribute to purchasers and prospective purchasers certain advertising literature including, among other things, a catalog. One of respondents' assortments of candy consists of a number of boxes of candy and a fountain pen and pencil set, which said fountain pen and pencil set is to be given as a prize to the purchaser of one of said boxes of candy. Said assortment of candy is sold and distributed to the purchasing public

in the following manner: On one page of said catalog is printed and set out a list of the boxes of candy and the prices thereof. On the opposite page is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of a box of candy and the price thereof. The name of the box of candy and the price thereof are so concealed that purchasers and prospective purchasers of the tabs or chances are unable to ascertain which box of candy they are to receive or the price which they are to pay until after the tab is separated or removed from the card. When a purchaser has detached a tab and learned what box of candy he is to receive, and the price thereof, his name is written on the list opposite the named box of candy. The purchaser securing a tab calling for a certain box of candy is entitled to receive, and is given without charge, said pen and pencil set. Some of said boxes of candy have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he buys. The manner in which said pen and pencil set is distributed and the apparent greater values and regular prices of some of said boxes of candy as compared to the price the prospective purchaser would be required to pay in the event he secures one of said boxes of candy, induce the members of the purchasing public to purchase the tabs or chances in the hope that they will receive a box of candy and said pen and pencil set, or a box of candy of far greater value than the designated price to be paid for same. The facts as to whether the purchaser of one of said pull card tabs receives a box of candy and said pen and pencil set or receives a box of candy which has apparent greater value and regular price than the price designated for same on such tab, which of said boxes of candy a purchaser is to receive and the amount of money which a purchaser is required to pay are determined wholly by lot or chance.

When the person or dealer operating the above-described card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the sums to the respondents, the said respondents thereupon ship to said dealers the boxes of candy designated on said card, and the pen and pencil set to be given as a prize, as aforesaid, together with a premium for the dealer as compensation for operating the pull card and selling the said merchandise. Said dealer delivers the boxes of candy to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondents sell and distribute, and have sold and distributed, various assortments of boxes of candy and furnish, and have fur-

nished, various pull cards for use in the sale and distribution thereof by means of a game of chance, gift enterprise, or lottery scheme. Respondents' sales plans or methods vary in detail, but the above-described plan or method is illustrative of the principle involved.

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

PAR. 4. The sale of candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an additional article of merchandise without cost or a box of candy at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy in competition with the respondents, as above alleged, are unwilling to adopt and use said methods or any other methods involving a game of chance or the sale of a chance to win something by chance, or any method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' said methods and by the element of chance involved in the sale of such candy in the manner above described, and are thereby induced to buy and sell respondents' candy in preference to candy offered for sale and sold by competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents, because of said game of chance, has the tendency and capacity to, and does, unfairly divert trade and custom to the respondents from their said competitors who do not use the same or equivalent methods, and as a result thereof, substantial injury is being done, and has been done, by respondents to competition in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission 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 thereafter served its complaint, in this proceeding upon the respondents, Domesart Corporation, a corporation, and Joseph Zweigenthal and William M. Safrin, individually and as officers of the respondent corporation, charging them with unfair methods of competition 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 the complaint were introduced by attorneys for the Commission before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the complaint, the answer thereto, the testimony and other evidence, the trial examiner's 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. Respondent, Domesart Corporation, is a corporation organized in the year 1928 under the laws of the State of New York, with its principal place of business located at 130 West Seventeenth Street, in the city and State of New York. Respondents, Joseph Zweigenthal and William M. Safrin, are directors, and president and secretary and treasurer, respectively, of the corporate respondent, and share the offices of the corporate respondent. The individual respondents, since 1933, have formulated, controlled, and directed the practices of the corporate respondent. All of the capital stock of the respondent corporation is owned by William M. Safrin and Adele Zweigenthal, the mother of respondent Joseph Zweigenthal. Respondents, William M. Safrin and Joseph Zweigenthal, are the only officers and directors of respondent corporation.

PAR. 2. Respondent, Domesart Corporation, since the year 1928, has been engaged in the sale and distribution of candy, and causes its 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, Domesart Corporation, 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, Domesart Corporation, sells and distributes its candy through agents located in various States of the United States whose names and addresses it obtains through mailing-list brokers. Catalogs describing its product, sales method including pull card, and its list of premiums, are mailed to prospective agents.

PAR. 5. The pull cards included in the catalogs bear 16 seals or pull-tabs, each of which has a slit across the top to facilitate its removal from the card. On the face of each tab is printed a feminine name, and on the reverse thereof is a number which is not disclosed until the tab has been detached and which indicates the price to be paid to the agent by the person pulling the tab. The catalog contains a list of respondent's candies and a statement indicating the amounts to be paid, therefor, which amounts correspond with the numbers appearing on the reverse of the tabs, one of these being for 10 cents, another for 39 cents, and the remaining 14 ranging from 44 to 49 cents. The purchaser pulling the 49-cent tab receives, in addition to the candy and without further charge, the pen and pencil set described in the catalog. The agent records the name of each customer and the number revealed by the detached pull-tab, which the customer retains as his receipt when he has paid the amount indicated thereon. After all the pulls have been sold, the agent remits the amount collected, $6.99, to respondent corporation, whereupon, the 16 boxes of candy described in the catalog, together with the pen and pencil set and the premiums selected by the agent as compensation for his services are mailed to the agent. If he so desires, the agent may retain, in lieu of the premiums, $2 of the amount collected, and remit the balance, $4.99, to the respondent. The pen and pencil set given as a prize to the person pulling the tab bearing the figure 49 cents is sold at wholesale for 16 cents. The candies sold by respondent are customarily sold at retail for considerably less than the price listed.

PAR. 6. The sheet of pull tabs is pasted on the upper half of page 19 of the catalog, and immediately thereunder appears a notice which reads:

> Notice to purchasers—On the back of each slip is printed the price of a box of candy. If after deliberation you decide that you want to buy the box of candy, pay the holder of this book the price shown on the slip. If you don't want the box of candy you need not buy it.

There is no testimony that any purchaser of a pull was ever shown this notice. One of the respondent's agents testified that every purchaser of a pull paid the price indicated on the tab.

PAR. 7. Respondent, Domesart Corporation, by its sales methods hereinbefore described, has placed and now places in the hands of others, plans, methods, and 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 such plans, methods, and devices such merchandise is distributed to the ultimate consumer wholly by lot or chance.

PAR. 8. Many persons have been and are attracted by the sales method employed by respondent corporation in the sale and distribution of its candy and by the element of chance involved therein, and have been thereby induced to purchase respondent's merchandise in preference to merchandise offered for sale by respondent's competitors who do not use the same or a similar method.

PAR. 9. During all of the time herein mentioned, the corporate respondent has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution in commerce of candy similar to that sold by respondent 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 candy, 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 corporate 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 of America, 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, the testimony, and other evidence introduced before duly appointed trial examiners of the Commission designated by it to serve in this proceeding in support of the allegations of the complaint, the trial examiner's report thereon, and brief filed on behalf of the Commission; and the Commission having made its findings as to the facts

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

It is ordered, That respondent Domesart Corporation, a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, and respondents, Joseph Zweigenthal and William M. Safrin, individually and as officers of said respondent corporation, 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 and distributing said candy or other merchandise to the public.

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

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

Syllabus

IN THE MATTER OF

EARL ARONBERG, TRADING AS POSITIVE PRODUCTS COMPANY AND REX 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 3856. Complaint, July 20, 1939—Decision, Sept. 17, 1941

Where an individual engaged in interstate sale and distribution of his medicinal preparations intended for use in the treatment of delayed menstruation, designated as "Triple X Relief Compound," and "Perio Pills," known also as "Reliable Perio Compound" and "Perio Relief Compound"; by means of advertisements disseminated through the mails and in newspapers and periodicals, directly or by implication—

(a) Represented that his said products constituted competent and effective remedies and treatments for delayed menstruation, and that they were harmless and safe for use, facts being that, while they possessed emmenagogue properties, they did not constitute competent and effective remedies or treatments for delayed menstruation, nor were they harmless or safe for use, but contained aloes, extract of cotton root and oil of savin in sufficient quantities, even where used in dosage prescribed, to cause such harmful results as gastro-intestinal disturbances and excessive purgation, and, by reason of their ergotin content, as well as the quinine sulphate in said "Triple X" preparation, might also cause severe toxix and circulatory conditions particularly hazardous in the case of pregnancy; and danger inherent in said preparations was further augmented by their indiscriminate sale to the lay public for use without medical supervision, and the taking by many users, because of ignorance or alarm, of excessive and too frequent doses; and

(b) Failed to reveal in said advertisement that prescribed use of said preparations might result in serious injury to health, and failed sufficiently to disclose harmful potentialities of such products in statements which appeared only on their labels, which, as a result of change made following the initiation of the Commission's investigation, read: "Not to be taken in pregnancy as it may cause discomfort. If in doubt consult a physician. If the pills cause excessive bowel action, they should be stopped temporarily. This medicine is a laxative and may irritate piles. Laxatives should never be used in cases of nausea, vomiting, abdominal pain or other possible sign of appendicitis," and which the many purchasers by mail had no opportunity to observe until after they had received said products;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that his preparations possessed therapeutic values which they did not in fact possess, and that they were safe for use, when such was not the fact, and to cause such public to purchase substantial quantities of his preparations because 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.

As respects evidence of experiments performed on rats and rabbits, introduced to support claim that seller's products, offered for delayed menstruation, did not possess harmful potentialities, the Commission found that such experiments were inconclusive, did not afford a substantial basis for his contentions, and lacked sufficient probative value to overcome evidence introduced at the instance of the Commission, which included the testimony of outstanding authorities in the field of gynecology and obstetrics.

Before *Mr. Randolph Preston* and *Mr. William C. Reeves*, trial examiners.

Mr. R. P. Bellinger for the Commission.

Jacobson, Merrick, Nierman & Silbert, 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 Earl Aronberg, an individual trading as Positive Products Company and Rex Products Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Earl Aronberg, is an individual trading as Positive Products Co. and Rex Products Co. with his office and principal place of business located at 6603 Cottage Grove Avenue, Chicago, Ill. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of various medicinal preparations in commerce among and between the various States of the United States and in the District of Columbia.

Among the preparations so sold and distributed by the respondent are certain medicinal preparations for the relief of delayed menstruation, designated as "Triple-X Compound" and "Reliable Perio Compound," also known as "Perio Pills" and "Perio Relief Compound."

Respondent causes said preparations when sold to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparations, by the United States mails, by in-

sertions in newspapers, and periodicals, having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparations; and has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Unnaturally DELAYED WOMEN!

We Can't Prove that TRIPLE-X

Relief Compound Brings You Relief

——But You Can!

Why be satisfied with anything else but *genuine* Triple-X Relief Compound? Thousands of women everywhere have used this time-tested compound for relieving stubborn, abnormally delayed, suppressed and long-overdue periods. For functional cases of longer standing or more stubborn abnormal delays, we offer PERIO RELIEF COMPOUND. Scores say they have brought Pleasant and Satisfactory relief. Mrs. J. K. writes:

"2 periods overdue; relief prompt." Mrs. S. B. H. writes: "I was 3 months abnormally late. Perio Pills worked fine." Hundreds of wonderful letters on file. Don't be concerned! Lose no time in sending coupon below. Either compound sent with absolute satisfaction guaranteed on first order or money refunded.

A Modern Aid For Many Unnaturally

DELAYED WOMEN

(Picture of one woman saying
to another—

But my dear, haven't you heard
of Perio-Relief Compound?)

A Time-Tested Preparation

For countless women such unnatural menstrual delay is often needless. To them a simple preparation is offered, which in many cases of abnormally suppressed, overdue, scant and painful periods has helped start the function, thus bringing gratifying relief. It is called PERIO RELIEF COMPOUND and may be taken at home, without, in most instances, interfering with daily activities.

Do as Many Other Women do

Thousands of modern-minded women have used PERIO RELIEF COMPOUND: a large number having heard about it through friends who have been helped and are therefore grateful. Some have secured relief after a delay of as much as two months, while others write to tell us how pleased they are with reputed effectiveness and say it is worth many times the cost.

PAR. 3. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set-out herein, respondent represents that his medicinal preparations known and designated as "Triple-X Compound" and "Reliable Perio Compound," also known as "Perio Pills" and "Perio Relief Compound," are competent and effective remedies for delayed menstruation; that said preparations are harmless and will accomplish results without pain or inconvenience.

PAR. 4. In truth and in fact said preparations are not a competent and efficient remedy for delayed menstruation and will not accomplish results without pain or inconvenience. Furthermore, said preparations are not safe and harmless in that "Triple-X Compound" contains aloes, extract cotton root, ergoti ferrous sulphate, extract black hellebore, quinine sulphate and oil savin, and said preparation "Reliable Perio Compound," also known as "Perio Pills" and "Perio Relief Compound" contains extract cotton root, ergotin, iron sulphate extract, extract black hellebore, aloes purified and oil savin. The aforesaid drugs are present in said preparations in quantities sufficient to cause serious and irreparable injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparations, under the conditions prescribed in said advertisements, or under such conditions as are customary and usual, may produce a very severe circulatory condition by constriction of blood vessels and contraction of involuntary muscles tending to produce abortion with violent poisonous effects upon the human system, and liable to produce severe toxic conditions, such as hemorrhagic diarrhea, and in some instances producing a gangrenous condition in the lower limbs, and in some instances resulting in either the loss of limbs or in death of the individual.

PAR. 5. In addition to the representations above set forth, the respondent is also engaged in the dissemination of false advertisements in that said advertisements fail to reveal that the use of said preparations, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, 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 respondent's medicinal preparations containing injurious drugs.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 20, 1939, issued, and subsequently served, its complaint in this proceeding upon the respondent, Earl Aronberg, an individual trading as Positive Products Co. and as Rex Products Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by R. P. Bellinger, attorney for the Commission, and in opposition thereto by David Silbert, attorney for respondent, before trial examiners of the Commission theretofore duly designated by it, and such 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, answer, testimony and other evidence, report of the trial examiners upon the evidence and the exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument; and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest 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, Earl Aronberg, is an individual trading as Positive Products Co. and as Rex Products Co., with his office and principal place of business located at 6603 Cottage Grove Avenue, Chicago, Ill. Respondent is now, and for more than three years last past has been, engaged in the sale and distribution of certain

medicinal preparations intended for use in the treatment of delayed menstruation, such preparations being designated by the respondent as "Triple-X Relief Compound" and "Perio Pills," the latter being known also as "Reliable Perio Compound" and as "Perio Relief Compound."

PAR. 2. Respondent causes his preparations, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and for more than three years last past has maintained, a course of trade in his 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 business the respondent has disseminated, and has caused the dissemination of, advertisements concerning his preparations 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, advertisements concerning his preparations by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations appearing in such advertisements, disseminated and caused to be disseminated by the United States mails and by advertisements in newspapers and periodicals, are the following:

Unnaturally DELAYED WOMEN!
We Can't Prove that TRIPLE-X
Relief Compound Brings You Relief
——But You Can!

Why be satisfied with anything else but *genuine* Triple-X Relief Compound? Thousands of women everywhere have used this time-tested compound for relieving stubborn, abnormally delayed, suppressed and long-overdue periods. For functional cases of longer standing or more stubborn abnormal delays, we offer PERIO RELIEF COMPOUND. Scores say they have brought Pleasant and Satisfactory relief. Mrs. J. K. writes: "2 periods overdue; relief prompt." Mrs. S. B. H. writes: "I was 3 months abnormally late. Perio Pills worked fine." Hundreds of wonderful letters on file. Don't be concerned! Lose no time in sending coupon below. Either compound sent with absolute satisfaction guaranteed on first order or money refunded.

SEND ONLY $1.00 for full treatment of Triple-X Relief Compound; $2.50 for 3 boxes. Perio Relief Compound (for very stubborn cases) $2.00; 2 boxes $3.50. C. O. D. 15¢ extra. Same day shipment in plain sealed wrapper. Also FREE Catalog of Hygienic Articles. Send coupon now.

A Modern Aid for Many Unnaturally
DELAYED WOMEN
A Time-Tested Preparation

For countless women, such unnatural menstrual delay is often needless. To them a simple preparation is offered, which in many cases of abnormally suppressed, overdue, scant and painful periods has helped start the function, thus bringing gratifying relief. It is called PERIO RELIEF COMPOUND and may be taken at home, without, in most instances, interfering with daily activities.

Pure Vegetable Ingredients

PERIO RELIEF COMPOUND contains no habit-forming drugs, but is made almost solely of pure vegetable ingredients, such as may be used by many physicians in their practice. Many users say they would never be without it. Some keep it always on hand and use it just before the time so as to help bring on a more full, unsuppressed function.

DO AS MANY OTHER WOMEN DO

Thousands of modern-minded women have used PERIO RELIEF COMPOUND; a large number having heard about it through friends who have been helped and are therefore grateful. Some have secured relief after a delay of as much as two months, while others write to tell us how pleased they are with its reputed effectiveness and say it is worth many times the cost.

GOOD NEWS TO MANY WOMEN!

PERIO RELIEF COMPOUND is made to quickly and harmlessly aid most abnormally delayed functions, in cases where no organic disorder is present.

PAR. 4. Through the use of these statements and representations and others of similar import, the respondent has represented, directly or by implication, that his preparations constitute competent and effective remedies and treatments for delayed menstruation, and that the preparations are harmless and safe for use.

PAR. 5. The formulas for the preparations are as follows:

TRIPLE-X

Each capsule contains:	
Aloes	¾ Gr.
Ergotin	1 "
Ext. Cotton Root	1 "
Ext. Black Hellebore	1 "
Oil Savin	¼ Min.
Ferrous Sulphate	1 Gr.
Quinine Sulphate	½ "

PERIO PILLS

Each pill contains:	
Aloes Purified	1 Gr.
Ergotin	1 "
Ext. Cotton Root	1 "
Ext. Black Hellebore	1 "
Oil Savin	¼ Min.
Ferrous Sulphate	1 Gr.

Respondent's directions for the use of the preparations were originally as follows:

For Triple-X: "One capsule four times a day, that is, one after each meal and one before bedtime, the last one to be taken with a large glass of water, to-

gether with a tablespoon full of epsom salts, that is, the epsom salts is to be in the large glass of water. The latter is merely suggested."

For Perio Pills: "The average adult dose is one pill before each meal and one before retiring, and, in addition, one of the pink capsules (Triple-X), which is contained in the box, is to be taken at night before retiring."

Subsequent to the Commission's investigation the directions were changed by respondent to read as follows:

The average adult dose is one pill with water four times daily before each meal and before retiring, not to be used continuously for more than ten days. Allow one week to intervene before resuming. Caution: Not to be taken in pregnancy as it may cause discomfort. If in doubt consult a physician. If the pills cause excessive bowel action, they should be stopped temporarily. This medicine is a laxative and may irritate piles. Laxatives should never be used in cases of nausea, vomiting, abdominal pain or other possible sign of appendicitis.

PAR. 6. Delayed menstruation is frequently due to pregnancy. In those cases which are due to causes other than pregnancy emmenagogue treatment is seldom efficacious or necessary. In such cases the menstrual delay is usually but a symptom of some other dysfunction in the body or is due to some external cause, such as fright or shock, and when such dysfunction is corrected or such cause removed, the normal menstrual flow usually resumes. In those exceptional cases where physicians prescribe emmenagogues such action is taken only after diagnosis, and the treatment is under the supervision of the physician.

PAR. 7. While respondent's preparations possess emmenagogue properties, they do not constitute competent or effective remedies or treatments for delayed menstruation. Nor are they harmless or safe for use. The ingredients aloes, extract of cotton root and oil of savin are drastic cathartics and gastro-intestinal irritants. They tend to cause gastro-intestinal disturbances and excessive purgation, resulting in severe toxic conditions, including hemorrhagic diarrhea. The preparations, by reason of their ergotin content (and in the Triple-X preparation the quinine sulphate also), may also cause a severe circulatory condition by the constriction of the blood vessels and the contraction of the involuntary muscles, including the muscles of the uterus. This is particularly hazardous in the case of pregnancy, as the contraction of the uterus may precipitate an abortion, which may result in violent poisonous effects upon the system.

PAR. 8. The ingredients referred to above are present in the preparations in quantities sufficient to cause such harmful results even in those cases where the preparations are used in the dosage prescribed by respondent. The record discloses, moreover, that where, as in this case, such preparations are sold indiscriminately to the lay public for use without medical supervision, many users, because of ignorance or

of alarm over their condition, take excessive and too-frequent doses, thus augmenting the danger inherent in the preparations.

Respondent insists that the statements appearing in his current directions are sufficient to obviate the danger of excessive use of the preparations, and to apprise purchasers that the preparations should not be used in the event of pregnancy. The Commission finds, however, that such statements are insufficient to disclose the harmful potentialities of the preparations. Moreover, such statements appear only on the labels of the preparations and do not appear in respondent's advertisements. Many of respondent's sales are made through the mails, and the purchasers have no opportunity to observe such statements until after they have received the preparations.

PAR. 9. In support of his claims that the preparations do not possess the harmful potentialities referred to above, the respondent introduced in evidence, in addition to the testimony of certain expert witnesses, the results of certain experiments performed on rats and rabbits. It is questionable, however, whether the number of animals used in the tests was sufficient to afford a substantial scientific basis for the conclusions contended for by respondent. Moreover, it appears from the record that the results of these tests cannot be accepted as a positive indication of the effects of the preparations on human beings, there being substantial differences in the degrees of susceptibility of animals and human beings.

The Commission finds that while these experiments may be to a limited extent indicative of the effects which may be expected to follow the use of the preparations, the experiments are inconclusive and do not afford a substantial basis for respondent's contentions. Their probative value is insufficient to overcome the evidence introduced at the instance of the Commission, which included the testimony of certain expert witnesses who are outstanding authorities in the field of gynecology and obstetrics.

PAR. 10. The Commission therefore finds that respondent's representations with respect to his preparations are misleading and deceptive and constitute false advertisements. The Commission finds also that respondent's advertisements are false for the further reason that they fail to reveal that the use of the preparations under the conditions prescribed in the advertisements, or under such conditions as are customary or usual, may result in serious injury to the health of the user.

PAR. 11. The Commission further finds that the use by respondent of these false advertisements 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 preparations possess

therapeutic values which they do not in fact possess, and that the preparations are safe for use, when such is not the fact, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's preparations as a result of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiners upon the evidence and the exceptions thereto, briefs in support of and in opposition to the complaint, and 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, Earl Aronberg, individually and trading as Positive Products Co. and as Rex 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 preparations designated as "Triple-X Relieve Compound" and "Perio Pills," the latter being known also as "Reliable Perio Compound" and as "Perio Relief Compound," 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 by implication, that said preparations constitute competent or effective remedies or treatments for delayed menstruation; that said preparations are harmless or safe for use; or which advertisement fails to reveal that the use of said preparations may cause gastro-intestinal disturb-

ances and severe toxic and circulatory conditions, and in the case of pregnancy, may produce violent poisonous effects upon the 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 preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fails to reveal that the use of said preparations may cause gastro-intestinal disturbances and severe toxic and circulatory conditions, and in the case of pregnancy, may produce violent poisonous effects upon the system.

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

W. S. McCLYMONDS AND G. L. McCLYMONDS, DOING BUSINESS AS OXOL LABORATORIES

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

Docket 4208. Complaint, July 31, 1940—Decision, Sept. 17, 1941

Where two individuals engaged in manufacture and interstate sale and distribution of their "Trox Tablets," ingredients of which included powdered extract triticum repens, oxyquinoline sulphate, charcoal, starch, and sugar of milk; by means of advertisements disseminated through the mails and otherwise—

Falsely represented that said preparation was a cure or remedy for various diseases and ailments of the kidneys and prostate gland, and constituted an effective treatment therefor; facts being tablets in question were without therapeutic value; modern pharmacologists ascribe no therapeutic properties to said first ingredient or conch grass, second ingredient is a decidedly less efficient antiseptic than phenol, with amount contained in said tablets so insignificant that no beneficial action would result therefrom for said ailments, and other ingredients are of no medical value;

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 such erroneous belief, to purchase substantial quantities of their said "Trox Tablets":

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. Donovan R. Divet for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that W. S. McClymonds and G. L. McClymonds, individuals, doing business as Oxol 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 complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, W. S. McClymonds and G. L McClymonds, are individuals doing business under the firm name and style of Oxol Laboratories with their principal office and place of business at 1042-48 Santa Fe Drive, Denver, Colo.

Respondents are now and for more than 2 years last past have been engaged in the business of manufacturing, selling, and distributing a drug preparation designated as "Trox Tablets." The respondents cause said preparation when sold, to be shipped from their said 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 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. 2. In the course and conduct of their aforesaid business, respondents have disseminated, and are now disseminating and have caused and are now causing, the dissemination of false advertisements concerning their said preparation, "Trox Tablets," 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 their said preparation; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said preparation by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid, are the following:

Prostate and Kidney * * * sufferers? Amazing results with our ten day treatment with Trox Tablets. Quick relief or your money back * * *

Prostate and Kidney sufferers. Use Trox Tablets for instant relief; money back offer.

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, respondents represent and have represented that their said preparation, "Trox Tablets," is a cure or remedy for varous diseases and ailments of the kidneys and of the prostate gland, and constitutes a competent and effective treatment for such diseases and ailments.

PAR. 4. The aforesaid statements and representations by respondents relating to said preparation, to wit, "Trox Tablets," are exaggerated, misleading, and untrue. In truth and in fact, said preparation, "Trox Tablets," has no therapeutic value in the treatment of diseases and ailments of the kidneys or prostate gland and does not constitute a cure

or remedy for any ailment or disease of the kidneys or prostate gland. Said preparation has no value with respect to relieving any such disease or ailment or any symptom thereof.

PAR. 5. The use by the respondents of the aforesaid false and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said preparation has had and now has the capacity and tendency to, and does, mislead and deceive a substantial number of the members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements, representations, and advertisements are true and induce the purchase of substantial quantities of respondents' said preparation because of said erroneous and mistaken belief.

PAR. 6. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 31st day of July 1940, issued and served its complaint in this proceeding upon the respondents, W. S. McClymonds and G. L. McClymonds, individuals, doing business as Oxol Laboratories, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 21, 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 Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, 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 respondents, W. S. McClymonds and G. L. McClymonds, are individuals and for more than 2 years prior to May 1, 1941, did business under the firm name and style of Oxol Laboratories, with their office and principal place of business located at 1042–48 Santa Fe Drive, Denver, Colo.

For more than 2 years prior to May 1, 1941, the respondents were engaged in the business of manufacturing, selling, and distributing a drug preparation designated as "Trox Tablets," the formula for which is:

Powdered extract triticum repens	4 grs.
Oxyquinoline sulphate	1/20 gr.
Charcoal	1 gr.
Starch	3/4 gr.
Sugar of milk	1/4 gr.

During the time that respondents were so engaged in said business, they caused said preparation when sold to be shipped from their said place of business in the State of Colorado to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondents, at all times mentioned herein prior to May 1, 1941, 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. 2. In the course and conduct of their aforesaid business, respondents disseminated and caused the dissemination of false advertisements concerning their said preparation, "Trox Tablets," by means of the United States mails and by 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 preparation by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said produce 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, were the following:

Prostate and kidney—sufferers? Amazing results with our ten-day treatment with Trox Tablets. Quick relief or your money back * * *

Prostate and kidney sufferers. Use Trox Tablets for instant relief; money back offer.

PAR. 3. Through the use of the aforesaid statements and representations, and other representations of similar import or meaning not herein set out, respondents represented that their said preparation,

"Trox Tablets," was a cure or remedy for various diseases and ailments of the kidneys and of the prostate gland, and constituted a competent and effective treatment for such diseases and ailments.

PAR. 4. The aforesaid statements and representations by respondents relating to said preparation, "Trox Tablets," were exaggerated, misleading, and untrue. In truth and in fact, no therapeutic properties are ascribed to triticum repens (conch grass) by modern pharmacologists. Oxyquinoline sulphate is an antiseptic decidedly less efficient in its killing power than phenol. The standard dose of oxyquinoline sulphate is 5 to 15 grains, and the amount of oxyquinoline sulphate contained in "Trox Tablets" is so insignificant that no beneficial action would result from its use in kidney or prostate disorders. The other ingredients of "Trox Tablets," to wit, starch, sugar of milk, and charcoal, are of no medical value. "Trox Tablets" have no therapeutic value, and the claims made by respondents as to the therapeutic value of "Trox Tablets," as hereinabove set forth, are false and misleading in their entirety.

PAR. 5. The use by respondents of the aforesaid false and misleading statements, representations, and advertisements, disseminated as aforesaid, has had the capacity and tendency to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading statements, representations, and advertisements were true, and has induced a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said "Trox Tablets."

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 Richard P. Whiteley, assistant chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the 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, W. S. McClymonds and G. L. McClymonds, individually and doing business as Oxol Laboratories, 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 product "Trox Tablets," 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 advertisements represents, directly or through inference:

(*a*) That respondents' product "Trox Tablets" constitutes a cure or remedy for diseases and ailments of the kidneys or of the prostate gland, or constitutes a competent or effective treatment therefor.

(*b*) That respondents' product "Trox Tablets" possess any therapeutic value in the treatment of diseases and ailments of the kidneys or of the prostate gland.

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, "Trox Tablets," 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

THE BRABANT NEEDLE 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 4212. Complaint, Aug. 2, 1940—Decision, Sept. 17, 1941

Where a corporation engaged in importing needles and needle threaders from England, Germany, Holland, and Czechoslovakia, and in interstate sale and distribution thereof—

(*a*) Packaged needles—the container pads or flaps of which, at time of importation and pursuant to the laws of the United States, bore the name of the country of origin—in a manner which concealed said name, and in booklets or other containers which usually bore the words "Printed in U. S. A.," and sold and distributed its needles, thus packaged, without disclosure of fact that they were made in Germany or other foreign country, to dealers for resale, and to manufacturers, dealers, and others for distribution to the public as part of a sales promotion plan to act as sales reminders and create good will for the supplying concern; and

(*b*) Made use of such statements, in invoices, letterheads, and other materials, as "Factory Lion Works, George St. Redditch—England U. S. Factory and Sales Rooms 47 Great Jones Street, New York, N. Y.";

The facts being needles of English manufacture are considered by trade and consuming public as superior in quality to those manufactured in Germany, Holland, or Czechoslovakia; there is a prejudice on the part of a substantial part of said purchasing public against products manufactured in Germany; and said corporation had not for many years, and did not then, own, control, or operate any needle factory in the United States or in England, and was not a manufacturer, for dealing with whom there is a decided preference on the part of a substantial portion of the purchasing public, as affording, in its belief, a saving of the middleman's profit and other advantages;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that its needles were of domestic or English origin and that it owned or controlled factories in which such needles were produced, and with result, as consequence of said erroneous belief, that a substantial portion of said public was induced to purchase its products, and there was thereby placed in the hands of dealers a means whereby they were enabled to mislead and deceive members of the purchasing public as to the source of such products and the business status of said company:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Mr. William Kessler, of New York City, for respondent.

COMPLAINT

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

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

PARAGRAPH 1. Respondent, The Brabant Needle 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 at 47 Great Jones Street, New York, N. Y.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the business of importing, packaging, selling, and distributing needles and needle threaders. Respondent causes its said products, when sold, to be transported from its place of business in the State of New York to purchasers thereof, located in various other States of the United States and in the District of Columbia. At all times mentioned herein, respondent has maintained a course of trade in said products, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent imports said needles in pads or flaps from Germany and other foreign countries; the name "Germany" indicating the country of the origin of some of such needles is stamped or printed upon the back of each pad or flap. In marketing certain of its products, respondent combines various pads or flaps of needles into booklets, or containers, sometimes in combination with other articles, such as needle threaders. Respondent prepares such booklets or containers by securely pasting the pads or flaps of needles to the inside covers of the booklets or containers in such a manner that the backs thereof are entirely concealed and any printing thereon, indicating the origin of said needles, is completely hidden from view. Such booklets, or containers, are thereupon sold and distributed by respondent in commerce, as aforesaid, without any marking thereon whatsoever, visible to the purchaser, indicating that such needles are of German origin.

PAR. 4. In the further course and conduct of its business, and in furtherance of the sale of its products, the respondent, during the times mentioned herein, has printed, or caused to be printed, upon the booklets, or containers, of its needles, the words: "Printed in U. S. A." and "U. S. A." and has caused to be printed on its letterheads, invoices, and bill heads, circulated, and caused to be circulated, by United States

mails, and by other means among purchasers and prospective purchasers, the following statements and representations:

The Brabant Needle Company, Inc.
Factory, Lion Works, George St.,
Redditch, England
U. S. Factory and Sales Rooms
47 Great Jones Street,
New York, N. Y.

The aforesaid statements, used by respondent, serve as representations to members of the purchasing public that its needles are of domestic or English origin and that it owns, operates, or controls factories located in England and in the United States, wherein the needles, which it sells and offers for sale, are made and manufactured.

PAR. 5. In truth and in fact, none of the needles packaged as aforesaid, and sold by respondent, are manufactured in the United States or England, and the respondent has not during any of the times mentioned herein owned, operated, or controlled any factory wherein such needles sold by it were manufactured either in England, the United States, or elsewhere. All of said needles are imported by respondent from foreign countries other than England for purpose of resale.

PAR. 6. For many years last past, there has been maintained among domestic manufacturers and importers an established custom and practice of marking products of foreign origin in such a manner as to indicate that such products are, in fact, of foreign, rather than domestic, origin. The purchasing public is familiar with and relies upon such custom and practice, and when products bear no marking indicating that they are of foreign origin, the purchasing public assumes that such products are of domestic origin. There is, among a substantial portion of the purchasing public, a decided preference for products which are manufactured in the United States or England over products manufactured in Germany or other foreign countries.

PAR. 7. There also is, and has been during all of the time mentioned herein, a preference on the part of a substantial portion of the purchasing public for purchasing products directly from the manufacturer. There is and has been during all of such time a belief that a saving of the middleman's profit could be obtained and that other advantages would accrue by purchasing directly from the manufacturer, and that dealing directly with a manufacturer is preferable and more advantageous than dealing with purchasers for resale.

PAR. 8. The practice of the respondent in packaging its products in such a manner that the origin of said products is entirely concealed from the view of the purchaser, and of printing on said booklets and containers the words, "Printed in U. S. A." and "U. S. A.," without

disclosing to the prospective purchasers the fact that certain of its products offered for sale are made in Germany, and the representations that it owns or controls factories in England and the United States, has a tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that a portion of its products are of domestic or English origin and that it owns or controls the factories manufacturing all of its said products. As the result of said 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.

Through the practices herein set forth, the respondent places in the hands of dealers a means and instrumentality whereby such dealers have been and are enabled to mislead and deceive members of the purchasing public as to the source or origin of such products and as to the business status of respondent.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 2, 1940, issued and subsequently served its complaint in this proceeding upon respondent, The Brabant Needle 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 an attorney for the Commission and in opposition to the allegations of the complaint by an attorney for the respondent 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, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Brabant Needle Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of New York and having its office and principal place of business at 47 Great Jones Street, New York, N. Y. The respondent is now and for more than 1 year last past has been engaged in the business of importing, packaging, selling, and distributing needles and needle threaders.

PAR. 2. Respondent causes its said products, when sold, to be transported from its place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. At all times mentioned in the complaint respondent has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent imports needles and needle threaders from England, Germany, Holland, and Czechoslovakia. At the time of importation into this country the said needles are arranged in pads or flaps and, pursuant to the laws of the United States, the name of the country of origin is printed or stamped upon the pads or flaps in which the needles are packaged. In some instances the name of the country of origin appears upon the face of the pad or flap and in other instances upon the back thereof. In selling and distributing the needles so imported, respondent frequently combines a number of the pads or flaps of needles, sometimes with other articles such as needle threaders, into one package by securely pasting said pads or flaps into a booklet or other container in which form they are sold and distributed. In those instances where the name of the country of origin of the imported needles appears upon the back of the pad or flap in which they are packaged, the name of such country of origin is effectively concealed when such pad or flap is pasted into a booklet or container, and is not visible to any purchaser or prospective purchaser.

PAR. 4. Needles of English manufacture are considered by the trade and the consuming public to be superior in quality to those manufactured in Germany, Holland, or Czechoslovakia, and there is a prejudice on the part of a substantial part of the purchasing public against products manufactured in Germany. In addition to frequently packaging needles imported from Germany or other foreign country in booklets or other containers in a manner which conceals the name of the country of origin, as aforesaid, the respondent packages such needles in booklets or other containers which usually bear

the words "Printed in U. S. A." Respondent sells and distributes the needles packaged in the manner stated to dealers, for resale to the public, and also to manufacturers, dealers, and others who distribute them to members of the public without charge as a part of a sales promotion plan by such manufacturer, dealer, or other purchaser. When so distributed they are intended to act as sales reminders and to create good will for the concern which supplied them as a gift.

PAR. 5. In the course and conduct of its business, as aforesaid, respondent has used invoices, letterheads, and other material bearing statements such as:

Factory Lion Works, George St.,
Redditch—England
U. S. Factory & Sales Rooms
47 Great Jones Street
New York, N. Y.

The respondent has not for many years, and does not now own, control, or operate any factory in the United States or England in which it manufactures needles. Many years ago the respondent owned an English concern known as "Brabant Needle Co., Ltd.," and is now the exclusive distributor for the products of that company in the United States and Canada. For a number of years last past, however, respondent has not manufactured any of the needles offered for sale and sold by it. There is a decided preference on the part of a substantial portion of the purchasing public for dealing directly with the manufacturer of the products purchased because of a belief that by purchasing directly from the manufacturer a saving of the middleman's profit is accomplished and that other advantages accrue through such method of purchase.

PAR. 6. The acts and practices of respondent in packaging needles imported from Germany and other foreign countries in such a manner that the name of the country of origin of such needles is frequently concealed from the view of the purchaser, and the placing upon the booklets and other containers in which said needles are packaged the words "Printed in U. S. A." without disclosing to purchaser or prospective purchasers the fact that certain of said needles are made in Germany or other foreign countries, and the acts and practices of respondent in representing that it owns, operates, or controls factories in the United States and in England, have a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's needles are of domestic or English origin and that it owns or controls factories in which such needles are produced. As a result of said 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. Through the aforesaid acts and practices the respondent places in the hands of dealers a means and instrumentality whereby such dealers have been and are enabled to mislead and deceive members of the purchasing public as to the source of origin of such products and the business status of respondent.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken in support of the allegations of said complaint and in opposition thereto, before an examiner of the Commission theretofore duly designated by it, brief filed 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, The Brabant Needle Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale and distribution of needles, needle threaders, or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing or implying that respondent owns, controls, or operates a factory in which the needles which it offers for sale, sells, and distributes are made, or representing or implying in any manner that needles or other products not manufactured by respondent are manufactured by it.

2. Concealing, erasing, or removing from imported needles, needle threaders, or other products the legend "Germany," "Made in Germany," or other marking showing the country of origin of such products: *Provided, however*, That this shall not prevent such concealment, erasure or removal of the markings showing the country of origin of such products as is reasonably necessary in the packaging,

assembling, or other handling of such products if the respondent affirmatively and clearly discloses on or in immediate connection with such products their German or other foreign origin.

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

IN THE MATTER OF

J. V. CORDES AND MRS. J. H. CORDES, DOING BUSINESS AS MARTHA BEASLEY ASSOCIATES

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

Docket 3841. Complaint, June 30, 1939—Decision, Sept. 18, 1941

Where two individuals engaged in interstate sale and distribution of certain medicinal preparations intended for use in the treatment of delayed menstruation, one being designated as "Martha Beasley's Compound Formula No. 2" and the other as "Martha Beasley's Compound Formula No. 3"; by means of advertisements disseminated through the mails and in periodicals, directly or by implication—

(*a*) Represented that their preparations constituted competent and effective treatments for delayed menstruation, were recommended by physicians generally, and were safe for use, through such statements as "Get a modern woman's remedy. Ladies, when troubled with delay, get our Special Relief Compound at once. Don't wait longer. Has rapidly relieved many unusual, long overdue or past due, suppressed, late appearing abnormally delayed periods in 2 to 4 days without pain or inconvenience," and "A preferred favorite time-tested prescription of many doctors";

The facts being active ingredients in products in question were apiol, oil of savin, aloin, and ergotin, first three of which had long been recognized by pharmacologists and physicians generally as gastrointestinal irritants, aloin in particular being regarded as a drastic cathartic; under directions prescribed or suggested, daily dosage of last-named drug would be four times dose of the United States Pharmacopoeia, which dosage, particularly when added to the apiol and savin ingredients, is likely to produce gastrointestinal disturbances resulting in nausea and vomiting, with pelvic congestion, including congestion of the uterus, and possibly resulting and leading to excessive hemorrhage therefrom; while in the case of pregnancy, use of their said preparations had a tendency to cause also contraction of uterus, sometimes producing abortion and causing uterine infection, which might also extend to other pelvic and abdominal structures and result in septicemia or blood poisoning; and while drugs which constituted active ingredients of their said preparations possess emmenagogue properties, they are not competent or effective treatments for delayed menstruation, nor recommended by physicians generally, being used only after careful diagnosis and under supervision of the physician in those exceptional cases in which some of said drugs may be used; and

(*b*) Failed to reveal in said advertisements that use of their said products, under prescribed or usual conditions, might result in serious injury to the health of the user, and to apprise prospective purchasers that said preparations should not be used in event of pregnancy, by use in their advertisements of the word "abnormally" in connection with words "delayed periods," said preparations being offered for sale and sold indiscriminately to the lay public, and prospective purchaser being usually incapable of determining whether her condition is due to normal or abnormal causes, and did not dis-

close product's harmful potentialities, in direction "Should capsules cause looseness of bowels or act excessively, discontinue for several days or number of capsules may be reduced for a day or so," which appeared only on the labels of said products and not in their advertisements, and which the many purchasers by mail had no opportunity to observe until after they had received products in question;

With tendency and capacity to mislead and deceive substantial portion of the purchasing public into the erroneous and mistaken belief that their said preparations possessed therapeutic values which they did not in fact possess, and that such preparations were safe for use, when such was not the fact, and to cause such portion of the public to purchase substantial quantities of their preparations as a 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.

As respects evidence of experiments performed on rats and rabbits, introduced to support claim that sellers' products, offered for delayed menstruation, did not possess harmful potentialities, the Commission found that such experiments—which, in certain instances, tended to confirm the opinions of experts introduced by the Commission as to the toxic properties of said products—were inconclusive, did not afford a substantial basis for their contentions, and lacked sufficient probative value to overcome evidence introduced at the instance of the Commission, which included the testimony of outstanding authorities in the field of gynecology and obstetrics.

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

Mr. Gerard A. Rault for the Commission.

Nash & Donnelly, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that J. V. Cordes and Mrs. J. H. Cordes, trading and doing business as Martha Beasley Associates, 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, J. V. Cordes and Mrs. J. H. Cordes, are individuals trading and doing business under the name of Martha Beasley Associates, with their principal office and place of business located at 5741 Grand River Boulevard, Detroit, Mich. The respondents are now, and for several years last past have been, engaged in the sale of medicinal preparations designed for the treatment of unnaturally delayed menstruation, one known as Martha Beasley

Compound Formula No. 2 and as Special Relief Compound, and Special Package No. 2; and the other known as Martha Beasley Compound Formula No. 3, and as Special Relief Compound, and Special Package No. 3. Respondents cause said preparations when sold to be transported from their aforesaid place of business in the State of Michigan to the purchasers thereof located in various States of the United States other than the State of Michigan and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said drugs in commerce between and among various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their 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 preparations by the United States mails, by insertions in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed among and between the various States of the United States and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations; and have disseminated, and are now disseminating, and have caused, and are now causing the dissemination of false advertisements concerning their said preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the advertisements disseminated and cause to be disseminated, as aforesaid, are the following:

Get a modern woman's remedy. Ladies, when troubled with delay, get our Special Relief Compound at once. Don't wait longer. Has repeatedly relieved many unusual, long overdue, or past due, suppressed, late appearing abnormally delayed periods in 2 to 5 days without pain or inconvenience.

A preferred favorite time-tested prescription of many doctors.

The representations hereinbefore set out, and other representations similar thereto but not set out herein, appearing in respondents' advertisements, are false, misleading, and untrue. Respondents' preparations are not safe or scientific treatment for delayed menstruation. They are not recommended by physicians. Said advertisements of respondents are also false in that they fail to reveal that the use of such preparations under the conditions prescribed in said advertisements or under such conditions as are customary and usual may result in the serious illness, and in some cases the death, of the user.

The true facts are that the following drugs constitute the chief ingredients of each of these preparations, apiol, ergotin, savin, water pepper, and aloin, and that the use of either of these preparations may result in gastrointestinal disturbances such as catharsis, nausea and vomiting with pelvic congestion, inflammation and congestion of the uterus leading to uterine hemorrhage, and in those cases where either of these preparations is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures causing septicemia or blood poisoning.

PAR. 3. The use by the respondents of the foregoing false advertisements and deceptive and misleading statements and representations with respect to their preparations disseminated as aforesaid has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations 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. 4. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 30, 1939, issued, and subsequently served, its complaint in this proceeding upon the respondents, J. V. Cordes and Mrs. J. H. Cordes, individuals trading and doing business as Martha Beasley Associates, 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 were introduced by Gerard A. Rault, attorney for the Commission, and in opposition thereto by Messrs. Nash and Donnelly, attorneys for respondents, before William C. Reeves, trial examiner of the Commission theretofore duly designated by it, and such 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, answer, testimony and other evidence, report of the trial examiner upon the evidence, briefs in support of and in opposition to the complaint, and oral argument; and the Com-

mission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, J. V. Cordes and Mrs. J. H. Cordes, are individuals trading under the name Martha Beasley Associates, with their principal office and place of business located at 5741 Grand River Boulevard, Detroit, Mich. Respondents are now, and for several years last past have been, engaged in the sale and distribution of certain medicinal preparations intended for use in the treatment of delayed menstruation, one of such preparations being designated by respondents as "Martha Beasley's Compound Formula No. 2" and the other as "Martha Beasley's Compound Formula No. 3."

PAR. 2. In the course and conduct of their business the respondents cause their preparations, when sold, to be transported from their place of business in the State of Michigan to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their 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 their business the respondents have disseminated, and have caused the dissemination of, advertisements concerning their preparations 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, advertisements concerning their preparations by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations appearing in such advertisements, disseminated and caused to be disseminated by the United States mails and by advertisements in periodicals, are the following:

Get of modern woman's remedy. Ladies, when troubled with delay, get our Special Relief Compound at once. Don't wait longer. Has rapidly relieved many unusual, long overdue or past due, suppressed, late appearing abnormally delayed periods in 2 to 4 days without pain or inconvenience.

A preferred favorite time-tested prescription of many doctors.

PAR. 4. Through the use of these statements and representations and others of similar import, the respondents represent, directly or by

implication, that their preparations constitute competent and effective treatments for delayed menstruation; that they are recommended by physicians generally; and that they are safe for use.

PAR. 5. The formulas for respondents' preparations are as follows:

Formula No. 2	*Formula No. 3*
Apiol—7½ minims	Apiol—8 minims
Oil of Savin—½ grain	Oil of Savin—¾ minims
Ergotin—1 grain	Ergotin—1 grain
Extract of water pepper—⅕ grain	Extract of water pepper—⅕ grain
Aloin—⅛ grain	Aloin—⅛ grain

The dosage as prescribed by respondents for Formula No. 3 is "One or two capsules four times a day." The dosage prescribed for Formula No. 2 is the same as that for Formula No. 3 except that the words "three or four times a day" are used instead of "four times a day."

Respondents' directions for the use of the preparations contain the following statement:

Should the capsules cause looseness of bowels or act excessively, discontinue for several days or number of capsules may be reduced for a day or so.

PAR. 6. The active ingredients in the preparations are the apiol, savin, aloin and ergotin. Apiol, savin, and aloin have long been recognized by pharmacologists and by physicians generally as gastrointestinal irritants, aloin in particular being regarded as a drastic cathartic. The average dose of aloin, according to the United States Pharmacopoeia, is one-fourth grain. The amount in each of respondents' capsules (Formula No. 3) is one-half of that amount or one-eighth grain. According to respondents' directions, as many as eight capsules may be taken in 1 day, and in that event the total amount of aloin taken per day would be four times the United States Pharmacopoeia dose. This dosage, particularly when added to the apiol and savin ingredients, is likely to produce gastrointestinal disturbances, resulting in nausea and vomiting. Pelvic congestion, including congestion of the uterus, may also result, leading to excessive hemorrhage from the uterus.

In the case of pregnancy, the use of respondents' preparations has a tendency to cause, in addition to the results mentioned above, a contraction of the uterus, due to the ergotin content of the preparations. Such contraction of the uterus may in some cases produce an abortion, which may result in uterine infection. Such infection may also extend to other pelvic and abdominal structures and may result in septicemia or blood poisoning.

PAR. 7. The respondents insist that their advertisements are not directed to pregnant women, and that the use in their advertisements

of the word "abnormally" in connection with the words "delayed periods" is sufficient to apprise prospective purchasers that the preparations should not be used in the event of pregnancy. The preparations, however, are offered for sale and sold indiscriminately to the lay public, and the prospective purchaser is usually incapable of determining whether her condition is due to normal or abnormal causes.

Respondents further insist that their direction, "Should capsules cause looseness of bowels or act excessively, discontinue for several days or number of capsules may be reduced for a day or so," is sufficient to obviate the danger of excessive cathartic action. The Commission finds, however, that this statement is insufficient to disclose the harmful potentialities of the preparations. Moreover, the statement appears only on the labels of the preparations and does not appear in respondents' advertisements. Many of respondents' sales are made through the mails, and the purchasers have no opportunity to observe such statement until after they have received the preparations.

PAR. 8. In support of their claims that their preparations do not possess the harmful and dangerous potentialities referred to above, the respondents introduced in evidence, in addition to the testimony of certain expert witnesses, the results of certain experiments performed on rats and rabbits. It is questionable, however, whether the number of animals used in the experiments was sufficient to afford a substantial scientific basis for the conclusions contended for by respondents. Moreover, in certain of the tests, the results tend to confirm the opinions of the experts introduced by the Commission as to the toxic properties of the preparations. It is doubtful also whether these experiments can be accepted as a positive indication of the effect of the preparations on human beings, there being substantial differences in the degrees of susceptibility of animals and human beings.

The Commission therefore finds that while these animal experiments may be to a limited degree indicative of the effects produced by respondents' preparations, the experiments are inconclusive and do not afford a substantial basis for respondents' claims. Their probative value is insufficient to overcome the testimony of the expert witnesses testifying at the instance of the Commission, among whom were outstanding authorities on pharmacology, toxicology, gynecology, and obstetrics.

PAR. 9. While the drugs which constitute the active ingredients of respondents' preparations possess emmenagogue properties, such drugs are not competent or effective treatments for delayed menstruation, nor are they recommended by physicians generally. In those exceptional cases in which some of the drugs may be used by

physicians, they are used only after careful diagnosis and under the supervision of the physician.

PAR. 10. The Commission therefore finds that the representations of the respondents with respect to their preparations are misleading and deceptive, and constitute false advertisements. The Commission finds also that respondents' advertisements are false for the further reason that they fail to reveal that the use of respondents' preparations under the conditions prescribed in such advertisements, or under such conditions as are customary or usual, may result in serious injury to the health of the user.

PAR. 11. The Commission finds that the use by the respondents of such false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' preparations possess therapeutic values which they do not in fact possess, and that such preparations are safe for use, when such is not the fact, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' preparations as a result of such belief.

CONCLUSION

The 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, testimony, and other evidence taken before William C. Reeves, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence, briefs in support of and in opposition to the complaint, and oral argument; 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, J. V. Cordes and Mrs. J. H. Cordes, individually and trading as Martha Beasley Associates, or trading under any other name, and 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 preparations designated as "Martha Beasley's Com-

pound Formula No. 2" and "Martha Beasley's Compound Formula No. 3," 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 by implication, that said preparations constitute competent or effective treatments for delayed menstruation; that said preparations are recommended by physicians generally; that said preparations are safe for use; 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 advertisement contains any of the representations prohibited in paragraph 1 hereof, or which 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.

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.

Syllabus

IN THE MATTER OF

PERFECT VOICE INSTITUTE, ET AL.

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

Docket 4047. Complaint, Mar. 5, 1940—Decision, Sept. 18, 1941

Where a corporation and three individuals, including its president in charge of its teaching activities, the chairman of its board of directors and its principal stockholder, who directed and controlled its business activities and policies, and its secretary and treasurer; engaged in interstate sale and distribution of a correspondence course of instruction for the development of the voice, based on the theory that the development and control of the muscles of the tongue is the key to voice culture, and accordingly prescribing numerous physical exercises for the tongue muscles, involving frequent use of certain mechanical aids supplied by them in addition to the series of lessons, including a mirror, an electric torch or flashlight, a pitch pipe, certain tongue supports and depressors, a tape measure and a so-called mouth gauge;

In advertisements of its said courses in periodicals of general circulation and in booklets outlining them and including testimonials from those who had taken it—

Represented that the voice might be greatly improved through the development and control of the muscles of the tongue, and that use of their course brought out a new and improved quality to the voice, and that by such use stammering might be overcome and physical defects of the vocal organs corrected;

The facts being that there is no relation between the development and control of the tongue muscles and the culture of the voice and while the physical exercises prescribed by them might result in strengthening said muscles and, in consequence, in the voice becoming louder or stronger, the quality and tone of the latter are not thereby improved, the voice on the contrary almost invariably becoming harsh and unmusical; there was danger also that use of such exercises might result in injury rather than a benefit to the voice, due to strain of the vocal organs through excessive exercising (ordinarily pursued by correspondence and without supervision of a teacher), notwithstanding caution as to moderation, since moderation for one student may be excess for another; and use of said course could not correct physical defects of the vocal organs or overcome stammering;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that their course possessed values and benefits which it did not possess, and to cause it to purchase their course as a result of said 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.

As respects the theory, underlying a course in voice culture, that the development and control of the muscles of the tongue is the key to the culture

and development of the voice, testimony to the effect that they had found the course of substantial benefit and that their voices had been improved by it on the part of a teacher of singing who had sung in opera and in motion pictures, formerly studied said course, and used said method in teaching his own pupils, and testimony of some 10 lay witnesses, students of such course, it appearing, among other things, that some of them had pursued studies with other teachers, was insufficient to overcome testimony to the effect that said theory did not reflect the facts, by various expert witnesses, including an assistant dean of the school of speech of a prominent university in Chicago, a specialist in the field of experimental psychology in speech problems who had devoted many years to the study of the vocal mechanism and the physics of voice production, and a number of teachers of standing in the educational field concerned and of long experience as singers themselves.

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

Mr. Maurice C. Pearce, for the Commission.

Petit, Olin & Overmyer, 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 Perfect Voice Institute, a corporation, Eugene Feuchtinger, individually and as president of Perfect Voice Institute, Walter A. Jordan, individually and as chairman of the board of directors of Perfect Voice Institute, and Mary E. Murphy, individually and as secretary and treasurer of Perfect Voice Institute, 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, Perfect Voice Institute, is a corporation duly chartered, 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 64 East Lake Street, Chicago, State of Illinois.

Respondent, Eugene Feuchtinger, an individual, is president of Perfect Voice Institute, with his principal office and place of business located at 64 East Lake Street, Chicago, State of Illinois.

Respondents, Walter A. Jordan and Mary E. Murphy, are each individuals, the former being chairman of the board of directors of Perfect Voice Institute, and the latter secretary and treasurer of Perfect Voice Institute, with their principal office and place of business located at 307 North Michigan Avenue, in Room 1600, Chicago, State of Illinois.

Said respondent, Walter A. Jordan, owns a controlling interest in respondent corporation and controls and directs the business activities and policies of said corporation, including its advertising. Respondents Feuchtinger and Murphy act in conjunction and cooperation with said respondent Jordan and with each other in connection with the acts and practices hereinafter alleged.

PAR. 2. The individual respondents, acting in conjunction and cooperation with each other as aforesaid, and said respondent Perfect Voice Institute, are now and for more than 1 year last past have been, engaged in the business of offering for sale, selling, and distributing, a course of instruction for the development of the voice, designated "Physical Voice Culture." Such course of instruction consists of 30 lessons, contained in 15 printed and bound volumes, entitled "A Manual for the Perfection of the Human Voice." Along with the course of instruction, and as a part of the same, respondents supply to purchasers thereof a so-called "outfit consisting of mirror, electric torch, tongue depressors, thyhedron tongue support, breath measure and special chromatic pitch pipe" to be used in connection with said course of instruction in the development of the voice.

PAR. 3. Said respondents have, through the medium of said corporate respondent, Perfect Voice Institute, placed certain advertisements in various publications, offering a "wonderful voice book free." When a reply to such advertisements is received by corporate respondent, said respondents then contact the party so answering the advertisements. The book referred to in said advertisements is forwarded to such prospective purchaser and contemporaneously therewith there is also forwarded application for enrollment blank, together with a form letter urging such prospective purchaser to enroll and become a student for such course of instruction. Upon receipt by respondents of the application for enrollment duly signed by the purchaser, and in consideration of the payment of the agreed tuition in cash or by installments, as set forth and provided in said application for enrollment, respondents deliver to such purchaser, through the United States mail or otherwise, the course of instruction, together with the "outfit," hereinabove described.

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

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their said course of instruction, respondents by means of advertisements inserted in newspapers and magazines having a general circulation, and also by advertising circulars and other printed or written matter, have made and are now making various false, misleading, and deceptive statements and representations concerning the character and nature of their said course of instruction and as to the results that have been and may be obtained from the training and instruction provided therein. Among and typical of such representations and statements made by respondents are the following:

We build, strengthen the vocal organs—not with singing lessons, but by fundamentally sound and scientifically correct silent exercises—and absolutely guarantee to improve any singing or speaking voice at least 100%.

The key to perfect voice production is strong tongue muscles under perfect control.

This famous method of physical voice culture is based upon the elementary principle of strengthening the throat and tongue muscles by silent, physical exercise.

We can bring out a new quality, a new power and force to your voice.

People who used to laugh at me because I stammered are the ones I laugh at now.

Yes—this is an astonishing guarantee, but it is justified by our twenty years of success not only in developing fine voices for thousands of students, but in overcoming positive physical defects * * *

PAR. 5. Through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented and do now represent that by the use of respondents' said course of instruction, the exercises outlined therein and the "outfit" supplied therewith, any person can build and strengthen vocal organs and thereby improve the singing and speaking voice by at least 100 percent; that by using respondents' method of instruction strong tongue muscles can be developed and controlled; that control of strong tongue muscles results in perfect voice production; that the strengthening of the throat and tongue muscles by silent physical exercises is a method of physical voice culture; that respondents' course of instruction brings out a new quality, new power and force to the voice; that respondents' course of instruction cures stammering; and that respondents' course of instruction has developed fine voices for students and overcomes positive physical defects.

PAR. 6. The aforesaid representations and claims, cooperatively used and disseminated by the respondents, as hereinabove described, are grossly exaggerated, misleading, and untrue. In truth and in fact, the singing and speaking voice cannot be improved at least 100 percent by building and strengthening the vocal organs by use of respondents'

said course of instruction, the exercises outlined therein, or the "outfit" supplied therewith; strong tongue muscles cannot be developed nor controlled by the use of respondents' method of instruction; control of strong tongue muscles does not result in perfect voice production; the strengthening of the throat and tongue muscles by silent physical exercises is not a method of physical voice culture; the course of instruction will not bring out new quality, new power and force to the voice; respondents' course of instruction is not a cure for stammering; and respondents' course of instruction will not develop fine voices or overcome positive physical defects.

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

PAR. 8. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 5, 1940, issued and thereafter served its complaint in this proceeding upon the respondents, Perfect Voice Institute, a corporation; Eugene Feuchtinger, individually and as president of Perfect Voice Institute; Walter A. Jordan, individually and as chairman of the board of directors of Perfect Voice Institute; and Mary E. Murphy, individually and as secretary and treasurer of Perfect Voice Institute, 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 were introduced by Maurice C. Pearce, attorney for the Commission, and in opposition thereto by Gustav E. Beerly, attorney for respondents, before trial examiners of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commis-

sion. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony, and other evidence, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (oral Argument not having been requested); and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Perfect Voice Institute, is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 64 East Lake Street, Chicago, Ill.

Respondent, Eugene Feuchtinger, an individual, is president of the corporate respondent. He formulates the course of instruction hereinafter referred to, and is in general charge of the corporation's teaching activities. He has his office at 64 East Lake Street, Chicago, Ill.

Respondent, Walter A. Jordan, an individual, is chairman of the board of directors of the corporate respondent and is the principal stockholder therein. He directs and controls the business activities and policies of the corporation, including its activities and policies with respect to advertising. He has his office at 307 North Michigan Avenue, Chicago, Ill.

Respondent, Mary E. Murphy, an individual, is secretary and treasurer of the corporate respondent, her mailing address being 307 North Michigan Avenue, Chicago, Ill.

All of the respondents act in conjunction and cooperation in carrying out the acts and practices hereinafter described.

PAR. 2. The respondents are now, and for a number of years last past have been, engaged in the sale and distribution of a course of instruction in the development of the human voice. Respondents cause their course of instruction, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times referred to herein have maintained, a course of trade in their course of instruction in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents' course of instruction consists of a series of lessons, approximately 30 in number, to be pursued by correspond-

ence, and certain mechanical aids supplied by respondents for use in connection with such lessons. These mechanical aids include a mirror, an electric torch or flashlight, a pitch pipe, certain tongue supports and depressors, a tape measure, and an article designated as a mouth gauge.

For the purpose of bringing their course of instruction to the attention of the public and obtaining students, the respondents insert advertisements in periodicals having general circulation throughout the United States. To those making inquiry in response to such advertisements, respondents forward an advertising booklet outlining the course of instruction and containing numerous statements with respect to the value and effectiveness of the course. This booklet contains also a number of testimonials from persons who have taken the course. Along with this advertising booklet respondents forward to the prospective purchaser an application blank or form of contract to be executed by the prospect.

Among and typical of the statements and representations appearing in respondents' newspaper advertisements and other advertising material are the following:

We build, strengthen the vocal organs—not with singing lessons, but by fundamentally sound and scientifically correct silent exercises—and absolutely guarantee to improve any singing or speaking voice at least 100%.

The key to perfect voice production is strong tongue muscles under perfect control.

This famous method of physical voice culture is based upon the elementary principle of strengthening the throat and tongue muscles by silent, physical exercises.

We can bring out a new quality, a new power and force to your voice.

People who used to laugh at me because I stammered are the ones I laugh at now.

Yes—this is an astonishing guarantee, but it is justified by our twenty years of success not only in developing fine voices for thousands of students, but in overcoming positive physical defects * * *.

PAR. 4. Through the use of these statements and representations and others of similar import, the respondents represent that the voice may be greatly improved through the development and control of the muscles of the tongue; that the use of respondents' course of instruction brings out a new and improved quality to the voice; that by the use of such course stammering may be overcome; and that physical defects of the vocal organs may be corrected through the use of such course of instruction.

PAR. 5. The theory upon which respondents' course of instruction is based is that the development and control of the muscles of the

tongue is the key to the culture and development of the voice. This theory is set forth in the first lesson of the course as follows:

> Carry this important fact in your mind throughout your course of study, for it is the basic principle of my method and marks the vital difference between my system of vocal culture and all others:
>
> In this course we consider the tongue muscles to be the key of all the muscles used to produce voice—that they are the most necessary factor in the desired control of the vocal organ as a whole.

In pursuance of this theory, respondents prescribe varied and numerous physical exercises for the tongue muscles, and in these exercises frequent use is made of the mechanical aids supplied by respondents. The purpose of these exercises is to develop and strengthen the muscles of the tongue, and to give the student a greater degree of control over the position and action of the tongue.

PAR. 6. The experts introduced as witnesses at the instance of the Commission included:

1. An assistant dean of the school of speech of a prominent university in Chicago, who is also director of the speech clinic of the university. This witness holds degrees from three universities, including a doctor's degree, and is a specialist in the field of experimental psychology and speech problems. He has devoted 20 years to the study of the anatomy and physiology of the vocal mechanism and the physics of voice production. His services with the speech clinic have extended over a period of 12 years, during which time some 3,000 speech and voice cases have come under his observation.

2. A teacher of singing who, in addition to giving private lessons, directs choirs and choruses and is choir master of a prominent church. He has studied voice in a number of leading schools, and his experience in teaching extends over a period of some 25 years.

3. A teacher who has for 21 years conducted a school of singing in Chicago. He is a graduate of one of the leading conservatories of music in Chicago, and has spent some 15 years studying with teachers both in the United States and in Europe. He has specialized in the development of the voice and in preparing students for the singing profession.

4. A professor of voice in the school of music of one of the leading universities in Chicago, who has studied both in the United States and abroad, being a graduate of the university in which he is now teaching. His teaching experience covers a period of some 35 years.

5. An official of a conservatory of music in Chicago who has studied both in America and abroad, and who sang professionally for some 12 or 14 years. His work has included singing in opera as well as on the concert stage and in musical comedies.

6. A teacher of speech in a prominent university who has studied in several accredited schools of speech.

7. A teacher of singing, who sang in opera for some 12 years, including several years with the Chicago Civic Opera Co. This witness is connected officially with a prominent conservatory of music in Chicago and also with the Chicago Civic Opera Co.

The testimony of these witnesses shows that there is no relation between the development and control of the tongue muscles and the culture of the voice. The physical exercises prescribed by respondents may result in the strengthening of the tongue muscles, and in consequence the voice may become louder or stronger. The quality and tone of the voice, however, are not improved; on the contrary the voice almost invariably becomes harsh and unmusical. Certain of the Commission's witnesses have had occasion to observe the voices of persons taking respondents' course, and the opinions of these witnesses as to the value of the course are based not only upon their general knowledge and experience but also upon their observation of these students.

The testimony further shows that in many instances the use of the physical exercises prescribed by the course may result in injury to the voice rather than benefit, one reason for this being that the exercises may be carried to excess and the vocal organs strained. This danger is increased by reason of the fact that the course is pursued by correspondence and without the supervision and guidance of a teacher. Respondents' students are free to come to the school for advice and instruction, and a number of students living fairly close to Chicago do go to the school for that purpose. In the usual case, however, the course is pursued entirely by correspondence. Even a caution as to moderation in the use of the exercises is insufficient, because exercises which may be moderate in the case of one student may easily become excessive in another case.

PAR. 7. In support of their claims for their course of instruction, respondents introduced only one expert witness, a teacher of singing who has also sung in opera and in motion pictures. This witness formerly studied respondents' course and now uses the method in teaching his own pupils. He testified that he had found the course of substantial benefit in his own case and also that he had obtained favorable results from the use of the method in his teaching.

Aside from the testimony of this witness, respondents relied principally upon the testimony of some 10 members of the public who had pursued respondents' course of instruction and some of whom are still numbered among respondents' students. The testimony of these

witnesses, in substance, was that they had found the course to be of substantial benefit and that their voices had been improved as a result of taking the course.

In some of these cases the witnesses had pursued studies with other teachers, and it is questionable as to how much of the improvement testified to by the witnesses was due to respondents' method. Moreover, the record discloses that it is questionable whether an individual is a capable judge of the quality and tone of his own voice, there being certain physiological and psychological reasons why one's voice does not sound to him as it does to other persons. After careful consideration of the testimony offered by respondents, including the testimony of these lay witnesses and of the expert referred to, the Commission is of the opinion, and finds, that it is insufficient to overcome the expert testimony introduced at the instance of the Commission.

PAR. 8. The Commission therefore finds that the representations of respondents with respect to their course of instruction and the benefits to be derived therefrom are misleading and deceptive. The use of respondents' course of instruction is incapable of improving the quality or tone of the voice. Neither the course of instruction nor the physical exercises prescribed therein has any beneficial effect upon the voice, other than to make it louder or stronger. Nor can physical defects in the vocal organs be corrected or stammering overcome through the use of respondents' course.

PAR. 9. The Commission further finds that the use by respondents of these misleading and deceptive representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' course of instruction possesses values and benefits which it does not in fact possess, and the tendency and capacity to cause such portion of the public to purchase respondents' course of instruction as a result of such erroneous and mistaken belief.

CONCLUSION

The 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 commere within the intent and meaning of the Federal 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-

ents, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Perfect Voice Institute, a corporation, and its officers, and Eugene Feuchtinger, Walter A. Jordan, and Mary E. Murphy, individually and as officers of said corporation, and respondents' 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 their course of instruction in the development of the human voice, do forthwith cease and desist from:

1. Representing that the development and control of the muscles of the tongue has any beneficial effect upon the voice other than to make it louder or stronger.

2. Representing that the use of respondents' course of instruction has any beneficial effect upon the voice other than to make it louder or stronger.

3. Representing that by the use of respondents' course of instruction physical defects of the vocal organs may be corrected, or stammering overcome.

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

IN THE MATTER OF

FEDERAL YEAST 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 3926. Complaint, Oct. 13, 1939—Decision, Sept. 22, 1941

Where a corporation engaged in the manufacture and interstate sale and distribution of bakers' yeast, in substantial competition with others similarly engaged—

(*a*) Discriminated in price by selling yeast of like grade and quality and in like quantities to customers competitively engaged with one another in sale and distribution of bread and allied products, at differentials amounting to 7 percent and upwards, thereby affording to the beneficiaries substantial savings in price which constituted material and vital factors in competition;

(*b*) Discriminated in price by delivering large quantities of its yeast without charge to certain purchasers in addition to its yeast actually sold to them, thereby substantially reducing average cost of its yeast to said purchasers, while concurrently selling it to others without so delivering yeast for which no charge was made, so that while both classes might be charged the same price for yeast sold and billed, the actual cost to the former was less by 5 percent or more than that to the nonfavored customers, thereby affording substantial savings to the beneficiaries which constituted material and vital factors in competition; and

(*c*) Discriminated in price by granting to certain of its purchasers cash discounts of 1 to 2 percent not granted to others who paid in the same manner and within the same time;

Effect of which discriminations had been and might be substantially to lessen competition in the line of commerce concerned, and to injure, destroy, or prevent competition in the sale and distribution of bread and allied products between its purchasers who received the benefits of such discriminations and those who did not:

Held, That said discriminations in price, as hereinabove set out, violated subsection (*a*) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. P. C. Kolinski for the Commission.

Mr. Simon E. Sobeloff, of Baltimore, Md., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of section 2 of the Clayton Act, as amended by the Robinson-Patman Act approved June 19,

1936 (U. S. C. title 15, sec. 13,) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Federal Yeast Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Maryland, having its principal office and plant located at Colgate-Highlandtown P. O., Baltimore, Md.

PAR. 2. Respondent since June 19, 1936, has been and now is engaged in the manufacture, sale, and distribution of bakers' yeast. In the course and conduct of such sale and distribution it causes said yeast to be shipped and transported in commerce from its plant in the State of Maryland to purchasers thereof in and among the various States of the United States and there has been at all times herein mentioned a current of trade and commerce in respondent's yeast between the State wherein respondent's plant is located and various other States of the United States.

PAR. 3. Said respondent in the course and conduct of its business since June 19, 1936, has been and is now in substantial competition with other corporations, individuals, partnerships, and firms engaged in manufacturing, selling, and distributing bakers' yeast, in commerce.

PAR. 4. In the course and conduct of its business as aforesaid, the respondent has been and now is discriminating in price between different purchasers of its said product of like grade and quality, by giving and allowing certain purchasers of bakers' yeast used in the manufacture of bread and allied products, different prices than given or allowed other of its said purchasers competitively engaged one with the other, in the sale and distribution of bread and allied products within the various States of the United States. To illustrate, during the year of 1937 respondent sold 5,681 pounds of bakers' yeast to Benkert's Bakery, 3012 Thirtieth Avenue, Long Island City, N. Y., at 13 cents per pound and during the same period sold Sabriett Food Products Co., 90 East Third Street, New York City, N. Y., a competitor, 10,910 pounds of bakers' yeast at 11 cents per pound and 27,710 pounds of bakers' yeast at 10 cents per pound, thus affording the last mentioned purchaser a saving of $1,049.50 during said period upon the basis of price charged to first mentioned purchaser.

PAR. 5. Further discrimination in price between different competing purchasers of its product is brought about as a result of respondent delivering large quantities of bakers' yeast to certain of its purchasers for which no specific charge is made in addition to yeast actually sold and delivered to these same purchasers for which a specific price is charged, thus reducing the cost of said favored cus-

tomers of the yeast actually purchased, while at the same time other purchasers competitively engaged in the sale of bread and allied products with the said favored purchasers and paying the same price per pound for said product are not furnished such additional yeast. To illustrate, during the month of December 1936, Kallik, 1018 Intervale Avenue, New York City, N. Y., purchased 1,171 pounds of bakers' yeast at 13 cents per pound and in addition to said purchased yeast respondent delivered 115 pounds of bakers' yeast for which no charge was made, while during the same period Your Baking, 1141 Burnett Place, New York City, N. Y., a competitor purchased 915 pounds of baker's yeast at 13 cents per pound and respondent delivered no additional yeast to said purchaser without charge.

PAR. 6. Respondent further discriminates in price between competing purchasers by granting cash discounts of 1 to 2 percent to certain of its purchasers which are not granted to others who pay in the same manner and within the same time as those receiving such discounts.

PAR. 7. The effect of such discriminations in price as set forth in paragraphs 4, 5, and 6 hereof has been or may be substantially to lessen competition in the line of commerce in which respondent and its competitors are engaged and may be to injure, destroy, or prevent competition in the sale and distribution of bread and allied products between those of respondent's purchasers who receive the benefits of such discriminations and competing purchasers who do not receive such benefits.

PAR. 8. The foregoing alleged acts and practices are in violation of subsection (*a*) 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 13th day of October 1939, issued and subsequently served its complaint in this proceeding upon respondent Federal Yeast Corporation, charging the respondent with violation of the provisions of subsection (a) of section 2 of the said act as amended. 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, with the exception of the illustra-

tions therein set forth regarding specific price discriminations, 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 a stipulation as to certain facts, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act, has been violated by the respondent, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Federal Yeast Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its principal office and place of business at Colgate-Highlandtown P. O., Baltimore, Md.

PAR. 2. Respondent, since June 19, 1936, has been and now is, engaged in the manufacture, sale, and distribution of bakers' yeast. In the course and conduct of such sale and distribution it causes its said yeast to be shipped and transported, in commerce, from its plant in the State of Maryland to the purchasers thereof in and among the various States of the United States, and there is, and has been at all times since the above date, a current of trade and commerce in respondent's yeast between the State of Maryland and various other States of the United States.

PAR. 3. Since June 19, 1936, respondent in the sale and distribution of its bakers' yeast has been, and now is, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing bakers' yeast in commerce.

PAR. 4. Respondent, since June 19, 1936, has discriminated in price and is now discriminating in price between different competing purchasers of its products of like grade and quality by giving and allowing some purchasers of its bakers' yeast used in the manufacture of bread and allied products different prices from those given and allowed other of its said purchasers competitively engaged one with the other in the sale and distribution of bread and allied products. In some instances respondent sold bakers' yeast of like grade and quality and in like quantities to competing customers at different prices wherein the differential between such prices amounted to 7 percent and upwards.

PAR. 5. Respondent has discriminated, and is further discriminating, in price between different purchasers of its products competitively engaged in the sale of bread and allied products by delivering large quantities of its bakers' yeast, without specific charge therefor, to certain purchasers in addition to its bakers' yeast actually sold and delivered to these purchasers, thereby substantially reducing the average cost of its said yeast to such purchasers. Respondent concurrently sells its said yeast to other purchasers but does not deliver in addition to the quantities purchased yeast for which no specific charge is made, with the result that while both classes of purchasers may be charged the same price for yeast sold and billed, the actual cost to those who receive additional yeast without specific charge therefor is less, by 5 percent or more, than the actual cost to the nonfavored customers.

PAR. 6. Respondent's acts and practices as set forth in paragraphs 4 and 5 constituted discriminations in price between its customers, and the savings to the beneficiaries of such discriminations in price were substantial in nature and constituted material and vital factors of competition.

PAR. 7. Respondent has discriminated, and is now further discriminating, in price between competing purchasers by granting cash discounts of 1 to 2 percent to certain of its purchasers which are not granted to other purchasers who pay in the same manner and within the same time as those receiving such discounts.

PAR. 8. The effect of such discriminations in price described in paragraphs 4, 5, and 7 above has been and may be substantially to lessen competition in the line of commerce in which respondent and its competitors are engaged and may be to injure, destroy, or prevent competition in the sale and distribution of bread and allied products between those of respondent's purchasers who receive the benefits of such discriminations and competing purchasers who do not receive such benefits.

CONCLUSION

The discriminations in price by respondent as hereinabove set out, violate subsection (*a*) of section 2 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 an act of Congress approved June 19, 1936 (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 substitute answer

of the respondent, in which answer respondent admits all the material allegations of said complaint with the exception of the illustration therein set forth regarding specific price discriminations and states that it waives all intervening procedure and further hearing as to said facts, and a stipulation of facts filed herein, and the Commission being of the opinion that said respondent has violated the provisions of section 2 (*a*) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), and having made its findings as to the facts and its conclusion, which findings as to the facts and its conclusion are hereby made a part hereof.

It is ordered, That the respondent, Federal Yeast 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 bakers' yeast in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist:

From the discriminations in price as found in paragraphs 4, 5, and 7 of the findings of fact or otherwise discriminating in price between different purchasers of bakers' yeast of like grade and quality where the effect of such discriminations may be substantially to lessen competition or to injure, destroy, or prevent competition with respondent or any such purchaser unless the differential in price in any such discrimination makes only due allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such commodities are to such purchasers sold or delivered.

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

IN THE MATTER OF

LEONA JOHNSON AND AUBREY M. GRAFF, TRADING AS RADIO DISTRIBUTORS

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

Docket 4157. Complaint, June 7, 1940—Decision, Sept. 22, 1941

Where an individual engaged in the competitive interstate sale and distribution of radios and other articles; in soliciting sale of and in selling and distributing her said products—

Furnished various devices and plans which involved the operation of games of chance, gift enterprises, or lottery schemes in sales of her merchandise to the ultimate consumer, including among other things, push cards and circulars explaining her plan of selling her said merchandise and allotting it as premiums or prizes to operators of said cards and to the purchasing public, a typical plan involving the use of a push card displaying 58 feminine names and adjacent disks and under which the customer selecting the name corresponding to that under card's master seal received a radio, those punching disks concealing certain numbers received a combination pen and pencil, and the amount paid for a chance was dependent upon the number punched; and thereby

Supplied to and placed in the hands of others means of conducting lotteries in the sale of her merchandise, in which the fact as to whether a purchaser received an article and which, if any, was determined wholly by lot and there was involved a game of chance to procure an article at much below its normal price, 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 any method involving chance, or contrary to public policy, and refrain therefrom;

With the result that many persons were attracted by her said sales plan and the element of chance involved therein, and were thereby induced to buy and sell her merchandise in preference to that of said competitors, and trade in commerce was unfairly diverted to her from them, to the substantial injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice 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. and *Mr. D. C. Daniel* for the Commission.

Mr. A. H. Schwab of 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 Leona Johnson and Aubrey M. Graff, individually and trading as Radio Distributors, 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, Leona Johnson and Aubrey M. Graff, are individuals trading as Radio Distributors with their principal office and place of business located at 30 North Dearborn Street, Chicago, Ill. Respondents are now and for more than 8 months last past have been engaged in the sale and distribution of radios 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 aforesaid place of business in the State of Illinois to purchasers thereof, at their respective points of location, in the various States of the United States other than Illinois and in the District of Columbia. There is now and has been for more than 8 months last past a course of trade by respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are and have been in competition with other 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 their business as described in paragraph 1 hereof, respondent 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 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 58 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 58 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 radio. 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:

Name Under Seal Receives A

Licensed AC DC

R. C. A. RADIO

No ground Required

R. C. A. Licensed Tubes

Do not remove seal until entire card is sold

Nos. 1–39 pay what you draw.
All others 39¢. None higher

4 EXTRA WINNERS 4

Nos. 1–9–19 and 29 Each Receive a Combination Pen and Pencil.

Sales of respondents' merchandise by means of said push card are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above-described legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

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. The persons to whom respondents furnish and have furnished the said push cards use and have used the same in purchasing, 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 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 June 7, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Leona Johnson and Aubrey M. Graff, individually and trading as Radio Distributors, 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, testimony, and other evidence in support of the allegations of said complaint were introduced by L. P. Allen and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by A. H. Schwab, attorney for the respondents, 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 said complaint, testimony, and other evidence, 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. Respondent Leona Johnson is an individual trading as Radio Distributors, with her principal office and place of business located at 30 North Dearborn Street, Chicago, Ill.

Respondent Aubrey M. Graff is an individual who, during the times mentioned herein, was employed by the respondent Leona Johnson, trading as Radio Distributors.

PAR. 2. For more than 1 year last past the respondent Leona Johnson, trading as Radio Distributors, has been engaged in the sale and distribution of radios and other articles of merchandise to purchasers thereof located in the various States of the United States and in the District of Columbia. The respondent causes her said merchandise, when sold, to be transported from her aforesaid place of business in the State of Illinois to purchasers thereof located in various other States of the United States. Said respondent maintains, and at all times mentioned herein has maintained, a course of trade in said merchandise in commerce among and between the various States of the United States.

In the course and conduct of her said business the respondent Leona Johnson, trading as Radio Distributors, 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 among and between the various States of the United States.

PAR. 3. In the course and conduct of her aforesaid business, the respondent Leona Johnson, trading as Radio Distributors, in soliciting the sale of, and in selling and distributing, her 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 was sold and distributed to the ultimate consumer thereof. The method or sales plan adopted and used by said respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions, including, among other things, push cards, order blanks, illustrations of her 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 58 feminine names with ruled columns on the reverse side thereof for writing in the name of the customers opposite the feminine name selected. Said push card has 58 small partially perforated disks, on the face of which is printed the word "push." Each of such disks is set above 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 radio. 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 the following legends or instructions, in addition to a pictorial representation of a portable radio and the seals and disks above described:

Name under seal receives a RCA radio.

Numbers 1 to 39 pay what you draw. All others 39¢. None higher.

Numbers 1–9–19 and 29 each receive a combination pen and pencil.

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 legends or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid and which of said articles of merchandise the purchaser is to receive, if any, is 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 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. 4. During the period of 16 months prior to February 6, 1941, the respondent Leona Johnson, trading as Radio Distributors, mailed out approximately a million and a half sets of literature containing push cards similar to the one above described. This mailing netted a return of approximately 10,000 orders for merchandise. The persons who placed such orders for merchandise used the said push cards in purchasing, selling, and distributing respondent's merchandise in accordance with the above-described sales plan or method. Said respondent thus supplies to and places in the hands of others, the means of conducting lotteries in the sale of her merchandise, and the sale of said merchandise 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. 5. The sale of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent Leona Johnson, trading as Radio Distributors, 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 respondent Leona Johnson in the sale and distribution of her merchandise and the element of chance involved therein, and are thereby induced to buy and sell said 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 said respondent, because of said game of chance, has the tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States to said respondent from her 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

said respondent to competition in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent Leona Johnson, individually and trading as Radio Distributors, as herein found are all to the prejudice and injury of the public and of said respondent's competitors and constitute unfair methods of competition in commerce 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 before W. W. Sheppard, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, 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 respondent Leona Johnson, individually and trading as Radio Distributors, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Leona Johnson, individually and trading as Radio Distributors, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of radios and other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying or placing in the hands of others, push cards 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 members of the purchasing public push cards 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 complaint be dismissed as to the respondent Aubrey M. Graff.

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

IN THE MATTER OF

AMERICAN BANDAGE CORPORATION

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

Docket 4354. Complaint, Oct. 22, 1940—Decision, Sept. 22, 1941

Where a corporation engaged in the manufacture of so-called "Self-adhering Medicated Bandages," and in the interstate sale and distribution thereof under the trade name "A B C Gauzband"; by means of advertisements disseminated through the mails, in newspapers and periodicals, and in circulars, leaflets, pamphlets, and other advertising literature, directly and indirectly—

Represented that its product had antiseptic and germicidal properties sufficient to inhibit the growth of, and to destroy, all types of bacteria, and was self-sterilizing and remained surgically sterile after removal from the package, through such statements as "medicated with antiseptic and germicidal material which renders it self-sterilizing * * *," "* * * will remain sterile even after it is removed from the package," and "is safe to apply directly to the wound";

Facts being the properties of the mercuricin medication in its said product, while antiseptic and germicidal, were insufficient to inhibit the growth of and to destroy all types of bacteria, or render such product self-sterilizing, or keep it sterile after it had been removed from the package;

With tendency and capacity to induce a substantial portion of the purchasing public to believe that such statements were true, and because of such belief, to purchase a substantial amount of its said product:

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

Before *Mr. W. W. Sheppard* and *Mr. Andrew B. Duval*, trial examiners.

Mr. Maurice C. Pearce for the Commission.

Mr. Albert I. Kegan, 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 American Bandage Corporation, 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, American Bandage Corporation, is a corporation duly chartered, 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 4238 North Lincoln Avenue, Chicago, State of Illinois.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the business of manufacturing certain so-called self-adhering medicated bandages sold and distributed under the trade name and designation "A B C Gauzband," which respondent alleges have germicidal and antiseptic properties. Respondent causes said product, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof located in the various States of the United States other than the State of Illinois 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 product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, and 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, or 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:

Through the development of a secret process, used exclusively by the manufacturer, GAUZBAND is medicated with an ANTISEPTIC and GERMICIDAL material, rendering it SELF-STERILIZING. It will remain sterile even after it is removed from the package.

GAUZBAND is self-sterilizing. The manufacturer has spared no expense to make this bandage the finest of its kind in the world. Years of chemical research have made possible the development of a new, secret process used exclusively by the manufacturer to render GAUZBAND self-sterilizing; it will remain sterile even after it is removed from the package.

The same process used in rendering GAUZBAND self-sterilizing, which is done with a medication containing antiseptic and germicidal materials, also makes it antiseptic and impregnates it with germicidal properties.

A B C GAUZBAND is a pure white cohesive gauze bandage offering maximum protection because it is medicated with antiseptic and germicidal material which renders it self-sterilizing, assuring the user a surgically sterile dressing. It is safe to apply directly to the wound.

PAR. 4. Through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented and does now represent, directly and indirectly, that its said product has been impregnated with certain materials which give said product antiseptic and germicidal properties sufficient to inhibit the growth of, and to destroy all types of bacteria, thereby making said product self-sterilizing and causing it to remain surgically sterile after it has been removed from the package.

PAR. 5. The aforesaid claims, statements and representations as hereinabove described are grossly exaggerated, false and misleading. In truth and in fact, respondent's product is not self-sterilizing and will not remain sterile after it has been removed from the package. The medication in said product consists of mercuricine, which is a mercury salt derivative, having antiseptic and mild germicidal properties. These properties, however, are insufficient to inhibit the growth of and to destroy all types of bacteria or to render respondent's product self-sterilizing or keep respondent's product surgically sterile after it has been removed from the package.

PAR. 6. The use by the respondent of the foregoing false, misleading, and deceptive statements, representations, and advertisements, disseminated as aforesaid, with respect to the properties of its product, 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 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 a substantial amount of respondent's product.

PAR. 7. The aforesaid acts and practices of the respondent, as hereinabove set forth, are all to the prejudice and injury 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 October 1940, issued and thereafter served its complaint in this proceeding upon

the respondent American Bandage Corporation, a corporation, charging it with unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. After the issuance of the complaint and the filing of respondent's answer thereto, evidence in support of the allegations of the complaint was introduced by the attorney for the Commission, at a hearing held before a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, and at said hearing a stipulation as to the facts was entered into between the attorney for the Commission and the attorney for the respondent, and at a later date the attorney for respondent waived the filing of briefs and oral argument, and agreed that the case be submitted to the Commission upon the record.

The evidence introduced and the stipulation as to the facts 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 complaint, the answer thereto, the evidence, the stipulation as to the facts, the trial examiner's report upon the evidence and brief in support of the complaint; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, American Bandage Corporation, is a corporation organized under the laws of the State of Illinois, with its principal office and place of business at 1701 Damen Avenue, Chicago, Ill.

PAR. 2. Respondent, for some time prior to the issuance of the complaint herein had been and now is engaged in the business of manufacturing certain so-called "Self-adhering Medicated Bandages," and in the sale and distribution of same under the trade name and designation "A B C Gauzband," and caused and causes said product, when sold, to be shipped from its place of business to purchasers thereof located in various 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 various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the conduct of its business has disseminated, and has caused the dissemination of advertisements concerning its products by means of the United States mails and by various other means, in commerce as "commerce" is defined in the Federal Trade

Commission Act, and has also disseminated and caused the dissemination of advertisements concerning its products 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 statements and representations contained in the advertisements disseminated or caused to be disseminated by respondent by means of the United States mails, by advertisements in newspapers, periodicals and by circulars, leaflets, pamphlets and other advertising literature, are the following:

Through the development of a secret process used exclusively by the manufacturer, GAUZBAND is medicated with an ANTISEPTIC and GERMICIDAL material, rendering it SELF-STERILIZING. It will remain sterile even after it is removed from the package.

GAUZBAND is self-sterilizing. The manufacturer has spared no expense to make this bandage the finest of its kind in the world. Years of chemical research have made possible the development of a new, secret process used exclusively by the manufacturer to render GAUZBAND self-sterilizing; it will remain sterile even after it is removed from the package.

The same process used in rendering GAUZBAND self-sterilizing, which is done with a medication containing antiseptic and germicidal materials, also makes it antiseptic and impregnates it with germicidal properties.

ABC GAUZBAND is a pure white cohesive gauze bandage offering maximum protection because it is medicated with antiseptic and germicidal material which renders it self-sterilizing, assuring the user a surgically sterile dressing. It is safe to apply directly to the wound.

PAR. 4. Through the use of the statements set forth in paragraph 3 hereof, and others similar to the above but not herein set out, respondent has represented, directly and indirectly, that its product has been impregnated with certain materials which give it antiseptic and germicidal properties sufficient to inhibit the growth of, and to destroy, all types of bacteria, thereby making the product self-sterilizing and causing it to remain surgically sterile after it has been removed from the package.

PAR. 5. The statements and representations made by the respondent, as set forth in paragraph 3, and others referred to in paragraph 4, hereof, are false, misleading, and deceptive, in that respondent's product is not self-sterilizing and will not remain sterile after it has been removed from the package. The medication in respondent's product consists of mercuricin, which is an organic mercury salt having antiseptic and germicidal properties. These properties are insufficient to inhibit the growth of and to destroy all types of bacteria, or to render respondent's product self-sterilizing, or to keep respondent's product surgically sterile after it has been removed from the package.

PAR. 6. The use by respondent of the statements, representations, and advertisements set out in paragraph 3 and referred to in paragraph 4, with respect to the properties of its product, has had the tendency and capacity to induce a substantial portion of the purchasing public to believe that such statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public because of such belief, to purchase a substantial amount of respondent's product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, evidence introduced before a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, the report of the trial examiner thereon, the stipulation as to the facts entered into between the attorney for the Commission and the attorney for respondent, and brief filed on behalf of the Commission; 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, American Bandage Corporation, a corporation, its officers, directors, agents, representatives, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of any medicated bandage sold and distributed by it under the trade name "A B C Gauzband," or under any other trade name or designation, do forthwith cease and desist from, directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement in newspapers, periodicals, circulars, leaflets, pamphlets, or otherwise, 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 by implication, that its said product possesses antiseptic and germicidal properties sufficient to inhibit the growth of, or to destroy, all types of bacteria, or which represents, directly or indirectly, that said product is a

sterilizing agent, or that it remains sterile after it has been removed from the container.

2. Disseminating, or causing to be disseminated, any advertisement in newspapers, periodicals, circulars, leaflets, pamphlets, or otherwise, 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 said product, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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.

Syllabus

IN THE MATTER OF

JOSEPH WARNER FURNITURE CORPORATION

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

Docket 4416. Complaint, Dec. 13, 1940—Decision, Sept. 22, 1941

Where a corporation engaged in the interstate sale and distribution of household furniture, operating so-called dealer or trade showrooms in New York under the name "Salem House," and describing its business as "Exclusive Distributors of Salem House Furniture"; directly and by implication—

Represented that it was a wholesaler and was selling its furniture at wholesale prices, which, substantially lower than retail prices, are responsible for the well-known preference by a substantial portion of the public for purchasing at wholesale; and as part of its plan and scheme so to misrepresent the character of its business and the prices of its products—

(a) Made such claims and statements in advertising matter, circular letters and so-called "admittance cards" which it circulated by mail and personally as "We are furniture distributors representing over 100 different factories," stocking every possible furniture need "to suit the requirements of thousands of dealers and interior decorators, and their referred clientele. A substantial money saving * * * is assured you";

(b) Made such statements on their so-called "Admittance Permit" cards, as "ADMITTANCE PERMIT To the Trade Showrooms of the JOSEPH WARNER FURNITURE CORP. This card entitles _____ and party to all Showroom privileges, including price quotation * * *," and set forth on customer's copy of triplicate invoice of sales the words "Serving the Trade"; thereby implying that it sold only to or through dealers, that it was a wholesaler and sold to holders of such cards at wholesale prices, and that its business was something other than that of selling to the general public;

(c) Furnished circulars to such persons and business concerns as would, for a commission, refer customers to it, to be shown to prospective customers, reading, in part, "Salem House Authorized Member Admittance and direct buying privileges by permit or personal escort available here. On view, products of over 100 factories, * * *. Substantial savings";

(d) Paid commissions on sales to customers sent to it by various persons and smaller business concerns, with whom it entered into agreements for the payment of such commissions, and who, in making such contacts and inducing prospective customers to go to its place of business and purchase its wares, made or repeated to them some or all of the aforesaid deceptive statements;

(e) Hesitated or refused, through its salesmen and representatives to show furniture to prospective purchasers unless they gave their dealer's name or presented an "admittance card" from some person or concern with whom it had made an agreement, as above described, for the payment of commissions on sales made to such customers, and stated that the house

sold only to dealers and was strictly wholesale, and that the net prices quoted were in fact the wholesale prices quoted to dealers; and

(*f*) Stated to customers who came to its place of business, through its salesmen and representatives, that the net prices quoted to them for its furniture were at various discounts and reductions from the exaggerated prices marked thereon, and gave the purchaser the benefit of discounts or reductions of 20 to 60 percent below the ordinary retail prices, and were in fact wholesale prices;

With result of inducing the belief in its customers that it was a wholesaler and that they were buying from it at wholesale prices, when in truth and in fact its sales were not at wholesale prices nor in wholesale lots, but were to the ultimate consumer and user and not for resale, and the net prices quoted to its customers were not wholesale prices but were substantially higher, and did not represent 20 to 60 percent discounts from retail prices, and with effect, as a consequence thereof, of inducing a substantial portion of the purchasing public to purchase its said products:

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

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

Mr. D. E. Hoopingarner for the Commission.

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

PARAGRAPH 1. Respondent, Joseph Warner Furniture 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 at 42 East Thirty-third Street (Two Park Avenue Building), city of New York, State of New York. Respondent is engaged in the sale and distribution of household furniture and conducts and operates so-called dealer or trade showrooms at said location under the name "Salem House." It designates and describes its business as "Exclusive Distributors of Salem House Furniture." When sales are made at said location, respondent causes the furniture sold to be transported from its said place of business in the State of New York to the purchasers thereof, many of whom are located in various States of the United States other than the State of New York

and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said furniture in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. There is a well-known preference on the part of a substantial portion of the public for purchasing at wholesale, due to a general belief, and the fact, that wholesale prices are substantially lower than retail prices.

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 made false, exaggerated, and misleading representations with respect to the character of its business and the value and prices of its products.

By various forms of advertising, circularizing, and by personal statements of its representatives and employees, respondent has directly and indirectly and by implication represented, and does represent, itself to be a wholesaler of furniture, and that it has been and is in fact selling furniture at wholesale prices.

As parts of respondent's plan and scheme so to represent the character of its business and the prices of its products, among other devices, acts and practices, respondent circulated by mail and personally advertising matter, circular letters and so-called Admittance Permit cards, containing the following statements and claims:

(a) We are furniture distributors representing over 100 different factories. We stock every possible furniture need in a very wide price range to suit the requirements of thousands of dealers and interior decorators, and their referred clientele. A substantial money saving, quality for quality, is assured you.

(b)

ADMITTANCE PERMIT

To the Trade Showrooms of the

JOSEPH WARNER FURNITURE CORP.

This Card entitles

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and party to all Showroom privileges, including price quotation.

EXCLUSIVE DISTRIBUTOR OF SALEM HOUSE FURNITURE

(c) On the customer's copy of the triplicate invoice of sales appear the words "Serving The Trade."

(d) To persons and business concerns which, for a commission, would refer customers to respondent, respondent furnished circulars to be shown to the prospective customers, which read in part as follows:

"Salem House Authorized Member

Admittance and direct buying privileges by permit or personal escort available here. On view, products of over 100 factories. 50,000 sq. ft. of furniture for every room in the home, in every price range. Substantial savings."

PAR. 4. As further parts of its said aforementioned plan and scheme to represent its business and prices as those of a wholesaler, and to more fully effectuate them, and to gain the advantages flowing therefrom, respondent carried on other acts and practices, among them the following:

(*a*) Respondent contacted various persons and smaller business concerns of various kinds and made agreements with them to pay, and did pay them commissions on sales to customers contacted by or sent to respondent by such persons and concerns, who, in making such contacts and inducing such prospective customers to go to respondent's place of business and purchase its wares, made or repeated to such customers some or all of the aforedescribed misleading and deceptive statements.

(*b*) Its salesmen and representatives at its place of business hesitated or refused to show furniture to prospective purchasers unless they gave their dealer's name or presented a so-called admittance card from some person or concern with whom respondent had made an agreement as before described for the payment of commissions on sales to such customers, and stated that "This house sold only to dealers and was strictly wholesale," and that the net prices quoted were in fact the wholesale prices quoted to dealers.

(*c*) To retail customers who came to its place of business, respondent's salesmen and representatives stated that the net prices for its furniture quoted to such customers were at various discounts and reductions from exaggerated prices marked on its furniture, did in fact give the purchaser the benefit of discounts or reductions amounting to from 20 percent to as much as 60 percent below the ordinary retail prices of the same or similar wares, and were in fact wholesale prices.

PAR. 5. By some or all of the aforesaid statements, acts and practices, respondent, both directly and by indirection and implication, represented to, and induced the belief in, its retail customers that it was a wholesaler and was selling its wares to them, and that they were in fact buying from respondent, at wholesale prices, when in truth and in fact respondent is a retailer, and its sales were and are not at wholesale prices nor in wholesale lots, but were and are to the ultimate consumer and user and not for resale, and so intended and known to the respondent, and the net prices quoted to its customers were not wholesale prices, but were and are substantially higher than wholesale prices for the same or similar articles. Respondent does not sell said furni-

ture at discounts or reductions from the ordinary retail prices of from 20 percent to 60 percent as represented.

PAR. 6. The aforesaid acts, practices, and methods are parts of, and together they constitute, a plan or scheme to mislead and deceive purchasers into the belief that they are buying at wholesale prices; and the use of the aforesaid acts, practices and methods, in connection with the sale and distribution of respondent's said furniture in said commerce, has misled and deceived, and does mislead and deceive, purchasers into the erroneous and mistaken belief that respondent sells its said furniture at wholesale prices, and at the discount or reductions from the usual retail prices indicated, and induces a substantial portion of the purchasing public, as a result of said erroneous and mistaken belief, to purchase respondent's said products.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 13th day of December 1940, issued and subsequently served its complaint in this proceeding upon said respondent, Joseph Warner Furniture Corporation, 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 2, 1941 the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into by and between counsel for the Commission and counsel for the respondent, subject to the approval of the Commission, whereby it was stipulated and agreed that a statement of facts thereupon read into and made a part of the record in this proceeding, 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 or 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 and accepted and made a part of the record, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding

is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Joseph Warner Furniture 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 at 42 East Thirty-third Street (Two Park Avenue Building), city of New York, State of New York. Respondent is engaged in the sale and distribution of household furniture and conducts and operates so-called dealer or trade showrooms at said location under the name "Salem House." It designates and describes its business as "Exclusive Distributors of Salem House Furniture." When sales are made at said location, respondent causes the furniture sold to be transported from its said place of business in the State of New York to the purchasers thereof, many of whom are located in various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said furniture in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. There is a well-known preference on the part of a substantial portion of the public for purchasing at wholesale, due to a general belief, and the fact, that wholesale prices are substantially lower than retail prices.

PAR. 3. By various forms of advertising, circularizing, and by personal statements of its representatives and employees, respondent has directly and indirectly and by implication represented, and does represent, itself to be a wholesaler of furniture, and that it has been and is in fact selling furniture at wholesale prices.

As parts of respondent's plan and scheme so to represent the character of its business and the prices of its products, among other devices, acts, and practices, respondent circulated by mail and personally advertising matter, circular letters and so-called admittance permit cards, containing the following statements and claims:

(a) We are furniture distributors representing over 100 different factories. We stock every possible furniture need in a very wide price range to suit the requirements of thousands of dealers and interior decorators, and their referred clientele. A substantial money saving, quality for quality, is assured you.

(b) ADMITTANCE PERMIT
To the Trade Showrooms of the
JOSEPH WARNER FURNITURE CORP.

This Card entitles

---

and party to all Showroom privileges
including price quotation
EXCLUSIVE DISTRIBUTOR OF
SALEM HOUSE
FURNITURE.

(c) On the customer's copy of the triplicate invoice of sales appear the words "Serving The Trade."

(d) To persons and business concerns which, for a commission, would refer customers to respondent, respondent furnished circulars to be shown to the prospective customers, which read in part as follows:

"Salem House Authorized Member Admittance and direct buying privileges by permit or personal escort available here. On view, products of over 100 factories, 50,000 sq. ft. of furniture for every room in the home, in every price range. Substantial savings."

PAR. 4. As further parts of its said aforementioned plan to represent its business and prices as those of a wholesaler, and to more fully effectuate them, and to gain the advantages flowing therefrom, respondent carried on other acts and practices, among them the following:

(*a*) Respondent contacted various persons and smaller business concerns of various kinds and made agreements with them to pay, and did pay them commissions on sales to customers contacted by or sent to respondent by such persons and concerns, who, in making such contacts and inducing such prospective customers to go to respondent's place of business and purchase its wares, made or repeated to such customers some or all of the aforedescribed misleading and deceptive statements.

(*b*) Its salesmen and representatives at its place of business hesitated or refused to show furniture to prospective purchasers unless they gave their dealer's name or presented a so-called admittance card from some person or concern with whom respondent had made an agreement as before described for the payment of commissions on sales made to such customers, and stated that "This house sold only to dealers and was strictly wholesale," and that the net prices quoted were in fact the wholesale prices quoted to dealers.

(*c*) To customers who came to its place of business, respondent's salesmen and representatives stated that the net prices for its furniture quoted to such customers were at various discounts and reductions from exaggerated prices marked on its furniture, and represented that such prices did in fact give the purchaser the benefit of discounts or reductions amounting to from 20 percent to as much as 60 percent below the ordinary retail prices of the same or similar wares, and were in fact wholesale prices.

PAR. 5. By some or all of the aforesaid statements, acts, and practices, respondent, both directly and by indirection and implication, represented to, and induced the belief in, its customers that it was a wholesaler and that they were in fact buying from respondent at wholesale prices, when in truth and in fact respondent's sales were and are not at wholesale prices nor in wholesale lots, but were and are to the ultimate consumer and user and not for resale, and the net prices quoted to its customers were not wholesale prices, but were and are substantially higher than wholesale prices for the same or similar articles. Respondent does not sell said furniture at discounts or reductions from the ordinary retail prices of from 20 percent to 60 percent as represented.

The use by the respondent on said so-called admittance permits or cards and invoices of sales of the statements "Trade Showrooms," "Exclusive Distributor," "This Card entitles (Name of holder) and party to all Showroom privileges, including price quotation," and "Serving the Trade" has the tendency and capacity to lead members of the general public to believe that respondent sells only to or through dealers; that respondent is a wholesaler and sells to holders of such cards at wholesale prices; and that the business of respondent is something other than that of selling furniture and other merchandise to the general public.

PAR. 6. The aforesaid representations and implications made and published by respondent as aforesaid are false, misleading, and deceptive.

PAR. 7. The aforesaid acts, practices, and methods mislead and deceive purchasers into the belief that they are buying at wholesale prices; and the use of the aforesaid acts, practices and methods, in connection with the sale and distribution of respondent's said furniture in said commerce, has misled and deceived, and does mislead and deceive, purchasers into the erroneous and mistaken belief that respondent sells its said furniture at wholesale prices, and at the discounts or reductions from the usual retail prices indicated, and induces a substantial portion of the purchasing public, as a result of said erroneous and mistaken belief, to purchase respondent's said products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and a stipulation entered into by and between counsel for the Commission and counsel for the respondent, wherein it was stipulated and agreed that a statement of facts thereupon read into and made a part of the record in this proceeding may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission may proceed upon such statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs or of a report upon the evidence by the trial examiner, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Joseph Warner Furniture Corporation, a corporation, its officers, representatives, agent, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of furniture or allied merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent is a wholesaler or that it sells its furniture and other merchandise to purchasers thereof at wholesale prices.

2. Representing, directly or by implication, that respondent sells its furniture and merchandise only to or through dealers purchasing for resale.

3. Using and distributing among prospective customers so-called admittance permits or cards which, through use of such statements as "Trade Showrooms," "Exclusive Distributor," "Serving the Trade," "This card entitles (Name of holder) and party to all showroom privileges, including price quotation," or other similar statements, import and imply that respondent sells only to or through dealers; or that respondent is a wholesaler and sells to holders of such cards at wholesale prices; or that respondent's business is anything other than that of selling furniture and other merchandise to the general public.

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

FOOD DISPLAY MACHINE CORPORATION, AND A. H. KULIKOWSKI, MRS. A. H. KULIKOWSKI, AND GEORGE H. HARDT

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

Docket 4122. Complaint, May 1, 1940—Decision, Sept. 23, 1941

Where a corporation and two individuals, who were its general officers and stockholders and in active charge of its business, engaged in interstate sale and distribution of machines designed for preparing and cooking potato chips, doughnuts, and, until discontinuance of sale of such machine in early 1940, corn chips, conducting their business under various trade names and doing much of their advertising under name of one of said individual officers; by advertisements in periodicals of general circulation, and advertising circulars, leaflets, and pamphlets, and circular letters, directly or by implication—

Represented that amazing profits or earnings might be made and fortunes acquired through the operation of their said machines, that profits of as much as $21.60 and $40 per day might be so obtained, and that the minimum profit on operation of certain machines would amount to $100 a week;

Facts being earnings and profits so represented were far in excess of any amounts which had been earned by persons operating their machines, or which might reasonably be expected from operation thereof; in exceptional cases in which purchasers had been able to derive a profit from their operation, such profits were far below the amounts represented; and in no event could amazing profits or earnings be thus derived, or fortunes thus acquired;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that much greater earnings and profits might be made from the operation of their said machines than was actually the fact, and to cause it to purchase substantial quantities of their machines, as a 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.

Before *Mr. William C. Reeves*, trial examiner.
Mr. R. P. Bellinger for the Commission.
Bussian & DeBolt, 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 Food Display Ma-

chine Corporation, a corporation, M. J. Kulikowski, Mrs. M. J. Kulikowski, and George H. Hardt, 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. The corporate respondent, Food Display Machine Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 620 North Michigan Avenue, Chicago, Ill. The respondents, M. J. Kulikowski, Mrs. M. J. Kulikowski, and George H. Hardt, of the same address, are the officers and principal stockholders of the said corporate respondent above named, and as such manage, control, and direct the policies and operation thereof, particularly in the acts and practices herein alleged. All of said respondents have acted in concert in conducting the business hereinafter described and in doing the acts and things hereinafter alleged.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of machines designed for cooking potato chips, corn chips, and doughnuts. Respondents cause said machines, when sold, to be shipped from their place of business in Chicago, Ill., to the purchasers thereof located in States of the United States other than Illinois and in the District of Columbia, and there is and has been a course of trade in said machines sold by the respondents in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their business as aforesaid, respondents employ or use the trade names, Vita-Seald with respect to and in connection with their potato chip machines King Korn Co. and King K Co. with respect to and in connection with their corn chip machines, and Brown Bobby Co. with respect to and in connection with their doughnut machines.

PAR. 3. In the course and conduct of their business in said commerce as aforesaid, in soliciting the sale of and selling their machines, respondent's have made various and sundry representations in form letters, pamphlets and other circulars distributed among prospective purchasers, and by statements published in magazines and periodicals of national circulation concerning the opportunities afforded purchasers of such machines to start a profitable, independent business, and concerning the earnings or income which are likely to result from the purchase of any of said machines. Among

and typical of the statements and representations so made and used by the respondents are the following:

Only $2.50 investment in raw materials brings back $10 in cash at wholesale.

Your machine is capable of turning out 10 lbs. of chips every hour—80 lbs. in an 8 hour day. If sold in 5¢ size bags * * * that should give you a total profit of $21.60 on your 80 lbs. of chips.

You can get back $40 in cash receipts from one day's production of the machine.

Big daily profits from the start without overhead expense.

Sensational New Business That May Sweep You To Riches.

This is undoubtedly the most amazing money-making opportunity ever offered to the readers of this—or any other—magazine. It tells how any ambitious level-headed man can quickly establish a remarkable new kind of business that can pay a steady net cash profit of $40.00 a day—a business that offers unlimited opportunity, rapid expansion—a business in which you can employ others to work for you and run your daily profits up as high as you want them to go—a business that may make many men independently wealthy within the next few years.

Your whole investment will be less than your first week's potential income. This is truth; not fiction—fact; not theory. To the best of our knowledge no other business in America offers one-tenth the opportunity for profit and independence.

Experts estimate and tests show that the first year's requirements should be about 12,000,000 lbs. You make 32¢ net profit on every pound that passes through your hands.

$100 A WEEK NET TO START.

According to accurate figures the very minimum of the first operation would produce a net cash profit of at least $100 a week * * *. This we figure to be a minimum.

Anyone—anywhere—can make big profits on this surprising new product.

No wonder so many people without one bit of experience are literally cleaning up fortunes with this new money-maker.

Said statements, together with other statements similar thereto not herein set out, represent that tremendous incomes and profits may reasonably be expected by the purchasers and users of respondents' machines as aforesaid; that with little effort and small investment or expense, one can purchase respondents' machines and therewith start a business that will rapidly accumulate riches for himself; that respondents' said machines present in themselves the most amazing money-making opportunity offered by any business in America; that the demand for the products of respondents' machines is so great that with one or more of said machines a person can quickly amass fabulous profits; that anybody anywhere can make large profits by the operation of one of respondents' machines and the minimum net weekly profit to be derived therefrom as a starter is $100; that with the purchase and operation of one of respondents' machines a man can quickly establish a business in which he will realize a net cash

profit of $40 a day, and which offers unlimited opportunities for mounting profits as high as he might wish; that the first week's income from the operation of one of respondents' machines will exceed the entire purchase price thereof and investment in the business; that many people without experience are reaping fortunes by the use of respondents' machines.

PAR. 4. In truth and in fact, respondents' claims and representations as to the actual or potential markets available for the sale of the products produced by such machines and the claims and representations made as to the earnings to be made or the income produced by the operation of such machines are grossly exaggerated, misleading, and deceptive, for the actual and potential markets available for such products are not as great as represented by respondents and the actual market is supplied by strong, well-financed, experienced operators from whom an inexperienced operator with one or more of respondents' said machines would be unable to acquire or divert substantial trade and custom. Only a few, if any, operators of such machines are able to find markets which will justify or require the operation of such machines at full capacity for any extended period of time. To accumulate the profits or earnings at the rate and in the amounts represented by respondents would require the steady operation of such machines at full capacity.

In truth and in fact, one cannot buy respondents' machines and therewith start a business that will rapidly accumulate riches for himself; respondents' machines do not present in themselves the most amazing money-making opportunity offered by any business in America; the demand for the products of respondents' machines is not sufficient to enable the operator of one or more of said machines quickly to amass fabulous profits; not everyone can make large profits through the operation of one of respondents' machines and the minimum net weekly profit to be derived therefrom when the operation thereof is first started is not $100 per week or any approximate sum; a man cannot, by the purchase and operation of one of respondents' machines, quickly establish a business in which he will realize a net cash profit of $40 a day, or which offers unlimited opportunities for mounting profits as high as he might wish; the first week's income from the operation of one of respondents' machines will not exceed the total investment in the business; many people without experience are not reaping fortunes by the use of respondents' machines; the actual and probable earnings or profits of operators of respondents' machines are, on the average, much less than the amounts set out above, and said amounts set out above are far in excess of the earnings and profits that can reasonably be expected by operators of said machines.

PAR. 5. The use by respondents of the representations set out herein have had and now have the capacity and tendency to mislead and deceive, and do mislead and deceive, a substantial portion of the purchasing public into the erroneous belief that such representations are true and to purchase a substantial quantity of such machines from respondents by reason of such erroneous belief.

PAR. 6. 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 May 1, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Food Display Machine Corporation, a corporation, and A. H. Kulikowski (referred to in the complaint as M. J. Kulikowski), Mrs. A. H. Kulikowski (referred to in the complaint as Mrs. M. J. Kulikowski), and George H. Hardt, individuals, 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 were introduced by R. P. Bellinger, attorney for the Commission, and in opposition thereto by Messrs. Bussian & DeBolt, attorneys for respondents, before William C. Reeves, a trial examiner of the Commission theretofore duly designated by it, and such 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, answer, testimony and other evidence, report of the trial examiner upon the evidence and exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Food Display Machine Corporation, 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 620 North Michigan Avenue, Chicago, Ill.

Respondent, A. H. Kulikowski (referred to in the complaint as M. J. Kulikowski), is president and treasurer of the corporate respondent. Respondent, Mrs. A. H. Kulikowski (referred to in the complaint as Mrs. M. J. Kulikowski), is secretary of the corporate respondent. Respondent George H. Hardt is vice president and assistant secretary of the corporate respondent. The mailing address of the individual respondents is the same as that of the corporate respondent.

The individual respondents, together with L. T. Kulikowski, a son of respondents A. H. Kulikowski and Mrs. A. H. Kulikowski, are the owners of all of the outstanding capital stock of the corporate respondent. Respondents, A. H. Kulikowski and George H. Hardt, are in active charge of the business of the corporation and formulate, direct and control the corporation's policies, practices and methods, including its advertising policies and practices. Respondent, Mrs. A. H. Kulikowski, does not participate actively in the operation of the business nor in the formulation, direction or control of the corporation's policies or practices.

The corporate respondent and respondents A. H. Kulikowski and George H. Hardt have acted in conjunction and cooperation each with the others in carrying out the acts and practices hereinafter set forth. As used hereinafter, the word "respondents" will refer to these three respondents alone and not to Mrs. A. H. Kulikowski.

PAR. 2. The respondents are now, and for more than three years last past have been, engaged in the sale and distribution of certain machines designed for preparing and cooking potato chips and doughnuts. Respondents were formerly engaged also in the sale and distribution of a machine designed for the preparation and cooking of corn chips, but the sale of this machine was discontinued in the early part of 1940. Respondents cause, and have caused, their machines, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and have maintained, a course of trade in their machines 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, the respondents employ, in addition to the corporate name Food Display Machine Corporation, various other trade names. In connection with their corn chip machine the names "King Korn Co." and "King K Co." have been used, and in connection with their doughnut machine the name "Brown Bobby Co." is used. Much of the respondents' adver-

tising is done also under the name of the individual respondent, George H. Hardt.

PAR. 4. In the course and conduct of their business and for the purpose of promoting the sale of their machines, the respondents have inserted advertisements in periodicals having a general circulation throughout the United States. They have also made use of numerous advertising circulars, leaflets, and pamphlets as well as various circular letters, all of such advertising material being sent to prospective purchasers of their machines. Among and typical of the statements and representations appearing in respondents' advertisements and advertising material are the following:

Only $2.50 investment in raw materials brings back $10 in cash at wholesale.

Your machine is capable of turning out 10 lbs. of chips every hour—80 lbs. in an 8 hour day. If sold in 5¢ size bags * * * that should give you a total profit of $21.60 on your 80 lbs. of chips.

You can get back $40 in cash receipts from one day's production of the machine.

Big daily profits from the start without overhead expense.

This is undoubtedly the most amazing money-making opportunity ever offered to the readers of this—or any other—magazine. It tells how any ambitious level-headed man can quickly establish a remarkable new kind of business that can pay a steady net cash profit of $40.00 a day—a business that offers unlimited opportunity, rapid expansion—a business in which you can employ others to work for you and run your daily profits up as high as you want them to go—a business that may make many men independently wealthy within the next few years.

Your whole investment will be less than your first week's potential income. This is truth; not fiction—fact; not theory. To the best of our knowledge no other business in America offers one-tenth the opportunity for profit and independence.

$100 A WEEK NET TO START

According to accurate figures the very minimum of the first operation would produce a net cash profit of at least $100 a week * * *. This we figure to be a minimum.

Anyone—anywhere—can make big profits on this surprising new product.

AMAZING NEW BUSINESS

Work at Home

Pays

BIG DAILY PROFITS

A SURPRISING new profit opportunity is now offered to every ambitious man and woman! A sensational new kind of food business has been invented that can be operated with no previous experience in either full or spare time—a business that pays you big daily profits selling production of one machine at wholesale only.

EVERYTHING SUPPLIED. We supply equipment and plans for making and selling a delicious new greaseless doughnut that is cooked in a remarkable electrical device. Easy to digest and more toothsome than old style doughnuts ever were. This delicious new dainty—Brown Bobby—costs less to make and sells faster. No

wonder so many people without one bit of experience are literally cleaning up "fortunes" with this new money-maker!

PAR. 5. Through the use of these statements and representations and others of similar import, the respondents have represented, directly or by implication, that amazing profits or earnings may be made and fortunes acquired through the operation of respondents' machines; that profits of as much as $21.60 per day and $40 per day may be obtained from the operation of such machines, and that the minimum profit on the operation of certain of the machines will amount to $100 per week.

PAR. 6. In order to ascertain the amount of the earnings or profits which may reasonably be expected to accrue to persons operating respondents' machines, there were introduced as witnesses on behalf of the Commission a number of persons who had actually purchased and operated the machines. These witnesses resided in some six different States and were representative of the members of the public who purchase the machines. The testimony of these witnesses shows, and the Commission finds, that the earnings and profits represented by respondents are far in excess of any amounts which have been earned by persons operating respondents' machines, or which may reasonably be expected to accrue from the operation of the machines. In most of the instances testified to by the witnesses the machines were found to be unprofitable, and the business was abandoned and the machines discarded entirely. In those exceptional cases in which purchasers had been able to derive a profit from the operation of the machines such profits were far below the amounts represented by respondents. In no event can "amazing" profits or earnings be derived from the operation of respondents' machines, nor can "fortunes" be acquired from the operation of the machines. Profits of $21.60 per day, $40 per day and $100 per week, as represented by respondents in their advertising, are wholly impossible from a practical viewpoint.

PAR. 7. The Commission therefore finds that respondents' representations with respect to the earnings or profits which may be derived from the operation of their machines are grossly exaggerated, false, and misleading.

PAR. 8. The Commission further finds that the use by respondents of these false and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that much greater earnings and profits may be made from the operation of respondents' machines than is actually the fact, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' machines as a result of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of respondents, Food Display Machine Corporation, A. H. Kulikowski and George H. Hardt, as herein found are all to the prejudice of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before William C. Reeves, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence, and exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that certain of the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Food Display Machine Corporation, a corporation, its officers, and A. H. Kulikowski and George H. Hardt, trading under the names King Korn Co., King K Co. and Brown Bobby Co., or trading under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondents' potato chip machines, corn chip machines, and doughnut machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that amazing earnings or profits may be made or fortunes acquired through the operation of respondents' machines.

2. Representing as possible or maximum earnings or profits which may be made during any specified period through the use of respondents' machines, any amounts in excess of those which have actually been earned during such specified period by users of respondents' machines under normal conditions in due course of business.

3. Representing as usual or customary earnings or profits which may be made during any specified period through the use of respondents' machines, any amounts in excess of the average, usual and customary amounts which have actually been earned by users of respondents' machines under normal conditions in due course of business.

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

It is further ordered, That this proceeding be, and it hereby is, dismissed as to respondent Mrs. A. H. Kulikowski.

IN THE MATTER OF

W. K. STERLINE, AND MUMM, ROMER, ROBBINS & PEARSON, INC.

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

Docket 4485. Complaint, Apr. 8, 1941—Decision, Sept. 23, 1941

Where an individual engaged in interstate sale and distribution of his "Hay Fever Compound" also known as "W. K. Sterline's compound," and his "Asthma Treatment," the latter including said "Compound," "Bronchial Elixir," and "Korana Powder"; together with his corporate advertising agency, by advertisements sent through the mails and through form letters, leaflets, pamphlets, and other advertising media, and including purported testimonial quotations, directly and by implication—

(*a*) Represented that his said "Hay Fever Treatment" was a cure and remedy for hay fever, and a competent and effective treatment therefor, which would fortify one's system against it, enabling one to avoid it, and would check sneezing and nasal discharge; facts being said treatment had no therapeutic value in the treatment of such condition;

(*b*) Represented that said "Asthma Treatment" constituted a cure and remedy for asthma and a competent and effective treatment therefor, and also for bronchitis when associated with asthma, and would restore one to health and prevent return of said condition; facts being neither said treatments nor the preparations of which it was composed, whether used separately or in any combination, constituted a cure or effective treatment for either ailment, or had any therapeutic value in the treatment of asthma in excess of affording mild temporary relief from its paroxysms, or any such value in the treatment of bronchitis when associated with asthma in excess of that furnished by a mild expectorant;

(*c*) Represented that his said "Elixir" constituted a cure and remedy and a competent and effective treatment for bronchitis; facts being it had no therapeutic value in treatment thereof, in excess of that furnished, as aforesaid, by a mild expectorant; and

(*d*) Failed to reveal facts material in light of representations contained in said advertisements as respects his said "Compound," and that use thereof under usual or prescribed conditions might result in serious injury to health, in that its content of potassium iodide and fluid extract of lobelia might be harmful to those suffering from active or latent tuberculosis, and its sodium bromide content, when used over long period of time, was likely to cause mental derangement and rash; and failed to apprise the reader that use of product in question might be harmful for such reasons, in note on label of said "Compound" advising prospective user, in event of having tuberculosis, to see a physician first;

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 a substantial portion of said public, because of such belief, to purchase his "Treatments":

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. Norwood*, trial examiner.
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 W. K. Sterline, an individual, and Mumm, Romer, Robbins & Pearson, 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. Respondent, W. K. Sterline, is an individual with his principal place of business located at 110 West Poplar Street, Sidney, Ohio.

PAR. 2. This respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a treatment for hay fever, consisting of a medicinal preparation designated "W. K. Sterline's Compound," sometimes referred to as "Double Strength Hay Fever Compound," "W. K. Sterline's Hay Fever Compound," "Hay Fever Compound," and "Compound," hereinafter referred to as "Hay Fever Treatment;" and in the sale and distribution of a treatment for asthma designated "Sterline's Combination Home Treatment" and sometimes as "Combination Treatment," hereinafter referred to as "Asthma Treatment," consisting of the following items:

(*a*) A medicinal preparation designated "W. K. Sterline's Compound," sometimes referred to as "Sterline's Asthma Compound" and "Asthma Compound."

(*b*) A medicinal preparation designated as "W. K. Sterline's Elixir," sometimes referred to as "Sterline's Bronchial Elixir" and "Bronchial Elixir"; and

(*c*) A medicinal powder designated as "Korona," sometimes referred to as "Asthma Powder,"

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

This respondent causes his aforesaid treatments, and the various items constituting said treatments, 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.

This respondent maintains, and at all times mentioned herein has maintained, a course of trade in his aforesaid treatments, and in the

various items constituting said treatments, in commerce between and among the various States of the United States.

PAR. 3. Respondents, Mumm, Romer, Robbins & Pearson, Inc., is a corporation existing under the laws of the State of Ohio, with its principal office and place of business located at 33 North Grant Avenue, Columbus, Ohio. This respondent is an advertising agency and, as such, is engaged in formulating, editing, and selling, as well as advising its clients on advertising matters.

This respondent is the advertising representative of respondent, W. K. Sterline, and as such it places all newspaper advertising, and aids, assists and advises in the preparation of all advertising material, used by respondent, W. K. Sterline, in the sale and distribution of the aforesaid treatments and medicinal preparations designated as aforesaid.

PAR. 4. The respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 5. In furtherance of the sale and distribution of the aforesaid "Hay Fever Treatment," the aforesaid "Asthma Treatment" and the respective items thereof, as aforesaid, the said respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning the aforesaid "Hay Fever Treatment" and the aforesaid "Asthma Treatment" by the United States mails and by various means in commerce, as commerce is defined by 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 the said treatments, designated as aforesaid, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the said treatments, and the respective items thereof, in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the false statements and representations disseminated and caused to be disseminated by the United States mails, by form letters, leaflets, pamphlets, and other advertising media, are the following:

WHY SUFFER WITH HAY FEVER? Fortify your system now by using W. K. Sterline's Hay Fever Compound.

Every time you take a dose you are doing that much to fortify your system and avoid your Hay Fever.

For 20 years I have been afflicted with Hay Fever. Nothing gave me any relief until I used your product. The sneezing and running from my nose was checked and I can truthfully say it is the most effective remedy I ever used in my life.

Some will not believe Hay Fever can be prevented, but at the end of every Hay Fever season sufferers write they escaped entirely.

I am glad to recommend your treatment because it always keeps me from having the slightest attack of Hay Fever.

I am mailing you today my ASTHMA COMPOUND and, since most people who suffer from Asthma also have Bronchitis without knowing it, I am also sending a trial of my Bronchial Elixir.

For instance, W. W. Shaeffer, Wakeman, Ohio, says that before he used my treatment in 1909, he couldn't rest in bed at all, but since taking the medicine nearly 30 years ago, he has never had an attack of asthma.

I have hundreds and hundreds of letters, not only from those who have just recently taken the treatment, but from those who used these same medicines 10, 15, and 20 years ago, all stating that their asthma has not returned.

I was confined to my bed for years and wondered how I managed to live. Everything I ate disagreed with me until I received your proper diet. Now I am making up for what I missed in my younger days. I have just forgotten that I ever had Asthma, but I owe it all to your great medicine. I am in the best of health * * *.

Your medicines are worth their weight in gold and God Bless you for saving me from the grave. I did not want to live those years and now I can hardly believe it is myself well and perfectly healthy. I want everyone to write me as I will always praise your treatment to the highest. I would be dead but for your precious medicine.

PAR. 6. Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto, but not specifically set out herein, which purport to be descriptive of the therapeutic properties of the aforesaid "Hay Fever Treatment," sold and distributed by respondent, W. K. Sterline, as aforesaid, respondents represent directly and by implication that the "Hay Fever Treatment," is a cure and remedy for hay fever and constitutes a competent and effective treatment for hay fever; that it will fortify one's system against hay fever; that it will enable one to avoid hay fever; and that it will check sneezing and discharging from the nose.

Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto but not specifically set out herein, which purport to be descriptive of the therapeutic properties of the aforesaid "Asthma Treatment" sold and distributed by respondent, W. K. Sterline, as aforesaid, respondents represent directly and by implication that the "Asthma Treatment" is a cure and remedy for asthma and constitutes a competent and effective treatment for asthma; and that it will restore one to health; and that it will prevent the return of asthma. Respondents further represent that this treatment is a cure and remedy for bronchitis when this disease is associated with asthma.

PAR. 7. The foregoing statements and representations, and others similar thereto but not specifically set out herein, are grossly exaggerated, false, and misleading.

The aforesaid "Hay Fever Treatment," sold and distriuted as aforesaid, is not a cure or remedy for, and has no generally recognized dependable therapeutic value in the treatment of, hay fever. It will not fortify one's system against hay fever. It will not enable one to avoid hay fever. It will not check sneezing and discharging from the nose. It will not prevent hay fever.

The aforesaid "Asthma Treatment," and the individual preparations constituting this treatment sold and distributed as aforesaid, used separately, or in any combination of one with the other, is not a cure or remedy, nor do they jointly or separately, or in any combination of one with the other, have any generally recognized material therapeutic value in the treatment of asthma or bronchitis in excess of affording temporary relief from the paroxysm usually associated with asthma. They will not restore one to health. They will not prevent the return of asthma. They are not a cure or remedy, nor are they a competent or effective treatment for bronchitis.

The medicinal preparation "W. K. Sterline's Compound" and the medicinal preparation "Korona" have no generally recognized material therapeutic value in the treatment of asthma in excess of affording temporary relief from the paroxysm of asthma.

The medicinal preparation "W. K. Sterline's Elixir" has no generally recognized material therapeutic value in the treatment of bronchitis in excess of that furnished by an expectorant.

PAR. 8. The medicinal preparation "W. K. Sterline's Compound" contains the drugs potassium iodide and fluid extract of lobelia. The use of this preparation thus constituted may be harmful to those suffering with active or latent tuberculosis by reason of delaying or retarding healing and the danger of activation of dormant lesions.

This medicinal preparation also contains the drug sodium bromide. The use of this preparation thus constituted over a long period of time is likely to cause mental derangement and rash.

The advertisements disseminated by the respondents, as aforesaid, contain no cautionary or warning statement to the effect that this preparation should not be used by persons suffering from active or latent tuberculosis, nor do they contain a cautionary or warning statement to the effect that this preparation should not be taken over a prolonged period of time. Such advertisements, therefore, constitute false advertising 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 preparations under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may result in serious injury to health.

PAR. 9. The use by said respondents, as aforesaid, of the foregoing false, deceptive, and misleading statements and representations, and others of 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 the aforesaid treatments and the medicinal preparations designated as aforesaid.

PAR. 10. The aforesaid acts and practices of said respondents as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 8th day of April 1941, issued, and on the 9th day of April 1941, and on the 10th day of April 1941, served its complaint on respondents, Mumm, Romer, Robbins & Pearson, Inc., and on respondent, W. K. Sterline, respectively, charging respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

On April 28, 1941, respondents, Mumm, Romer, Robbins & Pearson, Inc., and on April 30, 1941, respondent, W. K. Sterline, filed their separate answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, together with the exhibits thereto attached, signed and executed by respondent, W. K. Sterline, and by respondents, Mumm, Romer, Robbins & Pearson, Inc., and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and the said Commission may proceed upon said statement of facts, and the exhibits thereto attached, to make its reports, 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 and without the filing of trial examiner's report upon the evidence.

This proceeding, thereafter, regularly came on for final hearing before the Commission on said complaint, answers, stipulation, and exhibits, 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, W. K. Sterline, is an individual with his principal place of business located at 110 East (instead of 110 West as alleged in the complaint) Poplar Street, Sidney, Ohio, and he 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 a treatment for hay fever and of a treatment for asthma and of the various individual medicinal preparations of which said treatments are composed.

This respondent's hay fever treatment consists of a medicinal preparation designated "W. K. Sterline's Compound," sometimes referred to as "Double Strength Hay Fever Compound," "W. K. Sterline's Hay Fever Compound," "Hay Fever Compound" and "Compound."

This respondent's treatment for asthma, designated "Sterline's Combination Home Treatment," and sometimes as "Combination Treatment," consists of the following items:

(*a*) A medicinal preparation designated "W. K. Sterline's Compound," sometimes referred to as "Sterline's Asthma Compound" and "Asthma Compound."

(*b*) A medicinal preparation designated as "W. K. Sterline's Elixir," sometimes referred to as "Sterline's Bronchial Elixir," and "Bronchial Elixir"; and

(*c*) A medicinal powder designated "W. K. Sterline's Korana Powder" (instead of "Korona" as alleged in the complaint), sometimes referred to as "Asthma Powder."

PAR. 2. Respondent, W. K. Sterline, causes his aforesaid treatments, designated as aforesaid, and the individual medicinal preparations constituting said treatments, when sold, to be transported from his place of business in the State of Ohio to the respective purchasers thereof located in various other States of the United States; and he maintains, and at all times mentioned herein has maintained, a course of trade in his aforesaid treatments and in the individual medicinal preparations constituting said treatments in commerce between and among the various States of the United States.

PAR. 3. Respondents, Mumm, Romer, Robbins & Pearson, Inc., is a corporation existing under the laws of the State of Ohio, with its principal office and place of business located at 33 North Grant Avenue, Columbus, Ohio. This respondent is an advertising agency engaged in formulating, editing, selling, and advising its clients on advertising

matters. It is the advertising representative of respondent, W. K. Sterline, and prepares and places all newspaper and periodical advertising, and reviews, edits, revises, alters, rearranges, and sometimes rewrites all advertising material used by W. K. Sterline in the offering for sale, sale and distribution of the aforesaid "Hay Fever Treatment" and "Asthma Treatment" and the individual medicinal preparations of which said treatments are composed.

PAR. 4. The respondents act in conjunction with one another in the performance of the acts and practices hereinafter found.

PAR. 5. In furtherance of the sale and distribution of the said "Hay Fever Treatment," and "Asthma Treatment," variously designated as aforesaid, and of the individual medicinal preparations of which said treatments are composed, as aforesaid, the said respondents have disseminated, and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning the said "Hay Fever Treatment," and "Asthma Treatment" and the individual medicinal preparations of which said treatments are composed, by the United States mails and by various means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have caused and are now causing the dissemination of false advertisements concerning the said "Hay Fever Treatment" and "Asthma Treatment," designated as aforesaid, and concerning the individual medicinal preparations of which said treatments are composed, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the said treatments and the purchase of the respective individual medicinal preparations thereof, in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false statements and representations disseminated and caused to be disseminated by the United States mails, and by various means in commerce, through the use of form letters, leaflets, pamphlets, and other advertising media, are the following:

WHY SUFFER WITH HAY FEVER: Fortify your system now by using W. K. Sterline's Hay Fever Compound.

Every time you take a dose you are doing that much to fortify your system and avoid your Hay Fever.

For 20 years I have been afflicted with Hay Fever. Nothing gave me any relief until I used your product. The sneezing and running from my nose was checked and I can truthfully say it is the most effective remedy I ever used in my life.

Some will not believe Hay Fever can be prevented, but at the end of every Hay Fever season sufferers write they escaped entirely.

I am glad to recommend your treatment because it always keeps me from having the slightest attack of Hay Fever.

I am mailing you today my ASTHMA COMPOUND and, since most people who suffer from Asthma also have Bronchitis without knowing it, I am also sending a trial of my Bronchial Elixir.

For instance, W. W. Shaeffer, Wakeman, Ohio, says that before he used my treatment in 1909, he couldn't rest in bed at all, but since taking the medicine nearly 30 years ago, he has never had an attack of asthma.

I have hundreds and hundreds of letters, not only from those who have just recently taken the treatment, but from those who used these same medicines 10, 15, and 20 years ago, all stating that their asthma has not returned.

I was confined to my bed for years and wondered how I managed to live. Everything I ate disagreed with me until I received your proper diet. Now I am making up for what I missed in my younger days. I have just forgotten that I ever had Asthma, but I owe it all to your great medicine. I am in the best of health * * *.

Your medicines are worth their weight in gold and God Bless you for saving me from the grave. I did not want to live those years and now I can hardly believe it is myself well and perfectly healthy. I want everyone to write me as I will always praise your treatment to the highest. I would be dead but for your precious medicine.

PAR. 6. Through the use of the statements and representations hereinabove set forth, and others similar thereto but not specifically set out herein, purporting to be descriptive of the therapeutic properties of respondent W. K. Sterline's "Hay Fever Treatment," respondents represent directly and by implication that the said "Hay Fever Treatment" is a cure and remedy for hay fever and constitutes a competent and effective treatment for hay fever; that it will fortify one's system against hay fever; that it will enable one to avoid hay fever; and that it will check sneezing and discharging from the nose.

PAR. 7. Through the use of the statements and representations hereinabove set forth, and others similar thereto but not specifically set out herein, purporting to be descriptive of the therapeutic properties of respondent W. K. Sterline's "Asthma Treatment," and of the individual medicinal preparations of which said treatment is composed, respondents represent directly and by implication that the said "Asthma Treatment" is a cure and remedy for asthma and constitutes a competent and effective treatment for asthma; that it is a cure and remedy for bronchitis and constitutes a competent and effective treatment for bronchitis when bronchitis is associated with asthma; that it will restore one to health; that it will prevent the return of asthma.

PAR. 8. Through the use of the statements and representations hereinabove set forth, and others similar thereto but not specifically set out herein, purporting to be descriptive of the therapeutic properties of the medicinal preparation "W. K. Sterline's Elixir," respondents represent directly and by implication that the said medicinal preparation is a cure and remedy for bronchitis and constitutes a competent and effective treatment for bronchitis.

PAR. 9. The aforesaid statements and representations, and others similar thereto but not specifically set out herein, are grossly exaggerated, false, and misleading.

The aforesaid "Hay Fever Treatment," sold and distributed as aforesaid is not a cure or remedy, nor a competent or effective treatment for hay fever. It has no generally recognized dependable therapeutic value whatever in the treatment of hay fever. It will not fortify one's system against hay fever. It will not enable one to avoid hay fever. It will not prevent hay fever. It will not check sneezing and discharging from the nose.

The aforesaid "Asthma Treatment," sold and distributed as aforesaid, or the individual medicinal preparations of which said treatment is composed, used separately, jointly, or in any combination of one with the other, is not a cure or a remedy, nor a competent or effective treatment, for asthma or bronchitis; nor do they jointly or separately, or in any combination of one with the other, have any generally recognized dependable therapeutic value in the treatment of asthma in excess of affording mild temporary relief from the paroxysms usually associated with asthma; nor do they jointly or separately, or in any combination of one with the other, have any generally recognized dependable therapeutic value in the treatment of bronchitis, when bronchitis is associated with asthma, in excess of that furnished by a mild expectorant. They will not restore one to health. They will not prevent the return of asthma.

The aforesaid medicinal preparation "W. K. Sterline's Elixir" sold and distributed, as aforesaid, is not a cure or remedy, nor a competent or effective treatment for bronchitis. It has no generally recognized dependable therapeutic value in the treatment of bronchitis in excess of that furnished by a mild expectorant, either when bronchitis is associated with asthma or when bronchitis is independent of asthma.

PAR. 10. The medicinal preparation "W. K. Sterline's Compound" contains the drugs potassium iodide, fluid extract of lobelia, and sodium bromide. Due to the presence of potassium iodide and fluid extract of lobelia the use of this preparation may be harmful to persons suffering from active or latent tuberculosis by reason of delaying or retarding healing and the danger of activation of dormant lesions. Due to the presence of sodium bromide the use of this preparation over a long period of time by any person is likely to cause mental derangement and rash.

PAR. 11. The labels now being used by respondent, W. K. Sterline, for the medicinal preparation "W. K. Sterline's Compound" carries the following statement printed thereon:

NOTE: If you have tuberculosis see a physician before using.

This statement is not such a warning or cautionary statement that apprises the reader that the use of this preparation may be harmful to persons suffering from active or latent tuberculosis by reason of delaying or retarding healing and the danger of activation of dormant lesions and that this preparation used over a long period of time by any person is likely to cause mental derangement and rash.

The advertisements disseminated by the respondents contain neither a statement to the effect that the use of this preparation may be harmful to persons suffering from active or latent tuberculosis by reason of delaying or retarding healing and the danger of activation of dormant lesions and that its use over a long period of time is likely to cause mental derangement and rash, nor a cautionary or warning statement to the effect that this preparation should be used only as directed on the label. Such advertisements, therefore, 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 serious injury to health.

PAR. 12. The use of 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 statements, representations and advertisements are true, and that respondent W. K. Sterline's "Hay Fever Treatment" and "Asthma Treatment" and the individual medicinal preparation of which said treatments are composed will accomplish the results claimed as found in paragraphs 6, 7, and 8 hereof, and that respondent's medicinal preparation "W. K. Sterline's Compound" is harmless and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondent W. K. Sterline's aforesaid "Hay Fever Treatment" and "Asthma Treatment" and the various medicinal preparations of which said treatments are composed, as aforesaid.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public, and 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, and a stipulation as to the facts entered into between the respondents herein and Richard P. Whiteley, assistant chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents findings as to the facts and its 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 the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, W. K. Sterline, his agents, representatives, and employees, and that respondents, Mumm, Romer, Robbins & Pearson, 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 W. K. Sterline's "Hay Fever Treatment," consisting of the medicinal preparation "W. K. Sterline's Compound" and W. K. Sterline's "Asthma Treatment" consisting of the medicinal preparations, "W. K. Sterline's Compound," "W. K. Sterline's Elixir," and "W. K. Sterline's Korana Powder," and the individual preparations of which the aforesaid "Hay Fever Treatment" and the aforesaid "Asthma Treatment" are composed, or in connection with the offering for sale, sale or distribution of any other preparation or combination of preparations, consisting of substantially similar composition or possessing substantially similar properties, whether represented as a treatment or treatments and under whatever name or names designated, 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, indirectly or through inference:

A. That respondent W. K. Sterline's "Hay Fever Treatment," or the medicinal preparation "W. K. Sterline's Compound"

(*a*) is a cure or remedy for, or possesses any therapeutic value whatever in the treatment of persons suffering from, hay fever; or

(*b*) possesses any properties which will be effective in fortifying the system against, or enable one to avoid, hay fever; or

(*c*) will check sneezing and discharging from the nose; and

B. That respondent W. K. Sterline's "Asthma Treatment," or the medicinal preparations "W. K. Sterline's Compound," "W. K. Ster-

line's Elixir" or "W. K. Sterline's Korana Powder," separately, jointly, or when used in any combination of the one with the other:

(*a*) is a cure or remedy for, or possesses any therapeutic value in the treatment of, asthma in excess of affording mild temporary relief from the paroxysms usually associated with asthma; or

(*b*) will prevent the return of asthma or restore one to health; or

(*c*) possesses any therapeutic value in the treatment of bronchitis, when bronchitis is associated with asthma, in excess of that furnished by a mild expectorant;

C. That respondent W. K. Sterline's medicinal preparation "W. K. Sterline's Elixir" possesses any therapeutic value in the treatment of bronchitis in excess of that furnished by a mild expectorant, whether bronchitis is associated with asthma or not.

2. Disseminating or causing to be disseminated any advertisement of the medicinal preparation "W. K. Sterline's Compound" by means of United States mail or by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which fails to reveal that said medicinal preparation should not be used by persons suffering from active or latent tuberculosis and that use of said preparation over a long period of time is likely to cause mental derangement, provided, however, that if the label of said preparation contains a warning of the potential dangers existing in the said medicinal preparation as hereinabove set forth, such advertisements need contain only the cautionary statement: CAUTION, USE ONLY AS DIRECTED ON THE LABEL.

3. 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 W. K. Sterline's "Hay Fever Treatment" or of W. K. Sterline's "Asthma Treatment," or of the individual medicinal preparations of which each treatment is composed, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fails to comply with the requirements set forth in paragraph 2 hereof.

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 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

NOLAN B. STADLEY, TRADING AS STERLING 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 4542. Complaint, July 18, 1941—Decision, Sept. 23, 1941

Where an individual engaged in interstate sale and distribution of his "Sterling Short Wave Diathermy"; by means of advertisements disseminated through the mails—

(a) Represented that his said device, when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments, by self-application in the home, was a scientific, safe, harmless, and effective means 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 would have no ill effects upon the body;

Facts being the device did not constitute a competent treatment for conditions of acute inflammation of the nerves, muscles, bursae, or joints, and rheumatic pains associated therewith, but might result, in such cases, in further swelling of the inflamed tissues, thereby increasing the congestion and spreading the inflammation; short wave diathermy is contra-indicated in all cases of menstruation, pregnancy, gastric ulcers, acute appendicitis, in areas where there is a probable malignancy, and where there is a hermorrhagic diathesis; use of device in certain cases might cause serious injury to health, delay proper diagnosis and treatment, and result in severe tissue destruction and burns; use for treatment of pain in the extremities under certain conditions may lead to gangrene and even necessitate amputation; and diagnosis by competent medical authority is required to determine if diathermy is indicated and method of treatment which should be prescribed; and

(b) Failed to reveal the facts material in the light of such representations, and that use of said device under prescribed or usual conditions might result in serious and irreparable injury to health, and failed to reveal conspicuously that it might be safely used only after a competent medical authority had determined that diathermy was indicated and had prescribed the treatment, and user had been adequately instructed in the operation of such device by a trained technician;

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 said belief, to purchase his 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.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Nolan B. Stadley, an individual, trading as Sterling 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, Nolan B. Stadley, is an individual trading as Sterling Appliance Co., with his office and principal place of business at 4203 South Hoover 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 as Sterling Short Wave Diathermy.

In the course and conduct of his business, the respondent causes said device or apparatus, when sold, to be transported from his place of business in the State of California, to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains and at all times mentioned herein, has maintained, a course of trade in said 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 his aforesaid business, the respondent has disseminated and has caused 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 has caused 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, are the following:

Feel Better Through the use of Sterling Short Wave Diathermy—For home use. Natures way to health.

Short wave diathermy and its use in the home. * * * the older methods of application were inefficient, uncertain * * *. These uncertain methods of the past have now given way to the modern scientific way—Short Wave Diathermy, a means of applying heat that overcomes every objection and enables you to enjoy its many benefits right in your own home. No more trips to the clinics or tiresome waits for appointments. * * * the simplicity of operation in Sterling equipment makes possible self-treatment without an attendant. * * * artificial fever will do exactly the same thing that natural fever does * * *. * * * germs succumb more readily in the presence of short waves * * *.

The feature of self-administration of short wave diathermy is an important one. * * * two or more treatments may be taken per day as long as it is necessary if there is a diathermy machine in the home, whereas two or even one visit per day to the doctor's office can easily be an unnecessary burden * * * on the patient's pocketbook.

Practical home treatment is easy. The Sterling Diathermy machine is especially designed for the home. It is comfortable and pleasant, and as safe as your electric pad * * *.

Relief immediate and cures rapid. * * * beneficial results are certain in such ailments as rheumatism, arthritis, neuritis, neuralgia, sciatica, lumbago, prostate trouble, female disorder, hay fever, asthma, bronchitis, tonsilitis, infected wounds, sores, boils, bruises, sprains, aching feet, aching back, aching teeth, headache, sinus infection—almost any ache or pain. * * * as a curative agent in such other diseases as pneumonia, infantile paralysis, gonorrhea, syphilis, stomach ulcers and hosts of others. The reason for its curative success is * * * increased antibodies to neutralize toxins, and germicidal characteristics.

Effective method of applying heat to legs, arms, head, chest, back, hip and lower abdominal region.

Its value is marked in such instances as painful menstruation, pelvic cramps, intestinal cramps, gas, urinary retardation from prostatitis, and innumerable other ailments.

If the public is to benefit very generally from such treatment and the wonderful results * * *, the machines should be in the homes * * *.

The patient is the best judge of length and frequency of treatments. With a Sterling instrument in your home you are well equipped for the quick alleviation of pain, aches, inflammation, congestion and the treatment of other unpleasant symptoms that might otherwise lead to dangerous disease.

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 or apparatus, advertised as Sterling Short Wave Diathermy, 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, 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.

The foregoing representations are grossly exaggerated, false, and misleading.

PAR. 5. Respondent's device or apparatus, designated as Sterling Short Wave Diathermy, is composed principally of a high frequency generator encased in a portable wooden cabinet. The circuit is a modified Hartley Circuit, two RCA 812 tubes, push-pull, plus the regular chokes for proper control and for eliminating interference. The power to the circuit is furnished by a transformer of approximately 1,200 volts, 160 milliamperes plate supply, 6⅜₁₀ volt filament supply. The output is inductively coupled and tuned with a series condenser of 50 millimicrofarads and the device may be adjusted to produce a wave length from 12 to 15 meters, inclusive. The maximum power output is approximately 140 watts as indicated on the panel meter. The power is transmitted to the user by 2 insulated rubber covered conductor pads, varying in size from 2 by 4 inches to 7 by 9 inches, together with ear and sinus applicators used with one of the larger pads. No single high frequency cable is used with this device. The application to the patient is made usually by placing the condenser pads in such position that the power may pass between said condenser pads through the affected area of the body, at stated intervals for varying periods of time.

The individual self-application of said device by the unskilled lay public in the home, under the conditions prescribed in said advertisement or under such conditions as are customary or usual, will not accomplish the results claimed by the respondent, and is not a scientific, safe, harmless, and effective means and method to be used by the unskilled lay public for the relief, cure, or treatment of self-diagnosed diseases and ailments of the human body, or for the alleviation of pain resulting therefrom, and may cause severe electric burns or other serious and irreparable injury to health.

The said device does not constitute a competent treatment for conditions of acute inflammation of the nerves, such as neuritis, neuralgia, and sciatica; acute inflammation of the muscles, such as lumbago and myositis; acute inflammation of the bursae, such as bursitis; acute inflammation of the joints, such as acute inflammatory arthritis; and rheumatic pains associated with acute inflammatory conditions of the joints, bursae, nerves, and muscles. Such treatment as aforesaid may result in further swelling of the 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.

Short wave diathermy is contra-indicated in all cases of menstruation, pregnancy, gastric ulcers, acute appendicitis, in areas where

there is a probable malignancy, and where there is a hemorrhagic diathesis.

Furthermore, the use of this device for the relief of pain due to neuralgia or neuritis, which may often be symptomatic of some deeper, underlying disease or cause (such as pains due to tuberculosis of the joints, syphilis, and other infectious processes, or to tumor or cancer) may cause serious injury to health and also delay proper diagnosis and treatment.

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.

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.

Cancer or tuberculosis of the spine may evidence itself by severe pains in the knees and the application of diathermy by the untrained layman may delay proper diagnosis and treatment.

The application of this device 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.

There are many diseases and conditions in the treatment of which, diathermy would be contra-indicated. There are other conditions in which the efficacy of diathermy is dependent upon the method and duration of its use. In both of these classes of cases, the use of diathermy may aggravate rather than relieve such conditions. Many conditions, including some of those for which respondent recommends this device, are sometimes symptomatic or indicative of underlying systemic disorders for which diathermy would have no therapeutic value and may even be injurious. It would be impossible for a member of the lay public to correctly diagnose his ailment or condition or to determine the underlying cause of such disorder. It would also be impossible for such person to correctly determine the method and duration of the use of diathermy. Consequently, the use of diathermy requires the diagnosis of the ailment or condition by a competent medical authority to determine if diathermy is indicated and the method and duration of treatment which should be prescribed.

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 all facts material in the light of such representations or material with respect to consequences which may result from the use of said device or apparatus, under the conditions prescribed in said advertisement, or under such conditions as are customary or usual, and fail to reveal that the use of said device may result in serious and irreparable injury to health.

The said advertisement is further false, as aforesaid, in that said advertisement also 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.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his 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 the respondent's said device or apparatus.

PAR. 8. 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 18th day of July 1941, issued, and on the 22nd day of July 1941, served its complaint in this proceeding upon respondent, Nolan B. Stadley, an individual, trading as Sterling Appliance Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 8th day of August 1941, respondent filed his answer, admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the 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, Nolan B. Stadley, is an individual trading as Sterling Appliance Co., with his office and principal place of business at 4203 South Hoover 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 as Sterling Short Wave Diathermy.

In the course and conduct of his business, the respondent causes said device or apparatus, when sold, to be transported from his place of business in the State of California, to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said 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 his aforesaid business, the respondent has disseminated, and has caused the dissemination of, false advertisements concerning his said product by means of 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 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, false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by means of the United States mails, are the following:

Feel Better Through the use of Sterling Short Wave Diathermy—For home use. Natures way to health.

Short wave diathermy and its use in the home. * * * the older methods of application were inefficient, uncertain * * *. These uncertain methods of the past have now given way to the modern scientific way—Short wave Diathermy, a means of applying heat that overcomes every objection and enables you to enjoy its many benefits right in your own home. No more trips to the clinics or tiresome waits for appointments. * * * the simplicity of operation in Sterling equipment makes possible self-treatment without an

attendant. * * * artificial fever will do exactly the same thing that natural fever does * * *. * * * germs succumb more readily in the presence of short waves * * *.

The feature of self-administration of short wave diathermy is an important one. * * * two or more treatments may be taken per day as long as it is necessary if there is a diathermy machine in the home, whereas two or even one visit per day to the doctor's office can easily be an unnecessary burden * * * on the patient's pocketbook.

Practical home treatment is easy. The Sterling Diathermy machine is especially designed for the home. It is comfortable and pleasant, and as safe as your electric pad * * *.

Relief immediate and cures rapid. * * * beneficial results are certain in such ailments as rheumatism, arthritis, neuritis, neuralgia, sciatica, lumbago prostate trouble, female disorder, hay fever, asthma, bronchitis, tonsilitis, infected wounds, sores, boils, bruises, sprains, aching feet, aching back, aching teeth, headache, sinus infection—almost any ache or pain. * * * as a curative agent in such other diseases as pneumonia, infantile paralysis, gonorrhea, syphilis, stomach ulcers and hosts of others. The reason for its curative success is * * * increased antibodies to neutralize toxins and germicidal characteristics.

Effective method of applying heat to legs, arms, head, chest, back, hip and lower abdominal region.

Its value is marked in such instances as painful menstruation, pelvic cramps, intestinal cramps, gas, urinary retardation from prostatitis, and innumerable other ailments.

If the public is to benefit very generally from such treatment and the wonderful results * * *, the machines should be in the homes * * *.

The patient is the best judge of length and frequency of treatments. With a Sterling instrument in your home you are well equipped for the quick alleviation of pain, aches, inflammation, congestion and the treatment of other unpleasant symptoms that might otherwise lead to dangerous disease.

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 or apparatus, advertised as Sterling Short Wave Diathermy, 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, 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.

The foregoing representations are grossly exaggerated, false, and misleading.

PAR. 5. Respondent's device or apparatus, designated as Sterling Short Wave Diathermy, is composed principally of a high frequency generator encased in a portable wooden cabinet. The circuit is a

modified Hartley Circuit, two RCA 812 tubes, push-pull, plus the regular chokes for proper control and for eliminating interference. The power to the circuit is furnished by a transformer of approximately 1,200 volts, 160 milliamperes plate supply, 6⅘ volt filament supply. The output is inductively coupled and tuned with a series condenser of 50 millimicrofarads and the device may be adjusted to produce a wave length from 12 to 15 meters, inclusive. The maximum power output is approximately 140 watts as indicated on the panel meter. The power is transmitted to the user by two insulated rubber-covered conductor pads, varying in size from 2 by 4 inches to 7 by 9 inches, together with ear and sinus applicators used with one of the larger pads. No single high frequency cable is used with this device. The application to the patient is made usually by placing the condenser pads in such position that the power may pass between said condenser pads through the affected area of the body, at stated intervals for varying periods of time.

The individual self-application of said device by the unskilled lay public in the home, under the conditions prescribed in said advertisement or under such conditions as are customary or usual, will not accomplish the results claimed by the respondent, and is not a scientific, safe, harmless and effective means and methods to be used by the unskilled lay public for the relief, cure or treatment of self-diagnosed diseases and ailments of the human body, or for the alleviation of pain resulting therefrom, and may cause severe electric burns or other serious and irreparable injury to health.

The said device does not constitute a competent treatment for conditions of acute inflammation of the nerves, such as neuritis, neuralgia, and sciatica; acute inflammation of the muscles, such as lumbago, and myositis; acute inflammation of the bursae, such as bursitis; acute inflammation of the joints, such as acute inflammatory arthritis; and rheumatic pains associated with acute inflammatory conditions of the joints, bursae, nerves, and muscles. Such treatment as aforesaid may result in further swelling of the 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.

Short wave diathermy is contra-indicated in all cases of menstruation, pregnancy, gastric ulcers, acute appendicitis, in areas where there is a probable malignancy, and where there is a hemorrhagic diathesis.

Furthermore, the use of this device for the relief of pain due to neuralgia or neuritis, which may often be symptomatic of some deeper, underlying disease or cause (such as pains due to tuberculosis

of the joints, syphilis, and other infectious processes, or to tumor or cancer), may cause serious injury to health and also delay proper diagnosis and treatment.

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.

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.

Cancer or tuberculosis of the spine may evidence itself by severe pains in the knees and the application of diathermy by the untrained layman may delay proper diagnosis and treatment.

The application of this device 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.

There are many diseases and conditions in the treatment of which, diathermy would be contra-indicated. There are other conditions in which the efficacy of diathermy is dependent upon the method and duration of its use. In both of these classes of cases, the use of diathermy may aggravate rather than relieve such conditions. Many conditions, including some of those for which respondent recommends his device, are sometimes symptomatic or indicative of underlying systemic disorders for which diathermy would have no therapeutic value and may even be injurious. It would be impossible for a member of the lay public to correctly diagnose his ailment or condition or to determine the underlying cause of such disorder. It would also be impossible for such person to correctly determine the method and duration of the use of diathermy. Consequently, the use of diathermy requires the diagnosis of the ailment or condition by a competent medical authority to determine if diathermy is indicated and the method and duration of treatment which should be prescribed.

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 all facts material in the light of such representations or material with respect to consequences which may result from the use of said device or apparatus, under the conditions prescribed in said advertisement, or under such condi-

tions as are customary or usual, and fail to reveal that the use of said device may result in serious and irreparable injury to health.

The said advertisement is further false, as aforesaid, in that said advertisement also 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.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his 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 the respondent's said device or apparatus.

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 the respondent, in which answer the 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, Nolan B. Stadley, an individual, trading as Sterling 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 advertised as Sterling 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 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 respondent's device when used by the unskilled lay public constitutes a scientific, safe, harmless and effective means or method for the relief, cure or treatment of:

Rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble and colds, painful menstruation, female disorders, ulcers or innumerable other ailments, or for the alleviation of pain resulting therefrom;

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

THE THOMAS PAGE MILL COMPANY, INC., AND PIEDMONT WHOLESALE GROCERY 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 4286. Complaint, Aug. 29, 1940—Decision Oct. 1, 1941

Where a corporation engaged in the milling and interstate sale and distribution of flour, during a certain period selling large quantities to a wholesale grocery company, 88 percent of the outstanding stock of which was owned by three individuals engaged as Minetree Brokerage Co., and which was served in an executive capacity by one of the three—

Paid, on such sales, during said period, a brokerage fee of 20 cents a barrel to said three individuals, who, in the transactions in question, were the agents of said grocery company and acted in fact for it:

Held, That in so paying and granting such brokerage fees, it violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. P. C. Kolinski for the Commission.

Doran, Kline, Cosgrove, Jeffrey & Russell, of Topeka, Kans., for Thomas Page Mill Co., Inc.

Mr. William T. Powers, of Piedmont, Mo., for Piedmont Wholesale Grocery Co.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, 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 as follows:

PARAGRAPH 1. Respondent, The Thomas Page Mill Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Kansas, with its principal office and place of business located at Norris and Quincy Streets, Topeka, Kans. This respondent is engaged in the milling, distribution, and sale of flour.

PAR. 2. Respondent, Piedmont Wholesale Grocery Co., is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at Piedmont, Mo. This respondent is engaged in the general wholesale merchandise business.

PAR. 3. In the course and conduct of its business as aforesaid, since June 19, 1936, respondent, The Thomas Page Mill Co., Inc., has been and is now selling flour to purchasers located in various States of the United States, and causing said merchandise to be shipped and distributed by it to said purchasers located in various States of the United States, and particularly in the States of Nebraska, Missouri, and Kentucky. One of said purchasers to whom respondent sells and ships said merchandise is the respondent, Piedmont Wholesale Grocery Co.

Since June 19, 1936, in the course of making such sales of said merchandise in commerce, respondent, The Thomas Page Mill Co., Inc., has engaged in the practice of paying brokerage fees and granting allowances or discounts in lieu of brokerage upon such purchasers by buyers for their own account, including the Piedmont Wholesale Grocery Co., and said respondent Piedmont Wholesale Grocery Co. has received and accepted allowances or discounts in lieu of brokerage upon its purchases of merchandise from respondent The Thomas Page Mill Co., Inc.

PAR. 4. The paying of brokerage fees and granting of allowances in lieu thereof by respondent, The Thomas Page Mill Co., Inc., to buyers upon their purchases as aforesaid, and the receipt and acceptance of such brokerage fees or allowance in lieu thereof by said respondent Piedmont Wholesale Grocery Co. upon its purchases from respondent The Thomas Page Mill Co., Inc., in the manner and form hereinabove set forth, is in violation of the provisions of subsection (c) of section 2 of the act described in the preamble hereof.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act—U. S. C., Title 15, sec. 13), the Federal Trade Commission, on August 29, 1940, issued its complaint which was subsequently served in this proceeding upon the parties respondent named in the caption hereof, charging them with violating the provisions of subsection (c) of section 2 of said Clayton Act as amended. On September 16, 1940, respondents filed their answers to the complaint. Thereafter, a stipulation was entered into by respondent The Thomas Page Mill Co., Inc., whereby it was stipulated and agreed that a statement of facts signed and executed by 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 in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement of facts, to make its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, the answers of respondents, and the stipulation entered into by respondent The Thomas Page Mill Co., Inc., said stipulation having been approved, accepted and filed: And the Commission, having duly considered the same and being now fully advised in the premises, is of the opinion that subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, has been violated by one of the respondents, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Piedmont Wholesale Grocery Co., is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with is principal office and place of business located at Piedmont, Mo., and is engaged in a general wholesale merchandise business.

PAR. 2. The charges in the complaint against respondent Piedmont Wholesale Grocery Co., are denied by this respondent in its answer and are not supported by any evidence in the record.

PAR. 3. Respondent The Thomas Page Mill Co., Inc., hereinafter referred to as "respondent," is a corporation organized and existing under and by virtue of the laws of the State of Kansas, with its principal office and place of business located at Topeka, Kans. Respondent is engaged in the milling, sale, and distribution of flour to purchasers located in various States of the United States, and causes said flour to be shipped and distributed to purchasers located in various States of the United States, and particularly in the States of Nebraska, Missouri, and Kentucky.

PAR. 4. From March 19, 1938, to November 10, 1939, respondent sold and shipped large quantities of flour to the Poplar Bluff Wholesale Grocery Co., located at Poplar Bluff, Mo. On such sales of flour respondent paid a brokerage fee of 20 cents per barrel to T. A. Ward, Carr Ward, and Wilma Ward, trading as Minetree Brokerage Co. During said period of time the brokerage so paid amounted to $1,578.25.

PAR. 5. During the period from March 19, 1938, to November 10, 1939, T. A. Ward and Wilma Ward owned 88 percent of the outstanding capital stock of the Poplar Bluff Wholesale Grocery Co., and Carr Ward rendered services of an executive nature to said Poplar Bluff Wholesale Grocery Co. These individuals, trading under the name of Minetree Brokerage Co., in the transactions of sales of flour by the respondent to the Poplar Bluff Wholesale Grocery Co. during the period from March 19, 1938, to November 10, 1939, were the agents, and acted in fact for and on behalf of the Poplar Bluff Wholesale Grocery Co.

CONCLUSION

Respondent The Thomas Page Mill Co., Inc., in paying and granting brokerage fees of 20 cents per barrel to T. A. Ward, Carr Ward, and Wilma Ward, trading as Minetree Brokerage Co., upon purchases of flour for the Poplar Bluff Wholesale Grocery Co., in interstate commerce, as set forth in the foregoing findings as to the facts, violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

There being no evidence to sustain the charges of the complaint against respondent Piedmont Wholesale Grocery Co., the complaint against this respondent should be dismissed.

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 The Thomas Page Mill Co., Inc., and respondent Piedmont Wholesale Grocery Co., and a stipulation as to the facts entered into between respondent The Thomas Page Mill Co., 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 respondent The Thomas Page Mill Co., Inc., 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 The Thomas Page Mill Co., Inc. 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 respondent The Thomas Page Mill Co., Inc., its officers, representatives, agents, and employees, in connection with

the sale of flour in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from paying or granting anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof to any purchaser on or in connection with purchases for such purchaser's account or to an agent, representative or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of such purchaser of respondent's goods.

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

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Piedmont Wholesale Grocery Co.

IN THE MATTER OF

JOHN H. DAVIS AND DALE S. DAVIS, TRADING AS NORMANDIE ET CIE

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

Docket 3341. Complaint, Feb. 26, 1938—Decision, Oct. 6, 1941

Where two individuals engaged in the manufacture of perfumes and kindred products, and in competitive interstate sale and distribution thereof; directly or by implication—

(*a*) Represented that their products were made or compounded in France and imported into the United States in finished form and ready for use, through such statements on labels and cartons of their perfume as "Normandie et Cie—Pois de Senteur—Paris, France," "Parfums—Normandie—Paris," "Qualite Superieure," and "True Flower Fragrances—Made in France," and through prominently displaying, in small folders enclosed with each vial of perfume, the words "Paris" and "France" and the statement "Imported True Flower Fragrances"; and

(*b*) Represented thereby and through such statements, on letterheads and invoices following their trade name "Normandie et Cie," as "11 Rue des Champs Asnieres, pres Paris, France. U. S. Sales Division: 92 Maplewood Street, Watertown, (Boston), Massachusetts," that they had a place of business in France where such products were manufactured;

Facts being that their perfume was domestically made by them through importing from France certain perfume essences or compounds in bulk, to which they added domestic alcohol, the latter substance making up about 75 percent of the finished product; their bottles and cartons and the advertising matter included therewith were made in the United States, and all their operations were carried on in this country;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that their products were those preferred perfumes manufactured or compounded in France and imported into the United States, and to cause it to purchase substantial quantities of their product because of such belief, and with result that trade was diverted unfairly to them from their competitors, many of whom do not misrepresent their products or the place of origin 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. Edward E. Reardon*, trial examiner.

Mr. Charles S. Cox for the Commission.

Mr. David S. Grant, *Mr. Harry Ehrlich* and *Walsh & Walsh*, of Boston, Mass., 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 John H. Davis, an individual, and Dale S. Davis, an individual, trading as Normandie et Cie, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, John H. Davis and Dale S. Davis, are individuals trading under the name and style of Normandie et Cie, with their principal office and place of business located at 92 Maplewood Street, Watertown, Boston, Mass. Respondents are now, and for some time last past have been, engaged in the business of importing certain oils and ingredients used in the manufacture of perfumes and of similar products and of manufacturing the same into perfumes which respondents sell and distribute throughout the various States of the United States.

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

PAR. 3. In the course and conduct of their said business respondents are now, and have been, in substantial competition with other individuals, and with corporations and firms likewise engaged in the business of selling and distributing perfumes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business as hereinabove described, certain of respondents' perfume products so sold bear labels, tags, and markings purporting to describe and refer to the place of origin or manufacture of said products, as follows:

Respondents' perfume product designated "Sweet Pea" bears a sticker, on which appears the wording "Normandie et Cie—Pois de Senteur—Paris, France." Around each vial of perfume is wrapped

a folder printed in French and English describing the product with the words "Paris, France" prominently displayed, as well as the words, "Imported True Flower Fragrance," appearing thereon. The carton containing the vial and folder above described has printed thereon the following words:

Parfums Normandie—Paris

Said carton also depicts flowers followed by the words:

Pois de Senteur Sweet Pea,

and

Qualite Superieure;
True Flower Fragrances Made in France

Letterheads and invoices distributed by respondents bear the following statements:

Suel Inventeur et Fabricant Du Celebre
Parfums "Secrets of the Flowers"

NORMANDIE ET CIE

11 Rue de Champs
Asnieres Pres Paris, France

U. S. Sales Division: 92 Maplewood
Street, Watertown, (Boston) Mass.

The use of such statements, as herein set out, by respondents serve as representations that respondents' products are manufactured or compounded in France; that said products are imported into this country finished and completed for use, and that respondents have an office and place of business at 11 Rue de Champs, Asnieres, Paris, France. In truth and in fact, said products are not manufactured in Paris or in France and are not made up or compounded into the finished or completed articles in Paris or in France, but are composed of certain oils and ingredients compounded or mixed by respondents with domestic alcohol, and bottled and packaged in the United States of America. Respondents do not have an office or place of business at 11 Rue de Champs, Asnieres, near Paris, France.

PAR. 5. There is a preference on the part of the buying public for goods, wares, and merchandise which are manufactured in foreign countries and imported into the United States; and this is particularly true regarding perfumes manufactured in France, and such goods so manufactured and imported command and bring from the

purchasing public higher prices in the markets of the United States than domestic perfumes of the same nature and description.

PAR. 6. The foregoing statements on tags, labels, and invoices made by respondents in designating and describing their products and the source of origin and place of manufacture had and now have a tendency and capacity to, and do, mislead a substantial part of the purchasing public into the erroneous and mistaken belief that the products are of foreign manufacture, and are imported from France into the United States. Further as a direct consequence of the mistaken and erroneous beliefs induced by the representations of respondents, a number of the consuming public purchased a substantial volume of respondents' products.

As a result, trade in said commerce has been unfairly diverted to respondents from their competitors who actually import into the United States from foreign countries perfumes manufactured in foreign countries, or who manufacture or compound perfumes and similar products in this country for sale to the buying public and who truthfully represent and advertise the place of origin and quality of their products.

PAR. 7. The acts and practices of respondents are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 26, 1938, issued and subsequently served its complaint in this proceeding upon the respondents, John H. Davis and Dale S. Davis, individuals trading as Normandie et Cie, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Charles S. Cox, attorney for the Commission, and in opposition thereto by respondent John H. Davis, before Edward E. Reardon, a trial examiner of the Commission theretofore duly designated by it, and such 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, answers, testimony,

and other evidence, report of the trial examiner upon the evidence and exceptions thereto, 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 respondents, John H. Davis and Dale S. Davis, are individuals trading under the name Normandie et Cie, with their principal office and place of business located at 92 Maplewood Street, Watertown, Boston, Mass. Respondents are now, and for more than 6 years last past have been, engaged in the manufacture, sale, and distribution of perfumes and kindred products.

PAR. 2. Respondents cause, and for more than 6 years last past have caused, their products, when sold, to be transported from their place of business in the State of Massachusetts 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 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 the respondents are now, and at all times mentioned herein have been, in substantial competition with other individuals and firms, and with corporations, engaged in the sale and distribution of perfumes in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business and for the purpose of promoting the sale of their products, the respondents use various names, legends, and statements purporting to be descriptive of their products and of the place of origin or manufacture of such products. For example, the label on respondents' perfume designated "Sweet Pea" bears the wording "Normandie et Cie—Pois de Senteur Paris, France." The carton in which this perfume is displayed and sold to purchasers bears, in addition to the foregoing legend, the further legends, "Parfums—Normandie—Paris," "Qualite Superieure," and "True Flower Fragrances—Made in France." Substantially similar legends appear on the labels and cartons used by respondents for other varieties of their perfumes. Respondents also enclose with each vial of perfume a small folder or circular on which

the words "Paris" and "France" are prominently displayed. This folder also bears the statement "Imported True Flower Fragrances."

Letterheads and invoices used by the respondents bear the following statements:

Suel Inventeur et Fabricant Du Celebre Parfums "Secrets of the Flowers"
NORMANDIE ET CIE
11 Rue des Champs
Asnieres, pres Paris, France
U. S. Sales Division: 92 Maplewood Street, Watertown, (Boston,) Massachusetts

PAR. 5. Through the use of the foregoing legends and statements and others of a similar nature, the respondents represent, directly or by implication, that their products are manufactured or compounded in France and are imported into the United States in finished form and ready for use; and that respondents have a place of business in France where such products are manufactured.

PAR. 6. The Commission finds that the respondents import from France certain perfume essences or compounds in bulk, and then add to such materials domestic alcohol. The imported essences constitute approximately 25 percent of the finished perfume product, while the alcohol constitutes approximately 75 percent of the finished product. After the manufacture of the perfume has been completed by the addition of the alcohol, the respondents bottle the perfume in new bottles or containers and then proceed to sell it to retail dealers, who in turn resell it to the public. All of the bottles in which the perfume is packaged are manufactured in the United States, and this is true also of the cartons in which the bottles are enclosed. Likewise, the advertising matter enclosed in the cartons is prepared and printed in the United States.

Respondents do not have a place of business in France or any other country outside the United States. All of the respondents' business operations, including the manufacture of their perfumes, are carried on in respondents' place of business near Boston, Mass.

PAR. 7. The Commission therefore finds that the representations made by the respondents with respect to their products and the place of origin thereof, as set forth in paragraphs 4 and 5 hereof, are false, misleading, and deceptive.

PAR. 8. The Commission further finds that there is a marked preference on the part of a substantial portion of the purchasing public in the United States for perfumes which are manufactured or compounded in France and imported into the United States.

PAR. 9. The acts and practices of the respondents have the tendency and capacity to mislead and deceive a substantial portion of the

purchasing public into the erroneous and mistaken belief that respondents' products are manufactured or compounded in France and imported into the United States, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' products as a result of such erroneous and mistaken belief. In consequence thereof trade has been diverted unfairly to the respondents from their competitors, many of whom do not misrepresent their products or the place of origin thereof.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony, and other evidence taken before Edward E. Reardon, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence, and exceptions thereto, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested); and the Commission, having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, John H. Davis and Dale S. Davis, individually and trading as Normandie et Cie, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their perfumes and kindred products, do forthwith cease and desist from:

1. Using the terms "Paris," "France," "Made in France," or "Imported" to designate or describe products which are made or compounded in the United States, or otherwise representing that such products are manufactured in or imported from France or any other foreign country: *Provided, however*, That the country of origin of the various ingredients of such products may be stated when immediately accompanied by a statement that such products are made or compounded in the United States.

2. Using any French or other foreign words or terms to designate or describe products made or compounded in the United States, unless there appear in connection and conjunction therewith other words in English clearly stating that such products are made or compounded in the United States.

3. Using the words "11 Rue des Champs, Asnieres, pres Paris, France" or "U. S. Sales Division" in connection with respondents' trade name, or otherwise representing that respondents have a place of business in France or in any country other than the United States.

4. Representing in any manner whatsoever that products which are made or compounded in the United States are made in or imported from countries other than the United States.

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

IN THE MATTER OF

CLAIROL, INC., AND JOAN GELB, LEON A. SPILO, AND MORRIS GELB

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

Docket 3615. Complaint, Sept. 30, 1938—Decision, Oct. 8, 1941

Where three individuals engaged, through a corporation, since dissolved, which they controlled, in the competitive interstate sale and distribution of hair dyeing preparations which they designated generally as "Clairol," and more specifically as "Instant Clairol" and "Progressive Clairol"; in advertisements in circulars, leaflets, display cards and other advertising material distributed among retailers and beauty shops, and by them among the purchasing public, and also through extensive advertisements in trade journals and in advertisements which said individuals inserted in newspapers, or caused to be inserted therein, by dealers and beauty shops; directly or by implication—

(*a*) Represented that their said products were not hair dyes, but preparations which reconditioned and supplied nourishment to the hair, and restored the natural or youthful color thereof, imparting thereto color which was permanent; facts being said preparations were shampoos which contained certain dyeing ingredients and their effect on the color of the hair was due solely to such ingredients, they were incapable of reconditioning the hair or restoring the natural or youthful color thereof, and their effect was not permanent, since they served only to color the hair to which applied and had no effect upon new hair, and they were incapable of supplying nourishment to the hair; and

(*b*) Represented that said preparations were harmless and safe for use, and were made or compounded in Paris, France, and that as many as 12 million treatments thereof had been used in America in 1 year; facts being said "Instant Clairol" contained paratolylene diamine, and would result in irritation or rash to users allergic to such coal tar derivative, and blindness might result from its use for dyeing eyelashes or eyebrows; said preparations were compounded in the United States and not in Paris, France; and the actual number of treatments used in America in 1 year was not in excess of 1,500,000;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and to cause such portion of the public, because of said belief, to purchase substantial quantities of their preparations, and with result of diverting substantial trade to them from their competitors, among whom are those who do not misrepresent their products:

Held, That such acts and practices, under the circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition 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. John Wattawa, 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 Clairol, Inc., a corporation, and Joan Gelb, Leon A. Spilo, and Morris Gelb, 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. Respondent, Clairol, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and respondents, Joan Gelb, Leon A. Spilo, and Morris Gelb, individuals, are president, vice 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 hereinafter alleged. Respondents' office and principal place of business is located at 132 West Forty-sixth Street, in the city of New York, State of New York.

PAR. 2. Respondents now are, and for more than two years last past have been, engaged in the business of compounding and soliciting the sale of and selling, directly and through retail dealers and salesmen, two hair dyeing preparations, both generally known as Clairol and each specifically known as Progressive Clairol and Instant Clairol, respectively. Respondents cause said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said Clairol 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 said business, respondents are in active and substantial competition with other corporations and individuals and with partnerships and firms engaged in the sale and distribution of similar products 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 qualities and properties of their respective products and of their effectiveness when used.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of said Clairol preparations by members of the purchasing public, respondents, by means of statements in radio broadcasts, advertisements inserted in magazines, trade journals, display cards, bulletins and in other printed matter distributed among the trade and locally used by it in advertising said products and through other advertising media circulated generally throughout the United States, have made and are making many representations, directly and indirectly, as hereinafter stated, concerning the qualities and effectiveness of said Clairol preparations.

Among and typical of said representations made by the respondents are the following:

Clairol is not a dye.

Don't dye your hair—Clairol it.

Clairol does not contain the harsh metallic salts that dyes contain.

I can't use common old-fashioned dyes. I can't use anything but Clairol * * *.

Clairol * * * reconditions, obliterates the gray * * *.

Something effective, yet not a dye * * * colors white or gray hair completely, permanently in one treatment.

Naturally with Clairol * * * your hair regains and retains its youth.

* * * restore it to its youthful beauty and endow it with all the shimmering loveliness of its original and natural shade.

* * * the trained technician will apply these corrective oils to your hair and scalp and as these nourishing unguents are deeply absorbed by the hair shaft and follicles the Clairol tints * * * imparts color that is permanent.

Clairol Baby, yes, sir, her hair is ev'ry girl's de-si-re.

Clairol * * * harmless way to beauty.

Clairol * * * safe enough to bathe in.

Last year in America alone twelve million of Clairol shampoo tint treatments were used.

Mury of Paris presents Clairol. It is * * * absolutely safe.

All of said statements, together with similar statements appearing in respondents' advertising literature and in and through other said advertising media, purport to be descriptive of respondents' said Clairol hair dyeing preparations and of their effectiveness when used. In all of their advertising literature, and through other means, respondents, directly or indirectly by implication, insinuation or otherwise, through statements and representations herein set out and other statements of similar import and effect, represent: By advertising Progressive and Instant Clairol as merely Clairol, that all of their claims concerning both are applicable to each of said preparations. That they are not dyes. That they do not contain the harsh, metallic

salts that dyes contain. That they recondition and restore hair to its natural and youthful color and loveliness. That they contain beneficial oils and unguents which nourish the hair, as they are deeply absorbed by the hair shaft and follicles. That they permanently color white, gray or other shades of hair. That Instant and Progressive Clairol are both absolutely harmless and safe to use. That even every girl should prefer her hair colored with Clairol to its own natural color. That 12 million Clairol shampoo tint treatments are used annually in America alone. That respondents have an office and place of business in Paris, France, where said Clairol preparations are made.

PAR. 5. The above-mentioned representations, implications, and insinuations used by the respondents in the manner above described in connection with the offering for sale and selling of said Clairol preparations are false, misleading, and deceptive. In truth and in fact Progressive and Instant Clairol are both dyes, or shampoos containing dyes. The statement that they do not contain the harsh, metallic salts dyes contain is therefore unwarranted. They do not recondition or restore hair to its natural or youthful color and loveliness. They contain no beneficial oils and unguents, and have no properties which in any way nourish or benefit the hair. Neither of said preparations permanently colors white, gray or other shades of hair, new hair growing out thereafter will not be colored thereby. Instant Clairol is not harmless but dangerous when used by persons unable to pass a certain physical test, written notice of which is required by law in New York City to be stated on each bottle sold there. Every girl's hair will not be improved by using either of respondents' said products. The implication that 12 million Clairol shampoo tint treatments are used annually in America alone is a gross exaggeration and vastly exceeds the number of such treatments used here. None of the respondents has any office or place of business in Paris, France, and said Clairol preparations are not made there but are compounded in New York.

PAR. 6. The true facts are that there is nothing which will recondition or restore hair to its natural or youthful color. There is no known product which, when externally applied, will nourish the hair or hair shaft and follicles, or correct the cause of gray or faded hair or do more than impart color to existent hair. The slightest growth of the hair shows the natural color thereof and thus announces and proclaims that a hair dye has been used which accentuates lines and wrinkles and usually makes the face look hard.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondents in describing their said prod-

ucts and their effectiveness when used, as hereinabove set out, were and are calculated to, and have had and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct result of this erroneous and mistaken belief a number of the consuming public have purchased a substantial volume of respondents' products, with the result that trade has been diverted unfairly to respondents from competitors likewise engaged in the business of distributing and selling similar preparations 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 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 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 the respondents, Clairol, Inc., a corporation, and Joan Gelb, Leon A. Spilo, and Morris Gelb, 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 the complaint were introduced by John M. Russell, attorney for the Commission, and in opposition thereto by John Wattawa, attorney for respondents, before Edward E. Reardon, a trial examiner of the Commission theretofore duly designated by it, and such 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, answer, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. For approximately seven years prior to November 4, 1940, respondent Clairol, Inc. was a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. The individual respondents, Joan Gelb, Leon A. Spilo, and Morris Gelb, were president, vice president, and secretary, respectively, of the corporate respondent. They had dominant control of the business activities and practices of the corporation, including its advertising policies and practices. The office and principal place of business of all of the respondents was located at 132 West Forty-sixth Street, New York City, N. Y.

On October 14, 1940, a new corporation was organized by the individual respondents, such corporation being organized under the laws of the State of Connecticut and being known as Clairol, Incorporated. The individual respondents were the sole incorporators of the new corporation and constitute its board of directors. They hold the same official positions in the new corporation as they held in the old corporation, Joan Gelb being president, Leon A. Spilo being vice president, and Morris Gelb being secretary.

The new corporation, Clairol, Incorporated, was organized for the purpose of taking over the business formerly conducted by Clairol, Inc., respondent herein. On October 31, 1940, respondent Clairol, Inc. transferred to Clairol, Incorporated, all of its business and physical assets, which were moved to the new corporation's principal place of business in Stamford, Conn. On November 4, 1940, respondent Clairol, Inc. was dissolved.

PAR. 2. Prior to November 4, 1940, the respondents were engaged in the sale and distribution of certain hair dyeing preparations designated generally as "Clairol" and more specifically designated as "Instant Clairol" and "Progressive Clairol." Respondents caused their preparations, 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 maintained a course of trade in their 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 their business, the respondents were in active and substantial competition with other corporations and individuals and with firms and partnerships engaged in the sale and distribution, in commerce among and between the various States of the United States and in the District of Columbia, of preparations intended for the same purposes as those for which respondents' preparations were intended.

PAR. 4. In the course and conduct of their business and for the purpose of promoting the sale of their preparations, the respondents have advertised their preparations by means of circulars, leaflets, display cards and other advertising material distributed among retail dealers and beauty shops, and through such agencies among members of the purchasing public. Respondents have also advertised extensively in trade journals and have inserted advertisements in daily newspapers, or have caused such advertisements to be inserted in such papers by dealers and beauty shops. Among and typical of the statements and representations which have appeared in respondents' advertisements and advertising material are the following:

Clairol is not a dye.

Don't dye your hair—Clairol it.

Clairol does not contain the harsh metallic salts that dyes contain.

I can't use common old-fashioned dyes. I can't use anything but Clairol * * *.

Clairol * * * reconditions, obliterates the gray * * *.

Something effective, yet not a dye * * * colors white or gray hair completely, permanently in one treatment.

Naturally with Clairol * * * your hair regains and retains its youth.

* * * restore it to its youthful beauty and endow it with all the shimmering loveliness of its original and natural shade.

* * * the trained technician will apply these corrective oils to your hair and scalp and as these nourishing unguents are deeply absorbed by the hair shaft and follicles the Clairol tint * * * imparts color that is permanent.

Clairol * * * harmless way to beauty.

Clairol * * * safe enough to bathe in.

Mury of Paris presents Clairol. It is * * * absolutely safe.

Last year in America alone twelve million of Clairol shampoo tint treatments were used.

PAR. 5. Through the use of these statements and representations and others of similar import, the respondents have represented, directly or by implication, that their preparations are not hair dyes; that the preparations recondition the hair, and restore the natural or youthful color of the hair; that the color imparted to the hair by the use of the preparations is permanent; that the preparations supply nourishment to the hair; that the preparations are harmless and safe for use; that the preparations are made or compounded in Paris, France; and that as many as 12 million treatments of the preparations have been used in America in 1 year.

PAR. 6. The Commission finds that respondents' preparations are shampoos which contain certain dyeing ingredients. The effect produced upon the color of the hair through the use of the preparations is due solely to such dyeing ingredients. The preparations are incapable of reconditioning the hair or restoring the natural or youthful color of the hair. Nor is the effect produced by the preparations

permanent, as the preparations serve only to color the hair to which they are applied, and have no effect upon new hair. The preparations are incapable of supplying nourishment to the hair.

The Commission further finds that the preparation Instant Clairol is not in all cases harmless or safe for use, as it contains the drug paratolylene diamine, a coal tar derivative, and in those cases where the user is allergic to such drug, the use of the preparation will result in irritation or rash. In no event should the preparation be used for dyeing the eyelashes or eyebrows, as blindness may result. The preparations are not made or compounded in Paris, France, but are compounded in the United States. The number of treatments of the preparations represented by respondents as having been used in America in 1 year is grossly exaggerated. The actual number was not in excess of 1,500,000.

PAR. 7. The Commission therefore finds that the representations made by the respondents with respect to their preparations, as set forth in paragraphs 4 and 5 hereof, are misleading and deceptive.

PAR. 8. The Commission further finds that the use by the respondents of these misleading and deceptive representations with respect to their preparations 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 the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' preparations as a result of such erroneous and mistaken belief. As a result substantial trade has been diverted to the respondents from their competitors, among whom are those who do not misrepresent their products.

CONCLUSION

The 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 answer of respondents, testimony and other evidence taken before Edward E. Reardon, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence, and ex-

ceptions thereto, briefs in support of and in opposition to the complaint, and oral argument; 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 said individual respondents, Joan Gelb, Leon A. Spilo, and Morris Gelb, their 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 their cosmetic preparations designated generally as "Clairol" and more specifically designated as "Instant Clairol" and "Progressive Clairol," or any other 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:

1. Representing that said preparations are not hair dyes.

2. Representing that said preparations recondition the hair, or restore the natural or youthful color of the hair.

3. Representing that the effect produced upon the color of the hair by the use of said preparations is permanent.

4. Representing that said preparations supply nourishment to the hair.

5. Representing that said preparations are made or compounded in France.

6. Representing that the number of treatments of said preparations used by the public is greater than is the fact.

7. Representing that said preparation Instant Clairol is harmless or safe for use.

It is further ordered, That said individual 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.

The corporate respondent, Clairol, Inc., having been dissolved, *It is further ordered*, That this proceeding be, and it hereby is, dismissed as to said corporate respondent.

Syllabus

IN THE MATTER OF

DAVID L. SILVER AND O. C. COLWES, TRADING AS KAY'S CUT RATE AND AS KAY'S CUT RATE DRUGS

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

Docket 4510. Complaint, May 27, 1941—Decision, Oct. 14, 1941

Where two individuals engaged in interstate sale and distribution of various medicinal preparations; in advertisements through the mails, in newspapers, circulars, and other advertising literature, directly and by implication—

(a) Represented that their "Madame Bea's Capsules" constituted a competent and effective treatment for delayed, unnatural, and suppressed menstruation, and that it was safe and harmless, through such statements as "*Modern women:* Harmless prescription delayed periods. Don't be alarmed over delayed unnatural suppressed periods. *Madame Bea's Capsules* sold at *Kay's Cut-Rate*";

Facts being that said product was not a competent or effective treatment for such ailment, and was not safe or harmless, in that it contained the drugs ergot, oil of savin, aloin, and hellebore in quantities sufficient to cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs; where used to interfere with the normal course of pregnancy, might result in uterine infection causing blood poisoning; might also produce a severe circulatory condition by constriction of the blood vessels and contraction of the involuntary muscles, tending to cause abortion, and might result in severe poisonous effects upon the human system, in some instances resulting in loss of limbs or other serious and irreparable injury to health; and

(b) Failed to reveal facts material in the light of representations in such advertisements, and that the use of said preparation, under prescribed or usual conditions, might cause aforesaid disturbances and serious and irreparable injury;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that their said preparation possessed properties which it did not in fact possess, and that it was safe and harmless when such was not the fact, and to cause such public to buy substantial quantities of said preparation, as a result 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. Taggart for the Commission.

McGinnis & Mann, of Beckley, W. Va., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that David L. Silver and O. C. Colwes, trading under the names of Kay's Cut Rate and Kay's Cut Rate Drugs, 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 operating under the laws of the State of West Virginia with their principal office and place of business in Beckley, W. Va. Kay's Cut Rate and Kay's Cut Rate Drugs are trade names used by respondents in the operation of their said business.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondents is a drug preparation advertised and sold as "Madame Bea's Capsules."

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

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product by 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 the United States mails, by advertisements in news-

papers, and by circulars and other advertising literature, are the following:

Modern Women! Harmless prescription delayed periods. Don't be alarmed over delayed unnatural suppressed periods. *Madame Bea's Capsules* sold at *Kay's Cut-Rate.*

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 preparation designated as "Madame Bea's Capsules" 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, respondents' 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 hellebore in quantities sufficient to cause serious and irreparable 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 gastro-intestinal disturbances, such as catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy, such use may result in uterine infection, with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels, and contraction of the involuntary muscles, often with poisonous 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 preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may cause gastro-intestinal 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 aforesaid false, misleading, and deceptive statements and representations with respect to their said preparation, disseminated as aforesaid, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that 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, and the capacity and tendency to cause the purchasing public to purchase substantial quantities of respondents' preparation as a result of such belief.

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 27, 1941 issued, and on May 29, 1941 served its complaint in this proceeding upon David L. Silver and O. C. Colwes, individually, and trading as Kay's Cut Rate and as Kay's Cut Rate Drugs, charging them with the use of unfair and deceptive acts and practices in commerce within the intent and meaning 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 upon 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 are individuals operating under the laws of the State of West Virginia, with their principal office and place of business in Beckley, W. Va. Kay's Cut Rate and Kay's

Cut Rate Drugs are trade names used by respondents in the operation of their said business.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondents is a drug preparation advertised and sold as "Madame Bea's Capsules."

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

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product by 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 the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

Modern Women! Harmless prescription delayed periods. Don't be alarmed over delayed unnatural suppressed periods. *Madame Bea's Capsules* sold at *Kay's Cut-Rate.*

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 preparation designated as "Madame Bea's Capsules" 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, respondents' prepara-

tion 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 hellebore in quantities sufficient to cause serious and irreparable 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 gastro-intestinal disturbances, such as catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy, such use may result in uterine infection, with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels, and contraction of the involuntary muscles, often with poisonous 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 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 respondents of the aforesaid false, misleading and deceptive statements and representations with respect to their said preparation, disseminated as aforesaid, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that 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, and the capacity and tendency to cause the purchasing public to purchase substantial quantities of respondents' preparation as a result of such belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, in which answer the respondents admit all of 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 David L. Silver and O. C. Colwes, individually, and trading as Kay's Cut Rate and as Kay's Cut Rate Drugs, 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 known as Madame Bea's Capsules, or any other medicinal preparation or 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 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 by implication, that said preparation constitutes a competent or effective treatment for delayed, unnatural or suppressed menstruation, 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 the pelvic organs, and in cases 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 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 cases of pregnancy may cause uterine infection and blood poisoning.

It is further ordered, That 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 of this order, 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

POWER & GANG MOWER MANUFACTURERS' ASSOCIATION, COLDWELL LAWN MOWER COMPANY, JACOBSEN MANUFACTURING COMPANY, MILBRADT MANUFACTURING COMPANY, MOTO MOWER COMPANY, TORO MANUFACTURING COMPANY, IDEAL POWER LAWN MOWER COMPANY, OUTBOARD MOTORS CORPORATION, ROSEMAN TRACTOR MOWER COMPANY, AND ECLIPSE LAWN MOWER COMPANY

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

Docket 3689. Complaint, Jan. 19, 1939—Decision, Oct. 15, 1941

Where an association of manufacturers of power or gang mowers or both, whose combined sales approximated from 65 to 85 percent of the total sales of such equipment, of which, it appeared, a large part was sold to agencies of the Federal Government; following the abandonment of the N. R. A. code of fair competition for the industry, which carried into effect many of the practices previously established by said association and included provision for filing of prices and strict adherence thereto as filed, various restrictive rules relating to marketing, uniform cash discounts and establishment of trade-in allowances which were not to be exceeded, and in order "to salvage such provisions of the power and gang mower code as were found of value under the N. R. A."—

(*a*) Provided for the filing of prices with the association and the furnishing of copies to all known members of the industry, and also for uniform cash discounts and uniform guarantees to purchasers; and prohibited the sale of any product at any other price or discount than those set forth in such published price sheets;

(*b*) Prohibited members from repurchasing or taking in trade any product of the industry, or granting credit or allowances therefor, in amounts in excess of those set forth in the trade-in allowance schedule adopted by the association, and published, in different years, a "Blue Book" fixing trade-in allowances for various makes, models, and years, which were less, it appeared, than the average actual value of the equipment concerned;

(*c*) Established a uniform rate of discount to be granted to agencies of the Federal Government and, where price was the only factor considered, undertook to place their various models, which were not identical and prices of which ordinarily were not the same, on an absolute price parity; and—

(*d*) Organized distributors, in order more fully to effectuate such association and member policies in various territories in the United States, including, particularly, four large cities, and frequently met with such dealer organizations, and exerted pressure upon dealers to secure compliance with their said policies, including observance of established prices, discounts, and trade-in allowances, and avoidance of price cutting;

With result that such agreements for maintenance of filed prices, for standard discounts and terms to the more important classes of purchasers, and for uniform trade-in allowances, resulted, in substance, in stabilization of the prices of their products; prices to government units were enhanced and, during existence of their N. R. A. Code, an executive order permitting 15 percent discount in sales to the Government was, through understanding, disregarded; organization of dealer groups and participation in the conduct thereof aided in more effectively reflecting to consumers the effects of said agreements; and effect of said various agreements, acts, and practices was to unduly and unreasonably restrict and restrain competition in the sale of their products; to hinder and prevent competition between and among them, and enhance the prices of their products to the consuming public, and otherwise deprive the public of the benefits which would flow from normal competition:

Held, That such acts and practices were all to the prejudice of the public, had a dangerous tendency to, and did, hinder and prevent competition in the sale and distribution of power and gang mowers in commerce, and constituted unfair methods of competition.

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

Mr. Lynn C. Paulson for the Commission.

Cassedy & Northrop, of Newburgh, N. Y., for Coldwell Lawn Mower Co.

Barthel & Bugbee, of Detroit, Mich., for Motor Mower Co.

Van Fossen & Van Fossen, of Minneapolis, Minn., for Toro Manufacturing Corp. and Ideal Power Lawn Mower Co.

Butzel, Levin & Winston, of Detroit, Mich., for Outboard Motors Corp.

Miller, Gorham, Wescott & Adams, of Chicago, Ill., for Roseman Tractor Mower Co.

Ramsay, Bull & Yost, of Morrison, Ill., for Eclipse Lawn Mower Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Power and Gang Mower Manufacturers' Association, Coldwell Lawn Mower Co., Jacobsen Manufacturing Co., Milbradt Manufacturing Co., Moto Mower Co., Toro Manufacturing Co., Ideal Power Lawn Mower Co., Outboard Motors Corporation, Roseman Tractor Mower Co., and Eclipse Lawn Mower 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, Power and Gang Mower Manufacturers' Association, hereinafter referred to as respondent association, is a

voluntary unincorporated association comprised of the respondents named in paragraph 2 hereof, all of whom are engaged in the manufacture, sale, and distribution of power lawn mowers. Its principal office is in the city of Chicago, State of Illinois. It was organized in December 1932 or thereabouts by the respondents named in paragraph 2 hereof as a trade association, for the promotion of the interests of its members, and since its organization has so acted. The activities of its members hereinafter described were and have been and are being carried out through and under the supervision, and by means of, said respondent association.

PAR. 2. The following respondents are corporations organized, existing and doing business under and by virtue of the laws of the States hereinafter mentioned and with their principal places of business in the cities hereinafter mentioned, to wit:

Name of respondent	State of incorporation	Principal place of business
Coldwell Lawn Mower Co	New York	Newburgh, N. Y.
Jacobsen Manufacturing Co	Wisconsin	Racine, Wis.
Milbradt Manufacturing Co	Missouri	St. Louis, Mo.
Moto Mower Co	Michigan	Detroit, Mich.
Toro Manufacturing Co	Minnesota	Minneapolis, Minn.
Ideal Power Lawn Mower Co	Michigan	Lansing, Mich.
Outboard Motors Corporation	Delaware	Milwaukee, Wis.
Roseman Tractor Mower Co	Illinois	Evanston, Ill.
Eclipse Lawn Mower Co	do	Prophetstown, Ill.

PAR. 3. The respondents named in paragraph 2 hereof are now and since their respective organizations have been engaged in the manufacture, at their respective places of business, of power lawn mowers and in the sale thereof. In the course and conduct of their businesses, all the said respondents for more than 6 years last past have caused and still cause such power lawn mowers when sold by them to be transported in commerce from their respective places of business, to, into, and through various States of the United States other than the States in which they respectively have their places of business, to the purchasers in such other States and in the District of Columbia. The number of power lawn mowers manufactured and sold by the said respondents constitutes and at all times since 1931 has constituted substantially all of the power lawn mowers manufactured in the United States and sold therein. Many purchasers of power lawn mowers have no regular source of supply thereof excepting from said respondents, and since 1931 have had no regular source of supply of power lawn mowers excepting from said respondents. An important class of purchasers of power lawn mowers from the said respondents consists of cities and other municipalities,

State governments and divisions thereof, the Federal Government and divisions thereof, and State and Federal institutions. The said respondents were, prior to 1932, in competition with one another as to discounts, terms and conditions of sale in the sale of power lawn mowers between and among the various States of the United States and in the District of Columbia, and but for the combination, agreement, understanding, and conspiracy hereinafter described, said respondents would have been at all times since 1931, and would now be, in such competition with one another.

PAR. 4. In or about December 1932, the respondents named in paragraph 2 hereof, for the purpose of eliminating among themselves competition as to discounts, terms, and conditions of sale, entered into and have since carried out and are still carrying out, through and by means of respondent association, an agreement, combination, understanding, and conspiracy among themselves to fix and maintain, and by which they have fixed and maintained, uniform discounts, terms, and conditions of sale in selling power lawn mowers in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out the aforesaid agreement, combination, understanding, and conspiracy, said respondents have done, among other things, the following:

(*a*) By agreement among themselves have fixed and maintained list prices at which each of the said respondents would sell and have sold power lawn mowers manufactured by it.

(*b*) By agreement among themselves have fixed and maintained and have adhered to and still adhere to schedule of uniform trade-in allowances for used power lawn mowers.

(*c*) By agreement among themselves have fixed and maintained uniform discounts, terms, and conditions of sale.

(*d*) By agreement among themselves have fixed and maintained and still fix and maintain uniform discounts to be, and which have been and are, allowed to their respective distributors.

(*e*) By agreement among themselves have filed and still file with respondent association schedules of prices, discounts, terms, and conditions of all sales.

(*f*) By agreement among themselves have not deviated and do not deviate from prices, discounts, terms, and conditions of sale filed with respondent association.

(*g*) By agreement among themselves have organized in various cities of the United States local distributors of power lawn mowers into associations for the purpose of maintaining the prices, uniform

discounts, and terms and conditions of sale fixed as hereinbefore described.

(*h*) By agreement among themselves have allocated territories and prospective customers to certain of the said respondents, to the exclusion of the other of said respondents, the latter agreeing not to solicit sales nor to sell in such territories and to such customers, which such agreements have been and are being carried out.

PAR. 5. The acts and practices of the respondents as herein alleged are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented competition as to discounts, terms and conditions of sales, territories of sale, and customers between and among respondents in the sale of power lawn mowers in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have created in the respondents a monopoly in the sale of power lawn mowers in such commerce; have unreasonably restrained such commerce in power lawn mowers, 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 January 19, 1939, issued and subsequently served its complaint upon respondents Power and Gang Mower Manufacturers Association, a voluntary unincorporated association, Coldwell Lawn Mower Co., Jacobsen Manufacturing Co., Milbradt Manufacturing Co., Moto-Mower Co., Toro Manufacturing Co., Ideal Power Lawn Mower Co., Outboard Motors Corporation, Roseman Tractor Mower Co., and Eclipse Lawn Mower Co., corporations, charging them with combination and conspiracy in restraint of trade in violation of the provisions of said act.

After the issuance of said complaint and the filing of answers by several of respondents, testimony and other evidence in support of the allegations of said complaint were introduced by an attorney for the Commission and in opposition thereto by attorneys for several of the respondents, before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answers thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, 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, Power and Gang Mower Manufacturers Association, was a voluntary unincorporated association of which Edwin S. George of the Moto-Mower Co. was president and O. T. Jacobsen of the Jacobsen Manufacturing Co. was secretary, and the membership of which consisted of the other respondents in this proceeding and certain additional manufacturers of power and/or gang mowers. It was organized in 1932 and its last meeting was held early in 1937, since which time it has been inactive though not formally dissolved.

Respondent, Coldwell Lawn Mower Co., is a corporation organized and existing under the laws of the State of New York, having its principal place of business in Newburgh, N. Y.

Respondent, Jacobsen Manufacturing Co., is a corporation organized and existing under the laws of the State of Wisconsin, having its principal place of business at Racine, Wis.

Respondent, Milbradt Manufacturing Co., was a corporation organized and existing under the laws of the State of Missouri, having its principal place of business at St. Louis, Mo. In December 1938 this corporation was dissolved and Mr. Raymond C. Luecke, who had been its president, became proprietor of the business formerly conducted by the corporation.

Respondent, Moto-Mower Co., is a corporation organized and existing under the laws of the State of Michigan, having its principal place of business at Detroit, Mich.

Respondent, Toro Manufacturing Corporation (referred to in the complaint as Toro Manufacturing Co.), is a corporation organized and existing under the laws of the State of Minnesota, having its principal place of business at Minneapolis, Minn. Late in 1935 it succeeded to the business of the Toro Manufacturing Co., a corporation organized under the laws of the State of Delaware which was dissolved in January 1936.

Respondent, Ideal Power Lawn Mower Co., is a corporation organized and existing under the laws of the State of Michigan, having its principal place of business at Lansing, Mich.

Respondent, Outboard Motors Corporation, was a corporation organized under the laws of the State of Michigan. It was dissolved in September 1936 when it and Johnson Motor Co. were consolidated and their business carried on by Outboard, Marine & Manufacturing

Co., a corporation organized and existing under the laws of the State of Delaware.

Respondent, Roseman Tractor Mower Co., is a corporation organized and existing under the laws of the State of Illinois, having its principal place of business at Evanston, Ill. It sells only gang mowers and was never very active in the affairs of respondent association, although elected a member in December 1935 without obligation for the payment of any dues.

Respondent, Eclipse Lawn Mower Co., is a corporation organized and existing under the laws of the State of Illinois, having its principal place of business at Prophetstown, Ill.

PAR. 2. Respondents other than Power and Gang Mower Manufacturers Association were during all or a portion of the time alleged in the complaint, engaged in the sale and distribution of power and/or gang mowers to purchasers located in States other than the States in which their respective places of business are located, and caused such mowers, when sold, to be transported in commerce from their respective places of business to, into, and through various other States of the United States and the District of Columbia.

PAR. 3. The corporate respondents were, during all or a portion of the time alleged in the complaint, engaged in the sale and distribution of equipment for mowing or cutting grass. This equipment is of two general types: (1) Power mowers, propelled and operated by a built-in motor; and (2) gang mowers which consist of a number of mowing units coupled together and drawn by a horse, tractor, or other motive power. Some of the respondents manufacture but one of the two general types of mowers mentioned, while others manufacture both types.

Late in 1931 a meeting was held by representatives of certain of the corporate respondents at which it was determined that an effort would be made to organize the industry. Subsequent thereto, at a meeting held in January 1932, the Power and Gang Mower Manufacturers Association was organized, although articles of association and bylaws were not adopted until 1934. Representatives of Toro Manufacturing Co., Ideal Power Lawn Mower Co., Jacobsen Manufacturing Co., and Moto-Mower Co., were most active in the creation of the association and in securing the membership therein of other concerns in the industry.

The early efforts of members of the association were directed toward reducing or minimizing, insofar as possible, price competition in the sale of their products, particularly through control of discounts granted to purchasers and allowances made to purchasers for used equipment turned in as part payment for new equipment.

Examples of practices in furtherance of these aims appear in correspondence between interested parties. On February 22, 1932, the president of the Moto-Mower Co. wrote to the Jacobsen Manufacturing Co. stating:

Having in mind the expressed desire on the part of the power lawn mower dealers at our conference in Chicago—believing the statements made there were sincere, and also inasmuch as it was agreed that we would report what was looked upon as unfair competition, leads me to forward you this communication.

Our dealer, Mr. Dursch, of Philadelphia, reports that a dealer of yours by the name of Dunn (a repair man) had offered $50.00 allowance for a 1925 Detroit model Moto-Mower and in addition a 5% discount on the price of your product.

This is certainly unfair competition and destructive of the best interests of power lawn mower manufacturers. I felt it my duty to report this, and I am sending a copy of this communication to Mr. Smith of the Ideal Power Lawn Mower Co., as chairman to whom such information was to be forwarded.

I shall be pleased to hear from you when you are able to advise me of the facts pertaining to the above transaction and would respectfully request that a copy of your communication be forwarded to Mr. Smith.

On November 15, 1932, the Jacobsen Manufacturing Co. wrote the Moto-Mower Co. in part:

You may be interested to note the enclosed copies of letters from and to the Gilson Bolens Manufacturing Company at Port Washington, Wisconsin.

The transaction referred to took place shortly after our last meeting in Chicago and in accordance with our understanding at the meeting, we quoted a discount of 15% on this business. You will note the Cooper Mower Company received the award at a price approximately 40% from list.

A few days ago a dealer from Washington, D. C., came into our office and made the statement that he had been informed by the Ideal agency, Mr. Armiger, in Washington, that they would quote 35% from list on government business in 1933. I understand Mr. Armiger would get a 10% over-rider on such business.

I do not know what truth there is in this report but would appreciate your taking the matter up with Mr. Smith of the Ideal Company so we can disregard the agreement made in Chicago in the event that the Ideal people wish to quote on government business in this fashion.

On November 16, 1932, the president of the Moto-Mower Co. replied to the Jacobsen Manufacturing Co. in part:

This will acknowledge receipt of your favor of November 15th with enclosures, all of which I have read with considerable interest. I shall communicate with Mr. Smith, of the Ideal, and advise you of his reply. Specific instances such as you have stated enables detailed investigation and naturally calls for explanation on the part of any manufacturer that has been accused of doing anything that is detrimental to the best interests of the trade as a whole.

On November 23, 1932, this was followed by a letter from the president of the Toro Manufacturing Co. to the president of the Moto-Mower Co. stating:

On my return from St. Louis this morning, I find your letter of November 18, with copies of letters from Jacobsen Manufacturing Company, Gilson-Bolens Manufacturing Company, Cushman Motor Works, and Ideal Power Lawn Mower Company, all of which are very interesting, and involve a question of policy of vital interest to all manufacturers of power mowing machinery.

Inasmuch as there is a meeting to be held in Chicago the early part of December, and in order to get down to brass tacks in this controversy, I suggest that you address a letter to all of the manufacturers and have them prepare a schedule of all bids that have been submitted by the manufacturer direct, or *through their selling agents*, to any of the governmental departments the past two or three years, showing the list price and the discounts that have been made in submitting the bids.

It is a very easy and simple matter for some of the manufacturers to take refuge behind local dealers who have submitted prices with long discounts, and excuse themselves on the grounds that they have no control over sales agents. I believe the only solution of this matter would be for the manufacturers of such equipment to reserve the sole right to bid and sell direct to the governmental departments.

On November 25, 1932, the president of the Moto-Mower Co. wrote the Jacobsen Manufacturing Co.:

On December 10th the Power Lawn Mower Manufacturers will again hold a meeting at Chicago, at which time several matters of importance will be discussed. These meetings have proven very beneficial to the manufacturers as a whole, brought about through the spirit of co-operation and frankness which has characterized these meetings.

This morning's mail brought me a letter from Mr. Clapper of the Toro Manufacturing Co., under date of November 23rd, of which I enclose a copy herewith.

I believe Mr. Clapper's suggestion a good one. The Moto-Mower Company will be prepared to disclose the bids which they have made during the past two or three years for government business.

May I suggest, inasmuch as this office is being used at present as a clearing house for these matters, that you bring with you to the meeting detailed facts covering bids for government business during the last two or three years and present them for discussion at the meeting in Chicago. This information should furnish interesting discussion and a basis for a decision governing future policy in selling power lawn mowers to the government.

With a view to curtailing and bringing about uniformity in allowances granted on used equipment taken in trade in connection with the sale of new equipment, the association prepared and published a "Blue Book of Trade-In Allowances on Used Power Lawn Mowers, Gang Fairway Mowers, Golf Tractors," commonly referred to as the "Blue Book." This publication was authorized at a meeting of the power and gang mower manufacturers in Chicago, Ill., on September

8, 1933, and was approved by the board of directors at a meeting in Chicago on October 27, 1933. It was said to be for the confidential use of dealers and that "the values herein established have been worked out on a percentage basis of the retail price of the different pieces of equipment, and therefore are fair and equitable to all makes, and are for your protection." It also stated:

> The practice by dealers of allowing more for a used machine than it is worth is merely another way of cutting the price, and price cutting in any form is the greatest menace to dealer's profits. The dealer who cuts his price or offers an excessive trade-in allowance not only sacrifices his rightful profit but also encourages his competitors to compete on the same basis.
>
> * * * * * * *
>
> Remember, when you take in a piece of equipment on a trade you are buying and paying for it just as much as though you went out and bought it and gave your check for it. It costs real money to condition and resell it, and you cannot afford to take a loss, or make two deals for one profit.

This Blue Book listed under the names of the various manufacturers the models sold by each and set forth an "average appraisal value" for each such model that had been in use for 2 years, 3 years, 4 years, and 5 years or over.

PAR. 4. On March 26, 1934, a code of fair competition for the power and gang lawn mower manufacturing industry negotiated with the National Recovery Administration was approved. This code carried into effect many of the practices previously established by the association and included provision for the filing of prices and strict adherence to prices on file, various restrictive rules relating to the marketing of mowers, uniform cash discounts, and the establishment of trade-in allowances on used mowers, and also prohibited the granting of any trade-in allowance in excess of the amount so established.

An executive order (No. 6767) was issued by the President which provided in substance that bids might be made to the Government or its agencies as much as fifteen percent below filed prices. The attitude of the industry toward members individually availing themselves of the provisions of executive order No. 6767 is indicated by letter of July 31, 1934, from the secretary of the Code Authority, an officer of the Jacobsen Manufacturing Co., to the Outboard Motors Corporation, stating:

> In response to your letter of the 26th, advising your quoting the State of Wisconsin a discount of 10 percent as per Executive Order 6767, you will note enclosed application to the Administration for exemption to this order. Since this order is not generally being recognized by the Power and Gang Mower Industry, the Code Authority would greatly appreciate it if you would kindly cooperate with the industry by disregarding this Executive Order for the time being.

Your taking advantage of this order at the present time will only serve to stampede all other members of the industry into doing likewise, which will soon react to your own disadvantage.

The action taken by the mower manufacturers regarding the executive order appears in the following extract from the minutes of a meeting of the industry in Chicago on December 15, 1934, which was attended by most of respondents in this proceeding:

After considerable discussion of Executive Order 6767, it was the consensus of opinion that the Government may be granted a special discount not to exceed 15% from list prices at the discretion of the bidder, but that no cash discount should be given on any Federal sales where bids are entered at a discount of 15%, and that local freight rates should be added in submitting Government bids.

Further discussion on the subject of discounts to State and Municipalities developed the fact that while under Executive Order #6767, and the recommendation of the Board of Directors a 15% discount might be accorded to States and Municipalities, it was the opinion of the majority of those present that State and Municipal departments requesting bids on a single power mower should be quoted list prices or possibly a discount ranging from 5 to 10% depending upon the individual circumstances involved.

PAR. 5. After the abandonment of N. R. A. codes following the decision of the Supreme Court in *A. L. A. Schechter Poultry Corporation, et al.* vs. *United States* (295 U. S. 495), the Power and Gang Mower Manufacturers Association was anxious to retain the restrictions upon competition enjoyed under N. R. A. The minutes of a meeting of officers of that association in Detroit on July 12, 1935, recite in part:

The meeting was called to order by Colonel George for the purpose of discussing in a preliminary way, recommendations to be submitted to the *Board of Directors for a meeting to be called in Detroit on or about September Sixth*, particularly to formulate a plan to salvage such provisions of the power and gang mower code as were found of value under the NRA.

Colonel George advised that the following concerns had already expressed themselves in favor of continuing cooperative effort, in responding to his recent questionnaire to members of the industry—

Worthington Lawn Mower Company,
Ideal Power Lawn Mower Company,
Jacobsen Manufacturing Company,
Coldwell Lawn Mower Company,
Toro Manufacturing Company,
Eclipse Lawn Mower Company,
Outboard Motors Corporation,
Moto-Mower Company.

On motion of Colonel George, seconded by Mr. Smith, it was resolved that Directors of the Association be requested to inform the Secretary immediately as to any changes desired in the present consumer price policy as established by the Association on February 21, 1935, or of the consumer price policy es-

tablished by several of the gang mower manufacturers and as announced by Mr. McCartney of the Toro Company on April 12, 1935.

All recommendations and suggestions received by the Secretary were to be submitted to another meeting of the Officers to be held in Detroit on July 25.

On July 22, 1935, Mr. Hayden W. Wagner of the Coldwell Co., in a letter to the association's secretary, stated as follows:

The sole objective of the Power and Gang Mower Manufacturers Association at this time should be to secure the sincere voluntary co-operation of all members of the industry. With such cooperation prices, discounts and terms of sales can be stabilized, uniform marketing provisions adopted and unfair trade practices controlled or eliminated.

On July 26, 1935, the officers of the association held a further meeting in Detroit, Mich., at which a revised code for the industry prepared by Mr. Hayden W. Wagner was adopted and at a meeting of the association in Chicago on November 22, 1935, according to the minutes:

The proposed Code of Fair Trade Practices, as submitted by Colonel Hayden Wagner, July 26, 1935, was then read and approved.

The marketing rules thus adopted included a provision for the filing of prices with the association and furnishing copies to all known members of the industry, and a prohibition against the sale of any product "at a price or discount other than or more favorable than set forth in published price sheets of such member at the time outstanding and in force under the conditions applicable to such sale therein set forth." Uniform cash discount terms and uniform guarantees to purchasers of equipment were provided and members were prohibited from:

Repurchasing or taking in trade any product of the industry or paying or granting credit or allowances therefor in amounts in excess of the amount for such product as set forth in a trade-in allowance schedule adopted by the Association.

PAR. 6. The Blue Book setting forth trade-in values for used equipment was also published by the association in 1935, 1936, and 1937. The maintenance of the trade-in values thus established was of both direct and indirect interest to members of the association. Some members of the association make few sales at retail while others maintain very little dealer organization and themselves make many sales at retail. The allowances made on equipment traded in on retail sales made by the manufacturer is obviously of direct interest to such manufacturer. Manufacturers are frequently obliged to extend credit to their dealers and sometimes in large measure finance their handling of power and gang mower equipment.

Consequently, insofar as the profitable handling of used equipment affects the success of the dealer, it is of material interest to a manufacturer. It is also apparent that a manufacturer making direct sales in competition with dealers representing other manufacturers would be affected by such dealers granting larger trade-in allowances than the association rules permitted a manufacturer to grant.

The allowances which might be made for used equipment as set out in the Blue Book were apparently less than the average actual value of the equipment in question. The president of the Moto-Mower Co., in writing to the Toro Manufacturing Co. with regard to the schedule of allowances in the Blue Book, said in part:

I again, however, bring to your attention my letter of October 26th, in which I wrote that the two year allowance be 30%; the three year allowance be 20%; the four year allowance 10% and the five year allowance 5%. If you received a report of the last meeting of the dealers in Chicago you will notice that they went on record as being in favor of the two year allowance being 25%.

I am just trading in my Ford automobile toward a new car. I have used it two full years and the allowance for my machine is $400.00, and I paid approximately $650.00 for this car completely equipped, and this allowance is with the understanding that the radio is to be removed from my present car and placed in my new car. You will observe that this two year allowance is more than 60%.

One thing is sure, our branches would be glad to take in all the trade-in Moto-Mower they could secure that would be brought to them by dealers provided we could turn against them the other makes of mowers handled by such dealers. Maybe some makes of used mowers have a greater resale value than others. I know that our branches are always able to resell Moto-Mowers that they have traded in, and reconditioned, and make a profit on them. They believe that a used mower such as our City Model, or our Standard or Super, that has been used two or three years, traded in and reconditioned, and which can be offered to the new purchaser for from $100.00, $125.00 and $150.00, is a good buy, and we know that it is. I do not believe it is good business to maintain conditions that exist at present whereby dealers can make more money off of selling reconditioned mowers, based on Blue Book allowances, than they can on the sale of new mowers, and that is a known statement by Moto-Mower dealers.

PAR. 7. The Power and Gang Mower Manufacturers Association on November 22, 1935, established a uniform rate of discount to be granted to agencies of the Federal Government. The minute recording this action reads:

On motion of Colonel Hayden Wagner, seconded by Mr. H. L. McCartney, it was unanimously moved that the discount to be accorded all departments of the Federal Government should not exceed 10%.

A variation from this with respect to sales to the Veterans' Bureau was provided as follows:

After considerable discussion on the matter of submitting bids on proposals from the Veterans' Bureau, the following motion was unanimously carried:

Resolved, that any manufacturer bidding on proposals from the Veterans' Bureau may be privileged to enter his bid at a price equivalent to any agreed upon Federal discount from the lowest published list price of any competitor, F. O. B. factory, the net amount of bid not to be less than such manufacturer's extreme distributor's net price.

No further cash discount or trade-in allowance should be offered on such bids.

Some of the questions which arose among association members with reference to bidding on sales to the Federal Government are indicated in a letter of December 16, 1935, from the Moto-Mower Co. to the Jacobsen Manufacturing Company, reading:

You undoubtedly have received from the Treasury Department the proposed specifications on power lawn mowers. All of us were supposed to send in our suggestions as regards changes. We did that, and I presume you did likewise. Ramsey today asked the following question:

"If the Government adopts this new proposed specification when purchasing mowers, then doesn't it reasonably follow that if the bidder is able to conform to the specifications, the man submitting the lowest bid will certainly get the business?"

I think Ramsey's point is well taken. If this is the case then why should we not, on Government bids, bid in exactly the same manner that it was proposed to bid when proposals were submitted by the Veterans Bureau? Otherwise I can see where all the business again will go to the man who has the lowest list price.

The machine that we are all going to bump up against next year, when submitting bids to the Government, will be the Ideal, with a list price of $285.00 for a 30'' wheel type mower. Ours is $295.00 and yours, I believe, is $300.00. Milbradt has one at $295.00; Toro has one at $295.00, and Coldwell's latest list price shows $290.00.

I do not want to cut the price on our Super-Detroit under $295.00, but I do not want to lose a lot of business just because we submit our bid on a basis of $5.00 greater list than some other manufacturer.

Will you please give some consideration to the advisability of our submitting all Government bids based on the resolution passed as governing bids submitted to the Veterans' Bureau?

The proportion of the output of the power and gang mower industry purchased by agencies of the Federal Government is apparently substantial. On July 31, 1934, the secretary of the Code Authority for this industry wrote to the Deputy Administrator of the National Recovery Administration, stating in part:

It is estimated that approximately 80% of the industry's sales are made to some branch of the Government or public institutions, such as State and Federal grounds, hospitals, county court houses, city park departments, city-owned play grounds, golf courses, cemeteries, etc.

The remaining 20% of the industry's sales, going to private estates and golf clubs, would be entitled to the same discount as a public institution.

The action of the association with respect to bids to governmental agencies resulted in substantially reducing the discounts to such

purchasers, and that this action was reasonably successful is indicated in a letter of protest under date of March 3, 1937, from the Jacobsen Manufacturing Co., to the purchasing agent for the city of New York reading in part as follows:

We note that you received lower bids on Moto Mower, Milbradt, and Toro mowers, all representing a discount of approximately 25% from the manufacturers' list prices, all of which are a direct violation of the policy adopted by the Power and Gang Mower Manufacturers Association of which these parties are members.

The standard discount to municipalities, where the purchase of ten or more power mowers is involved, is 10%, the same as quotations to the Federal Government. No discount is accorded to municipalities purchasing only one machine.

These rules were adopted in code form under the NRA and have been effective since.

This sudden departure on the part of certain manufacturers from the established marketing fair practice code of our industry is a surprise to us and we are at a loss to understand the reason for it. Had we known that bids were going to be submitted on this basis, we would have quoted you an equivalent discount on Jacobsen mowers.

PAR. 8. In order to more fully effectuate the policies of the Power and Gang Mower Manufacturers Association, the association late in 1935 took steps to organize distributors in various territories in the United States. This was done in Chicago, St. Louis, Indianapolis, and Philadelphia. In this work the association employed and paid for the assistance of F. S. Jefferies Associates (trade association counsellors) and Peat, Marwick, Mitchell & Co. (accountants and auditors). Some of the distributor associations thus created were more successful and longer lived than others and apparently they all lapsed before the summer of 1937, and this effort on the part of the Power and Gang Mower Manufacturers Association was abandoned. The minutes of the meeting of the Chicago Power Mower Distributors Association for May 1936, state in part:

Luncheon was served to all present after which the Meeting was called to order by Mr. Charles Smith, who explained that the purpose of this Meeting was to check up the results of the agreements made at the previous Meeting, ten days earlier, with respect to Consumer Price Policy adopted at that Meeting.

All reported that there had been no known violation and that retail prices and Blue Book trade-in allowances had been properly maintained.

On May 22, 1936, the Chicago group "agreed that beginning Monday, May 25, they would file all copies of their invoices to consumers and to dealers," and subsequently F. S. Jefferies Associates reported to the group upon the filing of invoices by its members. The minutes of this group for the meeting of November 9, 1936, stated in part:

The distributors were informed at the previous meeting that the services of F. S. Jefferies Associates had been discontinued by the Manufacturers

Association and now wanted to know what arrangements had been made to replace this service which had proven so successful during the past season.

It was explained that Peat, Marwick, Mitchell & Company of Chicago would continue to serve the Chicago Distributors in the same manner as the F. S. Jefferies Associates. Unfortunately, Mr. E. L. Coleman, of the Peat, Marwick, Mitchell & Company did not receive notice of this meeting in time to enable him to attend but assured us of his attendance at all future meetings. The distributors were emphatic in their opinion that their organization could not function successfully without the aid of an outside agency to assist in the conduct of meetings, filing of invoices, etc. Regret was also expressed as to the absence of two members and the necessity for faithful attendance by all members at all meetings was stressed.

It was agreed that all regulations pertaining to the sale of power mowers would apply to the sale of fairways mowers.

In order to further the association's program, compliance with it by dealers was necessary. Representatives of association members frequently met with the dealer organizations created and also exerted pressure upon dealers to secure compliance. For example, the Coldwell Lawn Mower Co. on March 30, 1936, wrote to the Jacobsen Manufacturing Co. in part:

We will be very glad to cooperate with the other members of the Power and Gang Mower Manufacturers Association in using every effort to have our dealers and distributors maintain the marketing practices which have been adopted by the Association.

On April 23, 1936, the Toro Manufacturing Corporation wrote the Jacobsen Manufacturing Co. and in discussing a report of excessive trade-in allowances said to have been given by a Toro distributor said in part:

Our distributors are naturally not price cutters, but of course when the other fellow gets in and takes a deal or two away from them by giving discounts or paying an exorbitant price for used equipment, they are very apt to retaliate. This, however, does not excuse the Indianapolis deal so far as I know, and I do not believe that after receiving the letter I have written him that Mr. Cohee will let anything of this kind happen again.

On December 8, 1936, Ideal Power Mower Company wrote to one of its distributors in part as follows:

What I want to convey to you is this, that you cannot improve a situation by retaliating. The only way to improve a situation is to get together, discussing common problems and agreeing on certain business ethics, then if the situation does not improve and there is still those who will not either join or live up to agreements, the manufacturer will step in and we are confident that mistakes that have been made can be corrected.

On February 17, 1937, the Jacobsen Manufacturing Co. wrote to Worthington Mower Co., and in referring to apparent price cutting

on the sale of Worthington mowers by a dealer distributing both Jacobsen and Worthington machines stated:

We, therefore, feel disposed to request Mr. Riley to take his choice between the Worthington and Jacobsen line *unless* you will instruct him in writing, sending us a copy, that he must maintain your published prices and comply with the policies that may be adopted by the Indianapolis distributors association as constituting fair and ethical competition on Power and Gang Mower equipment in that territory.

In view of the assurances you gave me in Washington that you were for price maintenance, I anticipate the pleasure of receiving your fullest cooperation in this matter.

PAR. 9. Active furtherance of the association's program ceased at about the time the Commission's inquiry began, or soon thereafter. Complete compliance by members of the association and their dealers was never obtained but substantial results were secured. The following extracts from correspondence indicate the results secured, and the attitude of those concerned with respect to occasional infractions of the restrictive regulations imposed.

In letter of October 10, 1935, from the secretary of the Power and Gang Mower Manufacturers Association to the president of the Moto-Mower Co., with copies to several other association members, it was stated in part:

I recognize, of course, that regardless of what we do it is a physical impossibility to secure 100% compliance where a considerable portion of our sales go through dealers who have no further interest than the purchase and sale of a single machine. Nevertheless, I am sure that we could all be satisfied to tolerate a certain amount of non-compliance from this source, if we can get at least 90% compliance among ourselves and our principal distributors.

On April 4, 1936, the secretary of the Power and Gang Mower Manufacturers Association wrote to Ideal Power Lawn Mower Co.:

The enclosed summary of bids, received by the Veterans' Bureau on Proposal No. 450–M, is submitted for your information.

While bids were submitted by three leaders, only in one instance were such bids disturbing to our present plan of bidding on Federal specifications.

On June 15, 1936, the secretary of the Power and Gang Mower Manufacturers Association wrote the Toro Manufacturing Corporation in part:

Without a doubt, you have been considerably vexed this year by the half-dozen competitive dealers who have not complied with our Association federal discount, which has caused you to reach the conclusion as expressed in your letter of the 12th.

We likewise, have lost two or three deals on this account, but this has not been enough to disturb us. As far as I know, there have only been a few Moto-Mower dealers and one Ideal dealer who did not comply. Candidly, I think that is a pretty good record for the first year and that we all have

benefited immeasurably by the 10 percent discount adopted last November. It has enabled us to put most of this Government business through our dealers and protect them with a reasonable margin on the business that should be theirs.

I am further convinced that the few infractions which we have suffered are easily corrected. I believe the Moto-Mower Company are reversing the policy they set out on at the beginning of the year, and with the aid of Mr. Jefferies, we will have their future cooperation in keeping their dealers in line.

PAR. 10. The membership of respondent association represented a substantial portion of the power and gang mower manufacturing industry. Their combined sales approximated from 65 to 85 percent of the total sales of such equipment. The agreements among respondents for the filing of list prices and adherence to the prices filed did not, and were not intended to, create absolute price uniformity. The mowers sold by each of the several respondents vary from those sold by the others and are not identical products intended to be marketed at identical prices. However, in the case of sales to the Veterans' Bureau where price was the only factor considered by the purchaser, provision was made by agreement among respondents for offering each of their several products upon the basis of the lowest list price of any competitor. The agreement for maintenance of prices on file with the association, plus the agreements for standard discounts and terms of sale to the more important classes of purchasers and for uniform trade-in allowances on used equipment, resulted in substance in an agreement among respondents as to stabilization of the prices of their products, although such prices were not necessarily identical. The further implementation of these agreements by the organization of dealer groups and participation in the conduct thereof, aided in more effectually reflecting to consumers the effects of the several agreements among respondents. The agreements and acts and practices of respondents as heretofore found did unduly and unreasonably restrict and restrain competition in the sale of their products to purchasers and have had a dangerous tendency to, and did, actually hinder and prevent competition between and among said respondents and enhance the prices of their products to the consuming public, and otherwise deprive the public of the benefits which would flow from normal competition between and among said respondents.

CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice of the public and have had a dangerous tendency to, and did, hinder and prevent competition in the sale and distribution of power and/or gang mowers in trade and commerce between and

among the several States of the United States and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of certain of the 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, 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Power and Gang Mower Manufacturers Association, a voluntary unincorporated association, and respondents Coldwell Lawn Mower Co., Jacobsen Manufacturing Co., Moto-Mower Co., Toro Manufacturing Corporation, Ideal Power Lawn Mower Co., and Eclipse Lawn Mower Co., corporations, their officers, directors, agents, and employees, either with or without the cooperation of others not parties hereto, do forthwith cease and desist from following a common course of action pursuant to or in connection with any mutual understanding, agreement, combination, or conspiracy for the purpose and with the effect of maintaining the prices of their products, establishing and maintaining uniform rates of discounts and terms of sale to any purchasers or classes of purchasers, establishing and maintaining uniform trade-in allowances for used mowing equipment, or otherwise hindering or lessening competition in the sale and distribution of power and/or gang mowers or mowing equipment in commerce, as "commerce" is defined in the Federal Trade Commission Act, by:

1. Agreeing to maintain and maintaining prices published through the Power and Gang Mower Manufacturers Association, or otherwise.

2. Establishing and maintaining uniform discounts on or terms of sale for their products, or any of them.

3. Establishing and maintaining uniform prices for, or allowances on, equipment purchased or taken in trade in connection with the sale of other products.

4. Organizing or participating or cooperating in the actions of any groups or associations of dealers with the purpose and effect of accomplishing or furthering the accomplishment of any of the things prohibited in the preceding paragraphs of this order.

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, For the reasons set out in paragraph 1 of the findings as to the facts, that this proceeding be, and the same hereby is, dismissed as to respondents Milbradt Manufacturing Co., Outboard Motors Corporation, and Roseman Tractor Mower Co.

IN THE MATTER OF

BILT-RITE BOX CORPORATION, AND JACOB GLEKEL AND JACOB PRESS, 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 4177. Complaint, July 10, 1940—Decision, Oct. 15, 1941

Where a corporation, engaged in the interstate sale and distribution of corrugated paper garment boxes and shipping containers, and its president and treasurer who formulated, directed, and controlled its policies, acts and practices; in letterheads, invoices and other printed matter distributed to customers and prospective customers—

Represented that it owned, operated or controlled the plant or factory wherein its said products were manufactured, through such statements, in connection with its corporate name, as "Manufacturers of Corrugated Boxes and Shipping Containers" and "Manufacturers of Cloak, Suit, Dress, and Fur Shipping Containers";

Facts being it purchased all of its said products from manufacturers, who delivered to it "knock-down" boxes, i. e., products in which all the scoring, creasing, trimming and slotting had been done by the manufacturer, and it merely set up the parts of the boxes and stitched or stapled them together, and was not, as represented, a manufacturer, from whom a portion of the purchasing public prefers to buy direct as, in its belief, enabling it to avoid the middleman's profit and obtain a more uniform line of merchandise;

With effect of misleading and deceiving purchasers into believing that it actually owned and operated or controlled the plant or factory wherein, and machinery whereby, its products were made, and to purchase substantial amounts of its said products on acount of such erroneous beliefs:

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

Before *Mr. Lewis C. Russell*, trial examiner.
Mr. B. G. Wilson for the Commission.
Mr. Louis H. Solomon, 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 Bilt-Rite Box Corporation, a corporation, Jacob Glekel and Jacob Press, indiviuals, 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, Bilt-Rite Box 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 at 242 West Forty-first Street, New York, N. Y.; Jacob Glekel and Jacob Press are, respectively, president and treasurer of said corporate respondent and have their business offices at the same address of said Bilt-Rite Box Corporation.

Respondents, Jacob Glekel and Jacob Press, as officers of said corporation, formulate, control, and direct the policies, acts, and practices thereof. Respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for some time last past have been, engaged in the business of selling and distributing paper boxes, more especially designated as corrugated garment boxes and shipping containers, in commerce between and among various States of the United States and the District of Columbia.

Respondents cause and have caused said products, when sold, to be shipped from their aforesaid place of business, in the city of New York, State of New York, to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as aforesaid, respondents, in soliciting the sale of, and in selling, their products as above described, have caused letterheads, invoices, and other printed matter to be distributed through the United States mails and by other means to customers and prospective customers located in States other than the State of New York and in the District of Columbia. Among and typical of said statements and representations are the following:

BILT-RITE BOX CORPORATION
Manufacturers of
Corrugated Garment Boxes
and Shipping Containers
BILT-RITE BOX CORPORATION
Manufacturers of
Cloak, Suit, Dress and
Fur Shipping Containers

The use of the word "manufacturers" on respondents' letterheads, invoices and other printed matter serves as a representation that respondents own, operate, or control the plant or factory wherein, or machinery whereby, the products they sell are made or manufactured.

PAR. 3. In truth and in fact, respondents do not own, operate, or control, and have not owned, operated, or controlled a plant, factory or machinery for the manufacture of the products which they sell and distribute as hereinabove alleged, but respondents have filled and now fill orders for such articles of merchandise with products which are made or manufactured in a plant or factory or by machinery which they neither own, operate, nor control.

PAR. 4. There is a preference on the part of certain purchasers and prospective purchasers located in the various States of the United States, for buying said products and like or similar products directly from the manufacturer or factory producing the same. There is an impression and belief existing among certain of said purchasers or prospective purchasers of said products that by purchasing directly from the manufacturer a saving of the middleman's profit may be obtained; that a more uniform line of merchandise may be purchased, and that other advantages may be obtained by purchasing goods directly from a manufacturer or plant operator.

PAR. 5. The use by respondents of the word "manufacturers" contained in its advertising matter as hereinabove alleged has the tendency and capacity to mislead and deceive, and has misled and deceived, purchasers and prospective purchasers by causing them to mistakenly and erroneously believe that the respondents actually own and operate or control the plants or factories wherein, or the machinery whereby, said products are made or manufactured, and to purchase substantial amounts of respondents' products on account of such mistaken and erroneous belief.

PAR. 6. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 10th day of July, A. D., 1940, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with 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 respondents answer thereto, testimony and other evidence in support of, and in opposition to, the allegations of the complaint were introduced by the attorneys for the Commission and the attorney for respondent before Lewis C. Russell, a duly

appointed trial examiner of the Commission designated by it to serve in this proceeding, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, the testimony and other evidence, the report of the trial examiner 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. Respondent, Bilt-Rite Box Corporation, is a corporation existing under the laws of the State of New York. Respondent Glekel is president of respondent corporation and respondent Jacob Press is its treasurer. The principal place of business of the respondents is located at 242 West Forty-first Street, in the city and State of New York.

PAR. 2. The corporate respondent, since the date of its incorporation, has been engaged in the business of selling and distributing paper boxes which are designated by the trade as corrugated garment boxes, and shipping containers, and ships or causes its products to be shipped, when sold, from its principal place of business to purchasers thereof located in various States of the United States. Respondents, Jacob Glekel and Jacob Press formulate, direct, and control the policies, acts, and practices of the corporate respondent, and act together in cooperation with each other in doing the things and acts hereinafter set forth.

PAR. 3. The corporate respondent, in the course and conduct of its business as set forth in paragraph 2 hereof, in soliciting the sale of and selling its products, has caused letterheads, invoices, and other printed matter to be distributed to customers and prospective customers located in States other than the State of New York. Among and typical of the statements and representations contained in said literature are the following:

BILT-RITE BOX CORPORATION
Manufacturers of Corrugated
Boxes and Shipping Containers
BILT-RITE BOX CORPORATION
Manufacturers of
Cloak, Suit, Dress and Fur
Shipping Containers

The corporate respondent, by use of the word "manufacturers," as above stated, represents that it owns, operates, or controls the plant or factory wherein, and the machinery whereby, the products themselves are made or manufactured.

PAR. 4. None of the respondents owns, or has ever owned, operated, or controlled a plant, factory, or machinery for manufacturing the products sold by the corporate respondent. The corporate respondent purchases all of the boxes sold by it from manufacturers who deliver to the respondent what are known as "knock-down" boxes. By this is meant that all the scoring, creasing, trimming, and slotting is done by the manufacturer, and the respondent merely sets up the parts of the boxes and stitches or staples them together.

PAR. 5. The railroads demand that all paper shipping boxes bear a certificate stamp stating the name of the manufacturer of the boxes. The Agar Manufacturing Company, from whom the corporate respondent purchased its knock-down boxes, at the request of respondent stamped its boxes with a certificate showing that the boxes were manufactured by the corporate respondent; but because of the action of the Federal Trade Commission in similar cases, it ceased this practice in April 1939.

PAR. 6. A portion of the purchasing public prefers to buy directly from manufacturers, because of the belief that by so doing they may avoid the middleman's profit and will obtain a more uniform line of merchandise.

PAR. 7. The use by the corporate respondent of the word "manufacturer," as hereinbefore set forth, has a tendency and capacity to mislead and deceive, and has misled and deceived purchasers and prospective purchasers of shipping boxes or containers, causing them to erroneously believe that the corporate respondent actually owns and operates or controls the plant or factory wherein, and the machinery whereby, its products are made or manufactured, and to purchase substantial amounts of said respondent's products on account of such mistaken and erroneous beliefs.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the re-

spondents, the testimony and other evidence taken before Lewis C. Russell, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, the report of the trial examiner thereon and the exceptions to said report, and briefs filed in support of and in opposition to, the complaint, 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 respondent Bilt-Rite Box Corporation, a corporation, its officers, directors, agents, representatives, and employees, and the respondents, Jacob Glekel and Jacob Press, individually and as officers of the Bilt-Rite Box Corporation, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of paper boxes or other shipping containers, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing in any manner that respondents, or any one or more of them, own and operate or control a plant or factory wherein paper boxes or other shipping containers are manufactured.

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

Syllabus

IN THE MATTER OF

FOOD SERVICE EQUIPMENT INDUSTRY, 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 4433. Complaint, Dec. 26, 1940—Decision, Oct. 15, 1941

Where most of the leading dealers throughout the United States in food service equipment for hotels, restaurants, clubs, institutions, etc., members of an association consisting of about 100 such dealers and including certain manufacturers of kitchen, restaurant, and cafeteria equipment especially designed for each particular installation, but with members' primary business consisting in purchase and resale of said equipment, which they bought from selected manufacturers designated by said association as "Honor Roll Members," as below set forth, and also from members of a china association; and who would have been in competition with one another, but for acts and practices below set forth, as would have been said "Honor Roll" and China Association manufacturers in sales to dealers, and also with member dealers in sales to ultimate users;

Acting through and by means of said dealers' association, its officers and directors—

(*a*) Entered into and carried out agreements and understandings with said Honor Roll member manufacturers and said China Association, and pursued a concerted course of action and undertaking among themselves and with others, to adopt, carry out, enforce, and maintain, throughout the United States, certain restrictive and unfair policies and trade practices, including (1) classification of jobbers and dealers in food service equipment as being, or not being, "legitimate jobbers" or "recognized dealers," as defined by said association as those who carry a stock, maintain display rooms, etc., (2) acceptance of applications for membership in said association only from firms who, in its judgment, conformed to aforesaid classification, securing new members principally upon invitation of association members, as finally passed upon by the association directors, (3) the urging of all manufacturers to sell exclusively to and through aforesaid "legitimate" or "recognized" jobbers or dealers, and of protesting to manufacturers who sold to any others, (4) the selecting of certain cooperating manufacturers as recipients of the association's "Honor Roll Certificates," and the urging upon the association members that, in their purchases, they give preference to such "Honor Roll Members," (5) the protesting to manufacturers who sold food service equipment directly to public service companies, chain stores, and other large purchasers, unless such sales were made on a competitive equality with the prices which said purchasers could receive from "legitimate jobbers" or "recognized dealers" and (6) the entering into and carrying out of specific agreements and understandings with Honor Roll and China Association members with intent and effect of carrying out said policies and practices; and

Where said association members, to make effective and require compliance with said policies and practices, and, in effect, a general policy and practice of reducing competition throughout the United States in the sale and offer

of food service equipment by manufacturers, and of tending to create and maintain a monopoly in such trade by aforesaid Honor Roll and China Association members, and of reducing competition in the resale of such equipment and tending to create and maintain a monopoly in said association members and in "legitimate" or "recognized" dealers and jobbers—

(*b*) Entered into agreements under which they held at least one national meeting each year, formed local organizations of their association members in various cities and held frequent meetings thereof, and held directors' meetings, all for discussion of and agreement on, policies, and appointed special committees to enforce such policies and practices and enter into agreements and understandings with "Honor Roll" and other manufacturers;

(*c*) Agreed to and did issue and disseminate, through their association, a monthly bulletin to dealers and manufacturers herein concerned, in which association's activities were summarized and its membership and the current holders of Honor Roll certificates were listed, and agreed to and did issue, from time to time, to Honor Roll members and other manufacturers, a complete list of "legitimate" or "recognized" jobbers and dealers;

(*d*) Agreed to and did issue annually to Honor Roll members, Honor Roll certificates signifying that such members had carried out certain restrictive undertakings, as described below, and agreed to and did give preference to them in the purchase by association members of food service equipment;

(*e*) Agreed to and did submit complaints with reference to Honor Roll members to the association's committee on merchandising, for investigation and report as to whether such manufacturers should be dropped from the Honor Roll;

(*f*) Entered into and carried out an agreement and understanding with five manufacturers of stainless steel and enamel cooking utensils and other similar products for food service equipment, pursuant to which, and following certain restrictive undertakings by said manufacturers as below set forth, said association members gave preference in their purchases of said products to such manufacturers, with effect of monopolizing in said members resale of such equipment to institutional buyers throughout the United States, and of tending to monopolize in said manufacturers all purchases of such equipment by association members and by "legitimate" and "recognized" jobbers and dealers;

(*g*) Entered into and carried out, in many instances, an agreement and understanding with members of aforesaid China Association, pursuant, to which, and following certain restrictive undertakings on their part as hereinafter described, said association members specifically agreed to (1) cease pitting one manufacturer against another in an endeavor to force down prices, (2) cease requesting the copying of other American manufacturers' designs, (3) cease demanding and accepting volume discounts, (4) cease soliciting business on the same decoration on the same makes of china as now being supplied by another dealer, and (5) "practice better ethics," i. e., that a dealer given the exclusive right to quote on some specific proposition on one make of china, should confine his offering to the consumer to that particular brand and not accept an order for any other make; with effect of monopolizing in said association members and in "legitimate jobbers" and "recognized dealers" resale of various types of vitrified china products made by China Association members, to hotels, clubs, institutions, and similar buyers throughout the United States, and of monopolizing in said china

manufacturers all purchases of such equipment by association members and "legitimate" and "recognized" jobbers and dealers;

(*h*) Agreed to and did attempt to prevent, and in some cases did prevent, said Honor Roll members and other manufacturers from selling directly to chain stores, hotels, restaurants, and similar large volume purchasers, on any basis other than that of a competitive equality with the prices of said "legitimate jobbers" or "recognized dealers"; and

(*i*) Agreed to and did supervise and investigate, through said association and otherwise, the practices and policies of competing dealers in food service equipment, and agreed to and did act concertedly to maintain the policies and practices hereinbefore described; and

Where said "Honor Roll members," pursuant to above understanding and agreement and in furtherance thereof—

(*j*) Agreed not to sell their food service equipment through any other than said "recognized dealers" or "legitimate jobbers"; and in many instances discontinued selling to curbstone brokers, commission agents, and others, and selling direct to hotels, restaurants, chain stores, and similar large volume purchasers, on any basis other than that of a competitive equality with "legitimate jobbers'" or "recognized dealers'" prices; and

Where said China Association members, pursuant to their said understanding and agreement, acting through their association—

(*k*) Agreed to sell directly to department stores for their restaurants only where such stores had china departments, and to use their best endeavors to sell through dealers, to others and to chain stores; to cease immediately from taking on any new direct-to-consumer accounts or any new broker or commission agent accounts; and to refrain from quoting prices to consumers without first having received the dealer's consent as to the mark-up to be used;

Capacity, tendency, and effect of which agreements, policies, practices, and acts were—

(1) To create and set up said Honor Roll Members as a "White List" of manufacturers of food service equipment, signifying thereby that only those manufacturers who received Honor Roll Certificates from said association were to receive preference in the placement of business by its members;

(2) To prevent dealers who were not members of said association or were not classified by it as "legitimate" or "recognized" from procuring food service equipment from Honor Roll manufacturers and from other cooperating manufacturers, including the China Association members; to eliminate and discriminate against them; and to interfere with, suppress and hamper their interstate supply of food service equipment;

(3) To unreasonably restrain competition in the sale or offer of food service equipment throughout the United States, and thus to deprive hotels, restaurants, clubs, institutions, and other similar purchasers of the advantages they would receive under conditions of free and fair competition, and otherwise to operate as a restraint upon competition;

(4) To reduce substantially direct sales by manufacturers of food service equipment to hotels, restaurants, chain stores, and similar large volume purchasers;

(5) To burden, hamper, and interfere with the normal and natural flow of trade in food service equipment in interstate commerce;

(6) To cause said Honor Roll and China Association members to boycott and refuse to sell present and would-be dealers, distributors, and brokers of food service equipment who (a) were not members of said association, or (b) were not classified by it as "legitimate jobbers" or "recognized dealers";

(7) To prejudice and injure manufacturers of food service equipment who did not conform to said association members' policies and practices, or who did not desire to so conform but were compelled to do so by the concerted action of said association, its Honor Roll Members, and said China Association; and

(8) To injure the competitors of said association, Honor Roll, and China Association members by unfairly diverting business and trade from them:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of competitors and the public; had a dangerous tendency to, and actually did, hinder and prevent competition in the sale and distribution of food service equipment in commerce; unreasonably restrained such commerce; had a dangerous tendency to create in them a monopoly in the sale of such equipment; and constituted unfair methods of competition in commerce.

Mr. Fletcher G. Cohn for the Commission.

Levinson, Becker, Peebles & Swiren, of Chicago, Ill., for Food Service Equipment Industry, Inc., its officers and directors, representative members, G. S. Blodgett Co., Inc., and Hobart Manufacturing Co.

Cobbs, Logan, Roos & Armstrong, of St. Louis, Mo., for American Stove Co.

Goodwin, Nixon, Hargrave, Middleton & Devans, of Rochester, N. Y., for Josiah Anstice & Co., Inc.

D'Ancona, Pflaum & Kohlsaat, of Chicago, Ill., for G. S. Blakeslee & Co.

Saltsman & Saltsman, of Carrollton, Ohio, for Carrollton Metal Products Co.

Robinson, Robinson & Cole, of Hartford, Conn., for Colt's Patent Fire Arms Manufacturing Co.

Hill, Hamblen, Essery & Lewis, of Detroit, Mich., for Detroit-Michigan Stove Co.

Cullen & Dykman, of Brooklyn, N. Y., for Lalance-Grosjean Manufacturing Co.

Ross & Watts, of Chicago, Ill., for McGraw Electric Co.

Currie & Leberman, of Sheboygan, Wis., for Polar Ware Co.

Venable, Baetjer & Howard, of Baltimore, Md., for Standard Gas Equipment Corporation.

Zabel, Carlson, Gritzbaugh & Wells, of Chicago, Ill., for Illinois Brass Mfg. Co.

Walker, Hilleary, Shafer & Cox, of Terre Haute, Ind., for Columbian Enameling & Stamping Co.

Reed & Ewing, of Beaver, Pa., for American Vitrified China Manufacturers Association, Albert M. Walker, James K. Love, Mayer China Co. and Sterling China Co.

A. M. & H. C. Walker, of Akron, Ohio, for Bailey-Walker China Co.

Kenefick, Cooke, Mitchell, Bass & Letchworth, of Buffalo, N. Y., for Buffalo Pottery Co., Inc.

Mr. George K. Ralston, of Martins Ferry, Ohio, for Carr China Co.

Pentz & Pentz, of DuBois, Pa., for Jackson Vitrified China Co.

Powell, Clifford & Jones, of Clarksburg, W. Va., for D. E. McNichol Co. of W. Va.

Bond, Schoeneck & King, of Syracuse, N. Y., for Onondaga Pottery Co.

Mr. Scott Scammell, of New York City, for Scammell China Co.

Mr. Wylie McCaslin, of New Castle, Pa., for Shenango Pottery Co.

Mr. George S. Thompson, of East Liverpool, Ohio, for Wellsville China Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the respondents named and represented in the caption hereof, and more particularly described hereinafter, 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, Food Service Equipment Industry, Inc., hereinafter referred to as "respondent industry" is a nonprofit corporation organized under the laws of the State of Illinois on July 25, 1933, and existing and doing business by virtue of the laws of said State since that date, with its office and principal place of business being located at 2155 Pershing Road, Chicago, Ill.

Its officers are now, and since its organization have been, the following respondents hereinafter referred to as "respondent Industry Officers":

I. S. Anoff, chairman, who is also president and director of respondent Albert Pick Co., Inc., his address being in care of Albert Pick Co., Inc., 2151 Pershing Road, Chicago, Ill.

M. P. Duke, vice chairman, who is also president of respondent Duke Manufacturing Co., his address being in care of Duke Manufacturing Co., 2222 North 9th Street, St. Louis, Mo.

(Miss) L. E. Iwert, secretary, whose address is 2159 Pershing Road, Chicago, Ill.

S. R. Sperans, treasurer, who is also president of respondent Straus Duparquet, Inc., and whose address is in care of Straus Duparquet, Inc., 630 Sixth Avenue, New York, N. Y.

Its directors, hereinafter referred to as "respondent Industry directors," are now, and since its organization have been, the following respondents:

A. H. Beadle, vice-president, Joesting & Schilling Co., Inc., St. Paul, Minn.

S. J. Carson, manager, Carson Crockery Company, Denver, Colo.

H. C. Davis, in care of F. A. Davis & Sons, Baltimore, Md.

W. F. Dougherty, president, W. F. Dougherty & Sons, Inc., Philadelphia, Pa.

B. Dohrmann, vice president, Dohrmann Hotel Supply Co., San Francisco, Calif.

P. L. Ezekiel, president, Ezekiel & Weilman Co., Inc., Richmond, Va.

A. W. Forbriger, in care of John Van Range Company, Cincinnati, Ohio.

W. Friedman, in care of H. Friedman & Sons, Inc., 30 Cooper Square, New York, N. Y.

C. A. Winchester, treasurer, Thompson-Winchester Company, Inc., Boston, Mass.

C. Winkler, in care of Greene-Winkler Company, Inc., Seattle, Wash.

PAR. 2. The control, direction, and management of respondent Industry's affairs, policies, and actions are vested in respondents, Industry officers, and Industry directors.

PAR. 3. Among the members of said respondent Industry are the following respondents:

A. L. Cahn & Sons, a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 46 Cooper Square, New York, N. Y.

Duke Manufacturing Co., a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 2222 North 9th Street, St. Louis, Mo.

Ezekiel & Weilman Co., Inc., a corporation organized and existing under the laws of the State of Virginia with its office and principal place of business located at 7th and Cary Streets, Richmond, Va.

Alex Janows & Company, a corporation organized and existing under the laws of the State of Illinois with its office and principal place of business located at 1645 West Carroll Avenue, Chicago, Ill.

Albert Pick Co., Inc., a corporation organized and existing under the laws of the State of Delaware with its office and principal place of business located at 2151 Pershing Road, Chicago, Ill.

The Stearnes Company, a corporation organized and existing under the laws of the State of Illinois with its office and principal place of business located at 1333 South Wabash Avenue, Chicago, Ill.

Straus-Duparquet, Inc., a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 630 Sixth Avenue, New York, N. Y.

The above-named respondents, all members of respondent Industry, do not constitute the entire membership of said respondent Industry, but are representative members thereof, the membership of said respondent Industry consisting of approximately 75 or 80 corporations, individuals, firms, and partnerships, with the number of same vary-

ing from year to year, so that it is impracticable to name as respondents and bring before the Commission each and all the members of respondent Industry without manifest delay and inconvenience. Therefore, the Commission names and includes as respondents in this proceeding the aforementioned A. L. Cahn & Sons, Duke Manufacturing Co., Ezekiel & Weilman Co., Inc., Alex Janows & Co., Albert Pick Co., Inc., The Stearnes Co. and Straus-Duparquet, Inc., hereinafter referred to as "respondent Industry Members," both individually and as representatives of the entire membership of respondent Industry.

PAR. 4. Among the manufacturers of various types of food service equipment who are recipients of honor roll certificates from respondent Industry are the following respondents:

American Stove Co., a corporation organized and existing under the laws of the State of New Jersey with its office and principal place of business located at 825 Choteau Avenue, St. Louis, Mo.

Josiah Anstice & Co., Inc., a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 97 Humboldt Street, Rochester, N. Y.

G. S. Blakeslee & Co., a corporation organized and existing under the laws of the State of Illinois with its office and principal place of business located at West 19th and South 52d Streets, Cicero, Ill.

G. S. Blodgett Co., Inc., a corporation organized and existing under the laws of the State of Vermont with its office and principal place of business located at 59 Maple Street, Burlington, Vt.

Carrollton Metal Products Co., a corporation organized and existing under the laws of the State of Ohio with its office and principal place of business located at Carrollton, Ohio.

Colt's Patent Fire Arms Manufacturing Co., a corporation organized and existing under the laws of the State of Connecticut with its office and principal place of business located at Hartford, Conn.

Detroit-Michigan Stove Co., a corporation organized and existing under the laws of the State of Michigan with its office and principal place of business located at 6900 East Jefferson Avenue, Detroit, Mich.

Hobart Manufacturing Co., a corporation organized and existing under the laws of the State of Ohio with its office and principal place of business located at Troy, Ohio.

Lalance-Grosjean Manufacturing Co., a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 92d Street and Atlantic Avenue, Woodhaven, Long Island, N. Y.

McGraw Electric Co., a corporation organized and existing under the laws of the State of Delaware with its office and principal place of business located at 120 South LaSalle Street, Chicago, Ill.

Polar Ware Co., a corporation organized and existing under the laws of the State of Wisconsin with its office and principal place of business located at Sheboygan, Wis.

Standard Gas Equipment Corporation, a corporation organized and existing under the laws of the State of Maryland, with its principal corporate office located in Baltimore, Maryland, and its principal sales office located at 18 East 41st Street, New York, N. Y.

United States Stamping Co., a corporation organized and existing under the laws of the State of West Virginia with its office and principal place of business located at Moundsville, W. Va.

Vollrath Co., a corporation organized and existing under the laws of the State of Wisconsin with its office and principal place of business located at Sheboygan, Wis.

The above-named respondents do not constitute all of the manufacturers of various types of food service equipment who are recipients of honor roll certificates from respondent Industry, but are representative of such recipients; said recipients consist of between 40 and 45 firms and corporations manufacturing various types of food service equipment, with the number varying from year to year, as said recipients are selected annually by respondent Industry, so that it is impracticable to name as respondents each and all of said recipients without manifest delay and inconvenience. Therefore, the Commission names and includes as respondents in this proceeding the aforesaid American Stove Co., Josiah Anstice & Co., Inc., G. S. Blakeslee & Co., G. S. Blodgett Co., Inc., Carrollton Metal Products Co., Colt's Patent Fire Arms Manufacturing Co., Detroit-Michigan Stove Co., Hobart Manufacturing Co., Lalance-Grosjean Manufacturing Co., McGraw Electric Co., Polar Ware Co., Standard Gas Equipment Corporation, Vollrath Co., and United States Stamping Co., all of whom are hereinafter referred to as "respondent Honor Roll Members," both individually and as representatives of all the manufacturers of various types of food service equipment who are recipients of honor roll certificates from respondent Industry:

PAR. 5. Respondent, Illinois Brass Manufacturing Co., is a corporation organized and existing under the laws of the State of Illinois with its office and principal place of business located at 224 North Ada Street, Chicago, Ill.

Respondent, Columbia Stamping and Enameling Co., which is also known as Columbia Stamping Products, Inc., is a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 40–05 21st Street, Long Island City, N. Y.

PAR. 6. Respondent, American Vitrified China Manufacturers Association, hereinafter referred to as "respondent China Association," is an unincorporated association organized in 1918, with its office and place of business located at Shenango Pottery Co., New Castle, Pa.

Its active officers, hereinafter referred to as "respondent China Association Officers" are respondent Albert M. Walker, its president,

whose address is in care of Bailey-Walker China Co., Bedford, Ohio, and respondent James K. Love, its secretary treasurer, who is vice president of Shenango Pottery Co., New Castle, Pa.

PAR. 7. The following respondents, hereinafter referred to as "respondent China Association Members," all manufacturers of vitrified china products comprise the membership of respondent China association:

Bailey-Walker China Co., a corporation organized and existing under the laws of the State of Ohio with its office and principal place of business located at Bedford, Ohio.

Buffalo Pottery Co., Inc., a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at Seneca Street, and Hages Place, Buffalo, N. Y. (This respondent is also a recipient of an honor roll certificate from respondent Industry.)

Carr China Company, a corporation organized and existing under the laws of the State of West Virginia with its office and principal place of business located at Grafton, W. Va.

Iroquois China Co., a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at Syracuse, N. Y.

Jackson Vitrified China Co., a corporation organized and existing under the laws of the State of Pennsylvania with its office and principal place of business located at Falls Creek, Pa.

D. E. McNichol Co. of W. Va., a corporation organized and existing under the laws of the State of West Virginia with its office and principal place of business located at Clarksburg, W. Va. (This respondent is also a recipient of an honor roll certificate from respondent Industry.)

Mayer China Company, a corporation organized and existing under the laws of the State of Pennsylvania with its office and principal place of business located at Second Avenue and 6th Street, Beaver Falls, Pa.

Onandaga Pottery Co., a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 1856–58 West Fayette Street, Syracuse, N. Y.

Scammell China Company, a corporation organized and existing under the laws of the State of New Jersey with its office and principal place of business located at Third and Landing Streets, Trenton, N. J.

Shenango Pottery Co., a corporation organized and existing under the laws of the State of Pennsylvania with its office and principal place of business located at New Castle, Pa.

Sterling China Company, a corporation organized and existing under the laws of the State of Ohio with its office and principal place of business located at 12th and Anderson Streets, Wellsville, Ohio.

Wellsville China Co., a corporation organized and existing under the laws of the State of Ohio with its office and principal place of business located at Wellsville, Ohio.

PAR. 8. The said respondent Industry members, hereinbefore described and referred to in paragraph 3, are all dealers in various types of food service equipment for hotels, restaurants, clubs, institutions, and other such classes of business, the primary business of said

respondent Industry members being the purchase and resale of such equipment, with the said respondent Industry members constituting most of the leading dealers in this equipment throughout the United States. There are a few members of respondent Industry who are small manufacturers of kitchen, restaurant, and cafeteria equipment, which, in a large part, must be especially designed and manufactured for each particular installation. Large manufacturers of such equipment, however, are not admitted to membership in respondent Industry.

PAR. 9. Respondent honor roll members, hereinbefore described and referred to in paragraph 4, are manufacturers of the various types of food service equipment which are resold by respondent Industry members to hotels, restaurants, clubs, institutions, etc. Respondent honor roll members are recipients of certificates from respondent Industry, and are selected annually by respondent Industry in recognition of their cooperation with, and adoption of, the policies of respondent Industry in promoting the policies and practices, hereinafter set out. Respondent honor roll members are invited to attend meetings of respondent Industry. The status of being an honor roll member is not permanent, but honor roll certificates are granted from year to year by respondent Industry, respondent Industry members each year deciding as to what manufacturers should be placed on the honor roll.

Just prior to the close of the fiscal year on June 30, in each year, ballots are mailed out by respondent Industry to all respondent Industry members, containing the names of all manufacturers who appeared on the "Roll of Honor" during the preceding year and respondent Industry members are required to check the list and suggest any changes or additions thereto; the ballots are then submitted to respondent Industry directors for approval.

To remain an honor roll member, the manufacturer must restrict his sales to "legitimate jobbers" who are defined by respondent Industry, as being those jobbers who carry stock, maintain display rooms, employ a sales organization, extend facilities, and offer delivery service.

PAR. 10. Respondents, Illinois Brass Manufacturing Co., and Columbia Stamping and Enameling Co., although not recipients of honor roll certificates from respondent Industry, nevertheless have cooperated with respondent Industry in effectuating the policies and practices hereinafter set out, and are both manufacturers of certain types of food service equipment which are resold by respondent Industry members.

PAR. 11. In the course and conduct of their respective businesses, respondent Industry members purchase the various types of equipment which they resell, from respondent honor roll members, China association members and other manufacturers thereof including respondents Illinois Brass Manufacturing Co. and Columbia Stamping and Enameling Co., and as part of such purchases, cause said equipment to be shiped or transported into the States of the United States where the respective places of business of said respondent Industry members are located, from other States of the United States.

Said respondent Industry members also, in the course and conduct of their respective businesses, resell and distribute such equipment to hotels, restaurants, clubs, institutions and other such types of users thereof, located throughout the United States and as part of said sales, transport, or cause to be transported, such equipment from their respective places of business to said purchasers located in States of the United States other than the States of origin of such shipments.

Respondents, honor roll members, China association members, and Illinois Brass Manufacturing Co., and Columbia Stamping and Enameling Co., in the course and conduct of their respective businesses, sell and distribute the various types of food service equipment manufactured by them, to the purchasers thereof, including respondent Industry members, and as part of said sales, transport, or cause to be transported, said equipment from their respective places of business to these purchasers thereof located in the States of the United States other than the States of origin of said shipments.

All of said respondents, Industry members, honor roll members, China association members, Illinois Brass Manufacturing Co., and Columbia Stamping and Enameling Co., are, and were during the periods hereinafter set forth, engaged in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 12. Respondents, Industry, Industry officers, Industry directors, China association, and China association officers, all aided, abetted, furthered, cooperated with, and were instrumentalities of, and parties to, some, or all of the understandings, agreements, combinations, and conspiracies, hereinafter set out, and actively participated in the performance of some or all of the acts and things done in pursuance thereto and in furtherance thereof.

PAR. 13. Respondent Industry members are in competition with each other and with other dealers in food service equipment for hotels, restaurants, clubs, institutions, and other such types

of users of such equipment, which is manufactured and sold by respondents, honor roll members, China association members, Illinois Brass Manufacturing Co., and Columbia Stamping and Enameling Co., and other manufacturers of such equipment, in selling and seeking to sell same in commerce between and among the several States of the United States and in the District of Columbia, to the ultimate users of such equipment, except insofar as said competition has been hindered, lessened, restrained or restricted, or potential competition between and among them forestalled by the unfair practices and methods hereinafter set forth.

These competitive dealers of respondent Industry members likewise purchase or seek to purchase such equipment from the manufacturers thereof, including respondents, honor roll members, China association members, Illinois Brass Manufacturing Co. and Columbia Stamping and Enameling Co., and as part of said purchases, which are made or sought to be made by said competitors, the manufacturers of said equipment, including the aforementioned respondents, do, or did, transport, or cause, or did cause, such equipment to be shipped to the various places of business of said competitors located in States of the United States which are, or would be different from the States of origin of such shipments.

PAR. 14. Respondents, honor roll members, China association members, Illinois Brass Manufacturing Co., and Columbia Stamping and Enameling Co., are in competition with each other, and with other manufacturers of the same types of equipment used for food service which they manufacture, in selling and seeking to sell such equipment in commerce between and among the several States of the United States and in the District of Columbia to respondent Industry members, competitors of said respondent Industry members, and also directly to the ultimate users of said equipment except insofar as said competition has been hindered, lessened, restrained, or restricted or potential competition between and among them forestalled by the unfair methods and practices herein set forth.

PAR. 15. Respondent Industry members are in competition with respondents, honor roll members, China association members, Illinois Brass Manufacturing Co., and Columbia Stamping and Enameling Co., in selling and seeking to sell, in commerce between and among the several States of the United States and in the District of Columbia, to the ultimate users thereof, the various types of food service equipment manufactured by said respondents, honor roll members, China association members, Illinois Brass Manufacturing Co., and Columbia Stamping and Enameling Co., except insofar as said competition has been hindered, lessened, restrained, or restricted,

or potential competition between or among them forestalled by the unfair methods and practices hereinafter set forth.

PAR. 16. Respondent Industry members, acting through and by means of respondents, Industry, Industry officers, and Industry directors since about 1933, have, by means of agreements and understandings with the other respondents, as hereinafter set forth, and by other means and methods conspired and combined together, and with others, and have united in, and pursued, a common and concerted course of action and undertaking, among themselves, with the other respondents, and with others, to adopt, carry out, enforce and maintain throughout the United States, certain restricting, restraining, and unfair policies and trade practices, hereinafter described which said respondent Industry members adhered to, among themselves, and which they have effectuated, by coercion, compulsion, and other unfair means and methods.

PAR. 17. Among the said restricting, restraining, and unfair policies and trade practices referred to in the preceding paragraph, which were so formulated, adopted and put into effect by the respondents, are the following:

1. A policy and practice of selecting the members of respondent Industry according to certain standards set up by said respondent Industry which require said Industry Members to carry stocks, maintain display rooms, employ a sales organization, extend credit facilities, and offer delivery service.

2. A policy and practice of securing new members of respondent Industry on the basis of invitations from a respondent Industry member, and not through applications for membership, and of requiring all such invitations to be sent to respondent I. S. Anoff, chairman of respondent Industry, by whom said applications are referred to respondent Industry directors for final action.

3. A policy and practice of compelling all manufacturers of food service equipment to sell same through respondent Industry members and not directly to the ultimate users thereof.

4. A policy and practice of selecting certain specific manufacturers of food service equipment to cooperate with respondent Industry's purposes and policies, as recipients of respondent Industry's "Honor Roll Certificates."

5. A policy and practice of preventing manufacturers of food service equipment from selling said equipment to any dealers in same who are not members of respondent Industry.

6. A policy and practice of preventing manufacturers of food service equipment from selling same directly to public service companies, chain stores, and other recognized outlets.

7. A policy and practice of only purchasing the equipment which respondent Industry dealers resell, from those manufacturers who are recipients of honor roll certificates from respondent Industry.

8. A policy and practice of entering into and thereafter carrying out, agreements and understandings with respondents, honor roll members, China association members, Illinois Brass Manufacturing Co., and Columbia Stamping and Enameling Co., and other manufacturers of various types of food service equipment for the purpose and intent of monopolizing in respondent Industry members the resale and distribution of such equipment, and of monopolizing in respondents honor roll members, China association members, Illinois Brass Manufacturing Co., and Columbia Stamping and Enameling Co., all purchases by respondent Industry members of the various types of equipment manufactured by said respondents, honor roll members, Illinois Brass Manufacturing Co., and Columbia Stamping and Enameling Co.

9. A general policy and practice of reducing competition throughout the United States, in the sale and offering for sale, of various types of food service equipment, by the manufacturers thereof and of tending to create and maintaining a monopoly in such trade by respondents, honor roll members, China association members, Illinois Brass Manufacturing Co., and Columbia Stamping and Enameling Co.

10. A general policy and practice of reducing competition throughout the United States, in the resale of food service equipment, and of tending to create and maintain a monopoly in respondent Industry members in such trade and commerce throughout the United States.

PAR. 18. For the purpose of making such policies and practices effective, and of requiring compliance therewith by all food service equipment dealers and manufacturers of such equipment, throughout the United States, respondents have done, and performed and still do and perform, among other acts and things, the following:

1. Respondent Industry members agreed to formulate, adopt, follow, carry out, enforce, impose and make effective, and have formulated, adopted, followed, carried out, enforced, imposed and made effective, the policies and practices described in the preceding paragraph.

2. Respondent Industry members agreed to hold, and have held, at least one national meeting each year, at which said policies and practices were discussed, adopted and agreed to.

3. Respondent Industry members agreed to form, and have formed, local organizations of Industry members, particularly in New York, N. Y., Boston, Mass., Chicago, Ill., Miami, Fla., and St. Louis, Mo.

4. Respondent Industry members agreed to hold, and have held, frequent meetings of the respondent membership of said local organiza-

tions, at which said policies and practices were discussed, adopted and agreed to.

5. Respondent Industry directors agreed to hold, and have held, regular and special meetings at which said policies and practices were discussed, adopted and agreed to.

6. Respondent Industry members have agreed to appoint, and have appointed, through and by means of respondents, Industry, Industry officers and Industry directors, special committees to enforce said policies and practices, and also to confer and enter into agreements and understandings with representatives of respondent honor roll members and other manufacturers of various types of food service equipment which are resold by said respondent Industry members for the purpose, intent and effect of carrying out said policies and practices.

7. Respondent Industry members agreed to seek and obtain, and have sought and obtained, promises and assurances from one another, in establishing and making effective the policies and practices hereinabove described.

8. Respondent Industry members agreed to issue, and have issued through and by means of respondents, Industry, Industry officers and Industry directors, a monthly bulletin entitled "Food Service Equipment Industry Bulletin," in which the activities of respondent Industry are summarized, a complete list of the membership of respondent Industry given and also a full list of the current holders of honor roll certificates from respondent Industry.

9. Respondent Industry members agreed to disseminate, and have disseminated, aforesaid monthly bulletin among respondents, Industry members, honor roll members and other manufacturers of food service equipment.

10. Respondent Industry members have agreed to issue, and have issued, through and by means of respondents, Industry, Industry officers and Industry directors, special bulletins, general letters and the like, from time to time, for dissemination among respondents, Industry members, honor roll members, and other manufacturers of food service equipment.

11. Beginning in 1937, and continuing thereafter, respondent Industry members have, through respondent Industry, agreed to issue, and have issued, to respondent honor roll members, honor roll certificates, which signify that said respondent honor roll members have entered into and thereafter carried out, an agreement, understanding, combination and conspiracy with respondent Industry, acting for and on behalf of respondent Industry members, for the purpose and intent, and with the effect of unlawfully restricting, restraining,

monopolizing and suppressing, and eliminating competition in commerce between and among the the several States of the United States and in the District of Columbia, in the sale of food service equipment by the manufacturers thereof, and in the resale and distribution of such equipment in said commerce, by dealers thereof.

12. Pursuant to said understanding, agreement, combination, and conspiracy, hereinbefore set forth in the subparagraph 11, and in furtherance thereof, respondent honor roll members have agreed, and still do agree, among other things:

(*a*) Not to sell, and do not sell, the various types of food service equipment manufactured by them through anyone other than "recognized dealers" as defined by respondent Industry, which "recognized dealers" in most instances are respondent Industry members.

(*b*) To discontinue selling, and have discontinued selling, the various types of food service equipment manufactured by them to curbstone brokers, commission agents, and others who are not "recognized dealers," as defined by respondent Industry, which "recognized dealers" in most instances are respondent Industry members.

(*c*) To discontinue selling directly and have discontinued selling directly, to hotels, restaurants, chain stores, etc.

(*d*) That where it is necessary to sell directly to the trade in certain territories where there are no "recognized dealers," to quote, and do quote, in such instances the same prices as those at which respondent Industry members sell to the trade.

13. Pursuant to said agreement, understanding, combination, and conspiracy, hereinbefore set forth in subparagraph 11, and in furtherance thereof, respondent Industry members agreed, among other things, to purchase, and do purchase, most, if not all, of the various types of food service equipment manufactured by said respondent honor roll members from said respondents, to the exclusion of all other manufacturers of such equipment.

14. Respondent Industry members agreed to submit, and do submit, any complaints with reference to respondent honor roll members to respondent Industry's committee on merchandising.

15. Respondent Industry members agreed to require, and do require, said respondent Industry's Committee on merchandising to investigate such complaints and report back to respondent Industry directors as to whether such manufacturers should be dropped from respondent Industry's honor roll.

16. Respondent Industry members agreed to publish, and do publish, in each issue of its monthly bulletins all of the names of respondent honor roll members.

17. Respondent honor roll members agreed to give, and do give, respondent Industry members preferential consideration to the particular food service equipment manufactured by said respondent honor roll members.

18. In about 1937, respondent Industry members agreed to enter into, and did enter into, and thereafter carry out, by means of respondents, Industry officers and Industry directors, an agreement and understanding with respondents, Polar Ware Co., Lalance-Grosjean Manufacturing Co., Carrollton Metal Products Co., United States Stamping Co., Vollrath Co., and Columbia Stamping and Enameling Co., all of whom are manufacturers of stainless steel and enamel cooking utensils and other similar products, for food service equipment, to monopolize in respondent Industry members the resale of such equipment to hotels, restaurants, clubs, institutions and similar buyers of same, throughout the United States, and to monopolize in said respondent manufacturers of such food service equipment all purchases of same by respondent Industry members.

19. Pursuant to said agreement and understanding, hereinbefore set forth in subparagraph 18, and in furtherance thereof, the aforementioned respondent manufacturers agreed, among other things:

(*a*) To refrain from selling, and do refrain from selling, to any new hotel accounts or like buyers, directly, or through any commission agent, broker or any other channel of distribution other than "recognized dealers," as defined by respondent Industry, which "recognized dealers" in most instances are respondent Industry members.

(*b*) To attempt to eliminate, and did attempt to eliminate before October 1, 1937, all existing direct or brokerage accounts and divert this business exclusively to respondent Industry members.

20. Pursuant to said agreement and understanding, hereinbefore set forth in subparagraph 18, and in furtherance thereof, respondent Industry members agreed to purchase and do purchase, most, if not all, of their stainless steel and enamel cooking utensils and similar products used as food service equipment from said respondent manufacturers to the exclusion of all other manufacturers of such food service equipment.

21. In about 1939, respondent Industry members agreed to enter into, and did enter into, and thereafter carry out, through and by means of respondents, Industry, Industry officers and Industry directors, an agreement and understanding with respondent China association members, acting through and by means of respondents, China Association and China association officers, to monopolize in respondent Industry members the resale of various types of vitrified china products to hotels, restaurants, clubs, institutions and similar buyers of same throughout the United States, and to monopolize in respondent

China Association members all purchases of such equipment by respondent Industry members.

22. Pursuant to said agreement and understanding, hereinbefore set forth in subparagraph 21, and in furtherance thereof, respondent China Association members, acting through and by means of respondents, China association and China association officers, agreed, among other things:

(*a*) To sell, and do sell, directly to department stores only when the purchases by said stores are for use in their own departments.

(*b*) To use, and do use, their best endeavors to sell department stores having no china departments, exclusively through and by means of respondent Industry members.

(*c*) To sell, and do sell, to chain stores directly only where this is absolutely necessary because of competitive conditions.

(*d*) To cease and did cease, immediately after entering into the aforementioned agreement and understanding, from taking on any new direct-to-consumer accounts or any new broker or commission agent accounts.

(*e*) To refrain from, and do refrain from, quoting prices to ultimate consumers of their products without first having received the consent of respondent Industry members in a particular locality where such consumers are located, as to the mark-up to be used;

23. Pursuant to said agreement and understanding, hereinbefore set forth in subparagraph 21, and in furtherance thereof, respondent Industry members, acting through and by means of respondents, Industry, Industry officers and Industry directors, agreed, among other things:

(*a*) To cease, and did cease, pitting one manufacturer against another in an attempt to get lower prices on their purchases.

(*b*) To cease, and did cease, requesting the copying of other American manufacturers' designs.

(*c*) To cease, and did cease, demanding or accepting volume discounts.

(*d*) To cease, and did cease, soliciting business on the same decorations on the same makes of china as are supplied by any of respondent China Association members to other respondent Industry members.

24. Respondent Industry members agreed to attempt, and did attempt, with some success, to prevent respondent honor roll members and other manufacturers of food service equipment from selling directly to chain stores.

25. Respondent Industry members agreed to solicit and obtain, and did solicit and obtain, through coercion, better prices and special

discounts from some respondent honor roll members and other manufacturers of food service equipment, for respondent Industry members.

26. Respondent Industry members agreed to enter into, and did enter into and thereafter carry out, an agreement and understanding with respondents, Standard Gas Equipment Corporation, Detroit-Michigan Stove Co., and American Stove Co., the three largest manufacturers of commercial gas ranges and cooking equipment in the United States, to monopolize in respondent Industry members, particularly in the New York and Chicago trading areas, the resale of commercial gas ranges and other cooking equipment manufactured by said three respondents, and to monopolize in said three respondents all purchases of such equipment by respondent Industry members, particularly in said areas.

27. Pursuant to said agreement and understanding, hereinbefore set forth in subparagraph 26, and in furtherance thereof, the aforementioned respondents, Standard Gas Equipment Corporation, Detroit-Michigan Stove Co., and American Stove Co., did agree, among other things:

(*a*) To confine, and did confine, in said New York and Chicago areas, the exclusive sale and distribution of said equipment manufactured by the said three respondents, to respondent Industry members.

(*b*) To grant, and did grant, extra discounts, to respondent Industry members in the Chicago trade area, during the special campaign on the products manufactured by said three respondents, said special campaign being fostered and promoted by respondent I. S. Anoff, chairman of respondent Industry.

28. Pursuant to said agreement and understanding, hereinbefore set forth in subparagraph 26, and in furtherance thereof, respondent Industry members, particularly in said New York and Chicago areas, agreed to purchase, and did purchase, most, if not all, of the aforementioned food service equipment manufactured by respondents, Standard Gas Equipment Corporation, Detroit-Michigan Stove Co., and American Stove Co., from said three respondents.

29. Respondent Industry members agreed to enter into, and did enter into, and thereafter carry out, through and by means of respondents, Industry, Industry officers, and Industry directors, and by other means and methods, an agreement and understanding with respondent Illinois Brass Manufacturing Co., whereby the said respondent Illinois Brass Manufacturing Co. did agree to, and did grant to, respondent Industry members exclusively, extreme discounts on the types of food service equipment manufactured by said respondent Illinois Brass Manufacturing Co., and whereby said respondent

Industry members, acting through and by means of respondent Industry, agreed, at least tacitly to make, and did make, special efforts to sell the particular food service equipment manufactured by said respondent Illinois Brass Manufacturing Co.

30. Respondent Industry members agreed to supervise and investigate, and did supervise and investigate, through and by means of respondents, Industry, Industry officers, and Industry directors, and by other means and methods, the practices and policies of competing dealers in food service equipment, and to act, and did act, concertedly to maintain the policies and practices, hereinbefore described in paragraph 17, to coercively require, and did coercively require, recalcitrant dealers and manufacturers of such equipment to recognize and conform to such policies and practices.

PAR. 19. Each of the respondents named in the caption hereof acted, and now acts, in concert and in cooperation with one or more of the other respondents, either directly, or through or by means of respondents, Industry, Industry officers, Industry directors, China association, or China association officers, or by other means or methods, in doing and performing the acts and things, hereinbefore alleged, in effectuating, furthering and requiring compliance with the restricting, restraining and unfair policies and trade practices adopted and carried into effect by respondent Industry members, as hereinabove alleged.

PAR. 20. The capacity, tendency and effect of the aforesaid agreements, combinations, policies, practices, and the acts and things done and performed by all of the respondents named in the caption hereof, in pursuance thereof, are, and have been:

1. To monopolize in respondent Industry members the selling and distribution of food service equipment to hotels, restaurants, clubs, institutions, and similar users of such equipment, throughout the United States, and in the District of Columbia.

2. To monopolize in respondents, honor roll members, China association members, Illinois Brass Manufacturing Co. and Columbia Stamping and Enameling Co., and such other manufacturers of various types of food service equipment whom respondent Industry members, acting through and by means of respondents, Industry officers and Industry directors, and by other means and methods, approve the manufacture and sale of such equipment throughout the United States and in the District of Columbia.

3. To create and set up the respondent honor roll members as a "White List" of manufacturers of various types of food service equipment signifying thereby that only those manufacturers of various types of food service equipment who receive honor roll certifi-

cates from respondent Industry, are to receive the business of respondent Industry members.

4. To prevent dealers in food service equipment throughout the United States and in the District of Columbia who are not members of respondent Industry from securing various types of food service equipment from the manufacturers thereof, especially from those manufacturers of such equipment who are recipients of honor roll certificates from respondent Industry.

5. To suppress, eliminate, and discriminate against those who are, or have been, engaged in, or desire to engage in, the sale and distribution of food service equipment anywhere in the United States, but who are not members of, or cannot become members of, or who do not wish to become members of, respondent Industry.

6. To unreasonably lessen, eliminate, restrain, stifle, hamper and suppress competition in the sale, or offering for sale, of various types of food service equipment throughout the United States, and in the District of Columbia, and thus to deprive hotels, restaurants, clubs, institutions and other similar users of such equipment of the advantages in price, service and other considerations which they would receive and enjoy under conditions of normal, unmolested, free and fair competition in the sale, and offering for sale, to them of such equipment, and to otherwise operate as a restraint upon, obstruction and deterrent to, the freedom of fair and legitimate competition in such trade and industry.

7. To obstruct and prevent the establishment throughout the United States and the District of Columbia of new dealers in food service equipment.

8. To prevent direct sales throughout the United States and in the District of Columbia by manufacturers of various types of food service equipment to hotels, restaurants, clubs, institutions and other similar users of same, chain stores, brokers, "price-cutters" and noncooperation nonmembers of respondent Industry.

9. To prevent competitive sales throughout the United States and in the District of Columbia by gas and electric utility companies to consumers of such equipment who ordinarily are customers of respondent Industry members.

10. To prevent manufacturers of various types of food service equipment from bidding in competition with respondent Industry members on W. P. A. projects.

11. To obstruct and prevent the establishment throughout the United States and in the District of Columbia of new manufacturers of various types of food service equipment.

12. To burden, hamper, and interfere with the normal and natural flow of trade in commerce of food service equipment into, through and from the various States of the United States and in the District of Columbia.

13. To interfere with, suppress, and hamper the interstate supply of various types of food service equipment of those who are, or who desire to, engage in the sale and distribution of such equipment throughout the United States, and in the District of Columbia, but who are not now members of, or cannot become members of, or do not desire to become members of, respondent Industry.

14. To result in respondents, honor roll members, China association members, Illinois Brass Manufacturing Co. and Columbia Stamping and Enameling Co. boycotting and refusing to sell to, dealers, distributors and brokers of various types of food service equipment and those who desire to become such dealers, distributors and brokers, throughout the United States, and in the District of Columbia, but who are not members of, or cannot become members of, or who do not wish to become members of, respondent Industry.

15. To prejudice and injure manufacturers of various types of food service equipment, throughout the United States, and in the District of Columbia, who do not conform to respondents' said restricting, restraining and unfair policies and practices, or who do not desire to so conform, but are compelled to do so, by the concerted action of all of the respondents named in the caption hereof, as hereinbefore alleged.

16. To injure the competitors of respondents, Industry members, honor roll members, China association members, Illinois Brass Manufacturing Co., and Columbia Stamping and Enameling Co., by unfairly diverting business and trade from said competitors and otherwise oppressing them.

PAR. 21. The acts and practices of the respondents as herein alleged are all to the prejudice of competitors of respondents and of the public; have a dangerous tendency to and have actually hindered and prevented competition in the sale of various types of food service equipment in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in said food service equipment; have a dangerous tendency to create in respondents a monopoly in the sale of such equipment, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 26th day of December 1940,

issued, and thereafter had 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, as "commerce" is defined in the Federal Trade Commission Act, in violation of the provisions of the said act. All of said respondents, except respondents, United States Stamping Co. and Scammell China Co., have duly filed their answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, signed and executed by all of the respondents (including the aforementioned respondents, United States Stamping Co. and Scammell China Co.) except respondent, Illinois Brass Manufacturing Co., 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, the filing of briefs or the filing of a report on the evidence by a trial examiner for the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers and stipulations, 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, Food Service Equipment Industry, Inc., hereinafter referred to as "respondent Industry" is a nonprofit corporation organized under the laws of the State of Illinois on July 25, 1933, and existing and doing business by virtue of the laws of said State since that date, with its office and principal place of business being located at 2155 Pershing Road, Chicago, Ill.

Its officers are now, and since its organization have been, the following respondents, hereinafter referred to as "respondent Industry officers."

I. S. Anoff, chairman, who is also president and director of respondent Albert Pick Co., Inc., his address being in care of Albert Pick Co., Inc., 2151 Pershing Road, Chicago, Ill.

M. P. Duke, vice-chairman, who is also president of respondent Duke Manufacturing Co., his address being in care of Duke Manufacturing Co., 2222 North 9th Street, St. Louis, Mo.

(Miss) L. E. Iwert, secretary, whose address is 2159 Pershing Road, Chicago, Ill.

S. R. Sperans, treasurer, who is also president of respondent Straus-Duparquet, Inc., and whose address is in care of Straus-Duparquet, Inc., 630 Sixth Avenue, New York, N. Y.

Its directors, hereinafter referred to as "respondent Industry directors," from the time of its organization until April 1940, and up to the time of the filing of the complaint herein, with the exception of respondents H. C. Davis, P. L. Ezekiel, and C. Winkler, who were replaced as such directors in April 1940, are, and have been, the following respondents:

A. H. Beadle, vice president, Joesting & Schilling Co., Inc., St. Paul, Minn.

S. J. Carson, manager, Carson Crockery Company, Denver, Colo.

H. C. Davis, in care of F. A. Davis & Sons, Baltimore, Md.

W. F. Dougherty, president, W. F. Dougherty & Sons, Inc., Philadelphia, Pa.

B. Dohrmann, vice president, Dohrmann Hotel Supply Company, San Francisco, Calif.

P. L. Ezekiel, president, Ezekiel & Weilman Co., Inc., Richmond, Va.

A. W. Forbriger, in care of John Van Range Company, Cincinnati, Ohio.

W. Friedman, in care of H. Friedman & Sons, Inc., 30 Cooper Square, New York, N. Y.

C. A. Winchester, treasurer, Thompson-Winchester Company, Inc., Boston, Mass.

C. Winkler in care of Greene-Winkler Company, Inc., Seattle, Wash.

PAR. 2. The control, direction, and management of respondent Industry's affairs, policies and actions have been vested in respondent Industry officers and Industry directors, and still are, with the exception of the aforementioned respondents H. C. Davis, P. L. Ezekiel, and C. Winkler.

PAR. 3. The membership of respondent Industry consists of approximately 100 corporations, firms, partnerships, and individuals, all of whom are dealers in various types of food service equipment for hotels, restaurants, clubs, institutions and other such classes of business, the primary business of said members being the purchase and resale of such equipment, with said members constituting most of the leading dealers in such equipment throughout the United States. Certain of the members of respondent Industry are manufacturers of kitchen, restaurant and cafeteria equipment, which, in a large part, must be especially designed and manufactured for each particular installation.

The number of members of said respondent Industry vary from year to year. The following respondents, hereinafter referred to as

"respondent Industry members," are represented members of respondent Industry:

A. L. Cahn & Sons, a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 46 Cooper Square, New York, N. Y.

Duke Manufacturing Co., a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 2222 North 9th Street, St. Louis, Mo.

Ezekiel & Weilman Co., Inc., a corporation organized and existing under the laws of the State of Virginia, with its office and principal place of business located at 7th and Cary Streets, Richmond, Va.

Alex Janows & Company, a corporation organized and existing under the laws of the State of Illinois with its office and principal place of business located at 1645 West Carroll Avenue, Chicago, Ill.

Albert Pick Co., Inc., a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business located at 2151 Pershing Road, Chicago, Ill.

The Stearnes Company, a corporation organized and existing under the laws of the State of Illinois, with its office and principal place of business located at 1333 South Wabash Avenue, Chicago, Ill.

Straus-Duparquet, Inc., a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 630 Sixth Avenue, New York, N. Y.

PAR. 4. Respondent Industry annually selects certain manufacturers of the various types of food service equipment, which are resold by respondent Industry members to receive honor roll certificates from respondent Industry, in recognition of said manufacturers' cooperation with, and adoption of, the policies and practices of respondent Industry, which policies and practices are hereinafter set out.

The honor roll certificates which respondent Industry thus awards read as follows:

Presented to _____ in recognition of your cooperation with the policies of the Food Service Equipment Industry, Inc., in promoting friendly relations between manufacturers and dealers who (1) carry stocks, (2) maintain display rooms, (3) employ a sales organization, (4) extend credit facilities, (5) offer delivery service.

Expires June 30, 19——

S. R. SPERENS,
Treasurer,

S. S. ANOFF,
Chairman.

The recipients of such honor roll certificates, hereinafter referred to as "Honor Roll Members," are invited to attend meetings of respondent Industry. The status of being an honor roll member is not permanent, but honor roll certificates are granted from year to year by respondent Industry, respondent Industry members each year deciding as to what manufacturers should be placed on the honor roll.

Just prior to the close of the fiscal year on June 30, in each year, ballots are mailed out by respondent Industry to all respondent Industry members, containing the names of all manufacturers who appeared on the "Roll of Honor" during the preceding year, and respondent Industry members are required to check the list and suggest any changes or additions thereto; the ballots are then submitted to respondent Industry directors for approval.

To remain an honor roll member the manufacturer is required to observe the sales policy hereinafter set out in subdivision 9 of paragraph 17. Questions as to whether manufacturers on the Honor Roll have observed such sales policy have at various times been the subject of disagreement between respondents, Industry members and honor roll members.

The Commission finds that through the selection of honor roll members by respondent Industry, in the manner herein described, the respondent Industry compels or attempts to compel compliance by said honor roll members with the sales policy of said respondent, hereinafter set out in subdivision 9 of paragraph 17.

There are approximately 40 or 45 manufacturers of food service equipment who are honor roll members of respondent Industry, with the number of said members varying from year to year. The following respondents, hereinafter referred to as "respondent Honor Roll Members," all of whom were recipients of said honor roll certificates from respondent Industry for the year 1940, are representative of the honor roll members:

American Stove Co., a corporation organized and existing under the laws of the State of New Jersey, with its office and principal place of business located at 825 Choteau Avenue, St. Louis, Mo.

Josiah Anstice & Co., Inc., a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 97 Humboldt Street, Rochester, N. Y.

G. S. Blakeslee & Co., a corporation organized and existing under the laws of the State of Illinois, with its office and principal place of business located at West 19th and South 52nd Streets, Cicero, Ill.

G. S. Blodgett Co., Inc., a corporation organized and existing under the laws of the State of Vermont, with its office and principal place of business located at 59 Maple Street, Burlington, Vt.

Carrollton Metal Products Co., a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business located at Carrollton, Ohio.

Colt's Patent Fire Arms Manufacturing Co., a corporation organized and existing under the laws of the State of Connecticut, with its office and principal place of business located at Hartford, Conn.

Detroit-Michigan Stove Co., a corporation organized and existing under the laws of the State of Michigan, with its office and principal place of business located at 6900 East Jefferson Avenue, Detroit, Mich.

Hobart Manufacturing Co., a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business located at Troy, Ohio.

Lalance-Grosjean Manufacturing Co., a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 92nd Street and Atlantic Avenue, Woodhaven, Long Island, N. Y.

McGraw Electric Co., a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business located at 120 South LaSalle Street, Chicago, Ill.

Polar Ware Co., a corporation organized and existing under the laws of the State of Wisconsin, with its office and principal place of business located at Sheboygan, Wis.

Standard Gas Equipment Corporation a corporation organized and existing under the laws of the State of Maryland, with its principal corporate office located in Baltimore, Maryland, and its principal sales office located at 18 East 41st Street, New York, N. Y.

United States Stamping Co., a corporation organized and existing under the laws of the State of West Virginia, with its office and principal place of business located at Moundsville, W. Va.

Vollrath Co., a corporation organized and existing under the laws of the State of Wisconsin, with its office and principal place of business located at Sheboygan, Wis.

PAR. 5. Respondent, Illinois Brass Manufacturing Co., is a corporation organized and existing under the laws of the State of Illinois, with its office and principal place of business located at 224 North Ada Street, Chicago, Ill.

Respondent, Columbian Enameling & Stamping Co., Inc., referred to in the complaint as "Columbia Stamping & Enameling Co.," is a corporation organized and existing under the laws of the State of Indiana, with its office and principal place of business being located at 1536 Beech Street, Terre Haute, Ind.

Although the complaint referred to this respondent as Columbia Stamping & Enameling Co., and further stated that it was incorporated under the laws of the State of New York, with its principal place of business being located at 40–05 Twenty-first Street, Long Island City, N. Y., the respondent Columbian Enameling & Stamping Co., Inc., having admitted proper service upon it of the complaint, and having waived, by the signatures of its attorneys of record to the stipulation as to the facts, any and all defenses which it might have possessed because of the failure of the complaint to properly state its name, address and State of incorporation, the Commission finds that the respondent Columbian Enameling & Stamping Co., Inc., to all legal intents and purposes, shall be, and is, considered as though its proper name, address and State of incorporation were set out in the complaint.

PAR. 6. The Commission finds with reference to respondent Illinois Brass Manufacturing Co. that it was not a party to, or a participant in, any of the agreements and understandings by and between the respondent Industry members and the various other respondents, which agreements and understandings are hereinafter set out.

PAR. 7. Respondent American Vitrified China Manufacturers Association, hereinafter referred to as "respondent China Association," is an unincorporated association organized in 1918, with its office and place of business located in Shenango Pottery Co., New Castle, Pa.

Its active officers, hereinafter referred to as "respondent China Association Officers" are respondent Albert M. Walker, its president, whose address is in care of Bailey-Walker China Co., Bedford, Ohio, and respondent James K. Love, its secretary-treasurer, who is vice president of Shenango Pottery Co., New Castle, Pa.

PAR. 8. The Commission finds the following respondents, hereinafter referred to as "respondent China Association Members," all manufacturers of vitrified china products, comprised the membership of respondent China Association as of July 26, 1940:

Bailey-Walker China Co., a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business located at Bedford, Ohio; Buffalo Pottery, Inc., referred to in the complaint as "Buffalo Pottery Co., Inc.," is a corporation, incorporated in October, 1940, under the laws of the State of New York, with its office and principal place of business being located at Seneca Street and Hayes Place, Buffalo, N. Y. It succeeded, in October 1940, to the business of Buffalo Pottery Co., Inc., taking over the business and assets of said Buffalo Pottery Co., Inc.; it retained the membership of its said predecessor in respondent China Association; it adopted, approved, ratified and continued to carry out, the agreement, which is hereinafter set out, which said Buffalo Pottery Co., Inc., as a member of said respondent China Association, entered into in 1939 with respondent Industry members. Furthermore, said respondent's predecessor, Buffalo Pottery Co., Inc., was the recipient of an honor roll certificate from respondent Industry, and respondent Buffalo Pottery, Inc., as the successor to the business and assets of said Buffalo Pottery Co., Inc., assumes and is responsible for any and all benefits and obligations which the said Buffalo Pottery Co., Inc., may have acquired through the receipt and acceptance by it of the said honor roll certificate from respondent Industry.

Carr China Company, a corporation, organized and existing under the laws of the State of West Virginia, with its office and principal place of business located at Grafton, W. Va.

Iroquois China Co., a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 2320 Milton Street, Solvay, N. Y.

Jackson Vitrified China Co., a corporation organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business located at Falls Creek, Pa.

D. E. McNichol Co. of W. Va., a corporation organized and existing under the laws of the State of West Virginia, with its office and principal place of business

located at Clarksburg, W. Va. (This respondent is also a recipient of an honor roll certificate from respondent Industry.)

Mayer China Company, a corporation organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business located at Second Avenue and 6th Street, Beaver Falls, Pa.

Onondaga Pottery Co., a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 1856-58 West Fayette Street, Syracuse, N. Y.

Scammell China Company, a corporation organized and existing under the laws of the State of New Jersey, with its office and principal place of business located at Third and Landing Streets, Trenton, N. J.

Shenango Pottery Co., a corporation organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business located at New Castle, Pa.

Sterling China Company, a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business located at Twelfth and Anderson Streets, Wellsville, Ohio.

Wellsville China Co., a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business located at Wellsville, Ohio.

PAR. 9. In the course and conduct of their respective businesses, respondent Industry members purchase the various types of equipment which they resell, from respondent honor roll members, China association members and other manufacturers thereof, and as part of such purchases cause said equipment to be shipped or transported into the States of the United States where the respective places of business of said respondent Industry members are located, from other States of the United States.

Said respondent Industry members also, in the course and conduct of their respective businesses, resell and distribute such equipment to hotels, restaurants, clubs, institutions and other such types of users thereof, located throughout the United States and, as a part of said sales, transport, or cause to be transported, such equipment from their respective places of business to said purchasers located in States of the United States other than the States of origin of such shipments.

Respondent honor roll members and China association members, in the course and conduct of their respective businesses, sell and distribute the various types of food service equipment manufactured by them, to the purchasers thereof, including respondent Industry members, and, as a part of said sales, transport, or cause to be transported, said equipment from their respective places of business to these purchasers thereof located in the States of the United States other than the States of origin of said shipments.

All of said respondent Industry members, honor roll members and China association members are, and were during the period hereinafter set forth, engaged in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 10. Respondent Industry, Industry officers, Industry directors, China association and China association officers, all aided, abetted, furthered, cooperated with, and were instrumentalities of, and parties to, some or all of the understandings, agreements and combinations herein set out, and actively participated in the performance of some or all of the acts and things done in pursuance thereto and in furtherance thereof.

PAR. 11. The Commission finds that respondent Industry officers, Industry directors and China association officers, in aiding, abetting, furthering, cooperating with and being instrumentalities of, and parties to, some or all of the understandings, agreements and combinations herein set forth, and in actively participating in the performance of some or all of the acts and things done in pursuance thereto and in furtherance thereof, did not act individually but acted in their official capacities as Industry officers, Industry directors or China association officers.

PAR. 12. In the course and conduct of their respective businesses, respondent Industry members, but for the policies, acts and practices hereinafter found, naturally and normally would be in competition with each other and with other various types of dealers and jobbers in food service equipment for hotels, restaurants, clubs, institutions and other such types of users of such equipment, which is manufactured and sold by respondent honor roll members and China association members, and other manufacturers of such equipment, in selling and seeking to sell same in commerce between and among the several States of the United States and in the District of Columbia, to the ultimate users of such equipment.

Those jobbers or dealers in food service equipment who do not meet the requirements of respondent Industry, as hereinafter found, for the classification of "legitimate jobbers" or "recognized dealers," likewise purchase or seek to purchase such equipment from the manufacturers thereof, including respondent honor roll members and China association members, and as part of said purchases which are made or sought to be made by said competitors, the manufacturers of said equipment, including the aforementioned respondents, do, did, or would transport, or cause, did or would cause, such equipment to be shipped to the various places of business of said competitors located in States of the United States which are, or would be, different from the States of origin of such shipments. Such trade and commerce between and among the various States of the United States and in the District of Columbia in such equipment, to said jobbers and dealers, have been hindered and forestalled, in the manner and by the methods hereinafter found.

PAR. 13. In the course and conduct of their respective businesses, respondent honor roll members and China association members, but for the policies, acts and practices hereinafter found, naturally and normally would be in competition with each other, and with other manufacturers of the same types of equipment used for food service which they manufacture, in selling and seeking to sell such equipment in commerce between and among the several States of the United States and in the District of Columbia, to respondent Industry members, competitors of said respondent Industry members, who are not classified as "legitimate jobbers" or "recognized dealers" by respondent Industry, and also directly to the ultimate users of said equipment.

PAR. 14. In the course and conduct of their respective businesses, respondent honor roll members and China association members, but for the policies, practices and acts herein found, naturally and normally would be in competition with respondent Industry members in selling and seeking to sell, in commerce between and among the various States of the United States and in the District of Columbia, to the ultimate users thereof, the various types of food service equipment manufactured by said respondent honor roll members and China association members.

PAR. 15. Respondent Industry members, acting through and by means of respondent Industry, Industry officers and Industry directors, since about 1933, have entered into and carried out agreements and understandings with the other respondents, as herein found, and by other means and methods have combined together, and with others, and have united in and pursued a common and concerted course of action and undertaking, among themselves, with the other respondents, and with others, to adopt, carry out, enforce and maintain throughout the United States certain restricting, restraining and unfair policies and trade practices, herein found, which said respondent Industry members adhered to among themselves and which they have effectuated by the means and methods herein found.

PAR. 16. Among the said policies and trade practices referred to in the preceding paragraph, which were so formulated, adopted and put into effect by the respondents, are the following:

1. A policy and practice of selecting and classifying, according to certain standards set up by respondent Industry, jobbers and dealers in food service equipment throughout the United States as being or not being "legitimate jobbers" or "recognized dealers," who are defined by respondent Industry as being those dealers or jobbers who carry stock, maintain display rooms, employ a sales organization, extend credit facilities, and offer delivery service.

2. A policy and practice of accepting applications for membership in respondent Industry only from firms that, in the judgment of respondent Industry, (a) are "legitimate jobbers" or "recognized dealers" as those terms are defined by respondent Industry, and (b) are of good reputation and standing.

3. A policy and practice of securing new members upon application of prospective members submitted generally and principally upon invitation of respondent Industry members; such applications have, however, in some instances been submitted and accepted without prior invitation from respondent Industry members. All applications, regardless of source, are submitted to respondent I. S. Anoff, Chairman of respondent Industry, by whom such applications are thereafter referred to respondent Industry directors for final action.

4. A policy and practice of urging all manufacturers of food service equipment to sell same through respondent Industry members or through the jobbers or dealers in such equipment, whom respondent Industry has selected and classified as "legitimate" or "recognized," and not to sell such equipment directly to the ultimate users thereof.

5. A policy and practice of selecting certain specific manufacturers of food service equipment who cooperate with respondent Industry's purposes and policies, as recipients of respondent Industry's "Honor Roll Certificates."

6. A policy and practice of protesting to manufacturers of food service equipment who sell such equipment to any jobbers or dealers other than respondent Industry members or those jobbers or dealers who are classified by respondent Industry as "legitimate" or "recognized."

7. A policy and practice of protesting to manufacturers of food service equipment who sell same directly to public service companies, chain stores and other large purchasers of such equipment unless such sales are made on a competitive equality with the prices which such purchasers could receive from "legitimate jobbers" or "recognized dealers," as the same are classified by respondent Industry.

8. A policy and practice of urging and suggesting to respondent Industry members that they give preference to respondent honor roll members in the purchase by said respondent Industry members of the various types of food service equipment which are manufactured by said respondent honor roll members.

9. A policy and practice of entering into, and thereafter carrying out, specific agreements and understandings with respondent honor roll members and China association members, for the purpose, intent, and with the effect of carrying out the policies and practices hereinbefore enumerated in this paragraph.

The Commission finds that, in effect, the respondent Members have adopted and carried out a general policy and practice of reducing competition throughout the United States, in the sale and offering for sale of various types of food service equipment by the manufacturers thereof, and of tending to create and maintain a monopoly in such trade by respondent honor roll members and China association members and also of reducing competition throughout the United States in the resale of such equipment, and of tending to create and maintain a monopoly in respondent Industry members and in those dealers and jobbers in food service equipment whom respondent Industry classifies as "legitimate jobbers" or "recognized dealers," in such trade and commerce throughout the United States.

PAR. 17. For the purpose of making such policies and practices effective, and of requiring compliance therewith by all food service equipment dealers and manufacturers of such equipment, throughout the United States, respondents have done, and performed, among other acts and things, the following:

1. Respondent Industry members agreed to formulate, adopt, follow, carry out and make effective, and have formulated, adopted, followed, and in a great number of instances made effective, the policies and practices described in the preceding paragraph.

2. Respondent Industry members agreed to hold, and have held, at least one national meeting each year, at which said policies and practices were discussed, adopted and agreed to.

3. Respondent Industry members agreed to form, and have formed, local organizations of Industry members, particularly in New York, N. Y.; Boston, Mass.; Chicago, Ill.; Miami, Fla.; and St. Louis, Mo.

4. Respondent Industry members agreed to hold, and have held, frequent meetings of the respondent membership of said local organizations, at which said policies and practices were discussed, adopted and agreed to.

5. Respondent Industry directors agreed to hold, and have held, meetings at which said policies and practices were discussed, adopted and agreed to.

6. Respondent Industry members have agreed to appoint, and have appointed, through and by means of respondent Industry, Industry officers and Industry directors, special committees to enforce said policies and practices, and also to confer and enter into agreements and understandings with representatives of respondent honor roll members and other manufacturers of various types of food service equipment which are resold by said respondent Industry members, for the purpose, intent and with the effect of, carrying out said policies and practices.

7. Respondent Industry members agreed to issue and disseminate, and have issued and disseminated, through and by means of respondent Industry, Industry officers and Industry directors, a monthly bulletin entitled "Food Service Equipment Industry Bulletin," to respondents, Industry members, honor roll members and other manufacturers of food service equipment, in which Bulletin the activities of respondent Industry are summarized, a complete list of the membership of respondent Industry given and also a full list of the current holders of honor roll certificates from respondent Industry.

8. Respondent Industry members have agreed to issue, and have issued, from time to time, through and by means of respondent Industry, to respondent honor roll members and other manufacturers of food service equipment throughout the United States, a complete list of all such jobbers and dealers of food service equipment throughout the United States, numbering approximately 600, as respondent Industry has selected and classified as "legitimate jobbers" or "recognized dealers".

9. Beginning in 1937, and continuing thereafter, respondent Industry members have, through respondent Industry, agreed to issue, and have issued, annually to honor roll members, honor roll certificates, which signify that said respondent Honor Roll Members have entered into, and thereafter carried out, an agreement, understanding and combination with respondent Industry, acting for and on behalf of respondent Industry members, in the sale of food service equipment by the manufacturers thereof, and in the resale and distribution of such equipment in said commerce by dealers thereof. Pursuant to said understanding, agreement and combination, and in furtherance thereof, respondent honor roll members, in effect:

(*a*) agreed, and agree, not to sell, and, in many instances, do not sell, the various types of food service equipment manufactured by them, through any broker, jobber or dealer, other than the "recognized dealers" or "legitimate jobbers" so defined and classified by respondent industry.

(*b*) agreed, and agree, to discontinue selling, and, in many instances, have discontinued selling, the various types of food service equipment manufactured by them, to curbstone brokers, commission agents, and others who are not "legitimate jobbers" or "recognized dealers" as defined and classified by respondent industry.

(*c*) agreed, and agree, to discontinue selling, and, in many instances, have discontinued selling, directly to hotels, restaurants, chain stores and similar large volume purchasers of food service equipment, on any basis other than that of a competitive equality, with the prices such purchasers could receive from "legitimate

jobbers" or "recognized dealers" as same are defined and classified by respondent Industry.

10. Pursuant to said understanding, agreement and combination, hereinbefore set out in subparagraph 9, and in furtherance thereof, respondent Industry members agreed to, and do, give preference to respondent honor roll members in the purchase by said respondent Industry members of the various types of food service equipment which are manufactured by said respondent honor roll members.

11. Respondent Industry members agreed to submit, and do submit, any complaints with reference to respondent honor roll members to respondent Industry's committee on merchandising.

12. Respondent Industry members agreed to require, and do require, said respondent Industry's committee on merchandising to investigate such complaints and report back to respondent Industry directors as to whether such manufacturers should be dropped from respondent Industry's honor roll, and respondent Industry directors decide whether or not this should be done.

13. Respondent Industry members agreed to publish, and do publish, in each issue of its monthly bulletins all of the names of respondent honor roll members.

14. In about 1937, respondent Industry members agreed to enter into, and did enter into, and thereafter carry out, by means of respondent Industry, Industry officers and Industry directors, an agreement and understanding with respondents Carrollton Metal Products Co., Polar Ware Co., Lalance-Grosjean Manufacturing Co., United States Stamping Co. and Vollrath Co., all of whom are manufacturers of stainless steel and enamel cooking utensils and other similar products, for food service equipment. Said agreement and understanding tend to have the effect of monopolizing in respondent Industry members the resale of such equipment to hotels, restaurants, clubs, institutions and similar buyers of same throughout the United States, and also have had the effect of tending to monopolize in said respondent manufacturers of food service equipment all purchases of same by respondent Industry members and by those jobbers and dealers of such equipment whom respondent Industry classifies as "legitimate jobbers" and "recognized dealers." Pursuant to said agreement and understanding, and in furtherance thereof, the respondent manufacturers made the following specific agreements which were, to a substantial extent, observed and carried out by said respondents:

(*a*) To refrain from selling to any new hotel accounts or like buyers, directly, or through any commission agent, broker or any

other channel of distribution other than "legitimate jobbers" and "recognized dealers," as defined by respondent Industry.

(*b*) To attempt to eliminate before October 1, 1937, all existing direct or brokerage accounts and divert this business exclusively to respondent Industry members.

15. Pursuant to said agreement and understanding, hereinbefore set forth in subparagraph 14, and in furtherance thereof, respondent Industry members agreed to give, and do give, preference in their purchases of stainless steel and enamel cooking utensils and similar products used as food service equipment to said respondent manufacturers.

16. In about 1939, respondent Industry members agreed to enter into, and did enter into, and thereafter carry out, in many instances, an agreement and understanding with respondent China association members, acting through and by means of respondents China association and China association officers, which tends to have the effect of monopolizing in respondent Industry members, and in those dealers and jobbers whom respondent Industry classifies as "legitimate jobbers" and "recognized dealers," the resale of various types of vitrified china products manufactured by respondent China association members to hotels, restaurants, clubs, institutions and similar buyers of same throughout the United States, and which likewise tends to have the effect of monopolizing in respondent China association members all purchases of such equipment by respondent Industry members and those jobbers and dealers whom the respondent Industry classifies as "legitimate jobbers" and "recognized dealers." Pursuant to said understanding and agreement, respondent China association members, acting through and by means of respondents China association and China association officers, specifically agreed:

(*a*) To sell directly to department stores for their restaurants, only where such stores have china departments.

(*b*) To use their best endeavors to sell, through dealers, department stores having no china departments.

(*c*) To sell chain stores through dealers where this is possible.

(*d*) To cease immediately from taking on any new direct-to-consumer accounts.

(*e*) To cease immediately taking on any new broker or commission agent accounts; and

(*f*) To refrain from quoting prices to consumers without having first received the consent of the dealer as to the mark-up to be used.

Pursuant to said understanding and agreement respondent Industry members specifically agreed to:

(*a*) Cease pitting one manufacturer against another in an endeavor to force down prices.

(*b*) Cease requesting the copying of other American Manufacturers' designs.

(*c*) Cease demanding and accepting volume discounts.

(*d*) Cease soliciting business on the same decoration on the same makes of china as now being supplied by another dealer.

(*e*) Practice better ethics; that is, if a dealer is given the exclusive right to quote on some specific proposition on one make of china, he should confine his offering to the consumer to that particular brand and not accept an order for any other make of china.

17. Respondent Industry members agreed to attempt, and did attempt, by the various methods hereinbefore set forth to prevent, and in some cases did prevent, the respondent honor roll members and other manufacturers of food service equipment from selling directly to chain stores, hotels, restaurants and similar large volume purchasers of food service equipment, on any basis other than that of a competitive equality with the prices such purchasers could receive from the "legitimate jobbers" or "recognized dealers," which are defined, selected and classified as such by respondent Industry;

18. Respondent Industry members agreed to supervise and investigate, and did supervise and investigate, through and by means of respondent Industry, Industry officers and Industry directors, and by other means and methods, the practices and policies of competing dealers in food service equipment, and agreed to act, and did act, concertedly to maintain the policies and practices, hereinbefore described in paragraph 16.

PAR. 18. Although respondent Columbian Enameling and Stamping Co., Inc., had a representative at the meeting, in about 1937, at which the respondents Carrollton Metal Products Co., Polar Ware Co., Lalance-Grosjean Manufacturing Co., United States Stamping Co., and Vollrath Co., entered into the agreement with the respondent Industry members which has hereinbefore been set forth in subparagraph 14 of paragraph 17 this representative of respondent Columbian Enameling and Stamping Co., Inc., took no part in the actual discussions regarding the agreement and was not present at the meeting when the resolution embodying such agreement was adopted. The Commission, therefore, finds that said respondent Columbian Enameling & Stamping Co., Inc., was not a party to such agreement.

PAR. 19. Each of the respondents named in the caption hereof, except respondents Illinois Brass Manufacturing Co. and Columbian Enameling & Stamping Co., Inc., acted in concert and in cooperation with one or more of the other respondents, either directly or through or by means of respondent Industry, Industry officers, Industry

directors, China association or China association officers, or by other means or methods, in doing and performing the acts and things hereinbefore found, in effectuating, furthering and requiring compliance with the policies and trade practices adopted and carried into effect by respondent Industry members, as hereinabove found; and which, with respect to respondents China association, China association officers and China association members, who do not hold honor roll certificates, appear in subparagraph 16 of paragraph 17 hereof.

PAR. 20. The Commission finds, from all of the foregoing facts, that the capacity, tendency, and effect of the aforefound agreements, combinations, policies, practices, and acts and things done and performed in pursuance thereof, as have hereinbefore been found, have been and are:

1. To create and set up the respondent honor roll members as a "White List" of manufacturers of various types of food service equipment, signifying thereby that only those manufacturers of various types of food service equipment who receive honor roll certificates from respondent Industry, are to receive preference in the placement of business by respondent Industry members.

2. To prevent dealers in food service equipment throughout the United States and in the District of Columbia who are not members of respondent Industry or who are not selected and classified by respondent Industry as "legitimate jobbers" or "recognized dealers" from procuring various types of food service equipment from the manufacturers thereof, who are recipients of honor roll certificates from respondent Industry, and from those other manufacturers of such equipment who cooperate with respondent Industry, including respondent China association's members.

3. To suppress, eliminate and discriminate against those who are, or have been, engaged in, or desire to engage in, the sale and distribution of food service equipment anywhere in the United States, but (*a*) who are not members of, or cannot become members of, or who do not wish to become members of, respondent Industry, or (*b*) who are not selected, classified and designated by, respondent Industry as "legitimate jobbers" or "recognized dealers".

4. To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the sale, or offering for sale, of various types of food service equipment throughout the United States, and in the District of Columbia, and thus to deprive hotels, restaurants, clubs, institutions, and other similar purchasers and users of such equipment of the advantages in price, service and other considerations

which they would receive and enjoy under conditions of normal, unmolested, free and fair competition in the sale, and offering for sale, to them of such equipment, and to otherwise operate as a restraint upon, obstruction and deterrent to, fair and legitimate competition in such trade and industry.

5. To reduce substantially direct sales throughout the United States and in the District of Columbia by manufacturers of various types of food service equipment to hotels, restaurants, chain stores and similar large volume purchasers of food service equipment.

6. To burden, hamper, and interfere with the normal and natural flow of trade in commerce of food service equipment into, through and from the various States of the United States and in the District of Columbia.

7. To interfere with, suppress and hamper the interstate supply of various types of food service equipment of those who are engaged in or who desire to engage in, the sale and distribution of such equipment throughout the United States, and in the District of Columbia, but (*a*) who are not now members of, or cannot become members of, or do not desire to become members of, respondent Industry, or (*b*) who are not selected, classified and designated as "legitimate jobbers" or "recognized dealers" by respondent Industry.

8. To cause respondent honor roll members and China association members to boycott and refuse to sell dealers, distributors, and brokers of various types of food service equipment and those who desire to become such dealers, distributors and brokers, throughout the United States, and in the District of Columbia, but who (*a*) are not members of, or cannot become members of, or who do not wish to become members of respondent Industry, or (*b*) who are not selected, classified and designated by respondent Industry as "legitimate jobbers" or "recognized dealers".

9. To prejudice and injure manufacturers of various types of food service equipment, throughout the United States and in the District of Columbia, who do not conform to respondent Industry members' policies and practices, or who do not desire to so conform, but are compelled to do so, by the concerted action of the respondent Industry, Industry officers, Industry directors, honor roll members, China association, China association officers and China association members, as hereinbefore set out.

10. To injure the competitors of respondent Industry members, honor roll members and China association members by unfairly diverting business and trade from said competitors.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of competitors of the respondents and to the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented competition in the sale and distribution of various types of food service equipment in commerce within the intent and meaning of section 4 of the Federal Trade Commission Act; have unreasonably restrained such commerce in said food service equipment; have a dangerous tendency to create in respondents a monopoly in the sale of such equipment, and constitute unfair methods of competition 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 answers of the respondents and a stipulation as to the facts entered into by all of the respondents, except Illinois Brass Manufacturing Co., 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 named in said stipulation, 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 all of the respondents named in the caption hereof, except respondents Illinois Brass Manufacturing Co. and Columbian Enameling & Stamping Co., Inc. (referred to in the complaint as Columbia Stamping & Enameling Co), have violated Section 5 of the provisions of the Federal Trade Commission Act, the Commission issues the following order to cease and desist from such violations.

I

It is ordered, That respondents Food Service Equipment Industry, Inc., a nonprofit corporation, I. S. Anoff, M. P. Duke, (Miss) L. E. Iwert, and S. R. Sperans, as officers of respondent Food Service Equipment Industry, Inc., A. H. Beadle, S. J. Carson, H. C. Davis, W. F. Dougherty, B. Dohrmann, P. L. Ezekiel, A. W. Forbriger, W. Friedman, C. A. Winchester, and C. Winkler, as directors of respondent Food Service Equipment Industry, Inc., together with any and all of the other officers, directors, representatives, agents, and employees of said respondent Food Service Equipment Industry,

Inc., and its successors and assigns, and all of the members of respondent Food Service Equipment Industry, Inc., their officers, directors, representatives, agents, and employees, successors and assigns, and which members were made respondents herein by naming as their representatives, respondents A. L. Cahn & Sons, a corporation, Duke Manufacturing Co., a corporation, Ezekiel & Weilman Co., Inc., a corporation, Alex Janows & Company, a corporation, Albert Pick Co., Inc., a corporation, The Stearnes Company, a corporation, and Straus-Duparquet, Inc., a corporation, directly or indirectly or through any corporate or other device, in connection with the sale, offering for sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of food service equipment of any type or description, do forthwith cease and desist from continuing, entering into, or carrying out, any agreement, understanding or combination, express or implied, between or among themselves or with any of the other respondents named in the caption hereof, or with others, and from concerted action or cooperative effort, for the purpose, intent, or with the effect of lessening, eliminating, restricting, hampering, suppressing or forestalling competition in the sale, or offering for sale of such equipment in said commerce, by the following methods, policies, practices, acts or things, or any one or more thereof to wit:

1. Selecting or classifying, according to any standards set up by respondent Food Service Equipment Industry, Inc., jobbers or dealers in such equipment as being or not being "legitimate" or "recognized," or by, or according to, any other classification, whereby certain jobbers or dealers in such equipment are, in any manner or by any method, given any form of approval by said respondent Food Service Equipment Industry, Inc., to resell food service equipment, or whereby certain jobbers or dealers are differentiated from other jobbers or dealers in such equipment, for the purpose, or with the intent, or with the effect, of thereby securing, or attempting to secure, for any particular jobbers or dealers or classes of jobbers or dealers in such equipment any special or particular benefits of any nature or description not granted to, or secured by, or for, any other jobbers or dealers in such equipment.

2. Issuing, distributing, or circulating by any means or method, to or among manufacturers of food service equipment of any nature or description, a list or enumeration of those jobbers or dealers in such equipment whom respondent Food Service Equipment Industry, Inc., has designated, selected or classified for the purposes herein prohibited in subparagraph 1 of this paragraph.

3. Securing, selecting or designating firms, by any means or methods, as members of respondent Food Service Equipment Industry, Inc., where the intent, purpose or effect of said membership is to secure, or attempt to secure, for such members, from the manufacturers of such equipment, special or particular benefits or privileges of any nature or description, not granted or offered by such manufacturers to firms who are not members of respondent Food Service Equipment Industry, Inc.

4. Urging or advocating in any manner, or by any method, manufacturers of food service equipment of any nature or description to sell such equipment exclusively or solely through, or by means of members of respondent Food Service Equipment Industry, Inc., or through, or by means of particular or designated jobbers or dealers in food service equipment whom respondent Food Service Equipment Industry, Inc., may classify or designate in such a manner as to set them apart from other jobbers, dealers, or brokers in such equipment.

5. Protesting in any manner, or by any method, to any manufacturer of food service equipment of any nature or description because of such manufacturer's selling such equipment to any jobbers or dealers in such equipment other than those who are members of respondent Food Service Equipment Industry, Inc., or to those jobbers or dealers who are especially selected, classified or approved by respondent Food Service Equipment Industry, Inc., in the manner hereinbefore described in subparagraph 1 of this paragraph, as being entitled to resell such equipment.

6. Urging or advocating in any manner, or by any method, manufacturers of food service equipment of any nature or description to refrain from selling such equipment directly to the ultimate users thereof.

7. Protesting in any manner, or by any method, to any manufacturer of food service equipment of any nature or description for selling same directly to public service companies, chain stores or other large users of such equipment at lower prices than such purchasers could receive from jobbers or dealers in such equipment who are especially designated, classified or approved by respondent Food Service Equipment Industry, Inc., as being entitled to resell such equipment.

8. Selecting, classifying or designating certain manufacturers of food service equipment to be recipients of special awards, such as honor roll certificates, or other designations, from respondent Food Service Equipment Industry, Inc., because of said manufacturers' cooperation in carrying out any or all of the methods, policies, practices, acts or things prohibited in this order, where the purpose,

intent or effect of such selection, designation or classification is to cause preference of any nature or description, to be given to such manufacturers in purchases by the members of respondent Food Service Equipment Industry, Inc., or by other dealers or jobbers of food service equipment.

9. Suggesting, advocating or urging by any means or methods that members of respondent Food Service Equipment Industry, Inc., should purchase food service equipment from, or give preference in their purchases of such equipment to, those manufacturers who are recipients of honor roll certificates, or other designations, from respondent Food Service Equipment Industry, Inc., prohibited herein in subparagraph (8) of this paragraph.

10. Issuing, or disseminating or circulating to the members of respondent Food Service Equipment Industry, Inc., or to any other party or parties, by any means or methods, any bulletins, by whatever name called, or any other form of written or printed matter, for the purpose, or with the intent, or with the effect, of listing, or designating, or pointing out by any method, or in any manner, those manufacturers of food service equipment who have received, in the manner or for the reasons hereinbefore set out and prohibited in subparagraph (8) of this paragraph, honor roll certificates or any other form of award or recognition from respondent Food Service Equipment Industry, Inc.

11. Advocating or urging by any means or methods a common course of action by members of respondent Food Service Equipment Industry, Inc., to purchase food service equipment from, or give preference in their purchase of such equipment to, any particular type, group or class of manufacturers who assist respondent Industry or respondent Industry members in carrying out any of the policies, practices, acts or things herein prohibited.

12. Refusing or refraining from pitting against each other competing manufacturers of vitrified china products, where the purpose, intent, or effect of such refusal is to prevent, hinder or forestall competition in price among such manufacturers for the sale of their products to dealers or jobbers in food service equipment.

13. Waiving or refusing to accept volume discounts from manufacturers of vitrified china products, when such discounts are not contrary to law.

14. Refusing to solicit or accept sales for the same decorations on the same makes of vitrified china because a particular jobber or dealer in food service equipment is already being supplied with such decorations.

15. Refraining from requesting one manufacturer of vitrified china to copy or duplicate the design of another such manufacturer where such copying or duplicating is not contrary to law.

16. Arranging, holding, or taking part in any meetings or conferences of officers, directors or members of respondent Food Service Equipment Industry, Inc., of representatives of manufacturers of food service equipment, or of dealers or jobbers of such equipment, for the purpose, intent, or with the effect, of continuing, promoting, encouraging or carrying out, in any way, any of the methods, policies, practices, acts or things prohibited by this order.

17. Organizing, forming, or encouraging in any manner, or by any method, the continuance or creation of any local organization, or organizations, of members of respondent Food Service Equipment Industry, Inc., for the purpose, intent, or with the effect of continuing, promoting, encouraging or carrying out, in any manner or by any method, any of the methods, policies, practices, acts or things prohibited by this order.

18. Supervising or investigating, by means of respondent Food Service Equipment Industry, Inc.'s directors or officers, or by any other means or methods, the practices or policies of competing dealers in food service equipment, for the purpose, or with the intent or with the effect, of maintaining, or attempting to maintain, any of the methods, policies, practices, acts or things prohibited by this order.

II.

It is further ordered, That all manufacturers of food service equipment who are recipients of honor roll certificates or other awards or designations from respondent Food Service Equipment Industry, Inc., which signify or point out that such manufacturers have complied with the requirements of respondent Food Service Equipment Industry, Inc., to receive such certificates, awards or designations, or who have cooperated in carrying out the policies and practices of said respondent Food Service Equipment Industry, Inc., together with the officers, directors, representatives, agents, employees, and the successors and assigns of each of said manufacturers, and which manufacturers were made respondents herein by naming as their representatives, the respondents American Stove Co., a corporation, Josiah Anstice & Co., Inc., a corporation, G. S. Blakeslee & Co., a corporation, G. S. Blodgett Co., Inc., a corporation, Carrollton Metal Products Co., a corporation, Colt's Patent Fire Arms Manufacturing Co., a corporation, Detroit-Michigan Stove Co., a corporation, Hobart Manufacturing Co., a corporation, Lalance-Grosjean Manu-

facturing Co., a corporation, McGraw Electric Co., a corporation, Polar Ware Co., a corporation, Standard Gas Equipment Corporation, a corporation, United States Stamping Co., a corporation, Vollrath Co., a corporation, Buffalo Pottery, Inc., a corporation (referred to in the complaint as Buffalo Pottery Co., Inc.) and D. E. McNichol Co. of W. Va., a corporation, directly or indirectly, or through any corporate or other device in connection with the sale, offering for sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of food service equipment of any type or description, do forthwith cease and desist from continuing, entering into, or carrying out, any agreement, understanding or combination, express, or implied (through the receipt of such honor roll certificates or other such awards or designations, from respondent Food Service Equipment Industry, Inc., or through or by any other means or methods) between or among themselves, or with respondent Food Service Equipment Industry, Inc., or with any of the other respondents named in this order or with any other persons, partnership, firm or corporation, and from concerted action or cooperative effort, for the purpose, or with the intent, or with the effect of lessening, eliminating, restraining, hampering, suppressing or forestalling competition in the sale or offering for sale of such equipment in said commerce, by the following methods, policies, practices, acts or things, of any one or more thereof, to wit:

1. Refusing or ceasing to sell any of the food service equipment of any nature or description, which any of said respondents manufacture, through any broker, jobber, or dealer, because such broker, jobber, or dealer in such equipment has not been selected, classified or approved by respondent Food Service Equipment, Inc., or any other group or organization, of jobbers or dealers in such equipment, as entitled to resell such equipment.

2. Refusing or ceasing to sell any of such food service equipment to curbstone brokers, commission agents, or any other party or parties who desire to, and are financially and otherwise able to, purchase such equipment from them, because such prospective purchasers have not been, or are not, approved in any manner, or by any method, by respondent Food Service Equipment Industry, Inc., or any other group or organization of jobbers or dealers in such equipment.

3. Refusing or ceasing to sell any such food service equipment directly to hotels, restaurants, chain stores, and similar large-volume purchasers of such equipment at lower prices than such purchasers could receive from jobbers or dealers in such equipment who have been, or are, approved in any manner by respondent Food Service

Equipment Industry, Inc., or any other group or organization of jobbers or dealers in such equipment.

4. Refusing or ceasing to sell any such food service equipment directly to hotels, restaurants, chain stores, or other similar large volume purchasers of such equipment on any basis other than that which is satisfactory to respondent Food Service Equipment Industry, Inc., or any other group or organization of jobbers or dealers in such equipment.

III.

It is further ordered, That respondent American Vitrified China Manufacturers Association, an unincorporated association, and respondents Bailey-Walker China Co., a corporation, Buffalo Pottery, Inc., a corporation (referred to in the complaint as "Buffalo Pottery Co., Inc."), Carr China Company, a corporation, Iroquois China Co., a corporation, Jackson Vitrified China Co., a corporation, D. E. McNichol Co. of W. Va., a corporation, Mayer China Co., a corporation, Onondaga Pottery Co., a corporation, Scammell China Co., a corporation, Shenango Pottery Co., a corporation, Sterling China Co., a corporation, and Wellsville China Co., a corporation, both individually and as members of respondent American Vitrified China Manufacturers Association, and the respective officers, directors, representatives, agents, employees, successors, and assigns of each of said respondents and also respondents Albert M. Walker and James K. Love, as president and as secretary-treasurer, respectively, of respondent American Vitrified China Manufacturers Association, directly or indirectly, or through any corporate or other device, in connection with the sale, offering for sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any type of food service equipment, especially any vitrified china products, do forthwith cease and desist from continuing, entering into or carrying out, any agreement, understanding or combination, express or implied, between or among themselves or with any of the other respondents named herein, especially respondent Food Service Equipment Industry, Inc., or with others, and from concerted action or cooperative effort, for the purpose, with the intent, or with the effect, of lessening, eliminating, restraining, hampering or forestalling competition in the sale or offering for sale of such equipment or products in said commerce by the following methods, policies, practices, acts and things, or any one or more thereof, to wit:

1. Refusing to sell directly to department stores, which have no china departments, the products manufactured by said respondent corporations, for use in the restaurants of such department stores.

2. Endeavoring to sell, or attempting to sell, or selling, such products to department stores having no china departments, exclusively through dealers in food service equipment.

3. Endeavoring to sell, or attempting to sell, or selling, such products to chain stores, exclusively through dealers in food service equipment.

4. Refusing to sell such products directly to the consumers thereof.

5. Refusing to take on, accept or acquire any new broker or agent accounts.

6. Refusing to quote, or refraining from quoting, prices on such products to consumers without first having received consent of the dealers in food service equipment as to the mark-up to be used.

IV

It is further ordered, That nothing in this order is to be construed as prohibiting any single respondent from selecting its own customers or sources of supply, in good faith in the regular or ordinary course of trade, or from entering into any contract or agreement not prohibited by the provisions of the Sherman Anti-Trust Act as amended.

V

It is further ordered, That the case growing out of the complaint herein be, and the same hereby is, closed as to the respondents Illinois Brass Mfg. Co., Columbian Enameling & Stamping Co., Inc. (referred to in the complaint as Columbia Stamping & Enameling Co.), and also to respondents I. S. Anoff, M. P. Duke, (Miss) L. E. Iwert, S. R. Sperans, A. H. Beadle, S. J. Carson, M. C. Davis, W. F. Dougherty, B. Dohrmann, P. L. Ezekiel, A. W. Forbriger, W. Friedman, C. A. Winchester, C. Winkler, Albert M. Walker, and James K. Love, individually (but not as to such individual respondents when they are acting in their respective official capacities as officers and directors of respondents Food Service Equipment Industry, Inc. or American Vitrified China Manufacturers Association), but without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

VI

It is further ordered, That all, and each of the respondents named in the caption hereof, except those respondents against whom the

case growing out of the complaint has been closed by paragraph V of this order, shall in their individual and official or representative capacities, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

FORD MOTOR COMPANY

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

Docket 3174. Complaint, July 16, 1937—Decision, Oct. 20, 1941

Where a corporation engaged in the manufacture of passenger motor vehicles and in the competitive interstate sale and distribution thereof to its authorized retail dealers throughout the United States, whom it furnished with suggested price lists for their sales to the consuming public; predicating such retail prices on an advertised f. o. b. price plus transportation to retailer, cost of such equipment as bumpers, bumper guards, spare tires, and other necessary accessories, and, in addition, taxes, advertising assessments, and handling and conditioning charges, so that the actual delivered price of a vehicle to the retail purchaser was far in excess of its advertised f. o. b. price plus actual transportation; in a nation-wide advertising campaign in newspapers, magazines, price lists, radio broadcasts, and other advertising media, describing and illustrating its said products—

Misrepresented the price to be paid by the consumer purchaser for a particular vehicle through featuring f. o. b. prices which pertained, not to the model displayed, but to a less expensive car, setting forth in fine print almost totally obscured by the larger type featuring the f. o. b. price, the additional charges needed to make up the full price of the car ready for operation, and in some instances accompanying the featured price by the legend, in small letters, "and up f. o. b. Detroit" or said legend plus some such words as "standard accessories group including bumpers and spare tires extra," which explanatory matter was either inadequate or so inconspicuous as to be of no value in correcting the inherent deceptive tendencies;

With result that the false impression was conveyed that the car pictured was obtainable at the price featured and more expensive models were available at higher prices; readers of its advertisements would expect to obtain cars equipped exactly as shown for the prices emphasized at place of manufacture plus actual transportation charges; and persons who might not otherwise consider purchase of the type of car illustrated, visited the show-rooms of authorized dealers and in some instances purchased such cars at the prices above indicated which were much higher than the figures stated in its advertisements; and with tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that its vehicles could be purchased at prices much less than those at which they were actually obtainable, and to induce it to visit said dealers and purchase such cars, whereby trade was unfairly diverted to it from its competitors who truthfully represent the prices of their products:

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

Before *Mr. W. W. Sheppard* and *Mr. John P. Bramhall*, trial examiners.

Mr. James M. Hammond for the Commission.

Bodman, Longley, Bogle, Middleton & Farley, of Detroit, Mich., 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 Ford Motor Co., a corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Ford Motor Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its office and principal place of business at 3674 Schaefer Road, Dearborn, Mich. It is now, and for a number of years last past has been engaged in the business of manufacturing passenger motor vehicles and in the sale and transportation thereof in commerce among and between the various States in the United States, and in foreign countries. It causes, and has caused, said passenger motor vehicles, when sold, to be shipped from its place of business, in Michigan to purchasers thereof located in the various other States of the United States, in the District of Columbia, and in foreign countries.

In the course and conduct of its business, the respondent, Ford Motor Co., has been at all times herein referred to, in substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in similar businesses involving the sale and distribution of passenger motor vehicles in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, Ford Motor Co., 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 and are not owned by said Ford Motor Co. or directly controlled by it except insofar as their relationship is sustained by contracts relating to the manufacture and delivery of motor vehicles by the respondent,

Ford Motor Co., and the purchase thereof by said agents and dealers, who in turn resell the same to the purchasing and consuming public at prices suggested by the respondent, Ford Motor Co. The respondent's retail prices are predicated upon an advertised f. o. b. or delivered retail price, usually at its factories or assembly plants, plus additional charges for transportation from said factories or assembly plants to its retail dealers, plus the cost of certain equipment, such as bumpers, bumper guards, spare tires, and similar material necessary for the proper 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 respondent's advertised retail sales price. Other additional charges are generally or frequently made by the respondent to its local agents or dealers, such as taxes, advertising assessments, handling charges, and conditioning charges. All of these charges are added to the advertised f. o. b. or delivered price of each vehicle sold by the respondent, and are, in turn, included in the retail price charged the local purchaser by respondent's agents and dealers. The actual delivered price of respondent's cars to a retail purchaser is therefore far in excess of respondent's published f. o. b. price at a designated point plus actual transportation costs to place of sale and delivery and the retail purchaser is not informed of these additional charges over and above respondent's advertised retail delivery or f. o. b. prices.

PAR. 3. In the course and conduct of its business, as described hereinabove, respondent, Ford Motor Co., for the purpose of promoting the sale of its passenger motor vehicles, conducts and has conducted a nationwide advertising campaign in newspapers, magazines, price lists, by radio broadcasts, and in other ways, whereby it describes and illustrates its products. Accompanying these illustrations or descriptions, it features, usually in large numerals, a designated f. o. b. price for the cars 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 or distant points, for the designated and featured prices plus actual cost 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 f. o. b. prices are not the motor vehicles usually and commonly sold by the respondent for the featured price, and generally the said featured price is the price charged by the respondent for its less expensive cars. The cars so described or illustrated in respond-

ents' advertisements and price lists cannot be purchased at retail for the price featured in said advertisements or price lists at the f. o. b. or delivery point named therein or at the ultimate destination, plus actual freight or transportation charges thereon, without the payment of additional charges for added items, such as bumpers, bumper guards, spare tire, tube, or tire lock, and other accessories necessary for the actual or legal operation of the car or constituting part of what the public understands to be a complete car ready for operation, as illustrated or described by the respondent for sale at a designated point at a definite price. To these charges, over and above respondents' advertised delivered prices are frequently or 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 printed in such fine print as to be almost totally obscured by the large type or figures featuring the said f. o. b. price.

PAR. 4. The practice of the respondent, Ford Motor Co., in falsely advertising and representing a fully equipped and higher priced vehicle for sale at the price of a lower priced car and charging purchasers a price much higher than the featured price for the car so described and illustrated, and in the other ways set out in paragraph 3 hereof, 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 f. o. b. price plus transportation charges to a point of actual delivery, full title to and possession of said car, fully equipped and ready for operation, may be had. Respondent has also placed in the hands of retailers, agents, and dealers the means of making such false and misleading representations to the purchasing public and has enabled its retailers, agents, and dealers to increase their own sales of respondent's 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. 5. Motor vehicles of sundry competitors of respondent 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 respondent's motor vehicles but without fictitious and erroneous statements and representations in reference to "f. o. b." or delivered prices or retail sales prices as used or made by the respondent herein.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent as hereinabove set out, in offering for sale and selling its 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 respondent as hereinabove set out, a substantial number of the consuming public have purchased a substantial volume of respondent's passenger motor vehicles with the result that trade has been unfairly diverted to the respondent 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 respondent to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The above and foregoing acts, practices, and representations of the respondent have been and are all to the prejudice of the public and respondent's competitors as aforesaid, and have been and are, unfair methods of competition within the meaning and intent of section 5 of an act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 16th day of July, A. D., 1937, issued and thereafter served its complaint in this proceeding on the respondent, Ford Motor Co., a corporation, charging it with the use of unfair methods of competition in commerce within the intent and meaning 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 James M. Hammond, attorney for the Commission, and evidence in opposition thereto was introduced by Bodman, Longley, Bogle, Middleton & Farley, attorneys for the respondent, before Wm. W. Sheppard, and John P. Bramhall, duly appointed trial examiners of the Commission theretofore designated by it to serve in this proceeding; 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, the report of the trial examiners and the exceptions to said report, and briefs in support of the complaint and in opposition thereto; oral argument not having been requested, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Ford Motor Co., is a corporation organized under the laws of the State of Delaware in 1919, and having its principal place of business in Dearborn, Mich.

PAR. 2. Respondent is now, and has been at all times since the date of its incorporation, engaged in the business of manufacturing passenger motor vehicles and in their sale and distribution. Respondent causes the motor vehicles sold by it to be transported from the place of their manufacture to purchasers thereof located in various States of the United States. In the course and conduct of its business respondent has been, at all times referred to herein, in substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in the manufacture, sale, and distribution of passenger motor vehicles in commerce between and among the various States of the United States.

PAR. 3. All sales by respondent of the passenger motor vehicles manufactured by it are made to authorized dealers located throughout the United States who sell the same at retail to the purchasing and consuming public. The contracts entered into between respondent and all of its authorized dealers, set forth generally the manner in which the dealer shall buy and sell the products of respondent. Respondent furnishes the dealers with suggested price lists at which the dealers are to sell its products, and the dealers sell said products to the consuming public at the prices suggested by the respondent. The retail prices fixed by respondent are predicated on an advertised f. o. b. price, usually at its factories, plus additional charges for transportation to its retail dealers, plus the cost of certain equipment such as bumpers, bumper guards, spare tires, and other necessary accessories and similar material necessary for the proper operation of the vehicle, which vary in accordance with the model or type of car delivered. Generally, or frequently, taxes, advertising assessments, handling charges, and conditioning charges are added to the

advertised retail price. All of these charges are added to the advertised f. o. b. or factory delivered price of each vehicle sold by said dealers. The actual delivered price of respondent's automobiles to retail purchasers is, therefore, far in excess of respondent's advertised f. o. b. price at a designated point, plus actual transportation cost to place of sale and delivery.

PAR. 4. Respondent, for the purpose of promoting the sales of its passenger motor vehicles, conducts and has conducted a nation-wide advertising campaign in newspapers, magazines, price-lists, radio broadcasts, and other advertising media, whereby, it describes and illustrates its products. Accompanying these illustrations or descriptions, it features, usually in large numerals, the designated f. o. b. price of the car so illustrated or described, in such a way as to convey or create the impression in the minds 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 cost of transportation thereto.

In truth and in fact, the passenger motor vehicles described and illustrated in connection with, or in immediate proximity to, the featured f. o. b. prices are not the motor vehicles usually and commonly sold by respondent's dealers for the featured prices, and generally the said featured prices are the prices charged by respondent's dealers for respondent's less expensive cars. The cars so described or illustrated in respondent's advertisements and price lists cannot be purchased at retail for the prices featured in said advertisements or at the f. o. b. or delivery point named therein, or at the ultimate destination plus actual freight or transportation charges thereon, without the payment of additional charges for added items, such as bumpers, bumper guards, spare tire, tube or tire lock, and other accessories constituting part of what the general public understands to be a complete car ready for operation, as illustrated or described by the respondent, for sale at a designated point at a definite price. In addition to these extra charges, there are generally, or frequently, added, further and additional charges to retail purchasers, such as taxes, advertising, handling, and conditioning. In some instances, where statements concerning these extra charges appear in respondent's advertisements, such statements are printed in such fine print as to be almost totally obscured by the larger type or figures featuring the f. o. b. price.

PAR. 5. The record contains numerous specific instances where the price stated in the advertisement was not the true price of the car illustrated or described, either at the factory or at the point of de-

livery. The following instances are typical illustrations of respondent's practices as hereinbefore described.

An advertisement of respondent illustrates the Ford V-8 cabriolet for the featured price of $505 in large figures, accompanied by the legend in small letters, "and up, F.O.B. Detroit." The car illustrated in this advertisement, as shown by respondent's price list, was sold to the purchasing public at Detroit for $653.60, or $148.60 more than the price featured. At the time this advertisement was issued none of respondent's cars was sold at retail in Detroit for the featured price of $505; the cheapest of its cars was sold at retail for $566.38, and the actual selling price of the car illustrated in this advertisement was built up as follows:

List price f. o. b. Detroit	$590.00
Standard group accessories	31.50
Delivery charge	4.00
Conditioning and handling	9.00
Approximate Federal tax	19.10
Total selling price at Detroit	[1] 653.60

[1] Plus State taxes.

In another of respondent's advertisements is featured a DeLuxe Fordor Sedan, and in large figures adjacent thereto appears the price of $495 accompanied by a legend in fine print reading "and up f. o. b. Detroit." This car was sold to the public in Detroit for $712.03, or for a price of $217.03 more than the price advertised. The actual selling price of the car so illustrated is shown by respondent's price list to be built up as follows:

List price f. o. b. Detroit	$635.00
Delivery charge at Detroit	4.00
Standard group accessories	31.50
Conditioning and handling	9.00
White side wall tires	12.24
Approximate Federal taxes	20.29
Retail selling price of car illustrated, exclusive of State taxes	712.03

In another of respondent's advertisements a Tudor Touring Sedan is illustrated and a price of $510 is featured in large figures on the face of the advertisement adjacent to the illustration, followed by the fine print legend, "and up Detroit standard accessory group including bumpers and spare tire extra." Respondent's price list shows that this car was sold to the public in Detroit for the sum of $667.67, being $157.67 more than the price featured, without considering the State tax, which was also added to the purchase price.

In another of respondent's advertisements a DeLuxe Fordor Touring Sedan is illustrated, and in large figures the price is stated as $480, and immediately following, in fine print, is the legend, "base at Dearborn plant—taxes, delivery and handling, bumpers, spare tire and accessories additional." Respondent's price list shows that this car was not sold to the public in Detroit for $480, as featured in said advertisement, but was sold for $757.46 built up as follows:

List price of car illustrated f. o. b. Detroit	$665.00
Standard group accessories, including bumpers and spare tire	50.50
Delivery charge	4.00
Conditioning and handling	18.00
Approximate Federal taxes	19.96
Total selling price at Detroit, not including State taxes	757.46

Respondent's advertisement in the March 30, 1939, issue of the Washington D. C. "Star" illustrates a "Mercury 8" Sedan-Coupe and the Detroit delivered price is featured in large figures as $934. Below, in small type, it is stated that State and Federal taxes are extra. The car thus featured was not sold in Washington, D. C., for the listed price, but was sold by respondent's dealers to a retail buyer for $1,078.60, being $144.60 more than the advertised price. Of this extra amount, $46.25 is for transportation to Washington, which is a proper charge, assuming that sum was spent for transportation. Included in the additional amount is a charge of $24.40 for Federal taxes, $23.95 for District of Columbia business privilege taxes, and $50 to cover over allowance on used cars.

PAR. 6. The advertisements set forth in paragraph 5 hereof, and numerous other advertisements of respondent of a similar nature and import, when compared with the price lists issued by respondent at the time said advertisements appeared, and with the prices actually charged by its authorized agents at the time mentioned, show that respondent's pricing practices were misleading and deceptive, for the reason that the prices stated in such advertisements were not, in fact, the prices at which the various cars illustrated or described were sold to the public, and the explanatory matter appearing in said advertisements was either inadequate or so inconspicuous as to be of no value in removing or curing the inherent deceptive tendencies present in respondent's advertisements. In some instances the pictorial illustrations appearing in the advertisement were of a higher-priced car, and 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, and that more expensive models were available at a higher price.

The testimony shows that persons reading respondent's advertisements would expect to obtain the cars illustrated for the prices emphasized in large figures, at the place of manufacture, plus actual transportation charges if purchased at some other place; that they would expect the cars to be equipped exactly as shown in the advertisements, and that the explanatory matter appearing in the advertisements escaped their attention.

Respondent's advertisements created in the minds of the purchasing public the impression that the prices charged for its cars were much less than the prices at which they could in fact be obtained, and as a result, persons who might not otherwise have considered purchasing the type of car so advertised, visited the show-rooms of respondent's authorized dealers and in some instances purchased the advertised cars at the prices hereinbefore set forth, which were much higher than the prices stated in respondent's advertisements.

PAR. 7. The acts, practices, and methods of respondent, as herein set forth, had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that respondent's passenger motor vehicles could be purchased at prices much less than the prices at which they were actually obtainable, and as a result of such mistaken and erroneous belief, a substantial portion of the purchasing public were induced to visit respondent's authorized dealers and to purchase respondent's passenger motor vehicles, with the result that trade was unfairly diverted to respondent from its competitors who truthfully advertise and represent the prices of their passenger motor vehicles.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony, and other evidence introduced before Wm. W. Sheppard, and John P. Bramhall, duly appointed trial examiners

of the Commission designated by it to serve in this proceeding, the report of the trial examiners thereon and exceptions thereto, briefs filed on behalf of the Commission by James M. Hammond, counsel for the Commission, and by Bodman, Longley, Bogle, Middleton & Farley, counsel for the respondent; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Ford Motor Co., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its passenger motor vehicles in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as the price of any passenger motor vehicle, in or through the quotation of prices in connection with illustrations or descriptions of passenger motor vehicles, or otherwise, in any advertisement promoting the sale of such passenger motor vehicles at retail, any price other than the true retail price of said passenger motor vehicles at the place designated for their sale, such retail price to include all charges for any equipment or accessories illustrated or described in such advertisement, or necessary to the operation of such motor vehicle, or customarily included as standard equipment, and any charge or charges whatsoever for advertising, delivery, handling, or for any similar or like purpose, or for any other purpose except transportation charges where the passenger motor vehicle 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 1 are subject to the provisions of subparagraph 3 hereof with respect to taxes.

2. Using a designated price in any advertisement illustrating a passenger motor vehicle offered for sale at retail, unless the true retail price as defined in subparagraphs 1 and 3 hereof, of the passenger motor vehicle 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 passenger motor vehicle referred to in said advertisement.

3. Advertising passenger motor vehicles 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.

4. Advertising or representing a passenger motor vehicle as being for sale at retail at a designated price, unless such passenger motor vehicle 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 transportation charges thereto. This paragraph is subject to the provisions of subparagraph 3 hereof regarding taxes.

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

SNAP-ON TOOLS CORPORATION

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

Docket 4429. Complaint, Dec. 20, 1940—Decision, Oct. 20, 1941

Where a corporation engaged in the manufacture of tools and in the competitive interstate sale and distribution thereof—

Sold its said products to members of the public in accordance with sales plans outlined to its branch office managers in sales posters and circular letters, which involved games of chance, gift enterprises, or lottery schemes, a typical method suggested and advocated by contemplating a "Tool Club" of at least 100 members each of whom was to pay $1.00 weekly for not to exceed 10 weeks, under a program pursuant to which, and in accordance with weekly drawings, the first lucky member received his set for $1.00, the second for $2.00, etc., each member, at the end of the 10 weeks, being entitled to a $10.00 set and eligible to participate in a drawing for grand prizes, and under which, or other similar plans, the amount paid and the fact as to which members received the final prizes were determined wholly by lot or chance, and there was involved a game of chance to procure articles at much less than their normal retail prices, 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 adopt and use said or any methods involving chance, or contrary to public policy, refrain therefrom;

With the result that many persons were attracted by its said sales plans and the element of chance involved therein, and were thereby induced to buy its merchandise in preference to that of competitors who do not use such methods, and substantial trade in commerce 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 and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Mr. D. C. Daniel for the Commission.

Mr. Harry C. Alberts, 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 Snap-On Tools Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Com-

mission 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, Snap-On Tools Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business and a manufacturing plant located at Eightieth Street and Twenty-eighth Avenue, Kenosha, Wis. Respondent maintains a second manufacturing plant at Mount Carmel, Ill., and branch offices in various States of the United States. Respondent is now, and for more than 3 years last past has been, engaged in the manufacture of tools and in the sale and distribution thereof to the public. Respondent causes, and has caused, said merchandise when sold to be transported from its aforesaid places of business to purchasers thereof at their respective points of location in the various States of the United States other than the States in which said places of business are located and in the District of Columbia. There is now, and for more than 3 years last past has been, a course of trade by said respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business respondent is, and has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells, and has sold, its merchandise to members of the public in accordance with a sales plan which involves a game of chance, gift enterprise, or lottery scheme. Respondent has supplied the managers of its said branch offices with sales posters and circular letters outlining the sales plans or methods by means of which said merchandise was to be, and has been, sold and distributed to members of the purchasing public. The sales plan or method as suggested and advocated by respondent is substantially as follows:

The sales plan or method is described as a "Tool Club." Each club has a minimum of 100 members. Each member of the club pays $1 each week for a period not to exceed 10 weeks. At the end of the first week a drawing is held and the member whose name or number is drawn receives a $10 set of tools for the $1 paid. Each succeeding week the same procedure is followed, and the member whose name is drawn receives a set of tools for the amount paid up until the time of such drawing. Thus one member receives a set of said tools

for $1, another for $2, another for $3, and so on to the end of the fixed period. At the end of such period each member of the club is entitled to and receives a $10 set of said tools. Also at the end of the 10 weeks a drawing is held for grand prizes in which drawing all of the members of the club are eligible to participate. Thus the amount which an ultimate purchaser pays for a set of said tools and the fact as to which club members receive the final prizes are determined wholly by a lot or chance.

Respondent uses, and has used, various club plans or methods in the sale and distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme, but all of said plans or methods are similar to the one hereinabove described, varying only in detail.

PAR. 3. Respondent's merchandise is being and has been sold and distributed to the purchasing public in accordance with the aforesaid sales plans or methods. Respondent thus conducts 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 such merchandise by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail prices thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with respondent as above alleged are unwilling to adopt and use said methods or any methods involving a game of chance or the sale of a chance to win something by chance, or any other methods that are contrary to public policy 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 respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert substantial trade, in commerce between and among the various States of the United States and in the District of Columbia to the respondent, from its said competitors who do not use the same or equivalent methods. As a result thereof, substantial injury is

being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 20, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Snap-On Tools Corporation, a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission by order entered herein granted respondent's request for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the 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, Snap-On Tools Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business and a manufacturing plant located at Eightieth Street and Twenty-eighth Avenue, Kenosha, Wis. Respondent maintains a second manufacturing plant at Mount Carmel, Ill., and branch offices in various States of the United States. Respondent is now, and for more than 3 years last past has been, engaged in the manufacture of tools and in the sale and distribution thereof to the public. Respondent causes, and has caused, said merchandise when sold to be transported from its afore-

said places of business to purchasers thereof at their respective points of location in the various States of the United States other than the States in which said places of business are located and in the District of Columbia. There is now, and for more than 3 years last past has been, a course of trade by said respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business respondent is, and has been, in competition with other corporations and with individual and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells, and has sold, its merchandise to members of the public in accordance with a sales plan which involves a game of chance, gift enterprise or lottery scheme. Respondent has supplied the managers of its said branch offices with sales posters and circular letters outlining the sales plans or methods by means of which said merchandise was to be, and has been, sold and distributed to members of the purchasing public. The sales plan or method as suggested and advocated by respondent is substantially as follows:

The sales plan or method is described as a "Tool Club." Each club has a minimum of 100 members. Each member of the club pays $1 each week for a period not to exceed 10 weeks. At the end of the first week a drawing is held and the member whose name or number is drawn receives a $10 set of tools for the $1 paid. Each succeeding week the same procedure is followed, and the member whose name is drawn receives a set of tools for the amount paid up until the time of such drawing. Thus one member receives a set of said tools for $1, another for $2, another for $3, and so on to the end of the fixed period. At the end of such period each member of the club is entitled to and receives a $10 set of said tools. Also at the end of the 10 weeks a drawing is held for grand prizes in which drawing all of the members of the club are eligible to participate. Thus the amount which an ultimate purchaser pays for a set of said tools and the fact as to which club members receive the final prizes are determined wholly by lot or chance.

Respondent uses, and has used, various club plans or methods in the sale and distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme, but all of said plans or methods are similar to the one hereinabove described, varying only in detail.

PAR. 3. Respondent's merchandise is being and has been sold and distributed to the purchasing public in accordance with the aforesaid sales plan or methods. Respondent thus conducts 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 such merchandise by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail prices thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with respondent as above found are unwilling to adopt and use said methods or any methods involving a game of chance or the sale of a chance to win something by chance, or any other methods that are 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 respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert substantial trade in said commerce to the respondent, from its 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 said commerce.

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 acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding, having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of 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, Snap-On Tools 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 tools 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 tools or any other merchandise by the use of any sales plan, by means of which said tools or other merchandise are sold or distributed to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others any sales plan together with assortments of tools or other merchandise, which said sales plan is to be used or may be used in selling or distributing said tools or other merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

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

LUX-VISEL, INC., TRADING AS THE LUX COMPANY AND SUPERLUX

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

Docket 4577. Complaint, Aug. 25, 1941—Decision, Oct. 20, 1941

Where a corporation engaged in the manufacture of an electric water heater for use in the home, shop, or office, consisting essentially of a small aluminum disc together with a wire heating element, designated variously by it as the "Magic Disc," "Super-Lux Heater," and the "Lux," and in interstate sale and distribution of its said product through agents employed on a commission basis, and also through salesmen to whom it sold large number outright for resale;

In advertisements in newspapers and periodicals soliciting inquiries as to its product and its plans of employment and sale, and in letters, circulars, and other follow-up literature sent in response to such advertisements, and in which were included purported quotations from testimonials—

(*a*) Represented and implied to agents and salesmen and to the purchasing public that its said electric water heater operated on a new principle, heated water instantly, and was capable of heating substantial quantities of water, such as required for bathing, cooking, the family laundry, and for every home use, in a shorter time than would be required by gas, coal, or oil, and at only a fraction of the cost, and that use thereof was capable of saving up to 75 percent of gas bills;

Facts being said heater operated on the principle used for many years by other manufacturers of similar electric water heaters, was incapable of heating water in the quantities claimed in a shorter time than that required by gas, coal, or oil, and at a fraction of their cost, and was incapable of effecting any substantial reduction in gas bills; and

(*b*) Represented that said heater was safe and that it had been tested and approved by the American Public Service Testing System, which said corporation implied to be a duly qualified testing laboratory having facilities and competent employees to make such tests;

Facts being said heater was not entirely safe when used under recommended conditions, since hazards of electric shock and fire were present, and the American Public Service Testing System was not in existence at the time and had never had laboratory facilities or competent employees necessary to make efficient tests of such devices;

With effect of misleading and deceiving purchasers and prospective purchasers into the erroneous belief that such representations were true, and of causing a substantial portion of the purchasing public, because of such belief, to purchase substantial quantities of its said product:

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

Mr. 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 Lux-Visel, Inc., a corporation trading and doing business under the names The Lux Co. and Superlux, 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, Lux-Visel, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 415 West Franklin Street, in the city of Elkhart, State of Indiana. The respondent trades and does business under the names The Lux Co. and Superlux.

PAR. 2. Respondent is now, and for several years last past has been engaged in the manufacture, sale, and distribution of an electric water heater designated variously as the "Magic Disc," the "Super-Lux Heater," and the "Lux." Respondent's said heater consists essentially of a small aluminum disc, combined with a wire heating element designed for use in the home, shop, or office in heating water. Respondent has caused and now causes its said product, when sold, to be transported from its place of business in the State of Indiana to the purchasers thereof located in various States of the United States other than the State of Indiana, and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a course of trade in said electric water heaters in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent employs agents to sell some of its said water heaters on a commission basis. Respondent also sells a large number of its heaters outright to salesmen, to be resold by said salesmen throughout the various States of the United States and in the District of Columbia. Under one plan the agents or salesmen take orders for respondent's heaters, which orders are transmitted to and filled by the respondent. Under the other plan, the salesmen purchase the heaters from the respondent and resell them to the public at a profit. For the purpose of obtaining the services of said agents and salesmen, and for the purpose of promoting the sale of its heaters to said salesmen, respondent publishes advertisements in newspapers, periodicals, and magazines soliciting inquiries as to its product and

as to its plans of employment and sale. When an inquiry is received by the respondent indicating an interest on the part of a person in becoming a representative for the sale of respondent's said product, respondent sends to such person letters, circulars, and other "follow-up" literature. In said advertisements, letters, circulars, and other "follow-up" literature, many false and misleading statements and representations are made by the respondent in describing its said water heater and the qualities thereof. Among and typical of the statements and representations so made and circulated by the respondent are the following:

Hot water from your light socket. Amazing new way.

Amazing new principle. Makes cold water almost instantly seething, steaming, bubbling hot.

The Lux works on a new principle.

This MAGIC-DISC heats water instantly!

Sizzling, Steaming, Hot water in a fraction of the time required by gas or coal! Slip the LUX into dishpan or tub of water—plug in nearest light socket and presto!—it boils. New principle . . .

What strange element is hidden in this mysterious magic disc which makes people gasp when they see it placed in a pan of water—dish, a boiler or tub—and amazingly produces boiling, sizzling, steaming hot water at a fraction of the cost required by gas, coal or oil.

CUTS GAS BILL 75%

I use "The Lux" constantly and could not get along now without it. As well as heating my water so quickly, it has slashed my gas bill 75%—Mrs. Aldrich.

The LUX has been awarded the Certificate of Merit by the American Public Service Testing System.

The LUX has been awarded the FIRST CLASS SEAL OF APPROVAL by the American Public Service Testing System. They have tested the LUX and found it to be safe, sanitary, fast, dependable and economical.

The amazing new Super-Lux Double-Action Water Heater has completely revolutionized home water heating for every purpose—bathing, shaving, laundering, dishwashing, filling hot water bags, cooking, house-cleaning and every other domestic chore in which hot water is needed.

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 implies to prospective agents and salesmen and to the purchasing public that its said electric water heater operates on a new principle; that it heats water instantly; that it is capable of heating substantial quantities of water such as are required for bathing, cooking, and family laundry, and for every home use, in a shorter time than would be required by gas, coal, or oil, and at only a fraction of the cost; that the use of the said heater is capable of saving up to 75 percent of gas bills; that the said heater is safe, and that it has been tested and approved by the American Public Service Testing System, which respondent

impliedly represents to be a duly qualified testing laboratory having facilities and competent employees to make such tests.

PAR. 5. The foregoing representations and implications are grossly exaggerated, are false and misleading. In truth and in fact, the respondent's said heater is not based on a new principle. It operates, in fact, on the same principle that has for many years been used by other manufacturers of similar electric water heaters. It is incapable of heating substantial quantities of water such as are needed for use in the home in a shorter time than that required by gas, coal, or oil. It cannot be operated at only a fraction of the cost of gas, coal, or oil, and it is incapable of effecting a 75 percent reduction in gas bills or any other substantial reduction in gas or other fuel bills. The said heater is not, in fact, entirely safe when used under the conditions recommended by the respondent, as hazards of electric shock and fire are present. The American Public Service Testing System, does not exist as a business enterprise at this time, and at no time did it have laboratory facilities or competent employees necessary to make efficient tests of such devices as the respondent's electric water heater.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations, as aforesaid, has had, and now has the tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that such statements and representations are true, and has caused, and now causes, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said product.

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

REPORTS, FINDING AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 25, 1941, issued and served its complaint in this proceeding upon respondent, Lux-Visel, Inc., a corporation, trading and doing business under the names The Lux Company and Superlux, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 8, 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 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, Lux-Visel, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 415 West Franklin Street, in the city of Elkhart, State of Indiana. The respondent trades and does business under the names The Lux Company and Superlux.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of an electric water heater designated variously as the "Magic Disc," the "Super-Lux Heater," and the "Lux." Respondent's said heater consists essentially of a small aluminum disc, combined with a wire heating element, designed for use in the home, shop, or office in heating water. Respondent has caused and now causes its said product, when sold, to be transported from its place of business in the State of Indiana to the purchasers thereof located in various States of the United States other than the State of Indiana, and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a course of trade in said electric water heaters in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent employs agents to sell some of its said water heaters on a commission basis. Respondent also sells a large number of its heaters outright to salesmen, to be resold by said salesmen throughout the various States of the United States and in the District of Columbia. Under one plan, the agents or salesmen take orders for respondent's heaters, which orders are transmitted to and filled by the respondent. Under the other plan, the salesmen purchase the heaters from the respondent and resell them to the public at a profit. For the purpose of obtaining the services of said agents and salesmen, and for the purpose of promoting the sale of its heaters to said salesmen, respondent publishes advertisements in newspapers, periodicals and magazines soliciting inquiries as to its product and as to its plans of employment and sale. When an inquiry is received by the respondent indicating an interest on the part of a

person in becoming a representative for the sale of respondent's said product, respondent sends to such person letters, circulars, and other "follow-up" literature. In said advertisements, letters, circulars, and other "follow-up" literature, many false and misleading statements and representations are made by the respondent in describing its said water heater and the qualities thereof. Among and typical of the statements and representations so made and circulated by the respondent are the following:

Hot water from your light socket. Amazing new way.

Amazing new principle. Makes cold water almost instantly seething, steaming, bubbling hot.

The Lux works on a new principle.

This MAGIC DISC heats water instantly!

Sizzling, Steaming, Hot water in a fraction of the time required by gas or coal! Slip the LUX into dishpan or tub of water—plug in nearest light socket and presto!—it boils. New principle * * *

What strange element is hidden in this mysterious magic disc which makes people gasp when they see it placed in a pan of water—dish, a boiler or tub—and amazingly produces boiling, sizzling, steaming hot water at a fraction of the cost required by gas, coal or oil.

CUTS GAS BILL 75%

I use "The Lux" constantly and could not get along now without it. As well as heating my water so quickly, it has slashed my gas bill 75%—Mrs. Aldrich.

The Lux has been awarded the Certificate of Merit by the American Public Service Testing System.

The LUX has been awarded the FIRST CLASS SEAL OF APPROVAL by the American Public Service Testing System. They have tested the LUX and found it to be safe, sanitary, fast, dependable and economical.

The amazing new Super-Lux Double-Action Water Heater has completely revolutionized home water heating for every purpose—bathing, shaving, laundering, dishwashing, filling hot water bags, cooking, house-cleaning and every other domestic chore in which hot water is needed.

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 implies to prospective agents and salesmen and to the purchasing public that its said electric water heater operates on a new principle; that it heats water instantly; that it is capable of heating substantial quantities of water such as are required for bathing, cooking, the family laundry, and for every home use, in a shorter time than would be required by gas, coal, or oil, and at only a fraction of the cost; that the use of the said heater is capable of saving up to 75 percent of gas bills; that the said heater is safe, and that it has been tested and approved by the American Public Service Testing System, which respondent impliedly represents to be a duly qualified testing laboratory having facilities and competent employees to make such tests.

PAR. 5. The foregoing representations and implications are grossly exaggerated, false, and misleading. In truth and in fact, the respondent's said heater is not based on a new principle. It operates, in fact, on the same principle that has for many years been used by other manufacturers of similar electric water heaters. It is incapable of heating substantial quantities of water such as are needed for use in the home in a shorter time than that required by gas, coal, or oil. It cannot be operated at only a fraction of the cost of gas, coal, or oil, and it is incapable of effecting a 75 percent reduction in gas bills or any other substantial reduction in gas or other fuel bills. The said heater is not, in fact, entirely safe when used under the conditions recommended by the respondent, as hazards of electric shock and fire are present. The American Public Service Testing System does not exist as a business enterprise at this time, and at no time did it have laboratory facilities or competent employees necessary to make efficient tests of such devices as the respondent's electric water heater.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations, as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that such statements and representations are true, and has caused, and now causes, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said product.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and 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, Lux-Visel, Inc., a corporation, trading and doing business under the names The Lux Company and

Superlux, or 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 an electric water heater, now designated variously as the "Magic Disc," the "Super-Lux Heater," and the "Lux," whether sold under these names or any other name or names, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's electric water heater operates on a new principle.

2. That it heats water instantly.

3. That it is capable of heating substantial quantities of water in a shorter period of time than will gas, coal, or oil, and at only a fraction of the cost.

4. That the use of respondent's heater will enable one to save up to 75 percent of gas bills or that its use will effect any substantial reduction in the cost of heating water as compared with gas or other fuel.

5. That said heater is safe.

6. That said heater has been tested and approved by the American Public Service Testing System.

7. That said heater has been subjected to any tests at all, unless it has in fact been subjected to scientific tests by a reputable recognized testing laboratory properly equipped and staffed for the testing 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.

IN THE MATTER OF

WILLIAM B. BARTLETT, TRADING AS CHAMPION BATTERY COMPANY

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

Docket 4578. Complaint, Aug. 27, 1941—Decision, Oct. 20, 1941

Where a corporation long engaged, under a corporate name including the word "champion," in the manufacture and in the interstate sale and distribution of spark plugs and other mechanical apparatus, had built up a valuable good will in aforesaid name as applied thereto, and members of the purchasing public had, through long usage, come to identify electrical and other mechanical apparatus and accessories bearing said name as products of aforesaid well and favorably known company, and manifested a preference therefor; and

Thereafter an individual engaged in the interstate sale and distribution of a so-called sales stimulator plan which included certificates and electric lanterns with batteries, and bulbs for use in connection therewith, and in soliciting sale of and selling his said plan under a method pursuant to which he took from the retailer a form of written order or contract by which latter ordered a certain number of certificates, depositing with said individual's agent a portion of the purchase price, balance to be paid upon delivery, and under which it was further provided that when the certificate was returned for redemption to the dealer by the customer it must be accompanied by a "trial order" for six Champion "heavy duty" batteries, at 10 cents each, and two bulbs at 10 cents each, the dealer deducting and retaining, as a refund for the certificate purchased, the sum of 10 cents and an additional 5 cents as a commission, and forwarding to said individual the 65 cent balance, whereupon latter was to send customer lantern, bulbs, and batteries—

(*a*) Made use of word "Champion" in trade name and on said lanterns and on labels of said batteries, to induce the erroneous belief that his business was connected with, and his products manufactured by or purchased from, aforesaid long, well, and favorably known corporation, and thereby caused many members of the public to purchase his said products in such belief, and placed in the hands of retailers, a means whereby the purchasing public was misled and deceived;

(*b*) Represented, in many instances, in soliciting dealers that they were purchasing outright a certain number of lanterns for 10 cents each, making no mention of the certificates whatsoever, while representing in other instances that he would redeem each of such certificates through the dealer without any further cost or obligation by furnishing to the latter for delivery to each customer who held a certificate "One nationally advertised Champion 'Red Guard' electric lantern";

Facts being that when contract, which called for a specified number of certificates and not lanterns, at 10 cents each, was presented to dealer, his signature was secured before he was given opportunity carefully to read the same; letters acknowledging receipts of orders were worded so as to imply an

outright purchase, with dealer to receive a certain number of lanterns when shipment was made of certificates and advertising matter called for by the contract; the material was packed in container much larger than necessary and sufficiently large to package the number of lanterns expected by dealers, who did not discover that the packages sent contained certificates, advertising material, waste paper, and excelsior, and no lanterns, or only a few, until after payment of full balance of purchase price; and said individual did not redeem certificates by furnishing lanterns for delivery to dealer's customer-holders of certificates, but required dealer with each certificate returned for redemption, to secure from customer aforesaid purchase order for batteries and bulbs, and to forward him 65 cents before delivering lantern, batteries, and bulbs to customer;

(*c*) Furnished to the dealer purchasing said plan, certain advertising matter for display and distribution, which represented that the pictured lantern had a retail value of $1.29 and would be given by the dealer without charge to the customer upon the purchase of batteries, and bulbs therefor, at the regular price;

Facts being the lantern depicted did not have such value, never sold for said sum, and was not given by dealers without charge since the price charged by said individual for such batteries and bulbs was far in excess of their customary retail value and was sufficient to cover also the fair retail value of the lantern; and

(*d*) Represented, further, through his agents and salesmen, to the customer dealers, that at the end of the 3-months' period mentioned in the contract any and all lanterns remaining in customer dealer's hands would be redeemed by said individual at the price paid therefor, and that such dealers were to have the right to exclusive distribution of such lanterns in certain specified territories;

Facts being such remaining lanterns were not redeemed by said individual at any price, and said individual entered into contracts with other persons for distribution of lanterns in the same territory in which dealers had theretofore been granted such "exclusive rights";

With effect of leading a substantial number of retail merchants and members of the purchasing public into the erroneous belief that aforesaid representations were true, and of causing them, because of such belief, to purchase his certificates and to execute contract in connection therewith:

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.

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 William B. Bartlett, individually and trading as Champion Battery 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, William B. Bartlett, is an individual doing business under the trade name of Champion Battery Co., with his office and principal place of business located at 549 West Washington Street, Chicago, Ill. Respondent is now, and since June 1940 has been, engaged in the business of offering for sale, selling, and distributing in commerce among and between the various States of the United States and in the District of Columbia to retail dealers a certain so-called sales stimulator plan, including in connection therewith the sale and distribution of certain certificates and various articles of merchandise which are used in connection with putting his plan into operation and effect. Respondent causes such certificates and articles of merchandise, including electric lanterns, batteries, and bulbs used in connection with the operation of his so-called sales stimulator plan, 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 the sale and distribution of said so-called sales stimulator plan and articles of merchandise used in connection with the operation of the same in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, through his agents and salesmen, solicits and sells his so-called sales stimulator plan to retail dealers located in the various States of the United States. Respondent, in order to sell his so-called sales stimulator plan and said articles of merchandise, takes from the dealer a form of written order or contract in which the dealer orders a certain number of certificates, for which he deposits at the time with the agent of the respondent a portion of the purchase price, the balance to be paid upon delivery. The dealer is to distribute such certificates among his customers and prospective customers upon such basis as he may choose. The contract executed by the dealer provides that when the certificate is returned for redemption to the dealer by the customer it must be accompanied by a "trial order" for six Champion "heavy duty" batteries at 10 cents each and two bulbs at 10 cents each, and that the dealer is to deduct and retain as a refund for the certificate purchased the sum of 10 cents and an additional sum of 5 cents as a commission and must forward to the respondent the balance totaling 65 cents, whereupon the respondent is to send the customer the lantern, bulbs, and batteries. Respondent

places the word "Champion" upon said lanterns and upon the labels of said batteries.

PAR. 3. Respondent, through his salesmen and agents, makes many false and misleading statements and representations with respect to his so-called sales stimulator plan. In soliciting dealers, and with a view to making sales contracts and increasing his business, respondent represents in some instances to prospective customer-dealers that they are purchasing outright a certain number of lanterns for the price of 10 cents each and no mention is made of the certificates whatsoever. In other instances respondent represents that he will redeem each of these certificates through the dealer without any further cost or obligation on the part of the dealer or customer by furnishing to the dealer for delivery to each customer who is the holder of a certificate "One nationally advertised Champion 'Red Guard' electric lantern." In truth and in fact the contract or order entered into by the dealer calls for the specified number of certificates at the price of 10 cents each instead of the number of lanterns the dealers are led to believe, and believe, they are purchasing. The contract is presented to the dealer and his signature secured before he is given an opportunity carefully to read the same, and a deposit is collected from him as a part of the purchase price for the plan, the balance to be paid upon the delivery of the order.

Respondent's letter to the customer-dealers acknowledging receipt of the order is worded so as to infer that the customer-dealers have made an outright purchase and will receive a certain number of lanterns. Thereafter, when respondent ships the order of certificates and advertising matter actually called for by the contract or order, signed by the customer-dealer, the material is packed in a container much larger than is necessary to package such certificates and advertising matter and large enough to package the number of lanterns the customer-dealer expects to receive. The customer-dealers do not discover that the package contains certificates, advertising material, waste paper, and excelsior and no, or only a few, lanterns until they have paid the full balance of the purchase price. In truth and in fact, respondent does not redeem these certificates through the dealer by furnishing lanterns to the dealer for delivery to the customers who are holders of certificates. The dealer, when a certificate is returned for redemption, is required to secure from such customer a purchase order for batteries and bulbs, together with a remittance of 80 cents as the purchase price thereof, and to forward the sum of 65 cents to the respondent, before the lantern, batteries, and bulbs are delivered to the customer by the respondent.

Respondent furnishes the dealer purchasing said plan with certain advertising matter to be displayed and distributed by the dealer which represents that the lantern pictured and described in such advertising matter has a retail value of $1.29 and that it will be given by the dealer without charge to customers upon the purchase by such customers of batteries and bulbs for said lantern at the regular price thereof.

The lantern pictured and described in the advertising matter furnished the dealers by the respondent does not have a retail value of $1.29, nor has said lantern ever sold for such sum; such lantern is not given by the dealers without charge to their customers upon the purchase by such customers of batteries and bulbs at the regular price, as the price charged by the respondent for the batteries and bulbs is far in excess of their usual and customary retail value and is sufficient to cover also the fair retail value for the lantern.

Respondent's agents and salesmen represent to the customer-dealers that at the end of the 3-months' period mentioned in the contract any and all lanterns remaining in the customer-dealer's hands will be redeemed by the respondent at the price paid for them and that such customer-dealers are to have the right to exclusive distribution of such lanterns in certain specified territories.

The lanterns remaining in the customer-dealer's hands at the expiration of the 3-months' period mentioned in the contract are not redeemed by the respondent at the price paid for them nor does the respondent redeem such lanterns at any price. Customer-dealers are not given the right to exclusive distribution of such lanterns in certain specified territories nor does respondent intend or attempt to give such dealer customers exclusive rights to certain territory. Respondent enters into contracts with other persons for distribution of said lanterns in the same locality and territory in which dealers have theretofore been granted "exclusive rights."

PAR. 4. Respondent has caused the word "Champion" to be placed upon said lanterns and upon the labels of said batteries and has used the word "Champion" in said trade name to induce the belief upon the part of the public that respondent's said business is in some manner connected with, and that said products are manufactured by or purchased from the Champion Spark Plug Co.

The Champion Spark Plug Co. is a corporation organized and doing business under and by virtue of the laws of the State of Ohio, with its factory and principal place of business located at 900 Upton Avenue in the city of Toledo, State of Ohio. The Champion Spark Plug Company is now and for many years last past has been engaged in the manufacture of spark plugs and other mechanical apparatus,

and in the sale and distribution of said products throughout the United States and in the District of Columbia. Said products are sold under, and designated by, the trade name "Champion." Said company has built up and enjoys a valuable good will in the word "Champion" as applied to its respective products. Members of the purchasing public have through long usage and over a long period of time identified electrical and other mechanical apparatus and accessories which bear the name "Champion" as the products of the well and favorably known Champion Spark Plug Co. and have manifested a preference for such "Champion" products.

PAR. 5. The use by the respondent of the word "Champion" in its trade name and as a mark or brand for his said products is confusing, misleading, and deceptive and causes many members of the purchasing public to believe that respondent's said business is connected with, and that said products are manufactured by or purchased from, the Champion Spark Plug Co. and causes them to purchase said products as a result of said belief. In truth and in fact, respondent's business is not in any manner connected with, and said products are not manufactured by or secured from, said Champion Spark Plug Co.

The use of the word "Champion" as a mark or brand on said products places in the hands of retailers a means and instrumentality whereby the purchasing public is misled and deceived.

PAR. 6. The use by the respondent of the foregoing false and misleading representations has had the capacity and tendency to and does lead a substantial number of retail merchants into the erroneous and mistaken belief that the aforesaid representations made by the respondent and his representatives are true, and to cause them, because of such erroneous and mistaken belief, to purchase respondent's certificates and to execute the contract in connection therewith.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 27, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, William B. Bartlett, individually and trading as Champion Battery Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. The respondent subsequently filed his answer in which answer he admitted

all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, William B. Bartlett, is an individual doing business under the trade name of Champion Battery Co. with his office and principal place of business located at 549 West Washington Street, Chicago, Ill. Respondent is now, and since June 1940 has been, engaged in the business of offering for sale, selling and distributing in commerce among and between the various States of the United States and in the District of Columbia to retail dealers a certain so-called sales stimulator plan, including in connection therewith the sale and distribution of certain certificates and various articles of merchandise which are used in connection with putting his plan into operation and effect. Respondent causes such certificates and articles of merchandise, including electric lanterns, batteries, and bulbs used in connection with the operation of his so-called sales stimulator plan 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 the sale and distribution of said so-called sales stimulator plan and articles of merchandise used in connection with the operation of the same in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, through his agents and salesmen, solicits and sells his so-called sales stimulator plan to retail dealers located in the various States of the United States. Respondent, in order to sell his so-called sales stimulator plan and article of merchandise, takes from the dealer a form of written order or contract in which the dealer orders a certain number of certificates, for which he deposits at the time with the agent of the respondent a portion of the purchase price, the balance to be paid upon delivery. The dealer is to distribute such certificates among his customers and prospective customers upon such basis as he may choose. The contract executed by the dealer provides that when the certificate is returned for re-

demption to the dealer by the customer it must be accompanied by a "trial order" for six Champion "heavy duty" batteries at 10 cents each and two bulbs at 10 cents each, and that the dealer is to deduct and retain as a refund for the certificate purchased the sum of 10 cents and an additional sum of 5 cents as a commission and must forward to the respondent the balance totalling 65 cents, whereupon the respondent is to send the customer the lantern, bulbs, and batteries. Respondent places the word "Champion" upon said lanterns and upon the labels of said batteries.

PAR. 3. Respondent, through his salesmen and agents, makes many false and misleading statements and representations with respect to his so-called sales stimulator plan. In soliciting dealers, and with a view to making sales contracts and increasing his business, respondent represents in some instances to prospective customer-dealers that they are purchasing outright a certain number of lanterns for the price of 10 cents each and no mention is made of the certificate whatsoever. In other instances respondent represents that he will redeem each of these certificates through the dealer without any further cost or obligation on the part of the dealer or customer by furnishing to the dealer for delivery to each customer who is the holder of a certificate "One nationally advertised Champion 'Red Guard' electric lantern." In truth and in fact the contract or order entered into by the dealer calls for the specified number of certificates at the price of 10 cents each instead of the number of lanterns the dealers are led to believe, and believe, they are purchasing. The contract is presented to the dealer and his signature secured before he is given an opportunity carefully to read the same, and a deposit is collected from him as a part of the purchase price for the plan, the balance to be paid upon the delivery of the order.

Respondent's letter to the customer-dealers acknowledging receipt of the order is worded so as to infer that the customer-dealers have made an outright purchase and will receive a certain number of lanterns. Thereafter, when respondent ships the order of certificates and advertising matter actually called for by the contract or order, signed by the customer-dealer, the material is packed in a container much larger than is necessary to package such certificates and advertising matter and large enough to package the number of lanterns the customer-dealer expects to receive. The customer-dealers, do not discover that the package contains certificates, advertising material, waste paper, and excelsior and no, or only a few, lanterns until they have paid the full balance of the purchase price. In truth and in fact, respondent does not redeem these certificates through the dealer by furnishing lanterns to the dealer for delivery to the customers

who are holders of certificates. The dealer, when a certificate is returned for redemption, is required to secure from such customer a purchase order for batteries and bulbs, together with a remittance of 80 cents as the purchase price thereof, and to forward the sum of 65 cents to the respondent, before the lantern, batteries, and bulbs are delivered to the customer by the respondent.

Respondent furnishes the dealer purchasing said plan with certain advertising matter to be displayed and distributed by the dealer which represents that the lantern pictured and described in such advertising matter has a retail value of $1.29 and that it will be given by the dealer without charge to customers upon the purchase by such customers of batteries and bulbs for said lantern at the regular price thereof.

The lantern pictured and described in the advertising matter furnished the dealers by the respondent does not have a retail value of $1.29 nor has said lantern ever sold for such sum; said lantern is not given by the dealers without charge to their customers upon the purchase by such customers of batteries and bulbs at the regular price, as the price charged by the respondent for the batteries and bulbs is far in excess of their usual and customary retail value and is sufficient to cover also the fair retail value of the lantern.

Respondent's agents and salesmen represent to the customer-dealers that at the end of the 3-months' period mentioned in the contract any and all lanterns remaining in the customer-dealer's hands will be redeemed by the respondent at the price paid for them and that such customer-dealers are to have the right to exclusive distribution of such lanterns in certain specified territories.

The lanterns remaining in the customer-dealer's hands at the expiration of the 3-months' period mentioned in the contract are not redeemed by the respondent at the price paid for them nor does the respondent redeem such lanterns at any price. Customer-dealers are not given the right to exclusive distribution of such lanterns in certain specified territories nor does respondent intend or attempt to give such customer-dealers exclusive rights to certain territory. Respondent enters into contracts with other persons for distribution of said lanterns in the same locality and territory in which dealers have heretofore been granted "exclusive rights."

PAR. 4. Respondent has caused the word "Champion" to be placed upon said lanterns and upon the labels of said batteries and has used the word "Champion" in said trade name to induce the belief upon the part of the public that respondent's business is in some manner connected with, and that said products are manufactured by or purchased from, the Champion Spark Plug Co.

Conclusion

The Champion Spark Plug Co. is a corporation organized and doing business under and by virtue of the laws of the State of Ohio, with its factory and principal place of business located at 900 Upton Avenue in the city of Toledo, State of Ohio. The Champion Spark Plug Co. is now and for many years last past has been engaged in the manufacture of spark plugs and other mechanical apparatus, and in the sale and distribution of said products, throughout the United States and in the District of Columbia. Said products are sold under, and designated by, the trade name "Champion." Said company has built up and enjoys a valuable good will in the word "Champion" as applied to its respective products. Members of the purchasing public have through long usage and over a long period of time identified electrical and other mechanical apparatus and accessories which bear the name "Champion" as the products of the well and favorably known Champion Spark Plug Co., and have manifested a preference for such "Champion" products.

PAR. 5. The use by the respondent of the word "Champion" in his trade name and as a mark or brand for his products is confusing, misleading, and deceptive, and causes many members of the purchasing public to believe that respondent's business is connected with, and that said products are manufactured by or purchased from, the Champion Spark Plug Company and causes them to purchase said products as a result of said belief. In truth and in fact, respondent's business is not in any manner connected with, and said products are not manufactured by, or purchased from, said Champion Spark Plug Co.

The use of the word "Champion" as a mark or brand on said products places in the hands of retailers a means and instrumentality whereby the purchasing public is misled and deceived.

PAR. 6. The use by the respondent of the foregoing false and misleading representations has had the capacity and tendency to, and does, lead a substantial number of retail merchants and members of the purchasing public into the erroneous and mistaken belief that the aforesaid representations made by the respondent and his representatives are true, and to cause them, because of such erroneous and mistaken belief, to purchase respondent's certificates and to execute the contract in connection therewith.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, William B. Bartlett, individually and trading as Champion Battery 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 so-called sales stimulator plans, and the certificates and lanterns, batteries and bulbs, or other merchandise used in connection with such plans, do forthwith cease and desist from:

1. Representing that dealers purchasing respondent's said plan will receive a designated number of lanterns or other articles of merchandise, when in fact the contract for the purchase of such plan provides only that a number of so-called trade certificates will be delivered to the dealer.

2. Representing that respondent will effect the redemption of trade certificates without further cost or obligation to the dealer or the dealer's customer.

3. Representing as the value of respondent's lanterns any amount which is in excess of the usual and customary retail price of such lanterns.

4. Supplying to dealers advertising matter which represents that lanterns furnished by such dealers to their customers are furnished free or without charge.

5. Supplying to dealers advertising matter representing that the prices charged for the batteries and bulbs to be purchased by the dealer's customer in order to receive a lantern are the usual and customary retail prices of such batteries and bulbs.

6. Representing that lanterns remaining in dealers' hands at the termination of said so-called sales stimulator plan will be redeemed by respondent.

7. Representing that respondent's dealers are given the right to exclusive distribution of respondent's products within certain designated territories.

8. Using the word "Champion" to designate or describe respondent's products or otherwise representing that respondent's products are the products of the Champion Spark Plug Co., of Toledo, Ohio.

9. Using the word "Champion" as a part of respondent's trade name or otherwise representing that respondent is connected in any manner with the Champion Spark Plug Co., of Toledo, Ohio.

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

MILES BROKERAGE COMPANY, INC., MILES & COMPANY, INC., MILES-BRADFORD COMPANY, AND MILES-KANE 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 4519. Complaint, June 12, 1941—Decision, Oct. 22, 1941

Where a corporation engaged in Pennsylvania in conducting a brokerage business, acting as an intermediary in purchase and sale of commodities, principally foodstuffs, between numerous sellers and certain buyers, with office for transaction of said business in Buffalo, capital stock of which was held by 22 stockholders who also owned and controlled a majority interest in three corporations selling groceries, foodstuffs, and allied products at wholesale in the three trading areas in Pennsylvania, in which were located their respective principal places of business—

(*a*) Received and accepted, from sellers to one or more of said wholesale grocery concerns, brokerage fees, and commissions ranging from a fraction of 1 percent to 5 percent of the sales price of such purchases by said wholesalers, acting in all of such transactions, in fact for and on behalf of said three corporate wholesale grocers;

With the result that such majority stockholders of said wholesale grocers received from sellers, indirectly, in the form of cash dividends paid upon their stockholdings in said corporate broker, a substantial portion of the brokerage secured on purchases made by said wholesalers; and

Where said three corporate wholesalers—

(*b*) Received indirectly from sellers a substantial portion of the brokerage secured on their purchases by said corporate broker in the form of the use as buying office of the equipment and facilities of the latter's Buffalo office, maintained from the proceeds of said brokerage fees:

Held, That in so receiving and accepting brokerage fees and commissions from sellers upon purchases of commodities, said brokerage concern and said three corporate wholesalers violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. P. C. Kolinski for the Commission.

Smith & Maine, of Clearfield, Pa., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of section 2 of the Clayton Act (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. Respondent, Miles Brokerage Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal corporate office located at Clearfield, Pa. This respondent engages in a brokerage business, acting as an intermediary in transactions of sale and purchase of commodities, principally foodstuffs, between numerous sellers and certain buyers. Respondent maintains an office for the transaction of said brokerage business at 176 Niagara Frontier Food Terminal, Buffalo, N. Y.

PAR. 2. Respondent, Miles & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at DuBois, Pa.

PAR. 3. Respondent, Miles-Bradford Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Bradford, Pa

PAR. 4. Respondent, Miles-Kane Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Kane, Pa.

PAR. 5. The respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., are engaged in the business of selling groceries, foodstuffs, and allied products at wholesale, in the trading areas in the State of Pennsylvania represented by the cities of DuBois, Bradford, and Kane.

These respondents place orders for a substantial portion of the goods, wares, and merchandise, particularly foodstuffs by them required in the ordinary conduct of their respective businesses with sellers who are, in most cases, located in States of the United States other than the State of Pennsylvania, through the brokerage firm of Miles Brokerage Co., Inc. 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 Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co.

PAR. 6. The capital stock of respondent, Miles Brokerage Co., Inc., is held by 22 stockholders. Stockholders owning 97½ percent of respondent, Miles Brokerage Co., Inc., outstanding capital stock are identified with respondents, Miles & Co., Inc., Miles-Bradford Co.,

and Miles-Kane Co., as stockholders, directors, officers, attorneys, auditors, salesmen, buyers, or managers, and said group likewise own and control a majority interest in the capital stock of each of said three respondent corporations. Said stockholders of the Miles Brokerage Co., Inc., share in the corporation's earnings and profits realized from its brokerage business, through the receipt of cash dividends which are declared and paid at stated intervals. William E. Miles, the president of respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., is a stockholder in respondent, Miles-Brokerage Co., Inc., and takes an active interest in its affairs. His brother, Wade H. Miles, though not a stockholder, is vice president of respondent, Miles Brokerage Co., Inc., and its managing officer, receiving therefor a substantial compensation.

PAR. 7. 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 respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., the respondent, Miles Brokerage Co., has been and is now receiving and accepting from said sellers brokerage fees and commissions, the same being a certain percentage (from a fraction of 1 percent to 5 percent) of the sales price of such purchases. Since June 19, 1936, respondent, Miles Brokerage Co., has been and is now receiving and accepting from sellers brokerage fees and commissions upon the purchases of Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co. in the manner above described in substantial amounts.

PAR. 8. In all of the transactions of purchase and sale hereinabove referred to, the respondent, Miles Brokerage Co., Inc., has acted in fact for and on behalf of Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co.

PAR. 9. As a result of the operation of the brokerage business of Miles Brokerage Co., Inc., as set forth in paragraph 6 hereof, the stockholders, directors, officers, attorneys, auditors, salesmen, buyers, and managers of respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co. receive from sellers indirectly, in the form of cash dividends paid upon their stockholding in Miles Brokerage Co., Inc., a substantial portion of the brokerage secured on purchases made by Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co.

PAR. 10. Respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co. receive indirectly from sellers a substantial portion of the brokerage secured on their purchases by Miles Brokerage Co., Inc., in the form of the use of the equipment and facilities of the Buffalo office of the respondent, Miles Brokerage Co., Inc., as a buy-

ing office in connection with various transactions of purchase of merchandise required in the operation of their respective businesses. Such equipment and facilities are maintained from the proceeds of brokerage fees and commissions received by Miles Brokerage Co., Inc., upon aforesaid purchases.

PAR. 11. The receipt and acceptance of such brokerage fees and commissions by said respondent, Miles Brokerage Co., Inc., upon the purchases of Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., while acting in fact for said purchasers, and the receipt and acceptance of brokerage in the form of buying office services and facilities by said respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., upon their own purchases 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 approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," the Clayton Act, as amended by an Act of Congress approved June 19, 1936, the Robinson-Patman Act (U.S.C. title 15, sec. 13), the Federal Trade Commission on June 12, 1941, issued its complaint which was subsequently served in this proceeding upon the parties respondent named in the caption hereof, charging them with violating the provisions of subsection (c) of section 2 of said Clayton Act, as amended. After the issuance of said complaint and the filing of respondent's answers, a stipulation was entered into by respondents whereby it was stipulated and agreed that a statement of facts signed and executed by respondents by their attorneys, 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. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers of respondents, and stipulation of facts, said stipulation of facts having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, and being of the opinion that subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, has been violated by

the respondents, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Miles Brokerage Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal corporate office located at Clearfield, Pa. This respondent engages in a brokerage business, acting as an intermediary in transactions of sale and purchase of commodities, principally foodstuffs, between numerous sellers and certain buyers. Respondent maintains an office for the transaction of said brokerage business at 176 Niagara Frontier Food Terminal, Buffalo, N. Y.

PAR. 2. Respondent, Miles & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at DuBois, Pa.

PAR. 3. Respondent, Miles-Bradford Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Bradford, Pa.

PAR. 4. Respondent, Miles-Kane Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Kane, Pa.

PAR. 5. The respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., are engaged in the business of selling groceries, foodstuffs, and allied products at wholesale, in the trading areas in the State of Pennsylvania represented by the cities of DuBois, Bradford, and Kane.

PAR. 6. The capital stock of respondent, Miles Brokerage Co., Inc., is held by 22 stockholders. The said stockholders of Miles Brokerage Co., Inc., own and control a majority interest of the capital stock of Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co. Said stockholders of Miles Brokerage Co., Inc., share in the corporation earnings and profits realized from its corporate business, through the receipt of cash dividends.

PAR. 7. 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 respondents Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., the respondent, Miles Brokerage Co., has been and is now receiving and accepting from said sellers brokerage fees and commissions, the same being a certain

percentage (from a fraction of 1 percent to 5 percent) of the sales price of such purchases. Since June 19, 1936, respondent, Miles Brokerage Co., has been and is now receiving and accepting from sellers brokerage fees and commissions upon the purchases of Miles & Co., Inc., Miles-Bradford, and Miles-Kane Co. in the manner above described in substantial amounts.

PAR. 8. In all of the transactions of purchase and sale hereinabove referred to, respondent, Miles Brokerage Co., Inc., has acted in fact for and on behalf of Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co.

PAR. 9. As a result of the operation of the brokerage business of Miles Brokerage Co., Inc., as set forth herein, the majority stockholders of the respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., receive from sellers indirectly, in the form of cash dividends paid upon their stockholding in Miles Brokerage Co., Inc., a substantial portion of the brokerage secured on purchases made by Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co.

However, the Commission does not have before it any evidence that any of the brokerage income received by Miles Brokerage Co., Inc., from the transactions of purchase and sale hereinabove referred to, was paid or transmitted directly as such by Miles Brokerage Co., Inc., to Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co.

PAR. 10. Respondents, Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co. receive indirectly from sellers a substantial portion of the brokerage secured on their purchases by Miles Brokerage Co., Inc., in the form of the use of the equipment and facilities of the Buffalo office of the respondent, Miles Brokerage Co., Inc., as a buying office in connection with various transactions of purchase of merchandise required in the operation of their respective businesses. Such equipment and facilities are maintained from the proceeds of brokerage fees and commissions received by Miles Brokerage Co., Inc., upon aforesaid purchases.

CONCLUSION

In receiving and accepting brokerage fees and commissions from sellers upon purchases of commodities as set forth in the foregoing findings as to the facts, the respondents have violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respond-

ents and a stipulation as to the facts entered into between the respondents and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon respondents findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That in purchasing commodities in interstate commerce, the respondents, Miles & Co., Inc., Miles-Bradford Co., Miles-Kane Co., their officers, representatives, agents, and employees, do forthwith cease and desist from:

1. Accepting from sellers, directly or indirectly, any allowance or discount in lieu of brokerage fees or commissions in whatever manner or form said allowances, discounts, brokerage fees, or commissions may be offered, allowed, granted, paid, or transmitted; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage fee, or other compensation, or any allowance or discount in lieu thereof, upon purchases of commodities made by the respondents.

It is further ordered, That the respondent, Miles Brokerage Co., Inc., its officers, agents, representatives, and employees, 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 Miles & Co., Inc., Miles-Bradford Co., and Miles-Kane Co., under the facts and circumstances as set forth in paragraph 8 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 Miles Brokerage Co., Inc., acting as intermediary or agent, is subject to the direct or indirect control, or acts 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 each of the said respondents Miles Brokerage Co., Inc., Miles & Co., Inc., Miles-Bradford Co., Miles-Kane Co., corporations, shall within 60 days after service upon each of them of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth by the Commission.

IN THE MATTER OF

LOUIS KELLER AND WILLIAM CARSKY, INDIVIDUALLY AND TRADING AS CASEY CONCESSION COMPANY

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

Docket 3413. Complaint, May 10, 1938—Decision, Oct. 28, 1941

Where two individuals engaged in the competitive interstate sale and distribution, to operators and concessionaires of moving pictures, moving picture and burlesque theaters, tent shows, medicine shows and circuses, of assortments of candy and other merchandise, such as toy cameras, hosiery, perfume, etc. so packed and assembled as to involve the use of a lottery scheme or game of chance, when sold and distributed to the consuming public, typical assortment being composed of 110 small uniform cartons each containing an equal number of pieces of candy and an additional article of merchandise, some of which had a retail value in excess of the 5 cent charged for the carton—

Sold such assortments to their customers, by whom they were resold to the consuming public in accordance with the aforesaid sales plan, and thereby placed in the hands of others the means of conducting lotteries or games of chance in the sale of their products;

With the result that many dealers in and ultimate consumers of candy were attracted by their said method of packing said products and by the element of chance involved in the sale thereof, and were thereby induced to purchase such candy in preference to that of their competitors who do not use such methods, and with tendency and capacity to divert to themselves trade and custom from their said competitors and exclude them from the candy trade, lessen competition in such trade and create a monopoly thereof in themselves and in such other distributors as do use such a method, and to deprive the purchasing public of the benefit of free competition:

Held, That such acts and practices were all to the prejudice and injury of the public and their competitors, and contrary to established public policy of the United States Government, and constituted unfair methods of competition in commerce.

Before *Mr. Charles F. Diggs*, *Mr. John W. Addison*, and *Mr. W. W. Sheppard*, trial examiners.

Mr. D. C. Daniel for the Commission.

Mr. Morris A. Haft, 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 Louis Keller and William Carsky, individually and trading as Casey Concession 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, Louis Keller and William Carsky, are individuals doing business as a copartnership under the trade name and style of Casey Concession Co., with their principal office and place of business located at 1132 South Wabash Avenue, Chicago, Ill. 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 concessionaires with moving picture and burlesque theaters 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 theaters located in several of the States of the United States. They cause their said products, when sold, to be transported from their place of business in the city of Chicago, State of Illinois, to purchasers thereof in the various States of the United States other than the State of Illinois and in the District of Columbia at their respective places of business. There is now, and has been for some time last past, a course of trade by said respondents in such candy and other 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 in competition with other partnerships and with corporations and individuals likewise engaged in the sale and distribution of candy or other merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to operators of and concessionaires with moving picture and burlesque theaters 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. One of said assortments is composed of a number of packages containing pieces of candy and other articles 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 the purchaser of one of said packages 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 said packages of candy and

other articles of merchandise in the manner above described thus constitutes the operation of a lottery scheme, game of chance, or gift enterprise. Respondents sell and distribute various assortments of said candy and other articles of 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 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 have what is commonly referred to as the candy concession in various theaters in several States of the United States, and offer for sale and sell their said products in accordance with the above described sales plan direct to the consuming public in such theaters. The respondents' merchandise is shipped or transported from their place of business to such theaters 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 is contrary to an established public policy of the Government of the United States and which is in violation of criminal laws. The use by respondents of said method has the tendency unduly to hinder competition or to create a monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who sell and distribute candy in competition with respondents as above alleged are unwilling to offer for sale or sell candy so packed and assembled as above alleged or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

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

offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents has the tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their said competitors who do not use the same or an equivalent method, to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful, to lessen competition in said candy trade, 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. In the course and conduct of their business as hereinabove related, respondents cause and have caused various false, deceptive, and misleading statements or representations concerning their said candy to appear in advertising matter distributed or caused to be distributed by respondents, of which the following statements or representations are examples but are not all-inclusive:

Hawaiian Health Confection—Rich in Vitamin "D."

The candy in this package contains the rare Sunshine Vitamin D.

ALOHA, the Hawaiian Confection. A wonderful chocolate sweetmeat containing the Sunshine Vitamin D, which has the same effect as the Hawaiian sun in building strong, straight bones and bodies. You don't have to go to Hawaii to get this wonderful confection.

675 U. S. P. units of Vitamin D in every pound, which is equal to four teaspoonfuls of Cod Liver Oil.

Respondents' advertising matter also contains the following statement:

To introduce this tasty and beneficial confection, we are giving away free with every package a valuable gift. Here are just a few of the hundreds of presents given away. The candy is worth many times the price paid for it, so try a package now * * * Buy the Candy * * * Get a valuable gift * * *

The effect of the foregoing false, deceptive, and misleading statements and representations of the respondents in selling and offering for sale such items of merchandise as hereinabove referred to, is to mislead and deceive a substantial part of the purchasing public in the various States of the United States and in the District of Columbia by inducing them to mistakenly believe (1) that respondents' candy contains vitamin D in sufficient amount to be beneficial to the purchaser's health and that the amount of vitamin D contained in every pound of respondents' candy is equal to that contained in four teaspoons of cod liver oil, and (2) that respondents give away certain

of their articles of merchandise without cost to the purchasers of said packages of candy.

PAR. 7. In truth and in fact respondents' candy does not contain a sufficient amount of vitamin D to be beneficial to the purchaser's health, and every pound of said candy does not contain vitamin D in a quantity which is equivalent to that contained in four teaspoons of cod liver oil, as represented by respondent; and none of repondents' so-called premiums or gifts or prizes is given away "free," but the prices thereof are included in the prices of said packages of candy.

PAR. 8. The use by respondents of the false, deceptive, and misleading statements and misrepresentations set forth herein has had and now has the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are among the competitors of respondents, as mentioned hereinabove, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid, trade is unfairly diverted to respondents from such competitors, and as a result thereof substantial injury is being done and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondents are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 10, A. D., 1938, issued and thereafter served its complaint in this proceeding upon the respondents Louis Keller and William Carsky, individually and as copartners trading as Casey Concession Co., charging them with unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint and in opposition thereto were introduced by the attorneys for the Commission and the at-

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Louis Keller and William Carsky, have been copartners since December 1, A. D., 1936, and during all of said time have traded as Casey Concession Co. Their principal place of business during all of said time has been located at 1132 South Wabash Avenue, Chicago, Ill.

PAR. 2. Respondents, during all the time herein mentioned, have been and now are engaged in the business of selling and distributing candy and other merchandise, consisting in part of cardboard toy cameras, women's hosiery, boxes of face powder, bottles of perfume, small note books and pencils, dolls, and cigarette cases, to operators and concessionaires of moving pictures, moving picture and burlesque theaters, tent shows, medicine shows, and circuses located in various States of the United States and in the District of Columbia. Respondents cause their products, when sold, to be transported from their principal place of business in the city of Chicago, State of Illinois, to purchasers thereof located in various States of the United States and in the District of Columbia. There is now, and during all the period herein mentioned has been, a course of trade by said respondents in such candy and other merchandise between and among the various States of the United States and in the District of Columbia. Respondents, in the course and conduct of their business have been and are in competition with other partnerships and with individuals and corporations likewise engaged in the sale and distribution of candy and other merchandise similar to that sold and distributed by respondents, in commerce between and among the various States of the United States and in the District of Columbia.

Respondents, in the course and conduct of their business as hereinafter described, sell and have sold assortments of candy and other merchandise so packed and assembled as to involve the use of a

lottery scheme or game of chance, when sold and distributed to the consuming public. One of said assortments is composed of 110 small cartons of uniform size, shape and appearance in each of which is placed an equal number of pieces of candy and an additional article of merchandise. Sales are 5 cents per carton. The various additional articles of merchandise vary in retail value, some thereof having a retail value in excess of 5 cents. The said additional articles of merchandise are effectively concealed in said cartons from purchasers and prospective purchasers until a purchase has been made, the carton broken open and the additional article of merchandise removed therefrom. The said additional articles of merchandise are thus distributed to the consuming public wholly by lot or chance. Others of said assortments are similar to the one hereinabove described, varying only in detail. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale or distribution of their merchandise in accordance with the sales plan hereinabove described.

PAR. 3. Respondents' customers resell said assortments to the consuming public in accordance with the aforesaid sales plan. The respondents thus place in the hands of others the means of conducting lotteries, or games of chance in the sale of their product.

PAR. 4. Many dealers in and ultimate consumers of candy are attracted by respondents' said method and manner of packing said candy, and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondents in preference to candy offered for sale and sold by competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents has the tendency and capacity, because of said element 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, to lessen competition in said candy trade, and 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.

CONCLUSION

The aforesaid acts and practices of the respondents 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 within the intent and meaning of the Federal 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, the testimony, and other evidence taken before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, the report of the trial examiners and exceptions thereto, briefs in support of and in opposition to the complaint, and oral arguments; and the Commission having made its findings as to the facts and its conclusion that the respondents, Louis Keller and William Carsky, individually and as copartners trading as Casey Concession Co., have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Louis Keller and William Carsky, individually and trading as Casey Concession Co., or trading under any other name or designation, 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 candy, cardboard toy cameras, women's hosiery, face powder, perfume, note books, pencils, dolls, cigarette cases, 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 any merchandise together with a sales plan or device, or separately, which said sales plan or device is 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

OHIO ART COMPANY

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

Docket 4183. Complaint, July 12, 1940—Decision, Oct. 28, 1941

Where a corporation engaged in interstate sale and distribution of toy musical tops, and, in said connection, in importing musical reeds made in Germany, stamped with the word "Germany" as indicating their foreign origin, which, in enclosing said reeds in its tops, was hidden from view—

Stamped or imprinted upon its said tops, containing such imported reeds, legend "Made in U. S. A.," and placed upon the carton or container enclosing the top notation "Made by The Ohio Art Co., Bryan, Ohio," with no disclosure of any kind upon its said product informing members of the purchasing public that the musical reeds contained therein were of German origin;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that its said products were wholly of domestic origin and manufacture, decidedly preferred over products made in Germany and many other foreign countries, with result that a substantial portion of the public was induced to and did purchase its said tops, and with effect of placing in the hands of unscrupulous and uninformed dealers means whereby they were enabled to mislead and deceive members of the purchasing public:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. R. A. McQuat and *Mr. Maurice C. Pearce* for the Commission.

Gebhard & Hogue, of Bryan, 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 Ohio Art 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, Ohio Art Co., is a corporation organized and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business at Bryan, Ohio.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of toy musical tops. Respondent causes its said products, when sold, to be transported from

its place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein respondent has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent uses constituent parts of materials of both foreign and domestic origin in its aforesaid toy musical tops. Such foreign parts and materials when imported and received by the respondent bear marks and imprints indicating the country of their origin. Among such foreign-made parts used by respondent are the musical reeds within the top which are imported from the country of Germany, and stamped thereon is the word "Germany."

PAR. 4. In the course and conduct of its business, it has been, and is, the practice of respondent in assembling the toy musical tops to conceal or hide from view of the prospective purchasers of the assembled tops the word "Germany," and such toy musical tops are then sold and distributed by the respondent in commerce as aforesaid without any marking thereon to inform members of the purchasing public that the musical reeds of said tops are of German or foreign origin.

PAR. 5. A further practice of respondent in connection with the sale and distribution of its toy musical tops is the stamping or imprinting upon such toy musical tops the legend "Made in U. S. A." The carton in which the top is contained bears the words "Made by The Ohio Art Co., Bryan, Ohio," representing that such tops are manufactured at the respondent's place of business in Bryan, Ohio, and that such tops are wholly of domestic origin and manufacture rather than foreign origin and manufacture. In truth and in fact, such tops are not wholly of domestic origin and manufacture, as the musical reeds therein which constitute the musical part of the tops are made in Germany.

PAR. 6. For many years last past there has been maintained among manufacturers in the United States an established custom and practice of marking products of foreign origin in such manner as to indicate that such products are in fact of foreign rather than domestic origin. The purchasing public is familiar with and relies upon such custom and practice and when products bear no marking indicating that they are of foreign origin the purchasing public assumes that such products are of domestic origin.

PAR. 7. 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 Germany or any other foreign country.

PAR. 8. The practice of the respondent of obliterating or obscuring the word "Germany" appearing on the reeds used in the manufacture of its tops, and of imprinting on its tops the legend "Made in U. S. A.," and of using on the cartons in which said tops are packaged and offered for sale the words "Made by The Ohio Art Co., Bryan, Ohio," without disclosing to prospective purchasers that the musical reeds used in such tops are made in Germany, has a tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's toy musical tops are wholly of domestic 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 product.

Through the practices herein set forth, the respondent places 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 as to the source or origin of said tops and the parts thereof.

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 July 12, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, The Ohio Art Co., a corporation (designated in the complaint as Ohio Art 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by R. A. McOmat, attorney for the Commission, and in opposition to the allegations of the complaint by Messrs. Gebhard and Hogue, attorneys for the respondent, 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 said complaint, answer thereto, testimony and other

evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto and oral argument before the Commission, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The Ohio Art Co., is a corporation organized and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business at Bryan, Ohio.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of toy musical tops. Respondent causes its said products, when sold, to be transported from its place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein respondent has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, the respondent purchased and imported musical reeds manufactured in the country of Germany, which reeds were used in the manufacture of respondent's musical tops. These reeds consisted of a small metal plate or disk containing a number of slots or openings over which brass strips were riveted. When such reeds were imported into the United States they bore the word "Germany" stamped thereon to indicate the foreign origin of said reeds. The use of such reeds in a musical top operates to make a wind instrument, and in the manufacture of such tops it is necessary to so construct them that a current of air passes through the reeds to give the desired musical effect. In manufacturing such tops and enclosing the reeds therein, the word "Germany" stamped on such reeds and indicating their foreign origin, is concealed or hidden from view.

PAR. 4. It was the practice of the respondent, in connection with the sale and distribution of its musical tops containing reeds imported from Germany, to stamp or imprint thereon the legend "Made in U. S. A.," and also to place upon the carton or container in which the musical top is marketed, the notation "Made by The Ohio Art Co., Bryan, Ohio." No marking of any kind appears upon said products informing members of the purchasing public that the musical reeds contained in said tops are of German or foreign origin.

PAR. 5. In addition to the reeds imported from Germany, the respondent also purchases reeds made in the United States, and as of December 5, 1940, the respondent had on hand 7,049 gross of reeds made in Germany and 785 gross of reeds manufactured in the United States.

PAR. 6. There is among members of the purchasing public a decided preference for products which are manufactured in the United States over products manufactured in Germany and many other foreign countries. When the unqualified legend "Made in U. S. A." or words of similar import or meaning are stamped upon or attached to an article of merchandise, it is understood by members of the purchasing public to indicate that such article of merchandise is wholly of domestic origin and manufacture. In like manner the unqualified use of the words "Made by" or words of similar import and meaning in conjunction with trade names of geographic significance in the United States or with geographic locations within the United States, is understood by members of the purchasing public to indicate that such articles of merchandise are wholly of domestic origin and manufacture.

PAR. 7. The practice of the respondent in obscuring the legend "Germany" appearing on the reeds used in the manufacture of its musical tops and in offering for sale, selling, and distributing such musical tops bearing the notations "Made in U. S. A." and "Made by The Ohio Art Co., Bryan, Ohio," without disclosing that the reeds contained therein were made in Germany, 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 tops are wholly of domestic origin and manufacture. As a result of such erroneous and mistaken belief engendered as herein set forth, a substantial portion of the public are induced to, and do, purchase respondent's products.

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

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony, and other evidence taken before Lewis C. Russell, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner thereon and exceptions filed thereto, and 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, The Ohio Art Co., a corporation, its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of musical tops 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 term "Made in U. S. A." or any other term of similar import or meaning, on labels, containers, or in advertising of musical tops or other similar products which contain reeds manufactured in Germany, or any other foreign country, without clearly disclosing the foreign origin of such reeds.

2. Using the unqualified words "Made by" or any other word or words of similar import or meaning in conjunction with trade names having a geographical significance in the United States or in conjunction with geographic locations within the United States, on labels, containers, or in any other manner, so as to imply that respondent's musical tops or other similar products which contain reeds manufactured in Germany or any other foreign country, are wholly of domestic origin and manufacture without clearly disclosing the foreign origin of such reeds.

3. Representing in any manner whatsoever that respondent's musical tops or other similar products are made in the United States when in fact such products are manufactured, in whole or in part, in Germany, or any other foreign country.

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

IN THE MATTER OF

JOHN MARICAK, DOING BUSINESS AS CONTINENTAL SILVER COMPANY OF AMERICA

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

Docket 4369. Complaint, Oct. 31, 1940—Decision, Oct. 28, 1941

Where an individual engaged in interstate sale and distribution to retailers of a so-called sales stimulator plan which involved premium cards, advertising material, and silverware and was similar to other such plans made use of by him at other times during the last several years;

In offering his said plan, which (1) involved the purchase of so-called premium cards at $4.50 a thousand by the dealer for issuance to his customers upon their purchases in specified amounts and his undertaking to redeem such cards in Wm. A. Rogers silverware, he supplying to dealer-purchasers various advertising posters for use in putting plan into effect and, in some instances, sets of silverware for display purposes, and which (2) was presented to dealers by his representatives or agents who, traveling extensively through the United States, were supplied by him with contract forms and with samples of the advertising posters and display sets—

(*a*) Represented, through his representatives and agents, that he was connected with, or was a representative of, Wm. A. Rogers, Ltd., Oneida, Ltd., Successor, manufacturers of the silverware used in the operation of his said plan, and that such plan was an advertising campaign conducted by or on behalf of said manufacturers;

Facts being he was not in any manner connected with said concern, but purchased Wm. A. Rogers silverware in the open market, usually from independent jobbers, and his said plan was a commercial enterprise conducted for his own profit;

(*b*) Represented that he would provide retailers purchasing his plan with display sets of silverware which would become their property, making specific and prominent reference in the contract to such display set along with such representation;

Facts being that in some cases he failed to supply such dealers with any sets for aforesaid purposes;

(*c*) Represented, as aforesaid, and through advertising matter used by his agents in presenting the plan, that the dealer's customers, upon forwarding to him a certain designated number of premium cards, would receive silverware without cost; and

(*d*) Represented that after a designated percentage of such premium cards had been forwarded to him by dealer's customers for redemption, he would refund to the dealer entire amount paid by him, and that the operation of the plan would therefore be without cost to the dealer;

The facts being that premium cards forwarded to him for redemption in silverware were not thus redeemed without cost, but holders of such cards were required to remit certain amounts of money therewith in order to obtain silverware; his plan did not contemplate a refund to the dealer of the entire amount paid for the premium cards, his contracts being couched in ambiguous language, particularly so as to clauses respecting redemption of such cards and cash refunds to dealers, and it being impossible, as a practical

matter, under his construction and interpretation of the contract, for the dealer to recover more than a small part of the amount paid for the cards; With tendency and capacity to mislead and deceive a substantial number of retail dealers into the mistaken belief that such representations were true, and to cause them to purchase his sales stimulator plan as a result 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. William C. Reeves*, trial examiner.
Mr. Eldon P. Schrup for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that John Maricak, an individual, trading and doing business under the name Continental Silver Co. of America, 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, John Maricak, is an individual trading and doing business under the name and style of Continental Silver Co. of America, with his office and principal place of business located at 921 Charlevoix Building, Detroit, Mich. Respondent is now, and for more than 1 year last past has been, engaged in the business of offering for sale and selling a so-called sales stimulator plan, including premium cards, tableware, silverware, and other materials which are used in carrying said plan into effect, to retail merchants located in various States of the United States and in the District of Columbia.

PAR. 2. The respondent, being engaged in business as aforesaid causes said premium cards, tableware, silverware, and other materials used in connection with said so-called sales stimulator plan, when sold, to be transported from his office and principal place of business in Detroit, Mich., to purchasers thereof located at their respective points of location in various States of the United States other than the State of Michigan and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said premium cards, tableware, silverware, and other materials used in connection with said plan, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course of the operation of his business, and in order to sell his said plan and premium cards, and the tableware, silverware, and other materials used in connection therewith, respondent enters into a form of agreement with retail merchants who are contacted by respondent's selling agents.

Respondent's form of agreement provides for the purchase by the retail merchant of premium cards, upon which the merchant's name appears, at $4.50 per thousand which are to be given by the merchant to the merchant's customers upon the purchase by the customers of certain specified amounts of the merchant's goods.

By the terms of said form of agreement, respondent is to redeem in designated items of merchandise such premium cards when forwarded to respondent in specified numbers by such merchant's customers.

The form of agreement provides that respondent, as a part of such plan, is to furnish participating retail merchants with various display posters, circulars, redemption catalogs and advertisements to be used by said retail merchants in putting the aforesaid sales stimulator plan into effect and operation.

PAR. 4. In the course of the operation of his business and for the purpose of inducing retail merchants to purchase and use said plan and the premium cards, and the tableware, silverware, and other materials used in connection therewith, respondent makes the following representations:

1. That respondent is a representative of, or is connected with, or is putting into effect an advertising campaign for, Wm. A. Rogers, Ltd., Oneida, Ltd., Successor, of Sherrill, N. Y., manufacturers of tableware and silverware.

2. That respondent, for the purpose of putting such plan into operation, will provide retail merchants purchasing and using respondent's said plan and premium cards, with exhibit or display sets of tableware or silverware.

3. That respondent will redeem, without cost, in designated items of merchandise, such premium cards as are forwarded to him in specified numbers by the merchant's customers, and that respondent will refund to the retail merchant the entire purchase price of such premium cards after a designated number of such cards has been sent in by customers of such merchant for redemption.

4. That retail merchants may participate in said so-called sales stimulator plan and secure the cards, display or exhibit sets of tableware or silverware and the premiums for their customers without cost to the merchant.

PAR. 5. Respondent's representations as above set forth are grossly exaggerated, false, misleading, and deceptive. In truth and in fact, respondent is not in any manner connected with, representing, or conducting an advertising campaign for Wm. A. Rogers, Ltd., Oneida, Ltd., Successor. Respondent does not provide all merchants purchasing and using respondent's said plan and premium cards, with exhibit or display sets of tableware or silverware for use by such merchants in putting respondent's said plan into effect; nor does respondent refund to participating retail merchants the entire purchase price of said premium cards after a designated number of said premium cards has been sent to respondent by customers of said merchants for redemption. Retail merchants cannot participate in said plan and secure the premium cards, display or exhibit sets, and the premiums for their customers without cost to them.

PAR. 6. The use by respondent of the aforesaid false, misleading, and deceptive statements and representations has a capacity and tendency to, and does, mislead and deceive retail merchants, situated in various States of the United States, into the erroneous and mistaken belief that such statements and representations are true, and into the purchase and use of respondent's said so-called sales stimulator plan and the premium cards used in connection therewith.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 31, 1940, issued and thereafter served its complaint in this proceeding upon the respondent, John Maricak, an individual, trading and doing business under the name Continental Silver Co. of America, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint (no answer thereto being filed by respondent), testimony and other evidence in support of the allegations of the complaint were introduced by Eldon P. Schrup, attorney for the Commission, before William C. Reeves, a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, testimony, and other evidence, report

of the trial examiner upon the 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. For more than 2 years immediately prior to June 1940 the respondent, John Maricak, was trading and doing business under the name of Continental Silver Co. of America, with his office and principal place of business located at 921 Charlevoix Building, 2033 Park Avenue, Detroit, Mich. Respondent's business was that of selling to retail dealers a so-called sales stimulator plan, which plan involved premium cards, advertising material, and silverware. Respondent has at other times during the last several years been engaged in the sale of various other sales stimulator plans and has operated under various trade names. These plans were similar in all material respects to the more recent plan referred to above.

PAR. 2. In the course and conduct of his business respondent caused his sales stimulator plan, including premium cards, advertising material, and silverware, when sold, to be transported from his place of business in the State of Michigan to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein respondent maintained a course of trade in his sales stimulator plan in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent's sales stimulator plan involved the purchase by retail dealers of so-called premium cards from respondent at $4.50 per thousand cards. These cards, bearing the name of the dealer, were issued by the dealer to his customers upon the purchase by such customers of certain specified amounts of merchandise from the dealer, usually one card being given with each 25-cent purchase. Respondent agreed to redeem these premium cards in Wm. A. Rogers silverware. To dealers purchasing the sales stimulator plan, respondent supplied various advertising posters for use in putting the plan into effect, and in some instances sets of silverware to be used by the dealer for display purposes.

PAR. 4. For the purpose of contacting dealers and selling them his sales stimulator plan, respondent employed representatives or agents who traveled extensively throughout various sections of the

United States. These representatives were supplied by respondent with forms of contracts to be executed by dealers purchasing the plan, and also with sample advertising posters and samples of the display sets of silverware to be used in the operation of the plan.

PAR. 5. In the course and conduct of his business and for the purpose of inducing dealers to purchase his sales stimulator plan, the respondent, acting through his representatives and agents, made certain statements and representations to prospective purchasers. Among these statements and representations were the following:

1. That respondent was a representative of, or was connected with, Wm. A. Rogers, Ltd., Oneida, Ltd., Successor, manufacturers of the silverware used in the operation of respondent's sales stimulator plan, and that such sales stimulator plan was in the nature of an advertising campaign conducted by or on behalf of such silverware manufacturers.

2. That respondent would provide retail dealers purchasing respondent's sales stimulator plan with display sets of silverware which would become the property of the dealer.

3. That the dealer's customers, upon forwarding to the respondent a certain designated number of premium cards, would receive silverware without cost.

4. That after a designated percentage of such premium cards had been forwarded to respondent by the dealer's customers for redemption, respondent would refund to the dealer the entire amount paid by the dealer for such premium cards, and that the operation of the sales stimulator plan would therefore be without cost to the dealer.

The advertising matter supplied by respondent to his agents, and used by the agents in presenting the plan to dealers, featured the word "Free" and otherwise represented that the redemption of the premium cards in silverware would be without cost to the holders of the cards. Certain portions of the form of contract presented to the dealer were couched in ambiguous language, this being true particularly as to the clauses in the contract with respect to the redemption of the premium cards and the cash refund to the dealer. Specific and prominent reference was made in the contract to the display set of silverware, the representation being that the display set would be supplied to the dealer "Free" and would become the dealer's property.

PAR. 6. The Commission finds that these statements and representations were false and misleading. Respondent has not at any time been a representative of, or in any manner connected with, Wm. A. Rogers, Ltd., Oneida, Ltd., Successor. While the silverware used by respondent in connection with his sales stimulator plan was manu-

factured by such silverware concern, respondent purchased the silverware in the open market, usually from independent jobbers. Respondent's sales stimulator plan was in no sense an advertising campaign for or on behalf of such silverware manufacturers, but was merely a commercial enterprise conducted by respondent for his own profit. In some cases respondent failed to supply dealers purchasing his plan with any sets of silverware for display purposes. The premium cards forwarded to respondent for redemption in silverware were not redeemed without cost to the holders of such cards, but such holders were required to remit certain amounts of money along with such cards in order to obtain the silverware. Respondent's plan did not contemplate the refund to the dealer of the entire amount paid by the dealer for the premium cards. In fact, under the construction and interpretation placed upon the contract by respondent, it was impossible as a practical matter for the dealer to recover more than a small part of the amount paid for the cards.

PAR. 7. The Commission further finds that the use by the respondent of the aforesaid false and misleading representations had the tendency and capacity to mislead and deceive a substantial number of retail dealers into the erroneous and mistaken belief that such statements and representations were true, and to cause such dealers to purchase respondent's sales stimulator plan as a result of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (no answer thereto having been filed by respondent), testimony, and other evidence taken before William C. Reeves, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint, report of the trial examiner upon the evidence, and 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 the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, John Maricak, an individual, trading and doing business under the name Continental Silver Co. of America, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of his sales stimulator plan, including premium cards, advertising matter, silverware, or any other merchandise, do forthwith cease and desist from:

1. Representing either directly or by implication that respondent is a representative of, or has any connection with, the manufacturer of Wm. A. Rogers silverware: *Provided, however*, That this order shall not be construed to prohibit the respondent from dealing in such silverware.

2. Representing either directly or by implication that repondent's sales stimulator plan is in the nature of an advertising campaign conducted by or on behalf of the manufacturer of Wm. A. Rogers silverware.

3. Representing that respondent will supply dealers purchasing his sales stimulator plan with display sets of silverware for use in putting such plan into operation, when respondent does not in fact supply such display sets as represented.

4. Representing that respondent will give silverware or other merchandise free, when such silverware or other merchandise is not in fact given free.

5. Representing that premium cards or other similar devices will be redeemed in silverware or other merchandise, unless and until all of the terms and conditions of such offer are clearly stated in immediate connection or conjunction with such offer, and there is no deception as to the price to be paid in connection with the obtaining of such silverware or other merchandise.

6. Representing that upon the redemption of a specified number of premium cards respondent will refund any sum of money to dealers purchasing such cards, when such refund is not in fact made, and if there are any conditions connected with such refund, such conditions must be clearly stated in immediate connection or conjunction with such offer of refund.

7. Representing that the operation of respondent's sales stimulator plan is without cost to dealers purchasing such plan.

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

IN THE MATTER OF

J. FRED MALONE AND JOE P. MALONE, TRADING AS HARPER MANUFACTURING COMPANY, MALONE CLOTHING MANUFACTURING COMPANY, AND VARIOUS OTHER NAMES

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

Docket 4516. Complaint, June 5, 1941—Decision, Oct. 29, 1941

Where two individuals engaged in manufacture and in interstate offer and sale of men's clothing through traveling salesmen or agents, whom it equipped with kits including order blanks and sample swatches from which the purchaser made selections of material, and who, upon securing an order took and recorded the customers' measurements on order blanks and forwarded them, together with a number identifying the material selected, to said individuals at their place of business, collecting as their commission a substantial down payment on the purchase price, following which and transmission of order to said individuals, clothing was shipped to customer in question via parcel post, C. O. D. balance of contract, or purchase price—

(*a*) Represented that the garments would be made to order of the material selected, and that the material to be used contained no cotton, said salesmen making use of order blanks containing blank spaces for the height, weight, and general build of the customer and implying that the clothing sold by them was tailor made or made to measure—

The facts being garments thus ordered were of the ready-made variety or stock type of clothing, altered by individuals in question when deemed necessary partially to conform to the measurements shown on the order blank; many of the garments sent to their customers were not made in accordance with measurements submitted and of a cloth of a grade, texture, and weave corresponding with those selected by customer, but were made from material substantially inferior; said individuals in some instances failed to return purchase price received from customer, or to deliver garment selected by him; and materials from which products were made contained predominant quantities of cotton;

(*b*) Represented that the du Pont Company was back of, or associated with, said individuals in connection with the sale of their garments, that material used by them was made by said company, and that it was furnishing the goods free, the customer paying only for the labor involved;

The facts being that the E. I. du Pont de Nemours & Co., or, as also known, the du Pont Co., long engaged, among other things, in the manufacture of textile fabrics and possessed of a valuable good-will in the word "du Pont" as applied to its products, was not connected in any way with said individuals, and was not the maker of the material used by them; and

(*c*) Represented that the customer would have an opportunity to inspect and try on the garments before finally accepting them and paying the balance due, and that they manufactured all of the garments sold by their agents and shipped them to the customer direct from their own factory;

The facts being the C. O. D. shipment of the garments prevented the customer's exercise of such so-called choice or privilege, and said individuals did not make all the garments sold by them, nor ship the same to customers direct from their own factory;

With effect of misleading and deceiving prospective purchasers into the belief that said garments were made to order and manufactured according to the individual measurements recorded on said order blanks, as understood from said terms and as preferred by a substantial portion of the purchasing public, and that representations above set forth were otherwise true, as a result whereof a substantial number of purchasing public bought said garments 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. Joseph C. Fehr 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. Fred Malone and Joe P. Malone, individuals trading as Harper Manufacturing Co., Malone Clothing Manufacturing Co., Gray-Dickson Clothing Co, and Piedmont Clothing Co., and various other names, 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, J. Fred Malone and Joe P. Malone, hereinafter referred to as respondents, are individuals trading under the names Harper Manufacturing Co., Malone Clothing Manufacturing Co., Gray-Dickson Clothing Co., and Piedmont Clothing Co., with their principal office and place of business located at 1806–8–10 North Broad Street, in the city of Rome, in the State of Georgia.

PAR. 2. Respondents are now, and for more than 2 years last past have been, engaged in the business of manufacturing, offering for sale, and selling men's clothing through salesmen or agents who travel throughout the United States soliciting and accepting orders for such clothing.

PAR. 3. Respondents cause their said men's clothing, when sold, to be transported from their said place of business in the city of Rome, Ga., into and across the several States of the United States, to the purchasers thereof located at various points in the said several States of the United States other than in the State of Georgia, and in the District of Columbia.

PAR. 4. Respondents, in the course and conduct of their said business, as aforesaid, employ sales agents located throughout the several States of the United States to solicit and accept orders for their said clothing. Said salesmen or agents are equipped by respondents with order blanks containing spaces for entering thereon the individual measurements of each purchaser, and are furnished by respondents with sample swatches of materials forming parts of kits from which the purchaser makes selections as to color, weave, and quality of material from which the suit or other garment ordered is to be made. When a salesman or sales agent obtains an order for a suit or other garment, he takes the measurements of the purchaser and enters this and other information regarding the weight, height, general build, and appearance of the purchaser on the said order blank, together with a number identifying the material selected by the purchaser, and forwards the same to respondents at their said place of business in Rome, Ga., where the garment ordered is purportedly to be made to order from the material so selected by the customer from samples shown, and according to the individual measurements of the purchaser thereof. When the clothing is delivered to the customer, it is shipped to him by respondents via parcel post C. O. D. The prices at which said clothing is sold vary, according to the quality of the material selected, and said salesman or sales agent collects from the customer in each instance a substantial down payment or installment on the purchase price. The cash deposit thus collected by the agent or salesman constitutes the said salesman's commission. The balance of the contract or purchase price is to be paid to respondents by the customers when the garment is delivered C. O. D., as aforesaid.

PAR. 5. The said salesmen and sales representatives taking orders as aforesaid from members of the purchasing public represent themselves to be, and are accepted by the said purchasing public as being, agents of the respondents, and the proceeds of their said sales, after deducting agent's commission therefrom, as aforesaid, are received and accepted by, and inure to the financial benefit of, said respondents. Respondents furnish each of said sales agents and representatives with a credential card introducing him to the customer or prospective customer as an agent of respondents, authorized to sell pants and suits and to collect deposits thereon. Said identification cards are issued in one of the trade names employed by respondents in the operation of their said business.

PAR. 6. Made-to-measure or made-to-order clothing is understood by the trade and the purchasing public generally to be, and to mean, garments which are cut and made to the individual measurements of the person for whom intended. In order to produce a made-to-meas-

ure or made-to-order garment, as understood by the trade and purchasing public, it is necessary and essential that a person experienced and skilled in taking and making measurements for such garments shall measure the person for whom the garment is to be made so as to convey to the tailor actually making the garment accurate and specific measurements and information regarding the weight, height, general build, and appearance of the person measured. To obtain this information with any degree of accuracy and exactness, experience and skill on the part of the person taking or making the measurements are required. There exists among the purchasing public the belief that made-to-measure or made-to-order garments fit with more accuracy than do garments which are not so made, and there exists a preference on the part of a substantial portion of the purchasing public for made-to-measure or made-to-order garments.

PAR. 7. E. I. du Pont de Nemours & Co., also known as The du Pont Co., is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, with its factory and principal place of business located in the city of Wilmington, in the State of Delaware. It is now and for many years has been engaged, among other things, in the manufacture of rayon and other textile fabrics used in the manufacture of men's as well as women's garments. It has for several years last past also been engaged in the sale and distribution of said products, in commerce, between and among the various States of the United States and in the District of Columbia, causing said products, when sold, to be shipped from its place of business in the State of Delaware, or from its factories or places of business in various States of the United States, to purchasers thereof located in States of the United States other than the State of Delaware, or other than the States in which said factories or places of business are located. Said Company has built up and enjoys a valuable good will in the word "du Pont" as applied to its products, particularly rayon and other textile fabrics. Purchasers and prospective purchasers of men's and women's garments made of rayon and other textile fabrics as well as members of the respective trades dealing therein have, through long usage and over a long period of time, identified many rayon and other textile fabrics represented as "du Pont," as being the products of the du Pont Company, and have purchased substantial quantities of said products by reason of their superior quality and reputation.

PAR. 8. For the purpose of selling respondents' said garments and inducing purchasers to sign orders therefor, sales representatives of respondents, in sales talks employed by them, make many false and

misleading statements and representations. Among and typical of said statements and representations are the following:

That the guarantee will be made to order or measure.

That said garments will be of a certain material, color, design, weave, or pattern, as per sample shown.

That the material from which said garments were to be made contained no cotton.

That the du Pont Co. is back of or is associated with respondents in connection with the sale of their said garments; that the material used by respondents is manufactured by the du Pont Co.; that the du Pont Co. is furnishing free the goods to be used in the making of the said garments, the customer paying only for the labor involved in the making thereof.

That the customer will have an opportunity to inspect and try on the garments before finally accepting the same and paying the balance due thereon.

That respondents manufacture all of the garments sold by their said agents, and ship the same to the customer direct from their own factory.

PAR. 9. In truth and in fact, the men's garments delivered by respondents to purchasers who are induced to order, as aforesaid, were not and are not made-to-measure or made-to-order garments as those terms are understood by the purchasing public but were, and are, of the ready-made variety or stock type of clothing, and which are altered by respondent when deemed necessary partially to conform to the measurements shown on the order blanks, but at no time does the customer receive clothing made to measure or made to order. Further, in many instances, the garments sent to such customers do not correspond to the sample displayed to the said customer by said sales agents or sales representatives and as selected by said customers. Said garments are not made in accordance with measurements submitted by said salesmen, agents, or representatives of a cloth of the grade, texture, and weave the same as those displayed by respondents' said sales agents and representatives and selected by said customers. In many instances, garments delivered to purchasers are made from materials substantially inferior in quality, grade, weave, and texture to, and different from, the samples selected by the purchasers. The respondents in many instances have failed and refused to return the purchase price received from the customer or to deliver a garment made from the material selected by him.

The du Pont Co. is not in any manner associated with respondents in connection with the sale of their said garments. The material used in the manufacture of said products is not made by the du Pont

Co., nor does the du Pont Co. supply such materials to the respondents free or otherwise. The customer does not pay only for the labor involved, but pays for the materials used and a profit to respondents. The materials from which respondents' products are made are composed of, or contain predominant quantities of, cotton.

Customers do not have an opportunity to inspect or to try on the garments before finally accepting the same and paying the balance due thereon, the C. O. D. shipment thereof preventing the exercise of such so-called choice or privilege. Respondents do not manufacture all of the garments sold by them, nor ship the same to customers direct from their own factory.

PAR. 10. The foregoing false and misleading statements and representations made by and on behalf of the respondents, as aforesaid, in connection with the sale of their said garments, as above set out, were and are calculated to have, and have had and do now have, the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are and were true. As a result of such erroneous and mistaken belief so induced, a substantial number of the purchasing public have purchased a substantial volume of respondents' said products.

PAR. 11. 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 5th day of June 1941, issued and thereafter served its complaint in this proceeding upon respondents, J. Fred Malone and Joe P. Malone, individuals, trading as Harper Manufacturing Co., Malone Clothing Manufacturing Co., Gray-Dickson Clothing Co., Piedmont Clothing Co., and various other names, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On July 16, 1941, 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 Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charge stated in the complaint, or in opposi-

tion 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 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. Respondents, J. Fred Malone and Joe P. Malone, hereinafter referred to as respondents, are individuals trading under the names Harper Manufacturing Co. and Piedmont Clothing Co., with their principal office and place of business located at 1806–8–10 North Broad Street, in the city of Rome, in the State of Georgia. Since on or about January 1, 1941, respondents have discontinued trading under the names Malone Clothing Manufacturing Co., Gray-Dickson Clothing Co., and various other names.

PAR. 2. Respondents are now, and for more than 2 years last past have been, engaged in the business of manufacturing, offering for sale, and selling men's clothing through salesmen or agents who travel throughout the United States soliciting and accepting orders for such clothing.

PAR. 3. Respondents caused their said men's clothing, when sold to be transported from their said place of business in the city of Rome, Ga., into and across the several States of the United States, to the purchasers thereof located at various points in the said several States of the United States other than in the State of Georgia, and in the District of Columbia.

PAR. 4. Respondents, in the course and conduct of their said business, as aforesaid, employ sales agents located throughout the several States of the United States to solicit and accept orders for their said clothing. Said salesmen or agents are equipped by respondents with order blanks containing spaces for entering thereon the individual measurements of each purchaser. Said order blanks contain descriptions of various styles of men's suits, including coats, pants, and vests, together with pictorial designs showing a man going through the various stages of being measured for a coat, vest, and pants. Said order blanks also contain blank spaces calling for

information as to the height, weight, and general build of a customer and the names and addresses of respondents' sales agent or representative and the customer. Respondents also furnish said salesmen or agents with sample swatches of materials forming parts of kits from which the purchaser makes selections as to color, weave, and quality of material from which the suit or other garment ordered is to be made. When a salesman or sales agent obtains an order for a suit or other garment, he takes the measurements of the purchaser and enters this and other information regarding the weight, height, general build, and appearance of the purchaser on the said order blank, together with a number identifying the material selected by the purchaser, and forwards the same to respondents at their said place of business in Rome, Ga., where the garment ordered is purportedly to be made to order from the material so selected by the customer from samples shown, and according to the individual measurements of the purchaser thereof.

When the clothing is delivered to the customer, it is shipped to him by respondents via parcel post C. O. D. The prices at which said clothing is sold vary according to the quality of the material selected, and said salesman or sales agent collects from the customer in each instance a substantial down payment or installment on the purchase price. The cash deposit thus collected by the agent or salesman constitutes the said salesman's commission. The balance of the contract or purchase price is to be paid to respondents by the customer when the garment is delivered C. O. D. as aforesaid.

PAR. 5. The said salesmen and sales representatives taking orders as aforesaid from members of the purchasing public represent themselves to be, and are accepted by the said purchasing public as being, agents of the respondents, and the proceeds of their said sales, after deducting agent's commission therefrom, as aforesaid, are received and accepted by, and inure to the financial benefit of, said respondents. Respondents furnish each of said sales agents and representatives with a credential card introducing him to the customer or prospective customer as an agent of respondents, authorized to sell pants and suits and to collect deposits thereon. Said identification cards are issued in one of the trade names employed by respondents in the operation of their said business.

PAR. 6. Made-to-measure or made-to-order clothing is understood by the trade and the purchasing public generally to be, and to mean, garments which are cut and made to the individual measurements of the person for whom intended. In order to produce a made-to-measure or made-to-order garment, as understood by the trade and purchasing public, it is necessary and essential that a person experi-

enced and skilled in taking and making measurements for such garments shall measure the person for whom the garment is to be made so as to convey to the tailor actually making the garment accurate and specific measurements and information regarding the weight, height, general build and appearance of the person measured. To obtain this information with any degree of accuracy and exactness, experience and skill on the part of the person taking or making the measurements are required. There exists among the purchasing public the belief that made-to-measure or made-to-order garments fit with more accuracy than do garments which are not so made, and there exists a preference on the part of a substantial portion of the purchasing public for made-to-measure or made-to-order garments.

PAR. 7. E. I. du Pont de Nemours & Co., also known as The du Pont Co., is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, with its factory and principal place of business located in the city of Wilmington, in the State of Delaware. It is now and for many years has been engaged, among other things, in the manufacture of rayon and other textile fabrics used in the manufacture of men's as well as women's garments. It has for several years last past also been engaged in the sale and distribution of said products, in commerce, between and among the various States of the United States and in the District of Columbia, causing said products, when sold, to be shipped from its place of business in the State of Delaware, or from its factories or places of business in various States of the United States, to purchasers thereof located in States of the United States other than the State of Delaware, or other than the States in which said factories or places of business are located. Said company has built up and enjoys a valuable good will in the word "du Pont" as applied to its products, particularly rayon and other textile fabrics. Purchasers and prospective purchasers of men's and women's garments made of rayon and other textile fabrics as well as members of the respective trades dealing therein have, through long usage and over a long period of time, identified many rayon and other textile fabrics represented as "du Pont" as being the products of the du Pont Co., and have purchased substantial quantities of said products by reason of their superior quality and reputation.

PAR. 8. For the purpose of selling respondents' said garments and inducing purchasers to sign orders therefor, sales representatives of respondents, in sales talks employed by them, have made many false and misleading statements and representations. Among and typical of said statements and representations were the following:

That the garments would be made to order or measure.

That said garments would be of a certain material, color, design, weave, or pattern, as per sample shown.

That the material from which said garments were to be made contained no cotton.

That the du Pont Co. was back of or was associated with respondents in connection with the sale of their said garments; that the material used by respondents was manufactured by the du Pont Co.; that the du Pont Co. was furnishing free the goods to be used in the making of the said garments, the customer paying only for the labor involved in the making thereof.

That the customer would have an opportunity to inspect and try on the garments before finally accepting the same and paying the balance due thereon.

That respondents manufactured all of the garments sold by their said agents, and shipped the same to the customer direct from their own factory.

PAR. 9. In truth and in fact, the men's garments delivered by respondents to purchasers who are induced to order, as aforesaid, were not and are not made-to-measure or made-to-order garments as those terms are understood by the purchasing public but were, and are, of the ready-made variety or stock type of clothing, and which are altered by respondents when deemed necessary partially to conform to the measurements shown on the order blanks, but at no time does the customer receive clothing made to measure or made to order. The use of said order blanks by respondents' salesmen and representatives as hereinabove described has the capacity and tendency to and does mislead and deceive prospective purchasers into the belief that said men's suits and pants when delivered are made-to-measure or made-to-order garments and are manufactured according to the individual measurements taken and recorded on said order blanks by respondents' said agents and representatives.

In some instances, the garments sent to respondents' customers did not correspond to the sample displayed to such customers by respondents' sales agents or sales representatives, and as selected by such customers. Many of said garments were not made in accordance with measurements submitted by said salesmen, agents or representatives of a cloth of the grade, texture, and weave the same as those displayed by respondents' said sales agents and representatives and selected by said customers. In many instances, garments delivered to purchasers were made from materials substantially inferior in quality, grade, weave, and texture to, and different from, the samples selected by the purchasers. The respondents in some instances failed to return the purchase price received from the cus-

tomer or to deliver a garment made from the material selected by him.

The du Pont Co. is not in any manner associated with respondents in connection with the sale of their said garments. The material used in the manufacture of said products is not made by the du Pont Co., nor does the du Pont Co. supply such materials to the respondents, free or otherwise. The customer does not pay only for the labor involved, but pays for the materials used and a profit to respondents. The materials from which respondents' products are made are composed of, or contain predominant quantities of, cotton.

Customers do not have an opportunity to inspect or to try on the garments before finally accepting the same and paying the balance due thereon the C. O. D. shipment thereof preventing the exercise of such so-called choice or privilege. Respondents do not manufacture all of the garments sold by them, nor ship the same to customers direct from their own factory.

PAR. 10. The foregoing false and misleading statements and representations made by salemen and agents representing the respondents, as aforesaid, in connection with the sale of respondents' said garments, as above set out, had the tendency and capacity to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true. As a result of such erroneous and mistaken belief so induced, a substantial number of the purchasing public purchased a substantial volume of respondents' said garments.

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 Richard P. Whiteley, assistant chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the 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, J. Fred Malone and Joe P. Malone, individuals trading as Harper Manufacturing Co., Malone Clothing Manufacturing Co., Gray-Dickson Clothing Co., Piedmont Clothing Co., and various other names, whether trading under said trade names or otherwise, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of men's clothing in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using order blanks in taking orders for ready-made clothing which contain illustrations showing measurements being taken for the fitting of men's tailor-made or made-to-measure clothes, instructions for such fittings, or blank spaces for the entry of such fittings, or which otherwise import and imply that the clothing sold by respondents is tailor-made or made to measure.

2. Representing that the ready-made suits and other garments sold by respondents will be made from the materials selected by the purchasers from samples exhibited by their salesmen or agents, unless and until ready-made suits and other garments sold by respondents are made from materials of the identical quality, color, design, weave, and pattern selected by such purchasers.

3. Representing that the material from which respondents' ready-made suits and other garments are made contains no cotton, when such is not the fact.

4. Representing that E. I. du Pont de Nemours & Co., also known as the du Pont Co., is in any manner associated with respondents in connection with the sale of their ready-made suits and other garments, or that the material contained in respondents' ready-made suits and other garments is manufactured by said du Pont Co. or that said du Pont Co. is furnishing free the goods to be used in the making of respondents' said ready-made suits and other garments, and that the customer is paying only for the labor involved in the making thereof.

5. Representing that respondents' customers will have an opportunity to inspect and try on the ready-made suits and other garments shipped to such customers by respondents before finally accepting the same and paying the balance due thereon, unless and until an opportunity for such inspection and trying on of respondents' suits and other garments is actually provided before such customers finally accept such clothing and pay any balance due thereon.

6. Representing that respondents manufacture all of the ready-made suits and other garments sold by them or their agents and ship same to the customer direct from their own factory.

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 4573. Complaint, Aug. 21, 1941—Decision, Oct. 29, 1941

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of assortments of knives so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing public, a typical assortment including a card with 12 knives and a push card, for use, as thereon explained, under a plan by which the amount paid for a knife, each of which was of the same value, varied from 1 cent to 39 cents in accordance with the number secured by chance from card;

Sold such assortments to wholesalers and jobbers, and, directly or indirectly, to retailers, by whom they were exposed and sold to the purchasing public in accordance with such sales plan, under which the prices of said knives were determined wholly by lot or chance, and involving a game of chance to procure said articles at much less than their normal retail price; and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products, contrary to an established public policy of the United States Government, and in competition with many who, unwilling to use any method involving chance or otherwise contrary to public policy, refrain therefrom;

With the result that many persons were attracted by such sales plan and the element of chance involved therein, and were thereby induced to buy and sell its knives in preference to those of its competitors who do not use the same or equivalent methods, whereby trade was unfairly diverted to it from its said competitors; to the substantial injury of competition in commerce:

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

Mr. J. W. Brookfield, Jr., 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

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

PARAGRAPH. 1. Respondent, Imperial Knife Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 14 Blount Street, Providence, R. I. Respondent is now and for more than 1 year last past has been engaged in the manufacture and in the sale and distribution of knives 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 knives, when sold, to be transported from its place of business in the city of Providence, R. I., to purchasers thereof at their respective points of location in various States of the United States other than Rhode Island, 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 knives 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 firms and individuals engaged in the sale and distribution of knives 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 knives so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing public. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment includes a card containing 12 pocket knives and a push card. Appearing on the face of the push card is the following legend:

EVERY PUNCH WINS
1¢ TO 39¢

PAY WHAT YOU PUNCH
FROM 1¢ TO 39¢
NO HIGHER
EVERY PLAYER WINS

Said knives are distributed to the purchasing public in accordance with the foregoing legend and in the following manner:

The push card bears 12 partially perforated disks on the face of which is printed the word "Push." Concealed within each disk is a number ranging from 1 cent to 39 cents. When the disks are pushed or separated from the card one of these numbers is disclosed. Purchasers punching numbers 1, 26, 39, etc., pay respectively 1 cent, 26 cents, 39 cents. The purchaser of each punch receives a knife, all of the knives being of the same retail value. 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 knives 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 knives 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 push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's knives 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 knives and the sales of said knives 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. The sale of knives 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 knives at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute knives 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 knives and in the element of chance involved therein, and are thereby induced to buy and sell respondent's knives in preference to knives 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 acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 21, 1941, issued, and thereafter served, its complaint in this proceeding upon respondent Imperial Knife Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce, and unfair acts and practices in commerce in violation of the provisions of said act. 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 Imperial Knife Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 14 Blount Street, Providence, R. I. Respondent is now and for more than 1 year last past has been engaged in the manufacture and in the sale and distribution of knives 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 knives, when sold, to be transported from its place of business in the city of Providence, R. I., to purchasers thereof at their respective points of location in various States of the United States other than Rhode Island, 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 knives 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 firms and individuals engaged in the sale and distribution of knives 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 knives so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the purchasing public. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment includes a card containing 12 pocket knives and a push card. Appearing on the face of the push card is the following legend:

EVERY PUNCH WINS
1¢ to 39¢
PAY WHAT YOU PUNCH
FROM 1¢ to 39¢
NO HIGHER
EVERY PLAYER WINS

Said knives are distributed to the purchasing public in accordance with the foregoing legend and in the following manner:

The push card bears 12 partially perforated disks on the face of which is printed the word "Push." Concealed within each disk is a number ranging from 1 cent to 39 cents. When the disks are pushed or separated from the card one of these numbers is disclosed. Purchasers punching numbers 1, 26, 39, etc., pay respectively 1 cent, 26 cents, 39 cents. The purchaser of each punch receives a knife, all of the knives being of the same retail value. 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 knives 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 knives 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 push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's knives 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 knives and the sales of said knives 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. The sale of knives 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 knives at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute knives 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 knives and in the element of chance involved therein, and are thereby induced to buy and sell respondent's knives in preference to knives 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.

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 acts and practices in commerce within the intent and meaning of the Federal 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, 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 pocket knives or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing knives, or any other merchandise, so packed or assembled that sales of such knives 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 knives 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 knives or other merchandise to the public.

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

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

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

FRANCO-BELGIAN IMPORTING CO., INC. Complaint, August 7, 1940. Order, June 10, 1941. (Docket 4223.)

Charge: Naming products misleadingly and misbranding or mislabeling as to source or origin, composition, and nature of manufacture of product; in connection with the importation and sale of rugs.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record and it appearing that the corporate existence of the respondent has been terminated and the Commission having duly considered the matter and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed.

Mr. Randolph W. Branch for the Commission.

Mr. Martin Werner, of New York City, for respondent.

JOHN H. RYDER ET AL. Complaint, September 5, 1940. Order, June 11, 1941. (Docket 4302.)

Charge: Disparaging and misrepresenting competitive products as copyright infringements, threatening copyright infringement suits in bad faith to discourage competitive purchases or dealings, offering exclusive rights falsely or misleadingly, and representing product falsely or misleadingly as new and protected by copyright; in connection with the offer and sale of ready-made advertising copy and materials, including mats and cuts.

Dismissed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the motion of counsel for respondents that the complaint in this case be dismissed as to John H. Ryder, The Amsterdam Syndicate, Inc., Deward & Rich, Inc., and Norm Advertising, Inc., upon the ground of failure of proof and as to corporate respondents Abbott & Walker, Inc., Bradley Advertising, Inc., Dayton Lee, Inc., Lindsay & Brewster, Inc., Vanderbilt Advertising Agency, Inc., and Thomas Gailord & Reynolds, Inc., on the ground that said corporations have been dissolved and are no longer in existence, and it appearing that on September 26, 1940, the complaint herein was dismissed as to Baids, Inc., Advertisers Exchange, Inc., Boyd-Scott

Co., Inc., McTee & Co., Inc., Van Tine Features Syndicate, Inc., Carr & Lewis, Inc., Clare & Foster, Inc., Hargrace Co., Inc., Namron Advertising, Inc., and John Smithson Co., Inc.,[1] and the Commission having duly considered said motion and the record herein, and being now fully advised in the premises.

It is ordered, That the complaint herein be, and the same hereby is, dismissed as to respondents John H. Ryder, The Amsterdam Syndicate, Inc., Deward & Rich, Inc., and Norm Advertising, Inc., upon the ground of failure of proof, and as to respondents Abbott & Walker, Inc., Bradley Advertising, Inc., Dayton Lee, Inc., Lindsay & Brewster, Inc., Vanderbilt Advertising Agency, Inc., and Thomas Gailord & Reynolds, Inc., on the ground that the said corporations have been dissolved.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jay L. Jackson for the Commission.

Mr. Frank H. Foley, of New York City, for John H. Ryder, The Amsterdam Syndicate, Inc., Deward & Rich, Inc., and Norm Advertising, Inc.

Mr. Louis Fieldman, of New York City, for Baids, Inc., Advertisers Exchange, Inc., Boyd-Scott Co., Inc., McTee & Co., Inc., Van Tine Features Syndicate, Inc., Carr & Lewis, Inc., Clare & Foster, Inc., Hargrace Co., Inc., Namron Advertising, Inc., and John Smithson Co., Inc.

LIGHTFOOT SCHULTZ CO., CONTINENTAL BLADE CORP., and LAWRENCE DISTRIBUTING CORP. Complaint, May 31, 1940. Order, June 26, 1941. (Docket 4148.)

Charge: Misrepresenting value and quality or retail selling prices of products; in connection with the manufacture and sale of soaps and soap products.

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[1] The Commission on September 26, 1940, dismissed the complaint as to certain respondents by the following order:

This matter coming on to be heard by the Commission upon the motion and verified petition of respondent Advertisers Exchange, Inc., moving the dismissal of the complaint as to the respondents, Advertisers Exchange, Inc., Baids, Inc., Boyd-Scott Co., Inc., McTee & Co., Inc., Van Tine Features Syndicate, Inc., Carr & Lewis, Inc., Clare & Foster, Inc., Hargrace Co., Inc., Namron Advertising, Inc., and John Smithson Co., Inc., corporations, for the reason that corporate respondents Baids, Inc., Boyd-Scott Co., Inc., McTee & Co., Inc., Van Tine Features Syndicate, Inc., Carr & Lewis, Inc., Clare & Foster, Inc., Hargrace Co., Inc., Namron Advertising, Inc., and John Smithson Co., Inc., have been dissolved and are no longer in existence; and for the reasons that respondent Advertisers Exchange, Inc., is not engaged in the type of advertising business alleged in the complaint to which the alleged unfair methods of competition and unfair and deceptive acts and practices relate, and that respondent Advertisers Exchange, Inc., has not used, and is not using, the acts, practices, and methods alleged in the complaint, and that respondent John H. Ryder has not exercised any control or direction over or had any interest in respondent Advertisers Exchange, Inc., since long perior to the issuance of said complaint; and the Commission having duly considered said motion and verified petition, the exhibits submitted therewith and the records herein, and being now fully advised in the premises.

It is ordered, That said motion be, and the same hereby is, granted, and the complaint herein is dismissed as to respondents Advertisers Exchange, Inc., Baids, Inc., Boyd-Scott Co., Inc., McTee & Co., Inc., Van Tine Features Syndicate, Inc., Carr & Lewis, Inc., Clare & Foster, Inc., Hargrace Co., Inc., Namron Advertising, Inc., and John Smithson Co., Inc.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission on the record and upon briefs in support of the complaint and in opposition thereto, and the Commission having duly considered the matter, and being now fully advised in the premises.

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Mr. Milton Dammann and *Mr. Charles F. Goldberg*, of New York City, for respondents.

MERCK & CO., INC. Complaint, April 5, 1938. Order, July 9, 1941. (Docket 3373.)

Charge: Discrimination in price in violation of Section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act; in connection with the manufacturing, compounding, packaging, bottling, and selling a line of laboratory, medicinal, analytic, technical, and photographic chemicals.

Dismissed, after answer, by the following order:

This matter coming on to be heard by the Commission upon recommendation of the Chief Counsel 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. Allen C. Phelps for the Commission.

Hughes, Richards, Hubbard & Ewing, of New York City, for respondent.

L. B. PATTERSON, trading as WATCH-MY-TURN SIGNAL CO. Complaint, October 3, 1940. Order, July 9, 1941. (Docket 4331.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results and unique nature of product and earnings or profits to be made by salesmen; in connection with the assembling and sale of an electrical signaling device intended for use on automobiles.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission and it appearing that the evidence is not sufficient to sustain the allegations of the complaint, and the Commission having duly considered the matter, and being now fully advised in the premises.

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

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

Mr. Donovan R. Divet and *Mr. Eldon P. Schrup* for the Commission.

GOLDING BROTHERS CO., INC. Complaint, October 29, 1940. Order, July 23, 1941. (Docket 4365.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to quality and properties of products; in connection with the manufacture and sale of cloth fabrics.

Record closed, after answer, by the following order:

This matter duly came on to be heard by the Commission upon the record. The respondent in this proceeding was charged in the complaint with falsely representing certain dyed fabrics as being perspiration proof. The fabrics in question were dyed and labeled as perspiration proof by a third party pursuant to a contract with the respondent which called for the use of perspiration proof dyes. In tests made by respondent one of several colors used by the dyer proved to be unstable and respondent promptly and voluntarily discontinued the false representations within approximately 2 months from the date on which the fabrics were first offered for sale, and sold, and before the issuance of the Commission's complaint in this proceeding. 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.

Mr. Sidney Golding, of New York City, for respondent.

KEINER WILLIAMS STAMPING CO. ET AL. Complaint, June 20, 1934. Order, July 31, 1941. (Docket 2199.)

Charge: Combining and conspiring to suppress competition and enhance prices through container standardization, agreed price differentials, purchaser classification, agreed freight allowances, abstention from competitive bidding, etc.; in connection with the manufacture and sale of cans used for containing and transporting milk, cream, and ice cream.

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 without prejudice.

Mr. Robt. N. McMillen for the Commission.

Mr. Clarence M. Dinkins and *Mr. Nathan B. Williams*, of Washington, D. C., and *Mr. George E. Hagenbuch*, of Cleveland, Ohio, for respondents.

BENJAMIN D. RITHOLZ ET AL. trading as NATIONAL OPTICAL STORES CO. and DR. RITHOLZ OPTICAL CO. Complaint, June 4, 1937. Order, August 5, 1941. (Docket 3143.)

Charge: Misrepresenting pretended regular and special prices and free services and trial incident to sale, and misrepresenting customer needs and quality and value of product offered and sold in response thereto, and business status; in connection with the sale of spectacles and other optical devices and supplies.

Record closed, after answers 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 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* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. S. Brogdyne Teu, II, for the Commission.

Mr. B. D. Ritholz, of Chicago, Ill., for respondents.

MORRIS ORENSTEIN, trading as FAIR DEAL NOVELTY CO. and FAIR DEAL NOVELTY HOUSE. Complaint, March 11, 1938. Order, August 26, 1941. (Docket 3353.)

Charge: Using lottery scheme in merchandising; misrepresenting as to free product, terms and composition; and claiming trade-mark registration falsely; in connection with the sale of pen and pencil sets, cigarette lighters, electric lamps, china and silverware, cameras, clocks, jewelry, cosmetics, bedding, kitchenware, and other articles of merchandise.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises, and

It appearing to the Commission that an order to cease and desist was heretofore issued by the Commission against the respondent herein on June 30, 1941, in the matter of Morris Orenstein and Isidore Halperin, individually and trading as Wellworth Sales Co., Docket 3470,[1] and

It further appearing that by the terms of said order the respondent herein was prohibited individually from engaging in acts and practices similar to those charged in the complaint herein;

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

[1] See *ante*, p. 405.

Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Before *Mr. Randolph Preston*, trial examiner.

Mr. D. C. Daniel for the Commission.

Nash & Donnelly, of Washington, D. C., for respondent.

U. S. HOFFMAN MACHINERY CORP. Complaint, February 9, 1938. Order, September 19, 1941. (Docket 3330.)

Charge: Discriminating in price in violation of Section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act; in connection with the manufacture and sale of pressing machines.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the complaint of the Commission, the answer of the respondent, briefs of counsel for the Commission and for the respondent, and oral argument in support of, and in opposition to the allegations of the complaint, and the Commission, having duly considered the same and the record, and being now fully advised in the premises.

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

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

Mr. Fletcher G. Cohn for the Commission.

Semmes, Bowen & Semmes, of Baltimore, Md., for respondent.

GENERAL BAKING CO.[1] ET AL. Complaint, May 22, 1940. Order, September 19, 1941. (Docket 4139.)

Charge: Combining and conspiring to suppress, hinder, and lessen competition, through agreements of respondent bakeries, respondent labor unions, and respondent officers and members thereof, to limit channels of distribution and eliminate peddlers and independents, etc., in the Omaha, Nebr. and Council Bluffs, Iowa trade area; in connection with the manufacture and sale of bread and other bakery products.

Dismissed, after answers 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 be, and the same hereby is dismissed.

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

Mr. Wm. T. Chantland for the Commission.

Simpson, Thacher & Bartlett, of New York City, for General Baking Co.

[1] Error in joining such respondent as General Baking Corporation instead of General Baking Company was corrected by stipulation in the record.

Mr. John C. Grover, of Kansas City, Mo., for Interstate Bakeries Corp.

Mr. Harold D. LeMar, of Omaha, Nebr., for P. F. Petersen Baking Co.

Gross & Crawford, of Omaha, Nebr., for Charles W. Ortman, Charles G. Ortman, and Lawrence F. Ortman.

Mr. Louis T. Carnazzo and *Mr. David D. Weinberg*, of Omaha, Nebr., for General Drivers Union, Local No. 554 of the International Brotherhood of Teamsters of Omaha and its officers and members.

THOMAS J. MONAHAN, trading as MONAHAN'S BAKERY ET AL. Complaint, May 24, 1940. Order, September 19, 1941. (Docket 4140.)

Charge: Combining and conspiring to suppress, hinder, and lessen competition, through agreements of respondent bakeries, respondent labor unions, and respondent officers and members thereof, to limit channels of distribution and eliminate peddlers and independents, etc., in the Minneapolis trade area; in connection with the manufacture and sale of bread, pastries, cakes, and other bakery products.

Dismissed, after answers 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 be, and the same hereby is, dismissed.

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

Mr. Wm. T. Chantland for the Commission.

Mr. John E. Katzmarek, of Little Falls, Minn., for Thomas J. Monahan and William Blaseck.

Mr. R. H. Fryberger, of Minneapolis, Minn., for Zinsmaster Baking Co.

Van Fossen & Van Fossen, of Minneapolis, Minn., for Egekvist Bakeries, Inc.

Kingman, Cross, Morley, Cant & Taylor, of Minneapolis, Minn., for Regan Brothers Co.

Guesmer, Carson & MacGregor, of Minneapolis, Minn., for Gladness Bakeries, Inc.

Smith & Callahan, of Minneapolis, Minn., for John Karalis, Fred Karalis, and Demetrius Karalis.

Mr. Daniel J. Uhrig, of Chicago, Ill., for Purity Baking Co.

Mr. George Faunce, Jr., of New York City, for Continental Baking Co.

Mr. John E. Tappan, of Minneapolis, Minn., for Excelsior Baking Co.

Gainsley, Goldstein & Levitt, of Minneapolis, Minn., for Peoples-Lehman Baking Corp. and Independent Grocer Baking Co., Inc.

Mr. Harold N. Rogers, of Minneapolis, Minn., for Emrich Baking Co.

Durham & Swanson and *Mr. Harold L. Hoffman*, of Minneapolis, Minn., for Rafert Baking Co.

Mr. D. E. LaBelle, of Minneapolis, Minn., for James T. McGlynn.

Mr. Nathan Kaufman, of Minneapolis, Minn., for North Side Baking Co., Inc.

Mr. Gilbert E. Carlson and *Mr. Thomas O. Kachelmacher*, of Minneapolis, Minn., for Bakery Cracker, Pie & Yeast Wagon Drivers' Union Local No. 289 and its officers and members.

HARRY BERMAN, INC., and MORRIS GOLDRING. Complaint, November 16, 1940. Order, September 19, 1941. (Docket 4380.)

Charge: Advertising falsely or misleadingly as to "manufacturer's advertising sale," special or limited offers, maker, guarantee, price, value, qualities, etc.; in connection with the sale of fountain pens.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the respondent Harry Berman, Inc., did not engage in the advertising and sales practices as charged in the complaint and that the whereabouts of respondent Morris Goldring 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.

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

Mr. DeWitt T. Puckett for the Commission.

Mr. William B. Wolf, of Washington, D. C., for respondents.

GLOBE-UNION, INC. Complaint, April 23, 1940. Order, September 23, 1941. (Docket 4103.)

Charge: Discriminating in price in violation of Section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act; in connection with the manufacture and sale of radio tone and volume controls.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises.

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

Mr. P. C. Kolinski for the Commission.

Lecher, Michael, Whyte & Spohn, of Milwaukee, Wis., for respondent.

A. J. GOFORTH. Complaint, December 29, 1939. Order, September 25, 1941. (Docket 3980.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results of products, and testimonials; in connection with the sale of various medicinal preparations concocted from herbs.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should the 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. Gerard A. Rault for the Commission.

Mr. Sanford W. Brown and *Mr. J. Walter Haynes*, of Asheville, N. C., and *Price, Price & Garland*, of Johnson City, Tenn., for respondent.

D. J. EASTERLIN, trading as D. J. EASTERLIN & Co. Complaint, September 8, 1941. Order, September 25, 1941. (Docket 4587.)

Charge: Arranging buyer allowance or concession in lieu of full brokerage or compensation to respondent broker; in violation of Section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act; in connection with the sale of rice.

Dismissed, after answer, by the following order:

This matter coming on for consideration by the Commission, 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. A. W. DeBirny for the Commission.

HAROLD S. BANKS, trading as CIVIL EMPLOYEES TRAINING SERVICE. Complaint, October 4, 1940. Order, October 1, 1941. (Docket 4333.)

Charge: Misrepresenting government recommendation and connection, and opportunities, incorporation, success, etc., and advertising falsely or misleadingly as to unique nature of business, etc.; in connection with the sale of courses of study and instruction intended for preparing students thereof for examinations for certain civil service positions.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the business formerly conducted by the

respondent under the name Civil Employees Training Service has been discontinued and abandoned, that the present address of the respondent is unknown and upon diligent inquiry cannot be ascertained, and that service of the complaint in this proceeding cannot be had upon the respondent as required by law, and the Commission having duly considered the matter and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future acts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. Merle P. Lyon for the Commission.

INTERSTATE BAKERIES CORP. ET AL. Complaint, September 28, 1939. Original order, February 6, 1941. Docket 3900, 32 F. T. C. 694. Modified order, June 9, 1941. Order vacating modified order, etc., October 6, 1941.

Charge: Coercing and intimidating, and combining or conspiring to monopolize sale and distribution through employer-labor excluding agreements; in connection with the manufacture and sale of bakery products in the Des Moines, Iowa trading area.

Modified cease and desist order[1] in this case was vacated and complaint dismissed 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 modified order to cease and desist issued by the Commission on June 9, 1941, be, and the same hereby is, vacated and set aside.

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[1] The modified order, omitting preamble, and usual provision *re* compliance, was as follows:

It is ordered, That paragraphs 1, 2, 3, and 4 of the order to cease and desist heretofore issued on February 6, 1941, be and the same are hereby modified so as modified they are:

1. Entering into or carrying out, or enforcing or attempting to enforce, by any method or means, any agreement or understanding the purpose or effect of which is to hinder or prevent any bakery, dealer, or route man from purchasing bread, pastry, cakes, or other bakery products in said commerce for resale in the trade area in and around Sioux City, Iowa.

2. Entering into or carrying out, or enforcing or attempting to enforce, any agreement or understanding the purpose or effect of which is to prevent any bakery, dealer, or route man in the trade area in and around Sioux City, Iowa, from selling bread, pastry, cakes, or other bakery products in said commerce.

3. Entering into or carrying out any agreement to classify dealers for the purpose or with the effect of hindering or preventing any dealer or any class of dealers in and around Sioux City, Iowa, from obtaining bread, pastry, cakes, or other bakery products in said commerce for resale.

4. Using of threats or other coercive methods pursuant to any agreement or understanding with each other or with others to prevent any bakery or dealer or route man in the trade area in and around Sioux City, Iowa, from purchasing and receiving or selling and delivering bread, pastry, cakes, or other bakery products in said commerce.

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

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.

SUPREME BAKING CO. ET AL. Complaint, January 24, 1940. Order, October 6, 1941. (Docket 3999.)

Charge: Combining and conspiring to suppress, hinder, and lessen competition and limit channels of distribution, in the Des Moines, Iowa, trade area, through agreements of respondent bakeries, respondent labor unions, and respondent officers and members thereof; in connection with the manufacture and sale of bread and other bakery products.

Dismissed, after answers 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 be, and the same hereby is, dismissed.

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

Mr. Floyd O. Collins for the Commission.

Comfort, Comfort & Irish, of Des Moines, Iowa, for Supreme Baking Co.

Mr. George Faunce, Jr., of New York City, for Continental Baking Co.

Mr. Frazor T. Edmondson, of Dallas, Tex., for Colonial Baking Co.

Mr. John C. Grover, of Kansas City, Mo., for Interstate Bakeries Corp.

Mr. John Connolly, Jr., and *Mr. Irvin Schlesinger*, of Des Moines, Iowa, and *Mr. Joseph A. Padway*, of Washington, D. C., for Bakery Salesmen's Union, Local No. 356 and its officers and members.

THE PARADISE CO., ALBERT L. BISSON, SYLVAN B. HEININGER, MARTHA A. BOEING, LETA M. CLANTON, and G. G. GRANT. Complaint, August 25, 1937. Order, October 10, 1941. (Docket 3213.)

Charge: Offering false and misleading puzzle prize contests as inducements to purchase, and misrepresenting business status, personnel, etc.; in connection with the sale of cosmetics, toilet preparations, and kindred products.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the Commission, on June 12, 1941, in the matter of Thomsen-King & Co., Inc., et al., issued its order to cease and desist,[1] which order has now become final, and which order prohibits all the violations of law alleged in the instant case, 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.

Before *Mr. William C. Reeves* and *Mr. Robert S. Hall*, trial examiners.

Mr. Harry D. Michael, *Mr. Earl J. Kolb*, and *Mr. Jesse D. Kash* for the Commission.

Mr. Lewis F. Mason, of Chicago, Ill., for Albert L. Bisson.

NANNETTE, INC., JAMES M. WOODMAN, and WILLIAM J. LARSON. Complaint, September 4, 1937. Order, October 10, 1941. (Docket 3223.)

Charge: Offering and using pretended puzzle prize contests and misrepresenting standing and quality of product and prices and values; in connection with the sale of cosmetics, toilet preparations, and kindred products.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the Commission, on June 12, 1941, in the matter of Thomsen-King & Co., Inc., et al., issued its order to cease and desist,[1] which order has now become final, and which order prohibits all the violations of law alleged in the instant case, 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

[1] See *ante*, p. 126.

Commission, should the facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Before *Mr. Arthur F. Thomas* and *Mr. Edward E. Reardon*, trial examiners.

Mr. Jay L. Jackson for the Commission.

Mr. Lewis F. Mason, of Chicago, Ill., for respondents.

SUPER FRANKLIN CO., GLENN TATE, and M. L. HOLLAND. Complaint, September 28, 1938. Order, October 10, 1941. (Docket 3613.)

Charge: Offering false and misleading puzzle prize contests; in connection with the sale of cosmetics, toilet preparations, and kindred products.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the Commission, on June 12, 1941, in the matter of Thomsen-King & Co., Inc., et al., issued its order to cease and desist,[1] which order has now become final, and which order prohibits all the violations of law alleged in the instant case, 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.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Lewis F. Mason, of Chicago, Ill., for respondents.

RICHARD E. WILLIAMS, ET AL. Complaint, June 24, 1939. Order, October 10, 1941. (Docket 3833.)

Charge: Concertedly or cooperatively offering false and misleading puzzle prize contests, using lottery scheme in merchandising and advertising falsely or misleadingly as to qualities, properties or results, value and special prices; in connection with the sale of cosmetics and other toilet preparations.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the Commission, on June 12, 1941, in the matter of Thomsen-King & Co., Inc., et al., issued its order to cease and desist,[1] which order has now become final, and which order prohibits all the violations of law alleged in the instant case, and the Commission having duly considered the matter and being now fully advised in the premises.

[1] See *ante*, p. 126.

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.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Curtis C. Shears for the Commission.

Mr. Richard E. Williams, of Des Moines, Iowa, and *Mr. John A. Nash*, of Chicago, Ill., for respondents.

THE BRIARWOOD CORP. Complaint, December 4, 1934. Original order, February 20, 1935. Docket 2255, 20 F. T. C. 170. Order vacating, etc., October 16, 1941.

Charge: Advertising falsely or misleadingly as to nature of product; in connection with the manufacture and sale of smoking pipes.

Stipulation as to the facts, findings as to the facts and conclusion and part of the order to cease and desist in this case were vacated and set aside by the following order:

This matter coming on to be heard by the Commission upon the motion of the Commission's Chief Counsel to vacate and set aside the stipulation as to the facts approved by the Commission in this matter on February 15, 1935, the findings as to the facts and conclusion, and the order to cease and desist heretofore issued in this proceeding on February 20, 1935, and counsel for the respondent having consented to the granting of said motion with certain reservations and the Commission having duly considered said motion, the consent of counsel for respondent and the record herein and being now fully advised in the premises.

It is ordered, That the stipulation of facts approved by the Commission on February 15, 1935, the findings as to the facts and conclusion, and the order to cease and desist heretofore issued in this proceeding on February 20, 1935, with the exception of that portion of the order to cease and desist dismissing the charges contained in the Commission's complaint as to respondent's corporate and trade name, be, and they hereby are, vacated and set aside.

Mr. Gerard A. Rault for the Commission.

Mr. William H. Rosenfeld, of Cleveland, Ohio, for respondent.

DEAN LADD KIDDER, trading as PYROIL CO. Complaint, May 24, 1940. Order, October 21, 1941. (Docket 4141.)

Charge: Advertising falsely or misleadingly as to economy and qualities, properties or results of product; in connection with the manufacture and sale of a preparation known as "Pyroil," designed for addition to motor fuels and lubricants.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter, and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. R. A. McOuat for the Commission.

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

THE CELOTEX CORP. Complaint, November 22, 1939. Order, October 28, 1941. (Docket 3957.)

Charge: Acquiring stock of competitor in violation of Section 7 of the Clayton Act; in connection with the manufacture and sale of structural insulation and acoustical material and products, including fiber and gypsum products.

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. Everett F. Haycraft for the Commission.

Mr. Lowell B. Mason and *Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., and *Pam, Hurd & Reichmann*, of Chicago, Ill., for respondent.

STIPULATIONS [1]

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST [2]

2839.[3] **Garden Hose—Composition, Qualities, and Comparative Merits.**—Sears, Roebuck & Co., a corporation, operating a number of catalog mail order houses and conducting a large number of retail stores throughout the United States, sold and shipped merchandise, including garden hose, from its several places of business to purchasers thereof located in States other than that in which such shipments have their origin, in competition with other corporations and with individuals, firms, and partnerships 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 "ply," when used alone or only in connection with a number or numeral as descriptive of garden hose, is understood by the trade and purchasing public to refer to a hose having incorporated therein a layer or a designated number of separate layers of cotton duck, as distinguished from braided fabric.

Sears, Roebuck & Co., in connection with the offering for sale, sale, or distribution of its garden hose in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. The use of the term "3-ply" as descriptive of garden hose which is not constructed of three layers of cotton duck; and from the use of the word "ply" either alone or in connection with a designated num-

[1] For *false and misleading advertising* stipulations effected through the Commission's radio and periodical division, see p. 1715 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, June 1, 1941, to October 31, 1941, inclusive. Digests of previous stipulations of this character accepted by the Commission may be found in vols. 10 to 32 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] Not released until September 23, 1941.

ber or numeral so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that said garden hose contains the indicated number of plies, each ply consisting of a separate layer of cotton duck. If the hose has incorporated therein one or more braided reinforcements, and the word "ply" is used to refer to the braided reinforcement in said hose, then in such case, the word "ply" shall be immediately accompanied by the word "braided" printed in equally conspicuous type so as to indicate clearly that the ply in said hose is braided;

2. Stating or representing that the construction of its said hose is superior in the matter of strength, toughness, and serviceability to other hose of similar construction sold in competition therewith. (May 16, 1941.)

3130. **Cast Iron Soil Pipe, Pipe Fittings, Etc.—Manufacturers.**—W. H. Kirkland, Almeda H. Kirkland, and Elsie K. Weatherly, copartners, who, from 1934 until the latter part of 1940, were engaged under the firm name and style "W. H. Kirkland Company," in the sale and distribution of cast iron soil pipe and pipe fittings and other allied products 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.

W. H. Kirkland, Almeda H. Kirkland, and Elsie K. Weatherly, 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 they and each of them will cease and desist forthwith from the use in their advertisements and advertising matter or in any other way of the word "Manufacturers" or the word "Manufactured" to identify the business conducted by them, and from the use of the word "Manufacturers" or the word "Manufactured" or any other word or words of similar import or meaning so as to import or imply or the effect of which tends or may tend to convey the erroneous belief to purchasers or prospective purchasers that they make or manufacture the products offered for sale or sold by them or that they actually own and operate or directly and absolutely control the plant or factory in which said products are made or manufactured. (June 3, 1941.)

3141.[1] **Shoes—Qualities, Properties, or Results.**—Weyenberg Shoe Manufacturing Co., a corporation, engaged in the manufacture, sale, and distribution of shoes, one line of which is sold under the name of "Massagic," in interstate commerce, in competition with other corpo-

[1] Stipulations 3131 to 3140, inclusive, were accepted May 21, 1941, and will be found in vol. 32 at pp. 1734–1740.

rations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Weyenberg Shoe 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:

1. The use of words or phrases, statements or representations, so as to import or imply, or the effect of which tends, or may tend, to convey the belief to purchasers that "Massagic" shoes massage the feet; that the said shoes produce "massaging resilience"; or that said shoe "exercises and massages the foot";

2. The use of words or phrases, statements or representations, so as to import or imply, or the effect of which tends, or may tend, to convey the belief to purchasers that the wearing of "Massagic" shoes will cause callouses to vanish;

3. The use of words or phrases, statements or representations, so as to import or imply, or the effect of which tends, or may tend, to convey the belief to purchasers that said shoes will keep feet young. (June 4, 1941.)

3142. **Monuments or Memorials—Qualities.**—Melrose Granite Co., a corporation, engaged in the sale and distribution of granite monuments or memorials in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Melrose Granite Co., in connection with the sale or offering for sale of its monuments or memorials in interstate commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from representing, by the use of the word "eternal" or any other word or words of similar import or meaning or in any other manner, that its monuments or memorials are everlasting or will endure forever. (June 4, 1941.)

3143. **Men's Neckties and Mufflers—Composition and Hand Made.**—Beau Brummell Ties, Inc., also trading as Weisbaum Bros., Brower Co., a corporation, engaged in the sale and distribution of men's neckties and mufflers in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Beau Brummell Ties, Inc., in connection with the sale and distribution of its neckties and mufflers in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

1. The use of the words "silk," "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 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.

2. 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 50% Metallic Weighting" or "Silk Weighted up to 50%," with the word "weighting" and the percentage thereof printed in type equally conspicuous as the word silk.

3. 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".

4. Concealing labels or tags, descriptive of the fiber content of neckties composed in whole or in part of rayon, within such ties; or failing to attach such labels or tags to said ties in such a manner as to reveal, clearly and discernibly, the descriptive matter appearing thereon.

5. Representing, directly or inferentially, that neckties made or constructed wholly or partially with or by machines are "Made by Hand" or are hand made. (June 5, 1941.)

3144. **Smoking Tobacco and Cigarettes—Domestic as Foreign and Unique.**—International Tobacco Co. of America, Inc., a corporation engaged in the sale and distribution of smoking tobacco and cigarettes in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships 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 Tobacco Co. of America, Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from:

1. The use of the words or phrases "London," "English," "A Product of Peter Jackson (Overseas) Ltd., 217 Piccadilly, London, W." or other words or phrases, 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 or manufactured in England or any country other than the United States of America.

2. Representing, directly or inferentially, that its cigarette tips, designated "filter tip" represent an original or revolutionary principle in cigarette tips, or that its cigarettes are the only cigarettes that have so-called "filter tips." (June 5, 1941.)

3145. **Monuments or Memorials—Qualities.**—Rock of Ages Corporation, a corporation, engaged in the sale and distribution of granite monuments or memorials in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Rock of Ages 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 or phrases "everlasting," "endures forever," "impervious to the rigors of time and the elements," "throughout the ages," "eternal beauty," or any other words or phrases of similar import or meaning in its advertising, certificates of guarantee or otherwise, so as to import or imply or the effect of which is to cause or may cause the belief or impression that its said monuments or memorials are everlasting or will endure forever. (June 6, 1941.)

3147.[1] **Hair Preparations—Qualities and History.**—Cliff Edwards, an individual, engaged in conducting a business under the trade name "Cliff Edwards Hair-Way," said business consisting of the sale and distribution of two certain preparations for the hair, one designated "Cliff Edwards No. 7" and the other "Cliff Edwards No. 11" 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.

Cliff Edwards, in connection with the advertisement, offering for sale, sale, or distribution of his hair preparations, or other similar preparations, in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of any statement or representation, pictorially or otherwise,

[1] Stipulation 3146 was accepted on May 26, 1941, and will be found in vol. 32 at p. 1741.

1. That said preparations or any thereof, will cause hair to grow or in any way aid in growing hair on a naturally bald head.

2. That the said preparations, or either thereof, are new in the sense that they consist of ingredients other than such as have been long recognized for use in scalp treatments.

3. That the said preparations were created by a prominent cosmetologist and dermatologist. (June 9, 1941.)

3148. **Paints, Etc.—Earnings or Profits.**—The Adams Paint Co., a corporation, engaged in the sale and distribution of paints and related products in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The Adams Paint Co. in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from, representing that the usual and customary earnings or profits to be derived from the sale thereof by salesmen or agents are larger than and in excess of the usual and customary amounts actually so earned under normal conditions in the due course of business, or that salesmen or agents or others can, within a specified period of time, make profits or earnings which are in excess of the average net profits or earnings which have theretofore been consistently made in like periods of time by its active and full-time agents or salesmen in the ordinary and usual course of business and under normal conditiosn and circumstances. (June 9, 1941.)

3149. **Candy—Lottery Schemes.**—John J. Whelan, an individual, trading as Whelan Candy Co., and as The Whelan Co., engaged in the sale and distribution of candy and other merchandise 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 J. Whelan, in connection with the sale or offering for sale of his products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

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

2. Supplying to or placing in the hands of others punchboards, push cards, or other lottery devices, either with assortments of candy or other merchandise or separately, which said punchboards, push 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. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (June 9, 1941.)

3150. **Arch Supporters—Qualities.**—Charles Henry Brown & Son, Inc., a corporation, with Charles B. Brown, Charles Henry Brown and Mrs. Charles Henry Brown as officers and principal owners of said corporation. Said corporation and its said officers and principal owners, engaged in the sale and distribution of arch supporters designated "Glide-o-matic Arch resters" in interstate commerce, in competition with other corporations and individuals and with firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Charles Henry Brown & Son, Inc., Charles B. Brown, Charles Henry Brown, and Mrs. Charles Henry Brown, and each of them, agreed that in connection with the sale or offering for sale of their arch supporters in commerce as commerce is defined by the Federal Trade Commission Act, to forthwith cease and desist from the use of any statements or representations which cause or have the capacity to cause the belief or impression that such devices or the use thereof can be depended upon to afford relief from foot pains, fallen arches, callouses, metatarsal troubles, or other ailments, maladies or diseases of the feet; or that a single type of arch support generally will afford relief or be corrective when the use of arch supporters is indicated. (June 9, 1941.)

3151. **Printed or Mimeographed Cards or Material—Nature, Staff, Quality, Etc.**—Alfred Gutzmer, trading as Allied Journalists' Guild, Allied Enterprises, Allied Publishing Co., and P. D. Q. Press, is an individual, engaged in the sale and distribution in interstate commerce, of purported identification cards designated "Press Cards," 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.

Alfred Gutzmer, in connection with the sale or offering for sale of any printed or mimeographed material, either under his own name or under any trade name or names, agreed forthwith to cease and desist from:

1. The use in his advertising or advertising matter, on his printed or mimeographed cards or material, or in any other way, of the word "Press" as descriptive of said material or from stating or representing in any way, directly or inferentially, that purchasers or holders of said cards or material will be granted or afforded exceptional privileges as reporters or cameramen or otherwise, by authorities such as officers of the police or fire departments of local cities or communities generally;

2. Representing, directly, or inferentially, that the "Allied Journalists' Guild" consists of or has the services of experienced writers or ex-editors of recognized standing or has a "staff of experts;" or making any other misleading, exaggerated, or deceptive statements or representations concerning the character, nature, quality, value or scope of the so-called Allied Journalists' Guild or any other business conducted or operated by him, or the services rendered to subscribers thereto, with the tendency or capacity to mislead and deceive prospective subscribers or the public. (June 10, 1941.)

3152. **Civil Service Correspondence Course—Price, Opportunity, Limited, Enrollment, Bureau, Etc.**—Aaron Sauer, an individual trading as Interstate Home Study Bureau, 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.

Aaron Sauer, in connection with the offering for sale, sale, and distribution of his correspondence course of instruction in commerce as defined by said act, agreed forthwith to cease and desist from:

1. Disseminating any advertisement or advertising matter in which the price or cost to prospective students of his course of instruction is stated or indicated, unless all of the terms and conditions pertaining to the sale thereof be accurately, definitely, unambiguously and conspicuously set forth in immediate connection with such stated price.

2. Representing, directly or inferentially, that the sum of $30.00 or any other sum or amount, the payment of which is to be deferred until after the student subscribing for such course of instruction shall have been employed by the United States Government, is the price or cost to such student of the course when, in fact, a fee or payment, required in connection with the sale thereof, represents the true price or cost of such instruction course.

3. Representing, directly or inferentially, that the United States Post Office Department or any other department or agency of the United States Government wants "1,000 Men" or any other stated number of employees, or that enrollment for his course of instruction is restricted to 1,000 or other limited number of persons, unless or until such employment or enrollment shall be restricted or limited as represented.

4. The use of the word "Bureau," either with or without the words "Interstate Home Study," as a part of or in connection with the trade name under which he carries on his business; and from the use of the

word "Bureau" independently or in connection with any other words or expressions so as to impart or imply that the said course of instruction is compiled, published, or disseminated by a Bureau, as the term generally is understood and recognized. (June 11, 1941.)

3153. **Painting Outfit—Qualities, Properties, or Results.**—Binks Manufacturing Co., a corporation, engaged in the manufacture of spray guns and compressors of various types, including its so-called Roche compressor, a part of its new Roche painting outfit, 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.

Binks Manufacturing Co., in connection with the advertisement, offering for sale, sale, or distribution of its new Roche painting outfit in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the statement "3 C. F. M. at 40 lbs. Working Pressure" as descriptive of its said device, and from the use of the said statement or of any other statement which imports or implies or the effect of which tends or may tend to convey the belief that the said device, when and if operated at the designated pressure, will produce an output of 3 cubic feet of air to the minute or any other claimed output of air which is exaggerated or in excess of what is actually the fact. (June 13, 1941.)

3154. **Perfumes and Cosmetics—Source or Origin.**—The Genesee Trading Co., Inc., a corporation, engaged in the sale and distribution of perfumes and cosmetics manufactured by various concerns in the United States, and which perfumes Genesee Trading Co., Inc., has sold in interstate commerce, in competition with other corporations, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Genesee Trading Co., Inc., in connection with the sale, or offering for sale, of its products in commerce, as defined by the Federal Trade Commission Act, agreed to cease and desist from:

1. The use of words or phrases, statements or representations so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the perfumes sold by the Genesee Trading Co., Inc., are French perfumes manufactured in France and sold in the United States.

2. The use of any French words or language in its literature, on its cartons or packages in such manner as to lead the public to believe the contents of the package are of French origin and have been manufactured in France.

3. The use of the word "Paris" on its labels, letterheads, and other advertising matter in such a way as to lead the public to believe that the said corporation maintains a manufacturing plant in Paris, France. (June 17, 1941.)

3155. **Men's Robes, House Jackets, Etc.—Composition.**—Peerless Smoking Jacket Co., Inc., a corporation, engaged in the sale and distribution in interstate commerce, of men's specialty garments, including robes, house jackets, sport coats, and shirt and slack ensembles, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Peerless Smoking Jacket Co., Inc., agreed that it will not offer for sale, sell, or distribute in commerce, as commerce is defined by the Federal Trade Commission Act, any merchandise which is made from fabric composed of rayon or which contains rayon without clear and unequivocal disclosure of the fact that said fabric is made of or contains rayon, as the case may be, on labels or tags conspicuously affixed to the merchandise, on the invoices covering the sale thereof, and in all advertising matter, sales promotional descriptions or representations thereof, however disseminated or published. (June 18, 1941.)

3156. **Handkerchiefs and Laces—Foreign Offices.**—David A. Sutton and Sam Sutton trading as A. D. Sutton & Sons, engaged in the sale and distribution of handkerchiefs and laces imported from China, 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.

David A. Sutton and Sam Sutton in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist forthwith from representing in any way on their printed or advertising matter that they maintain foreign offices in either France or Belgium or in any other country abroad, when and if such is not the fact. (June 18, 1941.)

3157. **Illustrative Pictures—Nature.**—Nettie M. Gorov, an individual, trading under the name "Multiprint Company" with principal place of business located in Chicago, Ill., engaged in the production of a certain type of illustrative pictures for use by manufacturers of and dealers in furniture, machinery, and other products as a means of or in connection with the advertisement of their product, 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.

Nettie M. Gorov, in connection with the advertisement, offering for sale, sale, or distribution of her 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 "Photo" or the word "Photograph" as descriptive of reprints of photographs; and from the use of the word "Photo" or the word "Photograph" or of any other word or words of similar import in referring to said products, the effect of which tends or may tend to convey the belief to purchasers or prospective customers that said products are photographs. (June 20, 1941.)

3158. **Piece Goods or Texile Fabrics—Composition.**—John M. Lloyd, trading as Lloyd's, engaged in the sale and distribution of piece goods or textile fabrics 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 M. Lloyd in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from:

1. 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."

2. The use of the words "silk" or "crepe" 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 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. If the word "crepe" or similar word, is used properly to describe the construction of a fabric containing fiber other than silk, then such word when so used shall be accompanied, in immediate conjunction therewith and in type equally conspicuous, by a word or words clearly naming and disclosing the fiber, fibers, or materials of which such fabric is composed, stated in the order of their predominance by weight, beginning with the largest single constituent, as, for

example, "silk and rayon crepe" for fabric of crepe construction and composed of a mixture of silk and rayon each present in substantial proportion but with the silk predominant, or "rayon crepe" when the fabric is composed of rayon. (June 20, 1941.)

3159. **Flooring Products—Producers or Mills.**—Storm Flooring Co., Inc., a corporation, engaged in the sale and distribution of flooring and related 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.

Storm Flooring Co., Inc., in connection with the sale or offering for sale of its flooring products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the words "Producers" or "Mills" on its stationery or in its advertising or other printed matter as descriptive of its business, and from the use of any representation, statement, or depiction 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 it produces or manufactures such products or that it actually owns and operates or directly and absolutely controls a mill, factory, or plant in which such products are produced or manufactured. (June 20, 1941.)

3160. **Fluorescent Lighting Fixtures and Bulbs—Savings.**—W. H. Long, trading as W. H. Long Co., engaged in the sale and distribution of office equipment and supplies including fluorescent lighting fixtures and bulbs 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.

W. H. Long in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from representing that the use of "Fluorescent Daylight Lights" will "Cut Your Electric Bills as much as 85%", that a "15 Watt UNIT will replace any incandescent bulb up to 100 Watts" or that "a double 18"—30 Watt UNIT * * * replaces any incandescent bulb up to 200 Watts"; and/or from any other inaccurate, exaggerated, or misleading statements, claims or representations which have or may have the capacity or tendency to confuse, mislead, or deceive purchasers, prospective purchasers or the public in any material respect. (June 23, 1941.)

3161. **Men's Hosiery—Source or Origin.**—Derby Knitting Mills, Inc., a corporation, engaged in the business of manufacturing men's hosiery and in the sale and distribution thereof in interstate commerce, in

competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Derby Knitting Mills, Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from the use of the words "English Ribbed" either alone or in connection or conjunction with the word "Genuine" or 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 hosiery is of English origin, that his to say, knitted or made in England. If said hosiery fabricated on English-style machines is knitted or made elsewhere than in England, and the words "English Ribbed" are used as descriptive thereof, then in that case, said words shall be accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly the country in which said hosiery is knitted or made. (June 23, 1941.)

3162. **Electrical Heating Pads—Qualities.**—National Stamping & Electric Works, a corporation, engaged in the sale and distribution of electrical appliances and 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.

National Stamping & Electric Works, 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-heat switch" or "high, medium, and low," or any 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. (June 23, 1941.)

3163. **Cigarettes—Qualities.**—Benson & Hedges, a corporation, engaged in the manufacture of cigarettes and in the sale thereof, both 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.

Benson & Hedges 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 term "non-nicotine" or of any other term or words of similar implication, as descriptive of the mouthpiece of said products, the effect of which tends or may tend to convey the belief that such mouthpiece has the effect of either denicotinizing the cigarette tobacco or of appreciably removing the nicotine from the tobacco smoke which passes therethrough. (June 24, 1941.)

3164. **Furniture—Government Sponsorship, Endorsement, Etc.**—Johnson Furniture Co. and Johnson-Handley-Johnson Co., Michigan corporations, 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.

Johnson Furniture Co. and Johnson-Handley-Johnson Co., and each of them, agreed that, in connection with the offering for sale, sale, or distribution of their furniture in commerce as defined by the Federal Trade Commission Act, they will forthwith cease and desist from the use of the letters or initials "F H A" to designate or describe their business or their merchandising or selling plan; or representing, directly or inferentially, by the use of the letters "F H A" or otherwise, that the Federal Housing Administration has sponsored or endorsed such products or the sale thereof or that the same may be purchased or financed through, or on terms similar to those offered by, the Federal Housing Administration. (June 25, 1941.)

3165. **Textile Fabrics—Composition and Imported.**—Dressmaker Fabrics—David Custage, Inc., 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.

Dressmaker Fabrics—David Custage, Inc., in connection with the offering for sale, sale, and distribution of its textile fabrics in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

1. 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 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.

2. 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."

3. The use of the word "imported" or any other word of similar meaning in any manner so as to import or imply or the effect of which causes or has the capacity to cause the belief or impression that commodities or articles are imported when, in fact, such commodities or articles are not imported but are of domestic manufacture or origin. (June 27, 1941.)

3166. **Textile Fabrics—Imported.**—Jerome V. Detmer, an individual also trading as J. H. Henrikson & Co., engaged in the sale and distribution of textile fabrics 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.

Jerome V. Detmer, in connection with the offering for sale, sale, and distribution of his textile fabrics in commerce as defined by the Federal Trade Commission Act, agreed he will forthwith cease and desist from the use of the words "Importations," "British importations," or any other word or words of similar meaning in any manner so as to import or imply or the effect of which causes or has the capacity to cause the belief or impression that commodities or articles are imported from the British Isles or other foreign country when, in fact, such commodities or articles are not imported as represented but are of domestic manufacture or origin. (June 27, 1941.)

3167. **Electric Blanket—Qualities, Properties or Results.**—Vit-O-Net, Inc., an Illinois corporation, engaged in the manufacture, sale, and distribution of an electric blanket consisting of electric wires woven into fabric through which electrical current is passed, resulting in the application of heat to the user, 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.

Vit-O-Net, Inc., in connection with the sale, or offering for sale, of its product in commerce, as defined by the Federal Trade Commission Act, agreed it will cease and desist from the use of words or phrases, statements or representations, so as to import or imply, or the effect of which tends, or may tend to convey the belief to purchasers that the said electric blanket is a cure for nephritis; that the said electric blanket is an effective treatment in cases of infections; that said preparation is a cure or will correct obesity; that said electric blanket is an effective treatment for dropsical conditions; that it is effective in Addison's Diseases; that it is effective in chronic or inflammatory rheumatism; that it is of value for sluggish liver; that it is effective in cases of high blood pressure. (June 27, 1941.)

3168. **Cigarettes—Foreign Factory, Composition and Source or Origin.**—Batt Brothers Tobacco Products, Inc., a corporation, engaged in the manufacture, sale, and distribution of cigarettes in interstate commerce, in competition 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.

Batt Brothers Tobacco Products, Inc., in connection with the sale, or offering for sale, of its products in commerce, as defined by the Federal Trade Commission Act, agreed to cease and desist from:

1. The use of the words or phrases connoting that said corporation maintains a factory in London, England, or other words or phrases so as to import or imply or the effect of which tends, or may tend, to convey the belief to purchasers that said corporation maintains a factory in London, England, and that from such factory certain imported tobaccos are used in the manufacture of its cigarettes.

2. Representing, directly or inferentially, that its cigarettes are made from Russian or French tobaccos.

3. The use of any word, words, or phrases, as part of the brand name of said cigarettes, in or on advertising literatures, labels, invoices, or otherwise, in designating and describing same as Russian or French cigarettes when, in fact, said cigarettes are not composed of Russian or French tobaccos and are not manufactured in Russia or France. (June 30, 1941.)

3169. **Membership Certificates, Press Cards and Press Car Signs—"Associated" and Authority.**—Howard N. Rose, an individual trading under the name of Associated Writers, which he terms an unincorporated association of free lance writers, engaged in the sale and distribution of membership certificates, press cards, and press car signs to persons allegedly engaged in the business of writing, in interstate commerce, in

competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Howard N. Rose, in connection with the sale and distribution of his said products in commerce, as defined by the Federal Trade Commission Act, agreed he will forthwith cease and desist from:

1. Making use of the word "Associated" as part of his trade name and from the use of the word "Associated" in any way so as to import or imply that the business conducted by him is that of an association.

2. Representing that said "Associated Writers" has authority to issue press cards, press car signs for automobile windshields, or any other documents which permit the holder thereof to go within police or fire lines during fires, accidents, or other situations where the public is excluded. (July 1, 1941.)

3170. **Mirrors—Composition and Nature of Manufacture.**—Borin Art Products Corporation, a corporation, engaged in the production of framed pictures and 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.

Borin Art Products Corporation 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 "Sheet" or "Sheet Glass" or of any other words of similar import as descriptive of mirrors made of window glass without clearly disclosing that the glass in such mirrors is in fact window glass.

2. Describing, branding, labeling, or otherwise representing, directly or indirectly, any mirror as being made of or containing crystal glass or as being crystal, when in fact, such glass is not crystal glass.

3. The use of the term "Copper Colored Backs" or of any other words of similar implication as descriptive of its mirrors so as to import or imply or the effect of which tends or may tend to convey the belief that the coloring of said backs is the result of the application thereto by the electrolytic process of a paint which contains metallic copper. If the back of the mirror has the color of copper, due to the application thereto of a paint or coloring material which does not contain copper, and the words "Copper Colored Back" are used to describe such color, then in that case, it shall be clearly and unequivocally disclosed by some other word or words printed in equally conspicuous type that the words "Copper Colored Back" refer only to the color and that such color is not the result of the use of a paint which contains metallic copper. (July 1, 1941.)

3171. **Perfume Oils—Imported, Source or Origin and Nature.**—Steve Stuart, an individual trading under his own name, engaged in the business of selling perfume oils 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.

Steve Stuart, in connection with the offering for sale, sale, or distribution of his perfume oils in commerce, as commerce is defined by the Federal Trade Commission Act, agreed he will cease and desist forthwith from:

1. The use of the word "Imported," or of any other word or words of similar implication or meaning, on labels affixed to said products or in any other way as descriptive of such products which are not of foreign origin or imported into the United States, or as descriptive of domestically made or compounded products.

2. The use in the labeling of said products of the trade names used by nationally or widely known perfumers, the effect of which tends or may tend to convey the belief to purchasers that the said products are those of such perfumers, if and when such is not the fact.

3. Labeling or otherwise referring to said products as "Flower Oils" or through the use of the name of a flower or by means of the said words "Flower Oils," in connection with a flower name, or otherwise, so as to import or imply that said products are or have been made or compounded from the absolute or true oil of flowers or of the named flower, when in fact such is not the case. If the odor of a perfume product simulates that of a particular flower, and the name of such flower is used to describe such simulated odor, then in that case, the name of such flower shall be accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly and unequivocally that said product is not made or compounded from the oil of the named flower and that the odor of such fragrance is not derived from or the result of the use of the oil of the named flower. (July 1, 1941.)

3172. **Textile Fabrics—Composition.**—Colcombet-Werk, Inc., a corporation, engaged in the sale and distribution of textile fabrics, including fabrics composed in part of rayon and in part of 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.

Colcombet-Werk, Inc., in connection with the sale of its textile fabrics in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from advertising, branding, labeling, invoicing, selling, or offering for sale products composed in part

of rayon and in part of silk without disclosing in immediate connection and in equally conspicuous type each constituent fiber in the order of its predominance by weight beginning with the largest single constituent; that is to say, if the rayon content predominates, the word "Rayon" should precede the word "Silk," and if the silk content predominates, the word "Silk" should precede the word "Rayon." (July 2, 1941.)

3173. **Packing Material for Steam Engines—Nature, Comparative Merits, Patent and Manufacturer.**—J. & R. Wilson, Inc., a corporation, engaged in the sale and distribution, both individually and/or as an agent for The Beldam Packing & Rubber Co., Ltd., an English firm, of packing material for steam engines, designated " 'V' Pilot Packing," in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships 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. & R. Wilson, Inc., in connection with the sale or offering for sale of the product, designated " 'V' Pilot Packing," in commerce as defined by the Federal Trade Commission Act, either individually, or as agent for The Beldam Packing & Rubber Co., Ltd., or any other firm, individual, or corporation, agreed forthwith to cease and desist from the use of the words or phrases "Imitations have Limitations but Beldam's 'V' Pilot Packing for Steam and Water is Genuine," "Only Genuine when Bearing this Seal" or "Sole Patentees & Manufacturers," 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 or impression that:

1. "V" Pilot Packing sold in competition with said product is an imitation thereof.
2. A comparable competitive product or products are not genuine.
3. Said product is covered by an existing patent; or
4. The Beldam Packing & Rubber Co., Ltd., or any other firm, corporation, partnership, or individual, is the sole manufacturer of "V" Pilot Packing. (July 3, 1941.)

3174. **Perfumes, Colognes or Other Cosmetic Preparations—Source or Origin.**—Lucien Lelong, Inc., a corporation, engaged in the sale of cosmetic and toilet preparations including perfume and cologne in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lucien Lelong, Inc., in connection with the offering for sale, sale, or distribution in commerce as defined by the Federal Trade Commission Act of its perfumes, colognes, or other cosmetic prepara-

tions compounded or made in the United States of America, agreed forthwith to cease and desist from:

1. Representing through the use of the words "Paris" or "London" or any other words, terms, symbols, or picturizations indicative of French or other foreign origin of such products or in any manner, that such perfumes, colognes, or other cosmetic preparations are compounded or made in France or in any other foreign country: *Provided, however,* That the country of origin of the various ingredients thereof may be stated when immediately accompanied by a statement that such products are compounded or made in the United States of America.

2. Using any French or other foreign terms or words, except as provided in the paragraph immediately following, to designate, describe or in any way refer to such perfumes, colognes, or other cosmetic preparations, unless the English translation or equivalent thereof appears as conspicuously and in immediate conjunction therewith.

3. Using any French or other foreign words or terms as brands or trade names for such perfumes, colognes, or other cosmetic preparations, without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are compounded or made in the United States of America. (July 7, 1941.)

3175. **Textile Fabrics—Composition, Importers and Foreign Place of Business.**—Martin Stringer, Inc., 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.

Martin Stringer, Inc., in connection with the offering for sale, sale, or distribution of its textile fabrics in commerce as defined by the Federal Trade Commission Act, agreed to forthwith cease and desist from:

1. 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 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.

2. 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".

3. The use of the word "Importers" or any other word of similar meaning in any manner so as to import or imply or the effect of which causes or has the capacity to cause the belief or impression that it imports commodities or articles which, in fact, are not imported by it.

4. Representing that it has places of business in "Lyons" or "Paris" or elsewhere in France or in any other foreign country, unless or until it actually shall have places of business in the cities or countries as represented. (July 8, 1941.)

3176. **Haberdashery—Prices.**—Lampson's, Inc., a corporation, engaged in the operation of a chain of men's haberdashery stores where it has sold and now sells its merchandise both across the counter, and generally as a result of orders received by mail, in interstate commerce, that is to say, a substantial portion of its merchandise, including men's shirts and hosiery, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lampson's, Inc., agreed to cease and desist forthwith from the use, on labels or in printed or advertising matter of whatever kind or description employed 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, of any false, fictitious, or exaggerated price, that is to say, any purported sales price which is in excess of the price for which said products are customarily sold in the usual course of trade. (July 8, 1941.)

3177. **Hosiery—Manufacture.**—Pilot Full Fashion Mills, Inc., a Delaware corporation, Ira M. Schey, president of the said corporation, engaged with B. A. Jacob, Jr., as copartners in the conduct of a jobbing and sales agency business under the name "Jacob & Schey," in the manufacture of hosiery for women and in the sale thereof in interstate commerce, in competition with other corporations and with partnerships, 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.

Pilot Full Fashion Mills, Inc., and Ira M. Schey and B. A. Jacob, Jr., copartners, trading as "Jacob & Schey," agreed that it, they, and each of them, in connection with the offering for sale, sale, and distri-

bution of hosiery in commerce, as commerce is defined by the Federal Trade Commission Act, will cease and desist forthwith from the use of the term "Two-Fifty-One" or the figures "2–51" as descriptive of hosiery which is not 51-gage, 2-thread construction, and from the use of the said term or figures or of any other term, words or figures as a mark or stamp upon or otherwise to describe said hosiery, the effect of which causes or may cause purchasers or prospective purchasers to believe that the hosiery referred to is 51-gage or any designated gage other than is actually the fact. (July 9, 1941.)

3178. **Textile Fabrics—Composition and Imported.**—Daniel Wiener, an individual, engaged in the sale and distribution of textile fabrics 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.

Daniel Wiener, in connection with the offering for sale, sale, or distribution of his textile fabrics in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

1. The use of the words "Taffetas" or "Faille Taffetas" 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 "Taffetas," "Faille Taffetas," or other silk-connoting words are used properly to describe such silk content, then the words "Taffetas," "Faille Taffetas," 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. If the words "taffeta" or "faille," or similar word or words, are used properly to describe the construction of a fabric containing fiber other than silk, then such words when so used shall be accompanied in immediate conjunction therewith and in type equally conspicuous, by a word or words clearly naming and disclosing the fiber, fibers, or materials of which such fabric is composed, stated in the order of their predominance by weight, beginning with the largest single constituent, as for example, "silk and rayon taffeta" for fabric of taffeta construction and composed of a mixture of silk and rayon each present in substantial proportion but with the silk predominant, or "rayon taffeta" when the fabric is composed of rayon.

2. 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."

3. The use of the word "Importer" or any other word of similar meaning in any manner so as to import or imply or the effect of which causes or has the capacity to cause the belief or impression that he imports commodities or articles which, in fact, are not imported by him. (July 15, 1941.)

3179. **Hats and Caps—Second-Hand as New.**—Harry Richter and Benjamin Moglinsky, copartners, trading as Benay Novelty Co., engaged in the manufacture of hats and caps and in the sale and distribution thereof 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.

Harry Richter and Benjamin Moglinsky, and each of them, in connection with the offering for sale, sale, or distribution of their hats or caps in commerce as defined by the Federal Trade Commission Act, agreed forthwith to 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 exposed surface of 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 material. (July 17, 1941.)

3180. **Ribbons and Seam Binding—Unit Quantities.**—Francis W. Abbott, George J. Abbott, and Stuart Abbott, copartners, trading as Abbott Brothers, engaged in the manufacture of narrow ribbons including seam binding, and in the sale and distribution thereof 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.

Francis W. Abbott, George J. Abbott, and Stuart Abbott, and each of them, in connection with the sale or offering for sale of their seam

binding or other ribbons in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the marking "100 Yards" on bolts or containers thereof when, in fact, less than 100 yards of material are contained therein, or otherwise mismarking or misbranding such products with respect to the yardage thereof or in any other way with the tendency and capacity or effect of misleading or deceiving purchasers or the consuming public. (July 18, 1941.)

3181. **Seam Binding and Ribbons—Unit Quantities.**—King Ribbon Co., Inc., a corporation, engaged in the manufacture of seam binding 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,

King Ribbon Co., Inc., in connection with the sale or offering for sale of its seam binding or other ribbons in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the marking "100 Yards" on bolts or containers thereof when, in fact, less than 100 yards of material are contained therein, or otherwise mismarking or misbranding such products with respect to the yardage thereof or in any other way with the tendency and capacity or effect of misleading or deceiving purchasers or the consuming public. (July 18, 1941.)

3182. **Fur Coats—Composition, Nature, Free and Prices.**—Globe Fur Co., also trading as Marilyn Fur Studios and/or as Marilyn Furs, a corporation, engaged in the sale and distribution of fur products including fur coats in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships 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 Fur Co., in connection with the sale or offering for sale of its fur coats in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

1. The use in its invoices, advertisements, or otherwise of any designation, description, or representation of any fur garment which deceptively conceals the true name or nature of the fur with the tendency and capacity, or effect of misleading or deceiving purchasers, prospective purchasers or the public.

2. Disseminating any invoices, advertisements, or other descriptive literature pertaining to coats or garments manufactured from dyed furs, peltries, or skins which fail clearly and unequivocally to disclose the fact that such products are manufactured from dyed furs, peltries, or skins.

3. Representing by the use of the word "free" or any other word or words of similar import or meaning that a service or product, included as part of a combination offer, is given free, when in fact such service or product is not a gratuity but the cost thereof is included in the price of such combination offer.

4. Disseminating advertisements or advertising matter or displaying any sales price, special or otherwise, in any manner so as to cause or which has the capacity to cause the belief or impression that such displayed or featured price represents the true price of the articles advertised when, as a matter of fact, the price or prices of such articles or any thereof are in excess of such displayed or featured price; if such sales prices range from a minimum price to a maximum price as, for example, $39.95 up to $99, the maximum price shall be printed in type equally conspicuous as that in which the minimum price is printed, and in immediate connection therewith so as to clearly, unequivocally, and unambiguously indicate the maximum price as well as the minimum price comprehending such price range. (July 18, 1941.)

3183. **Fur Coats—Composition, Nature, Value, Prices, Special Offers and Free.**—David B. Silverman and Harry Shulak, individuals, who were copartners trading as Marilyn Fur Studios and presently are officers of the Globe Fur Co. which now operates the said Marilyn Fur Studios, either under said trade name "Marilyn Fur Studios" or under the trade name "Marilyn Furs." Said individuals, either as copartners or as officers of the Globe Fur Company, engaged in the sale and distribution of fur coats in interstate commerce, in competition with other corporations and partnerships and with 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.

David B. Silverman and Harry Shulak, and each of them, in connection with the sale or offering for sale of their fur coats in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist from:

1. The use in their advertisements or on labels, tags, brands, or otherwise of any designation, description, or representation of any fur garment which deceptively conceals the true name or nature of the fur, with the tendency and capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the public.

2. Disseminating any advertisements, invoices, or other descriptive literature pertaining to coats or garments manufactured from dyed furs, peltries, or skins which fail clearly and unequivocally to disclose the fact that such products are manufactured from dyed furs, peltries, or skins.

3. Representing the sale price of their products as a "mere fraction of their actual worth" or as less than the "worth" or the cost price thereof when such "worth" or cost price is in excess of or equal to such sale price; or representing that so-called "values" offered are due to quantity purchases, unless the number of articles purchased is as represented and unless such quantity purchases do, in fact, result in special values or reduced prices to consumer purchasers.

4. Representing that so-called special offers or sales are to be terminated on a specified date or are limited as to time, unless such offerings or sales terminate on the dates indicated or are definitely limited as represented.

5. Representing by the use of the word "free" or any other word or words of similar import or meaning that a service or product, included as part of a combination offer, is given free, when in fact such service or product is not a gratuity but the cost thereof is included in the price of such combination offer.

6. Representing that any so-called "credit checks," coupons, or similar devices have any monetary value in the purchase of articles which are regularly sold with or without such "credit checks" or similar devices at the prices required to be paid, or that any articles of merchandise regularly sold in connection with the use of any purported "credit checks" or similar devices, have any value in excess of the actual money prices required to be paid therefor. (July 18, 1941.)

3184. **Photographic Enlargements—Special Offer, Nature and Guaranteed.**—Maurice Larsen, an individual, trading as Fox Studio, engaged in the making of photographic enlargements 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.

Maurice Larsen in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from:

1. Representing in any way that his regular method of sale is either a "special" or an "introductory" offer, or that the offer is limited as to the number of persons to whom it is available or that the price charged for the product is a "special" one or is other than the price usually charged therefor in the regular course of business.

2. Stating or representing that his products are "oil colored photographs" or from using any other designation for or otherwise describing said product in a way which may import or imply or tend to cause the belief by purchasers that said products are photographs in the ordinarily accepted meaning of a picture of a person drawn from life, particularly in oil.

3. The use of the word "guaranteed" or any other word or words of similar meaning in connection with the offering for sale, sale, or distribution of his products, unless, whenever used, clear and unequivocal disclosure is made in direct connection therewith of exactly what is offered by way of security as, for example, refund of purchase price. (June 19, 1941.)

3185. **Electric Bulbs or Lamps—Qualities or Results, Comparative Merits, and Government Conformance.**—Polar Co., a corporation, trading under the name "Masterlite Lamp Co.," engaged in the manufacture of electric bulbs or lamps of various types, including one such device called "Double-Life," 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.

Polar Co., trading as Masterlite Lamp Co., or under any other name, in connection with the advertisement, offering for sale, sale, or distribution of its aforesaid commodities in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from stating or representing in any manner that the use of said commodities will effect or result in a saving of 20 percent or up to 40 percent on lighting costs, that is to say, reduce electric light bills by 20 percent or more, or any other amount which is exaggerated or in excess of what is actually the fact, or that said commodities will last from 2 to 4 times longer than standard bulbs, or that said commodities have an average burning life of 2,000 hours or that they meet Bureau of Standards specifications in all respects. (July 21, 1941.)

3186. **Chemical Preparations—Value, Quality, and Composition.**—Vincent B. Bartos and Clara J. Bartos, partners trading under the firm name or title "Barton Chemical Company," engaged in the manufacture, sale, and distribution of chemical preparations such as bleaches, cleaners, whiteners, insecticides, and other 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.

Vincent B. Bartos and Clara J. Bartos, in connection with the sale or offering for sale of their products in commerce as defined by the Federal Trade Commission Act, agreed they will cease and desist from representing to customers or prospective customers through the use of advertisements, printed matter, or otherwise, that the goods or merchandise offered as a premium for the return of coupons issued by said partners, Vincent B. Bartos and Clara J.

Bartos, have a retail price or value greater than the price at which said products are currently sold in the usual course of business; and also representing that the product given for the return of said coupons is of a certain quality or composition, when in fact such product is not of the quality and composition as represented. (July 25, 1941.)

3187. **Textile Fabrics—Source or Origin and "Home Loomed."**—Miles Llewellyn Finch, Miles L. Finch, Jr., Guy Giordanelli, and Cora S. Sontag, copartners, trading as Associate British Manufacturers, engaged in the sale and distribution of textile fabrics 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.

Miles Llewellyn Finch, Miles L. Finch, Jr., Guy Giordanelli, and Cora S. Sontag, and each of them, in connection with the sale or distribution of their textile fabrics in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

1. Representing, through the use of any words, terms, symbols, or depictions indicative of British or other foreign origin, or in any other manner, that products which are manufactured in the United States of America are made in or imported from the British Isles or any other foreign country: *Provided, however*, That the country of origin of the various constituent fibers thereof may be stated when immediately accompanied in equally conspicuous type with an explanation that such products are manufactured in the United States of America.

2. Representing, by means of tags, labels, or other advertising matter or in any manner, that their fabrics are manufactured from imported British wool when, in fact, the fiber content thereof does not consist wholly of British wool imported from the British Isles.

3. The use of the words "Home Loomed" as descriptive of fabrics manufactured by machines in mills or factories, or otherwise representing that factory manufactured fabrics are loomed or produced in the home.

It is further understood that no provision contained in this agreement 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. (July 28, 1941.)

3188. **Hosiery—Composition and Source or Origin.**—Chester H. Roth Co., Inc., a New York corporation, and Century Hosiery Corporation, a North Carolina corporation, engaged in the sale and distribu-

tion of men's hosiery in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Chester H. Roth Co., Inc., and Century Hosiery Corporation, and each of them, in connection with the sale and distribution of their hosiery in commerce, as defined by the Federal Trade Commission Act, agreed they will forthwith cease and desist from:

1. The use of the words "Linen" or "Irish Linen" as descriptive of the fiber content of hosiery not composed of linen. If a portion of such hosiery, as, for example, the toe or the toe and heel thereof, is composed in part of or reinforced with linen, then in that case the word "Linen," when used properly to describe such linen content, shall be immediately accompanied in equally conspicuous type by a word or words truthfully and unambiguously designating the portion so reinforced as, for example, "Toe reinforced with linen" or "Heel and toe reinforced with linen."

2. Representing, directly or inferentially, that hosiery is composed in whole or in part of "Egyptian Lisle" or of cotton produced in Egypt when, in fact, the cotton fiber or thread content thereof was not produced in Egypt.

3. The use of the term "Lisle" as descriptive of hosiery which is not, in fact, made of lisle, as the term generally is understood and recognized by the hosiery industry and the purchasing public. (Aug. 4, 1941.)

3189. **Fabrics or Ribbon—Unit Quantities.**—Shannock Narrow Fabric Co., a corporation, engaged in the manufacture of narrow fabrics or ribbon, 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.

Shannock Narrow Fabric 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 marking "50 Yards" on bolts or containers thereof when, in fact, less than 50 yards of material are contained therein, or otherwise mismarking or misbranding such products with respect to the yardage thereof or in any other way, with the tendency and capacity or effect of misleading or deceiving purchasers or the consuming public. (Aug. 4, 1941.)

3190. **Ribbons and Seam Binding—Unit Quantities.**—Standard Ribbon Corporation, a New York corporation, engaged in the manufacture

of various types of ribbons including seam binding, in competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution, in interstate commerce, of similar products, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Standard Ribbon Corporation, in connection with sale or offering for sale of its seam binding or other ribbons in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from the use of the marking "100 Yards" on bolts or containers thereof when, in fact, less than 100 yards of material are contained therein, or otherwise mismarking or misbranding such products with respect to the yardage thereof or in any other way, with the tendency and capacity or effect of misleading or deceiving purchasers or the consuming public.—(Aug. 4, 1941.)

3191. **Radio Communications—Qualities, Properties, or Results.**—The Sunshine Broadcasting Co., a corporation, engaged in interstate commerce in communication by radio and dissemination of such communications including commercial and other programs by and through its broadcasting station designated by the call letters "KTSA" to persons located within the State of Texas and other States of the United States, in competition with other corporations, individuals, and partnerships 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 Sunshine Broadcasting Co., in connection with the dissemination of such communications in commerce, as defined by said act, agreed to cease and desist from using the slogan or words "KTSA San Antonio, Texas, 5,000 WATTS, DOING A 50,000 WATT JOB." (Aug. 4, 1941.)

3192. **Hair Dyes—Qualities, Properties or Results.**—A. Rhodes Co., Inc., a corporation, engaged in the business of manufacturing hair dyes, one type of which is called "Rejuvena," sometimes spelled "Reju-Vena," and in the sale thereof in commerce between the various 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.

A. Rhodes 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 any statement or representation which imports or implies, or the effect of which tends or may tend to convey the impression or belief to purchasers or prospective purchasers, that

said product has healing properties or that it would be beneficial per se to the skin or scalp, that it contains anything which would be of any particular value as a means of preventing falling hair, that its use would do more than to assist only in the temporary removal of dandruff, that it would have any youthening effect upon the user other than to change the color of gray hair, or that the use thereof would prevent the hair shaft, which emerges from the hair follicle after the application of the dye, from appearing in its natural grayness. (Aug. 5, 1941.)

3193. Medicinal Preparation—Qualities, Properties, or Results.—Henry I. Snare, trading as Snare Brothers Ointment Co., and George J. Mergenthal and George O. Dennis, copartners, trading as Snare's Re-Lef Sales Co., engaged in the sale and distribution of a medicinal preparation, a salve or ointment called "Snare's Relef," 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.

Henry I. Snare, George J. Mergenthal, and George O. Dennis in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist forthwith from the use of any statement or representation which, either directly or by inference, imports or implies or the effect of which tends or may tend to convey the belief:

1. That the use of said preparation, as directed, will prevent or cure pneumonia, asthma or hay fever, influenza, pleurisy or gout, or goiter, or that it will afford any appreciable relief from sinus disorders or various forms of rheumatism or that it will be beneficial in the treatment of appendicitis or severe chest colds, or that it will put an end to inflammation of all kinds or kill infection and germs by vapor action, or that the said preparation is a modern or new type of treatment or that it is superior to other similar preparations.

2. That the said preparation has therapeutic value or properties other than those of a counter-irritant or that it will afford other than temporary, local relief to persons who may be suffering from minor bruises or aches, as aching muscles and feet, certain forms of neuritis, rheumatoid arthritis, and sprains. (Aug. 5, 1941.)

3194. Cosmetics—Qualities, Properties, or Results.—Elmo Sales Corporation, a corporation, engaged in the sale and distribution in interstate commerce of two cosmetics, one called "Elmo Special Formula Cream" and the other "Elmo Foundation Cream," both of said cosmetics having essentially identical therapeutic properties and being manufactured by Elmo, Inc., a corporation, and of which the said Elmo Sales Corporation is a subsidiary, in competition

with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Elmo Sales Corporation, in connection with the offering for sale or sale of its product called "Elmo Special Formula Cream," or of any other product of like composition, in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use in its advertising or printed matter furnished by it to others for their use, of any statement, claim, or representation, the effect of which is to convey or which tends or may tend to convey the belief to purchasers that the use of said product would retard or otherwise influence or prevent changes giving rise to wrinkles, crowsfeet, or lines characteristic of advancing age, or that it would do more than to temporarily soften or mask and thereby lessen the prominence of such lines or age signals or to temporarily correct dryness and redness of the skin. (Aug. 5, 1941.)

3195. Candies—"Home Made."—Fanny Farmer Candy Shops, Inc., a corporation, engaged in the manufacture of candies at a number of factories or "studios" operated by it in several States of the United States, 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.

Fanny Farmer Candy Shops, Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from the use in its advertisements and advertising matter or on the containers of its products of the words "Home Made" or of any other word or words of similar implication as descriptive of said products; and from the use of the said words "Home Made" in any way so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that said products are home made or cooked or made in the home. (Aug. 5, 1941.)

3196. Bath Oil—Source or Origin.—Cassell Products, Inc., a corporation, also trading as Jaland Parfums, engaged in the sale and distribution of a bath oil designated "Swiss Pine Needle Bath 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.

Cassell Products, Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease

and desist from the use of the word "Swiss" on tags, labels, invoices, or other advertising matter as descriptive of bath oil not produced in Switzerland; or from any representation, the effect of which causes or has the capacity to cause the belief or impression that any product or products are of Swiss or other foreign origin or are produced in or imported from Switzerland or other foreign country, when such are not the facts. (Aug. 5, 1941.)

3197. **Premium Merchandise—Nature.**—Paul F. Beich Co., a corporation, engaged in the manufacture of candy and in the sale and distribution thereof and also in the sale or distribution of enlarged tinted photographs and other products as so-called premium merchandise in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Paul F. Beich Co., 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 the use of the word or words "Painted," "Hand Painted," "Portrait," "Oil Portrait," or any other word or words of similar import or meaning, either alone or in conjunction or connection with any other word, term, or expression, in any way to designate, describe, or refer to colored or tinted photographs or photographic enlargements or other pictures produced from a photographic base or impression. (Aug. 7, 1941.)

3198. **Flashlights—Qualities, Properties or Results, and Price.**—Milton M. Tigerman, trading as Parker Industries, engaged in the sale in commerce of a type of flashlight variably called "Magic-Lite," "Parker-Lite" and "Flashmaster" and which was described as having self-generating mechanism that produced its own lighting power and eliminated the necessity of batteries or cord, 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.

Milton M. Tigerman in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist forthwith from the use of any statement or representation which asserts or the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the said devices are of such unlimited span of usefulness that they will last forever or for a lifetime or are everlasting or will assure light forever and at no expense or that they will provide a lifetime of service without

the necessity of replacing any of the parts thereof and/or that the first cost of the device will be the last. The said individual also agrees to cease and desist forthwith from the use in his advertising or printed matter or in any way of any false, fictitious, or exaggerated price, that is to say, any purported sales price which is in excess of the price for which said device is customarily sold in the usual course of trade. (Aug. 5, 1941.)

3199. **Flashlights—Qualities, Properties, or Results.**—Match King, Inc., trading as Monarck Manufacturing Co., engaged in the business of manufacturing a type of flashlight which it calls "The Flashmaster" and describes as having self-generating mechanism which produces its own lighting power and thus eliminates the necessity of batteries or cord, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Match King, 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 any statement or representation which asserts or the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that said devices are of such unlimited span of usefulness that they will last forever or for a lifetime or are everlasting or assure light forever and at no expense or that they will provide a lifetime of service without the necessity of replacing any of the parts thereof and/or that the first cost of said device will be the last. (Aug. 5, 1941.)

3200. **Fur Products—Composition and Nature.**—C. J. Gordon Co., a corporation, engaged in the sale and distribution of fur products, including fur coats, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships 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. Gordon Co. in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from labeling, invoicing, or otherwise designating or referring to coats or other articles manufactured from the peltries of "Bessarabian" or other lambs not Persians of full breed as "Blk Persian" or "Persian"; from advertising, offering for sale, selling, branding, or otherwise representing furs as the product of a true species or breed of animals, unless such furs have, in fact, been obtained from a true species or breed of animals; or otherwise making representations which convey or tend to convey a misconception as to the name,

nature, breed, or zoological origin of any fur product offered for sale or sold by it. (Aug. 8, 1941.)

3201. **Spring Water—Qualities, Properties or Results, Ailments, Comparative Merits, Etc.**—Richard R. Thompson, an individual, trading as Eureka Springs Water Co. and as Ozarka Water Co., engaged in the sale and distribution of bottled water designated "Eureka Springs Ozarka Water" or as "Ozarka Spring Water" in interstate commerce, in competition with other individuals and with corporations, firms, and parternships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Richard R. Thompson, in connection with the sale in commerce, as commerce is defined by the Federal Trade Commission Act, or the dissemination of advertising by means of the United States mails or otherwise in commerce as set forth in said act, of the product designated "Eureka Springs Ozarka Water" or "Ozarka Spring Water," or any other product of substantially the same composition or possessing substantially the same properties, whether sold under such name or names or any other name or names, agreed forthwith to cease and desist from representing, directly or inferentially, that such product is a cure, remedy, or competent treatment for any malady, disease, or ailment; that it is a laxative or that faulty elimination is the cause of all stomach trouble, indigestion, rheumatism, or diseases of the liver, kidneys, or bladder or generally the cause thereof; that it has any therapeutic value due to any radio-activity which it may possess; that it is the purest natural water on the American continent or known to scientists; or that undistilled or naturally pure water is the only water to be recommended for human use or that distilled water is poisonous to mankind. (Aug. 11, 1941.)

3202. **Hair Dye Preparation—Safety and Qualities, Properties or Results.**—Jose G. Gonzalez and Mrs. Henry (Felicitas G.) Myers, individuals, engaged in the sale and distribution of a hair dye product designated "Malintzin" in interstate commerce, in competition with other individuals and with firms, and partnerships and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Jose G. Gonzalez and Mrs. Henry (Felicitas G.) Myers, in connection with the advertisement, offering for sale, sale, or distribution in commerce, as commerce is defined by the Federal Trade Commission Act, of the product "Malintzin" or of any other product of substantially the same composition or possessing substantially the same properties, agreed, and each of them agreed, to cease and desist forthwith from the use of the word "harmless" or "safe" as descriptive of said product, and from the use of the said words in any way so

as to import or imply that the said product will not prove harmful under any conditions of its use or when or if used by certain persons. The said individuals also jointly and severally agreed to cease and desist from the use in advertising matter, or in any other way, (1) of the statement "gives permanence of color" or of any other statement of similar implication, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that an application of the product to gray hair would prevent the hair shaft which subsequently emerges from the hair follicle from appearing in its natural grayness; (2) of the statement "imparts a naturalness in any shade of hair" or of any other similar statement, which has or may have the capacity to cause consumers to believe that the use of said product upon hair which has become gray will impart thereto or restore such gray hair to its previous natural shade regardless of what may have been the original shade or color of such hair. (Aug. 11, 1941.)

3203. **Fingernail Polishes—Scientific or Relevant Facts, Qualities, Properties or Results, and Comparative Merits.**—Northam Warren Corporation, a corporation, and Peggy Sage, Inc., a corporation, and a wholly owned subsidiary of Northam Warren Corporation, engaged in the sale and distribution, in interstate commerce, of fingernail polishes, that sold by the Northam Warren Corporation being designated "Cutex" and that sold by Peggy Sage, Inc., being designated as "Peggy Sage," in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Northam Warren Corporation and Peggy Sage, Inc., in connection with the sale or offering for 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 their fingernail polishes or preparations, respectively designated "Cutex" and "Peggy Sage," or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under such names or any other name or names, they, and each of them, agreed forthwith to cease and desist from:

1. Representing that fingernails have pores or that they are like the skin in structure; that the health, growth, or length of fingernails is the result of or contingent upon their contact with air or moisture; that fingernails absorb or give off moisture or that nail defects, such as brittleness, are the result of or due to moisture conditions or a lack of moisture.

2. Representing that their nail polishes or preparations applied to the fingernails, contain pores or form or constitute a porous or mesh-like film or coating or are permeable by any appreciable quantity of

moisture; or that the moisture permeability of their nail polishes exceeds that of competitive products by 206 percent, 100 percent or 90 percent, or by any other percentage which is not in accord with the facts.

3. Representing, directly or inferentially, that the use or application of competitive brands of nail polish smothers or "seals up" the nails, or thereby results in or causes brittle, splitting, or flaky nails or other abnormal or unhealthy nail conditions.

4. Statements or depictions which cause or may cause the belief or impression that their nail polishes can be depended upon to remain intact upon fingernails without chipping, peeling, or wearing off for any period of time in excess of the time such products will remain intact, or that the wearing qualities of their polishes are in excess of those of all polishes sold in competition therewith. (Aug. 12, 1941.)

3204. **Seam Binding—Unit Quantities.**—William Smith & Sons, Inc., engaged in the manufacture of seam binding 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.

William Smith & 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 of the marking "100 yards" on bolts or containers thereof when, in fact, less than 100 yards of material are contained therein, or otherwise mismarking or misbranding such products with respect to the yardage thereof or in any other way with the tendency and capacity or effect of misleading or deceiving purchasers or the consuming public. (Aug. 14, 1941.)

3205. **Horoscopic Readings, "Talismans" and "Lucky Stones"—Astrologer, Qualities, Properties, or Results, Guaranteed, Nature, Etc.**—Samuel Schaap, an individual, trading as Robina Studios, engaged in the sale and distribution of mimeographed material purporting to be horoscopic or astrological readings and of so-called "Talismans" and "Lucky Stones" in interstate commerce, in competition with other individuals, and with corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Samuel Schaap, in connection with the sale and distribution of his horoscopic readings, "Talismans" and "Lucky Stones" in commerce as defined by said act, agreed to cease and desist from:

1. Statements which import or imply that he is an astrologer or that his said business is conducted by or under the supervision of an astrologer.

2. Representing, by direct statement or by reasonable inference, that he has or possesses any astrological gift, quality, or endowment; that he can determine the past, present, or future by astrology or the aspects and situation of the stars; or that, by the application of mundane astrology, he can bring happiness to others or furnish information pertaining to love, health, business, or any other topic or subject matter.

3. Representing that his so-called astrological forecasts or "Life Readings" are individually prepared; that each "Life Reading" is based upon a study of the purchaser's horoscope or upon calculations or deductions pertaining thereto; that any time or work, other than that used in mimeographing and mailing, is required in filling orders; or that the sum of $5 or any other price for the purpose as represented is a reasonable price for such mimeographed copies.

4. Stating, directly or inferentially, that he can and will furnish correct answers to questions submitted to him by purchasers of his "Life Readings".

5. Representing that any scientific process is used in the manufacture or preparation of his talismans; that such talismans, amulets or charms are of any value to the wearers thereof; that the importance of wearing the same is generally acknowledged or recognized; that any person or persons have benefited or have had their wishes fulfilled by reason of wearing such talismans or charms; or that such charms will exercise or exert any influence on persons owning or wearing the same.

6. Representing that the efficiency of his talismans is guaranteed or in any manner importing or implying that any talisman, amulet, charm, "Lucky Stone" or similar product possesses any efficiency, is effective in averting ill or securing good fortune, or possesses any magic qualities or mystic power.

7. Stating, directly or by implication, that the wearing of a so-called "Lucky Stone" will have any influence or bearing on the wearer or in any way affect his fortunes or the attainability of his desires; or that any particular stone possesses any quality or attribute by reason of which it is capable of bringing luck to the owner or wearer.

8. The use of the word "guaranteed" or any other word or words of similar meaning in connection with the advertising, offering for sale, or sale of his said products.

9. The making of any other misleading or deceptive statements or representations concerning the character, nature, quality, value, or scope of the horoscopic readings, "Talismans," "Lucky Stones" or other product or commodity offered for sale or sold by him, or in any other material respect, with the tendency or capacity to mislead or deceive prospective purchasers or the public. (Aug. 15, 1941.)

3206. **Darning Machine—Nature and Qualities, Properties or Results.**—Perfect Manufacturing Co. also trading as Safe Electric Co., a corporation, engaged in the sale and distribution of an electrical heating unit or device designated "Otto-Matik Darning Machine," for use in connection with the patching 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.

Perfect 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 "Otto-Matik Darning Machine" or "Automatic Darning Machine" as a designation for or as descriptive of said product; or the use of the coined word "Otto-Matik" or the words "automatic," "darning" or "machine" or other word or words of similar implication or meaning in any manner so as to import or imply or cause the belief or impression that such device is automatic in operation, that darning can be accomplished by its use or that it is a machine. (Aug. 15, 1941.)

3207. **Alcoholism Treatment—Qualities, Properties, or Results, Safety and Laboratory.**—Harry J. Knorr, an individual, trading and doing business under the name of Laboratory Products Co., engaged in the business of selling and distributing in interstate commerce a preparation called Van-Tox consisting of two kinds of tablets containing the same active ingredients but in different quantities and which were described as "Special Formula Single Stg. #1" and "Special Formula Double Stg. #2," said tablets comprising a treatment for alcoholism and the liquor habit. The said individual, in competition with other individuals, and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Harry J. Knorr, in connection with the offering for sale, sale, or distribution of his preparation designated "Van-Tox" or of any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the aforesaid designation or under any other name, agreed to cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated in any advertisements in commerce, as commerce is defined by the Federal Trade Commission Act, which advertisements represent, directly or through inference that said preparation is a cure or remedy or a competent or effective treatment for chronic alcoholism or the liquor habit; that the use of said preparation will overcome the craving or desire for or

indulgence in alcohol; that the said preparation is in all cases safe or harmless, or that it contains no harmful drugs.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined by the Federal Trade Commission Act, of said preparation, which advertisements contain any of the representations referred to in the preceding paragraph.

The said individual also agreed that, in connection with the offering for sale, sale, or distribution of said preparation in commerce, as commerce is defined by said act, to cease and desist from:

1. Using the word "Laboratory" or any other word of similar import or meaning in any trade name or in any other manner to describe or refer to his business.

2. Representing in any manner that he owns and operates a laboratory. (Aug. 18, 1941.)

3208. **Chicks and Hatching Eggs—Size, Poultry Farm, Qualities, Properties or Results, Awards, Etc.**—Lindstrom Hatchery & Poultry Farm, a corporation, engaged in the sale and distribution of chicks and hatching eggs in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lindstrom Hatchery & Poultry Farm is engaged in the business of producing so-called high-quality poultry for show purposes and for placement in certain farmers' poultry flocks. Chicks advertised and sold by said corporation to the consuming public are hatched in the "Lindstrom" hatchery from eggs purchased by it from farmers, whose flocks include cockerels and/or pullets from the "Lindstrom" poultry farm, or from other poultry raisers.

Lindstrom Hatchery & Poultry Farm, in connection with its sale or offering for sale of chicks and hatching eggs in commerce, as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

1. The use of the words or phrases "chicks from one of the world's largest model poultry plants," "a plant complete to serve the needs of every poultry raiser," "another special modern laying house with the capacity of over one thousand hens," and "every facility is here to give you the finest in baby chick quality" or any other statement or representation of similar import or meaning, either alone or in connection or conjunction with the words "Poultry Farm" as part of its corporate or trade name or the words "poultry plant" or "laying house," without disclosure of the fact that chicks offered for sale and sold to the consuming public generally are hatched from eggs obtained

from supplying farmers or other poultry raisers; or from any statement or representation causing or having the capacity to cause the belief or impression that such chicks are hatched from eggs produced on its own poultry farm.

2. Representing, directly or inferentially, that chicks offered for sale and sold to the consuming public generally have the strain of said corporation's prize-winning or high performance poultry unless, in direct connection with any such representation, truthful disclosure be made of the fact that such chicks are related to and have the strain of losing as well as winning contest entrants and that the strain of such winning and losing contest entrants is diluted due to mating with farmers' flocks.

3. Representing that its poultry generally or various breeds thereof are champions or that it has been awarded a greater number of prizes than have competitors if, in fact, such representations are based on awards received in so-called contests in which a certain breed or breeds of its poultry were the sole entrants for such breed and encountered no competition, unless such representations, whenever made, be immediately accompanied by a statement or statements in equally conspicuous type indicating, definitely and unambiguously, that its entrants encountered no opposition in certain contests or shows.

4. Statements or representations, the effect of which causes, or has the capacity to cause, the belief or impression that its poultry or any thereof have received awards at poultry shows, when, in fact, such entrants did not receive awards as represented.

5. Representing that its pullets have reached egg-laying condition earlier, have layed fewer small and more large eggs, and have layed larger eggs more steadily at egg-laying contests than have any pullets ever entered by any other breeder, or any other statements of similar implication, unless or until such representations are truthfully predicated on factual records or data. (Aug. 19, 1941.)

3209. **Perfumes—Source or Origin and Qualities.**—The Ever-Dry Laboratories, Inc., also trading as Trans-Pacific Importers, with principal office and place of business at Los Angeles, Calif., and Robert W. Miller, individual, trading as Hula-Lei Products with place of business at Honolulu, Hawaii, engaged in the sale and distribution of perfumes in interstate commerce and between the United States and Hawaii, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The Ever-Dry Laboratories, Inc., and Robert W. Miller, in connection with the sale or offering for sale of perfume products in commerce as defined by the Federal Trade Commission Act, agreed jointly and separately to cease and desist from:

1. Representing that the following-named perfumes: "Ginger," "Sandalwood," "Pikaki," "Pomi Moi," or "Plumeria" are made in Hawaii from the tropical flowers of Hawaii; and from the use of any representation or statement so as to import or imply, or the effect of which tends or may tend to convey the belief that said products are made in Hawaii or are products of Hawaii.

2. Representing that said perfumes represent the exotic fragrance of tropical flowers from Hawaii. (Aug. 19, 1941.)

3210. **Ozone Generating Device—Qualities, Properties or Results, and Testimonials.**—Vita-Lite, Inc., a corporation, engaged in the sale and distribution in interstate commerce as defined by the Federal Trade Commission, of machines or devices designated "Vita-Lite," for the purpose of generating or providing ozone, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Vita-Lite, 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 forth, of its devices or machines designated "Vita-Lite," or of any other ozone generating device or devices of substantially the same character, whether sold under such name or any other name or names, agreed forthwith to cease and desist from representing, by direct statement or by reasonable inference either in its advertising matter or through statements by its canvassing salesmen or agents, or otherwise, that such devices have any therapeutic value, destroy or are capable of destroying bacteria or germs, are of benefit or value in the alleviation or curing of disease or that the use thereof is indicated as a remedy or effective treatment for any ailment, disease or malady of the human body; and from publishing or otherwise disseminating any testimonials containing statements or assertions contrary to the terms of the foregoing agreement. (Sept. 2, 1941.)

3211. **Ozone Generating Device—Qualities, Properties or Results, and Economy.**—Clyde Scherpness, an individual, trading as Ozone Air Co., engaged in the manufacture of machines or devices designated "Ozone-Air," for the purpose of generating ozone 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.

Clyde Scherpness, 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 machines or devices designated "Ozone-Air" or of any other device or devices of substantially the same character, whether sold under such name or any other name or names, agreed forthwith to cease and desist from representing, by direct statement or by reasonable inference, that such devices have any therapeutic value; that such devices or ozone developed by the use thereof will eliminate foul air, purify or reactivate the air, eliminate offensive odors, oxidize all foreign matter in the air, destroy everything which is not naturally a component part of the air or render carbon monoxide innocuous or harmless; that such device or ozone generated thereby is a competent sterilizing agent or germicide, will destroy germs or bacteria or is conducive to health; that the use of said device will effectuate or result in a saving of 50 percent or other appreciable percentage in the cost of heating; or that the use thereof by poultry raisers will eliminate or prevent poultry disease or infection, increase egg production, improve health of stock, constitute a competent disinfectant or eliminate or destroy offensive odors in poultry houses. (Sept. 3, 1941.)

3212. **Refrigeration Compressors and Beverage Coolers—Qualities, Properties or Results, and Comparative Merits.**—Mills Novelty Co., a corporation, engaged in the business of manufacturing, among other things, refrigeration compressors and beverage coolers, 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.

Mills Novelty 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 statement that its ⅓ horsepower compressor unit will equal the performance of the ½ horsepower compressor units of other manufacturers; and from the use of that statement or of any other statement or representation, the effect of which tends or may tend to convey the impression or belief to purchasers or prospective purchasers that its compressor units, or any thereof, will equal the performance of its competitors' compressor units of greater horsepower, or that its said compressor units, in the matter of performance, are any better, size for size, than the compressor units of other manufacturers, or that its compressor units are quieter or less costly to operate than are competitive compressor units of the same horsepower. Said corporation also agrees to cease and desist from stating or representing that its Mills Speed Coolers are the only coolers which feature absolutely or completely dry storage, forced air circulation, automatic defrost and automatic disposal of defrost water. (Sept. 4, 1941.)

3213. **Poultry and Animal Food Supplement—Qualities, Properties or Results.**—Harold Hilty, an individual trading as Marvelous Vegetable Yeast Co., engaged in the sale and distribution of a poultry and animal food supplement, designated "Marvelous Vegetable Yeast," 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.

Harold Hilty, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of the product, designated "Marvelous Vegetable Yeast," or any other product or products composed of substantially the same ingredients or possessing substantially the same qualities, whether sold under such name or any other name or names, agreed he will forthwith cease and desist from representing, directly or by implication, that such product constitutes a remedy or effective treatment for diseases of poultry or animals generally or is efficacious in correcting or preventing worms and coccidiosis in chickens, pigeons, or other poultry, and worms in dogs, cats, foxes, minks or other animals. (Sept. 8, 1941.)

3214. **Eyelash and Eyebrow Preparation—Safety.**—Hec Barth, an individual doing business under the trade name "Dark Eyes," engaged in the business of offering for sale and selling a preparation, a dye for eyelashes and eyebrows, called "Dark Eyes," 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.

Hec Barth, in connection with the dissemination of advertising by the means and in the manner above set out of the preparation called "Dark Eyes," 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 he will cease and desist forthwith from disseminating any advertisement which fails conspicuously to include therein a statement to the following effect:

CAUTION: Prolonged or frequent use of this preparation may result in permanent discoloration of the skin and mucous membranes.

Provided, however, That such advertisement need contain only the statement:

CAUTION: Use only as directed on the label.

if and when such label bears the first described caution conspicuously displayed thereon and the accompanying labeling bears adequate directions for its use. (Sept. 9, 1941.)

3215. **Chenille Fabrics—Composition.**—John A. Wahrenberger, an individual, engaged in the sale and distribution of chenille fabrics 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. Wahrenberger, in connection with the sale and distribution of his products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

1. 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".

2. The use of abbreviation "Pers." or any abbreviation of the word "Persian," or any other word or words connoting fur as descriptive of fabrics made or composed of fibers other than the fur indicated; or advertising, invoicing, labeling, selling, or offering for sale, fabrics composed of fibers other than fur under any representations or conditions of deceptive concealment whereby purchasers or the consuming public are or may be misled into buying such fabrics in the belief that they are composed of fur. (Sept. 10, 1941.)

3216. **Medicinal Preparations—Qualities, Properties or Results, Ailments, Etc.**—Robert Salazar, an individual, trading as Los Angeles Pharmacal Co. and as Hidalgo Pharmacy (Hidalgo Farmacia), engaged in the sale and distribution of medicinal preparations, including products designated "Stomovita," "Femovita," "Pulmotol," and "Renatone Pills," 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.

Robert Salazar, 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 the products designated "Stomovita," "Femovita," "Pulmotol," or "Renatone Pills," or any other preparation or preparations of substantially the same composition or possessing substantially the same properties, whether sold under such name or names or any other name or names,

he will forthwith cease and desist from representing, directly or inferentially:

1. That "Stomavita" is a remedy or an effective treatment for stomach acidity, dyspepsia, indigestion, or stomach or gastric trouble generally; that such product will regulate or relieve or that its use is indicated as a treatment for gastric or stomach troubles; or that such product will afford the user thereof the satisfaction of eating everything desired without distress or ill effects.

2. That "Femovita" can be depended upon to correct annoyances exclusive to the feminine sex; that its results are marvelous or sure; that it is an effective treatment for nervousness, muscular pain, or female ailments due to "irregularities in the functions of their sex"; that its use will control, result in or maintain health, a rhythm of health, beauty, youthful charm, or happiness; that it will enrich the blood or tone up the nerves, glands, muscles, or tissues; or that it will increase physical resistance or soothe nervous excitation and functional disturbances common to women.

3. That "Pulmotol" will stimulate organic energy or conquer nervous debility; that it is a general tonic; that its use by growing children helps or aids in the growth of bones or teeth, causes children to be strong or healthy, or contributes to their development or causes them to progress in their studies; that such product is indicated for raising organic resistance or invigorating the organism; or that its use will create a barrier to or prevent chest ailments.

4. That "Renatone Pills" are a scientific discovery; that they have any effective therapeutic action on the kidneys or afford any relief to abnormally functioning kidneys; that such product is a remedy or effective treatment for, or will prevent kidney disabilities or ailments; that its use is indicated as a remedy for headache or pains in the waist; that the kidneys accumulate uric acid or acid; that all impurities are removed from the blood by the kidneys; and that disorders or maladies such as rheumatism, stomach trouble, backaches, lumbago, arthritis, and nervousness are caused by acid in the kidneys or are attributable solely to kidney ailments. (Sept. 16, 1941.)

3217. **Hosiery—Source or Origin.**—Clarence L. Whisnant, Elsie E. Whisnant, Ernest Whisnant, and Louella P. Whisnant, copartners trading as Whisnant Hosiery Mills, engaged in the manufacture of men's socks and in the sale thereof in interstate commerce, in competition with other partnerships and with 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.

Clarence L. Whisnant, Elsie E. Whisnant, Ernest Whisnant, and Louella P. Whisnant, in connection with the offering for sale, sale, or distribution of their domestically manufactured "English Rib"

hosiery 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 "English" either alone or in connection with the word "Rib" or with any other word or words or in any other way as a mark, stamp, brand, or transfer for such hosiery so as to import or imply, or the effect of which tends or may tend to convey the impression or belief to purchasers or prospective purchasers that said hosiery is manufactured in England. If said domestically manufactured hosiery is knitted on machines capable of producing "English Rib" hosiery, and the words "English Rib" are used as descriptive thereof, then in that case, said words shall be immediately accompanied by the words "Made in U. S. A." or other words of similar import, printed in equally conspicuous and prominent type so as to indicate clearly that said hosiery is not of English origin. (Sept. 16, 1941.)

3218. **Hosiery—Mills.**—Hanes Associated Mills, Inc., a corporation, engaged as a sales agency for a number of hosiery manufacturing concerns located in the State of North Carolina, in the sale of such hosiery in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Hanes Associated Mills, Inc., in connection with the offering for sale or sale of hosiery in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the word "Mills" as part of its corporate or trade name, and from the use of the word "Mills" or any other word or words of similar import, the effect of which tends or may tend to convey the impression or belief to purchasers or prospective purchasers that it makes or manufactured the hosiery offered for sale and sold by it or that it actually owns and operates or directly and absolutely controls the mills in which said hosiery is manufactured. (Sept. 16, 1941.)

3219. **Sinusitis Remedy—Qualities, Properties or Results and Safety.**—Henry Spangler, an individual, trading as National Laboratories and as National Laboratories, Inc., engaged in the sale and distribution in interstate commerce of an alleged remedy for sinusitis designated "Bullock's System" which includes preparations designated as "Bullock's Antiseptic Healing and Cleansing Tonic," "Bullock's Nasal Salve," "Bullock's Antiseptic Emollient" and "Bullock's Clear Head Tablets," 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.

Henry Spangler, in connection with the offering for sale, sale, or distribution of the advertising by the means and in the manner above

set forth of his "Bullock's System" or the preparations designated "Bullock's Antiseptic Healing and Cleansing Tonic," "Bullock's Nasal Salve," "Bullock's Antiseptic Emollient," and "Bullock's Clear Head Tablets" or any other preparation composed of substantially the same ingredients or possessing substantially the same therapeutic properties, whether sold under such name or names or any other name or names, agreed forthwith to cease and desist directly or inferentially from:

1. Representing that said preparations or any thereof constitute an effective treatment or competent remedy for sinusitis, infectious catarrh or any pathological process of the nose, mouth, throat, or sinus,

2. From disseminating or causing to be disseminated any advertisement which fails to reveal that the frequent or continued use of the preparation designated "Bullock's Clear Head Tablets" or any other preparation composed of substantially the same ingredients may be dangerous, causing collapse or dependence on the drug; provided, however, that such advertisement need contain only the statement: "Caution, use only as directed on the label," provided such label contains a warning to the effect that the frequent or continued use thereof may be dangerous, causing collapse or dependence on the drug. (Sept. 22, 1941.)

3220. **Stoves, Furnaces, Etc.—Manufacturers and Personnel.**—Kalamazoo Stove & Furnas Co., a corporation, engaged in the sale and distribution of cooking and heating units and other appliances in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Kalamazoo Stove & Furnas Co., 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:

1. From the use of the words "Kalamazoo Direct To You," "Factory Prices," "Our Factory Produces," "Direct from factory to the user," "straight from the men who make them to your home," or any other words or phrases of similar import or meaning in any manner so as to import or imply or the effect of which tends or may tend to convey the belief or impression that it produces or manufactures any stove, heater, range, furnace or other appliances or that it actually owns and operates or directly and absolutely controls the mill or plant in which any such product is produced or manufactured when, in fact, such stove, heater, range, furnace, or other appliance is not manufactured or produced in a mill, factory, or plant operated or directly and absolutely controlled by it.

2. From representing, directly or inferentially that 43 engineers or "engineering brains" "have been concentrated on the one job of designing a new Kalamazoo Furnace"; that any number of engineers, in excess of the actual number so employed, have been or are being employed or engaged in developing or improving any furnace, stove, range or other appliance advertised, offered for sale, or sold by it; or denonminating or referring to any member of its personnel as an engineer when, in fact, such member is not a competent and qualified engineer. (Sept. 23, 1941.)

3221. **Booklets—Qualities, Properties or Results, Prices, Etc.**—Bernard Munves, Paul Pukula, and Benjamin Pukula, copartners, trading as George Cary Earnist, engaged in the sale and distribution in interstate commerce, of booklets, designated "The Daily Five, The Hundred Dollar System of Scientific Physical Efficiency," containing instructions for certain bodily exercises, a so-called "Daily Diet," and other alleged health rules or suggestions, in competition with other partnerships 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.

Bernard Munves, Paul Pukula, and Benjamin Pukula, and each of them agreed that, in connection with the sale and distribution of their booklets, designated "The Daily Five," or any other booklets or publications containing substantially the same subject material, whether sold under such name or any other name or names, agreed forthwith to cease and desist from:

1. Representing, directly or inferentially, that the exercises outlined in their said booklets will have any demonstrable effect upon or are a competent remedy or effective treatment for indigestion, torpid liver, nervous trouble, impure blood or weak heart, or lungs; that such exercises can be depended upon to "remove constipation" or the "cause of constipation," to correct ill health or preserve health or strength, or to revitalize the system; or that, by following exercise instructions as outlined, internal organs not under voluntary control will be exercised.

2. Representing, directly or inferentially, that the "Daily Diet," as set forth in said booklets, contains complete dietary information and hygienic rules or, that such "Diet" is in accordance with the modern science of dietetics.

3. Representing that the "Shockless Cold Bath" described in said booklets is or acts as a nerve "Tonic," or has any beneficial effect upon the brain or nerve center.

4. Representing or quoting as the customary or regular price or value of such booklets, prices, or values which are in fact fictitious and

in excess of the prices at which such booklets customarily are offered for sale and sold in the normal course of business. (Sept. 23, 1941.)

3222. **Animal and Poultry Foods or Food Supplements—Qualities, Properties or Results, Nature, Composition, Etc.**—Lapp Laboratories, Inc., a corporation engaged in the sale and distribution of animal and poultry foods or food supplements including products designated "Mo-Lactas," "Lapp's Mineralized Mo-Lactas Block" and "Lapp's Poultry Blockettes," in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lapp Laboratories, Inc., in connection with the offering for sale, sale, or distribution in commerce as defined by said Act, of its animal and poultry foods or food supplements designated "Mo-Lactas," "Lapp's Mineralized Mo-Lactus Block" and "Lapp's Poultry Blockettes" or any thereof or any other product composed of substantially the same ingredients or possessing substantially the same properties, whether sold under such names or any other name or names, agreed forthwith to cease and desist, directly or inferentially, from:

1. Representing that said product or products are remedies or effective treatments for any malady, disease, or ailment of animals or poultry not the result of nutritional deficiencies due to a lack of the minerals, vitamins, or food elements contained therein; or that the use of such product or products or the addition thereof to a diet or ration containing the necessary food elements, minerals, and vitamins in adequate quantities will afford any curative or nutritional benefits, values, or properties.

2. Representations or statements which import or imply that said product or products when used as a supplement to animal or poultry foods or otherwise in the feeding of animals or poultry:

Will cause increased milk production or increase the milk solids when fed to dairy cows.

Will cause calves to thrive, make rapid gains, or be kept in excellent condition.

Will keep sows and pigs in excellent condition.

Will cause faster growth or increase lactation when fed to hogs.

Will increase the rapidity of the growth of chicks.

Will promote or increase milk flow or cause glossier wool or faster wool growth when fed to sheep; or

Will increase the food consumption of animals generally or keep animals and poultry in good condition—

unless in direct connection with each and every such representation it be clearly and unambiguously stated that the benefits claimed will

obtain only when there is a deficiency or suboptimal supply of food elements, minerals, vitamins, or other constituents of such product or products in the feed or ration ordinarily provided such animals or poultry.

3. Representing that such product or products or the use thereof constitute an effective treatment or competent remedy for the control or eradication of worms in animals or poultry; that they are tonics; that the mineral content thereof is identical with the mineral content of the blood and tissues; that their molasses content is dried whole molasses; that their use as a supplement to horse feed will promote the assimilation of roughage; that the use thereof can be depended upon to prevent cattle from refusing their rations; that cattle fed thereon will average 3½ pounds per day gain in weight over any extended period of time; that sheep fed thereon will gain 5 pounds weight per week over any extended period of time; or that said product or products are adequate substitutes for or will replace milk, dried buttermilk or other milk products, salt and certain other minerals, yeast, or alfalfa in the diet of animals or poultry. (Sept. 23, 1941.)

3223. **Peat—Nature.**—American Soil Sponge Selling Corporation, a corporation engaged in the sale of peat, which is mined at Capac, Mich., in interstate commerce in competition with other corporations and with individuals, firms, and partnerships 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 Soil Sponge Selling Corporation, in connection with the advertisement, offering for sale, sale, or distribution of its peat product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the words "Peat Moss" as descriptive of said product; and from the use of the words "Peat Moss" in any arrangement, either alone or in connection or conjunction with any other words 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 or impression to purchasers or prospective purchasers that said product is moss peat, that is to say, a product consisting chiefly of the decomposed stems and leaves derived from species of Sphagnum mosses. (Sept. 23, 1941.)

3224. **Trunks or Lockers—Composition, Qualities, Properties, or Results.**—General Trunk Co., a corporation, engaged in the manufacture of luggage, including trunks and lockers, 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.

General Trunk Co., in connection with the sale and distribution in commerce, as defined by the Federal Trade Commission Act, of its trunks or lockers heretofore designated or described as "cedar-lined" or "Cedar Lined" or any other product of substantially the same construction, agreed forthwith to cease and desist from:

1. The use of the words "Cedarlined" or "Cedar Lined" or other word or words of similar import or meaning, either alone or in connection or conjunction with any other word or words, as a designation for or as descriptive of such products; or any representation which imports or implies or has the capacity to cause the belief or impression that such products are lined with cedar, that is to say, boards or lumber obtained from cedar trees.

2. The use of the words "Moth Repellent" as descriptive of such products; or representing in any manner, directly or by implication, that said products have any effective, adequate, or competent moth-repellent qualities or that the paper linings thereof afford any practical use or value as a moth repellent. (Sept. 23, 1941.)

3225. **Canvas Products—Weight.**—A. Mamaux & Son, a corporation, engaged in the manufacture of tents, tarpaulins, awnings, and other canvas products, and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

In the canvas products industry and trade the weight of a canvas product indicates the original weight of the grey goods used in the manufacture thereof and does not include the weight of any material used therein as a so-called waterproof treatment. Commercial Standard CS28–32, effective January 1, 1932, as adopted by representative manufacturers, distributors and users of cotton fabric tents, tarpaulins, and covers, reads in part as follows:

Waterproof-treated goods.—Since the practice of indefinite and misleading markings and descriptions of "waterproof-treated" fabric tents, tarpaulins, and covers by their finished weight works an injustice and is misleading to the buying public, the industry desires to eliminate this practice and arrange in lieu thereof a definite standard method of marking which will be clear to both buyer and seller.

Waterproof-treated or untreated cotton fabric tents, tarpaulins, and covers shall be marked with a printed tag or stencil to show the original grey goods weight on a square yard basis.

A. Mamaux & Son, in connection with the offering for sale, sale, or distribution in commerce as defined by the Federal Trade Commission Act, of its tents, tarpaulins, awnings, or other canvas

products made or manufactured from so-called waterproof-treated canvas or fabric, agreed forthwith to cease and desist from representing as the weight of the fabric thereof, on a square yard basis, any weight in excess of the original weight per square yard of the grey goods used in the manufacture of such products. (Sept. 23, 1941.)

3226. **Correspondence Courses of Instruction—Institute, Government Connection, Guarantee or Refund, Nature, Etc.**—Citizens Institute of Training, Inc., a corporation, engaged in the sale and distribution in interstate commerce of a correspondence school course of instruction intended to assist students thereof to pass Civil Service examinations, in competition with other corporations and with individuals, firms, and partnership likewise engaged in the sale and distribution of correspondence school courses of instruction, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Citizens Institute of Training, Inc., in connection with the offering for sale, sale, or distribution of its correspondence course of instruction in commerce as defined by said act, agreed forthwith to cease and desist from:

1. The use of the word "Institute" as a part of or in connection with the corporate or trade name under which it carries on its business; and from the use of the word "Institute" independently or in connection with any other word or words implying or suggesting that its correspondence school is an organization conducted for the promotion of learning such as philosophy, art, or science and has equipment and faculty such as to entitle it to be designated an institute.

2. Representing, directly or by reasonable inference, either in its advertising media, by statements by its canvassing salesmen or agents, or otherwise that said corporation or the correspondence school conducted by it has any connection with the United States Civil Service Commission or other agency of the Federal Government.

3. The use, directly or indirectly, of any so-called "money-back" guarantee, refund agreement or provision, or other guarantee, agreement, or contract with a student or students conditioned upon the student's taking or passing or having the opportunity to take or pass a future Government or civil-service examination or test, or conditioned upon the student's being placed upon a Government or other eligible list, or upon his securing or having the opportunity to secure employment within the field of training pursued, with the capacity, tendency, or effect of misleading students or prospective students by reason of concealment of pertinent facts or of other circumstances or conditions of its use.

4. Representing, by direct statement or by reasonable inference, either in its advertising media, by statements by its canvassing salesmen or agents, or otherwise, that students or graduates of its said course of instruction are assured of civil-service appointments or of receiving employment by the United States Government.

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 sold or offered for sale by it or in any other material respect, with a tendency or capacity to mislead or deceive students, prospective students, or the public. (Sept. 23, 1941.)

3227. Cigars—Quality and Prices.—Webster Eisenlohr, Inc., a corporation, engaged in the business of manufacturing cigars and in the sale thereof in interstate commerce under the brand name "Cinco," in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Webster Eisenlohr, Inc., in connection with the offering for sale, sale, or distribution of its "Cinco" 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 brand of cigars which it now sells and, at all times since June 1939, has sold at "2 for 5¢" is composed of the same tobacco ingredients or the same quality of ingredients as were used in the making of the cigars sold under the brand name "Cinco" prior to said date at higher prices.

2. The use of the price representation "5¢" either alone or in connection with any words or in any other way, so as to import or imply that the price of 5 cents each is the price at which said brand of cigars, as presently made, are now and for some time past have been customarily sold in the usual course of retail trade.

3. The use of the word "Now" or of any other word or words of similar import in connection with the phrase "2 for 5¢" or of any similar phrase of equivalent meaning to designate or represent product regularly and usually offered for sale or sold at that price, or which tends or may tend to convey the belief to purchasers or prospective purchasers that the price of the products referred to has been recently reduced.

4. The use of the statement or representation "Popular at 5¢ for Over 50 Years," or of any other statement of similar import, in referring to its "Cinco" brand of cigars, when in fact, such brand of cigars has not been sold at 5 cents each for 50 years. (Sept. 25, 1941.)

3228. **Dog Food—Composition and Quality.**—Kendall Foods, Inc., a corporation, engaged in the sale and distribution in interstate commerce of dog foods, including a product designated "Walter Kendall Complete Dog Food," in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Kendall Foods, Inc., in connection with the offering for sale, sale, or distribution in commerce as defined by said act, of its dog food, designated "Walter Kendall Complete Dog Food," or any other product composed of substantially the same ingredients or possessing substantially the same properties, whether sold under such name or any other name or names, agreed forthwith to cease and desist from representing that such product is a "balanced ration for all breeds" of dogs or from any representation the effect of which causes or has the capacity to cause the belief or impression that such product constitutes a properly balanced ration or food for dogs generally or for dogs of all breeds, ages, or of all activities. (Sept. 25, 1941.)

3229. **Toothbrushes—"Sterilized."**—I. Sekine Co., Inc., a corporation, engaged in the manufacture of toothbrushes 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.

I. Sekine Co., Inc., in connection with the offering for sale, sale, or distribution or the advertising in commerce, as defined by the Federal Trade Commission Act, of toothbrushes not so packaged and sterilized as to be rendered sterile, agreed forthwith to cease and desist from the use of the word "Sterilized" or any other word or words of similar implication or meaning as descriptive of such products; or from any representation the effect of which tends or may tend to convey the belief to purchasers that such products are sterile or are rendered free from organisms capable of growth. (Sept. 29, 1941.)

3230. **Cooking or Table Oil—Composition.**—C. F. Simonin's Sons, Inc., a corporation, engaged in the sale and distribution in interstate commerce, of vegetable oils, including a product designated "Olio Simonini" for use as a cooking or table oil, in competition with other corporations and with individuals, firms, and partnerships 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. F. Simonin's Sons, Inc., in connection with the offering for sale, sale, or distribution, or the advertising by the means and in the man-

ner above set forth, of its product "Olio Simonini" or any other cooking or table oils not composed wholly of olive oil, agreed forthwith to cease and desist from any representation which, directly or by reasonable inference, conveys or may tend to convey the belief or impression to purchasers or the consuming public that such product or products consists of or is composed of olive oil. (Sept. 29, 1941.)

3231. **Silk Hosiery and Lingerie Preparation—Qualities, Properties or Results, and Manufacturer.**—George Edmunds, an individual, trading as M. D. Manufacturing Co., engaged for a number of years last past in the mail order business of selling and distributing a powdered preparation, consisting chiefly of potassium alum, for the use in the treatment of silk hosiery and lingeries, 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 Edmunds, in connection with the advertisement, offering for sale, sale, or distribution of his preparation in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. Stating or representing in any way that the use of said preparation, as a treatment for silk hosiery or lingerie, will prevent or stop or insure against runs or snags therein or will cause such hosiery or lingerie to wear longer.

2. The use of the word "Manufacturing" as part of his trade name, and from the use of the said word or of the words "Manufactured by" or of any other word or words of similar meaning or implication, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that he makes or manufactures said preparation or that he actually owns and operates or directly and absolutely controls the plant or factory in which said preparation is manufactured. (Oct. 2, 1941.)

3232. **Jackscrews—Qualities, Properties, or Results.**—Illinois Iron & Bolt Co., a corporation, engaged in the manufacture of hardware products, including jackscrews, 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.

Illinois Iron & Bolt Co., in connection with the offering for sale, sale, or distribution of its jackscrews in commerce, as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from representing as the capacity thereof any number of tons or

other weight designation in excess of the actual lifting capacity thereof: *Provided*, That the sustaining capacity, or the weight of the loads which such jackscrews will sustain, may be designated if such designation is immediately accompanied in equally conspicuous type by a statement that such designation indicates the sustaining capacity and not the lifting capacity of said jackscrews. (Oct 7, 1941.)

3233. **Stationery, Office Supplies, Etc.—Printing Shop.**—Carl L. Spitzfaden, Inc., a corporation, engaged in the sale and distribution in interstate commerce of stationery, printing, engraving, and office supplies and equipment, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Carl L. Spitzfaden, Inc., in connection with the sale or offering for sale of its said merchandise in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the words "Printers," "Engravers," "Lithographers," "Paper Rulers" or "Binders," or other words of similar implication or meaning on its invoices, statements, letterheads, or other trade or advertising literature in any way, so as to import or imply or the effect of which tends or may tend to convey the belief that it prints, engraves, lithographs, rules, or binds such merchandise, or that it actually owns and operates or directly and absolutely controls a print shop or establishment in which said merchandise is printed, engraved, lithographed, ruled, or bound. (Oct. 8, 1941.)

3234. **Hair Dye Product—New Discovery and Qualities, Properties, or Results.**—Norman W. Siebras, an individual, trading as Lady Lennox Co., engaged in the business of selling a hair dye product called "Lady Lennox 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.

Norman W. Siebras, in connection with the advertisement, offering for sale, sale, or distribution of the product designated "Lady Lennox Hair Coloring" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the words "new," "New Discovery," "modern," or any other word or words of similar meaning or implication as descriptive of said product, and from the use of any word, statement, or representation, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the use of said product will cause all hair, including such as may be normally stiff or kinky, to become soft, lustrous, or gleaming and silky, or

that the use of said product will end gray hair in the sense that, as it grows out, gray hair will not again appear at the roots, or that it will restore the original color to hair which is turning or has become gray. (Oct. 9, 1941.)

3235. **Stamps and Philatelic Supplies—Free, Delivering Unordered Merchandise, Price, Value, and Collection Agency.**—Philip Goldstein, an individual, trading as Midwood Stamp Co., engaged in the sale and distribution in interstate commerce, of stamps and philatelic supplies, 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.

Philip Goldstein, in connection with the offering for sale, sale, or distribution of stamps and philatelic supplies in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

1. Representing, directly or by implication, that any "approval" stamp or any stamp or selection of stamps for which a price is charged is given free; the use of the word "free" or other term of similar meaning in any manner so as to import or imply or which causes or has caused or has the capacity to cause the belief or impression by any person that "approval" stamps are given free; or the use of the word "free" or other term of similar meaning unless all the terms of the offer to which such term applies are clearly, unequivocally, unambiguously, and definitely set forth in equal conspicuousness and in immediate connection or conjunction with the word "free".

2. Mailing, or otherwise distributing approval sheets of stamps or other merchandise to persons who have not requested same, and therewith or thereafter representing, either by direct assertion or by implication, that such recipient is under contract legally enforceable either to pay for such unsolicited merchandise or to return the same.

3. Representing that the prices at which he offers for sale and sells his product constitute a discount to the purchaser or that such price or prices are special or reduced prices or are applicable for a limited time only, when in fact, such prices are the usual and customary prices at which he sells such products in the normal or usual course of business.

4. Representing that the actual value of an assortment of stamps is the sum of the catalog nominal list prices of all of such stamps; applying the term "catalog value" to a packet of stamps in a manner so as to import or imply or cause the belief that any figures so designated is the actual value thereof when in fact the actual value is less than the alleged "catalog value" or catalog list price; or otherwise quoting a figure purporting to be the actual or genuine value of a stamp, set of stamps or other merchandise which is in excess of the price for which

such article or group of articles is sold or can be obtained in the usual course of business.

5. The use of the name "Nat. Mercantile Agency" or any other fictitious name purporting to be that of an independent collection agency or credit bureau for the purpose of inducing the payment for or the return of "approval" stamps or for the purpose of collecting payments on his contracts or alleged contracts, when in fact no such agency exists or is employed by him. (Oct. 14, 1941.)

3236. **Hair Dye Products—Qualities, Properties or Results, and New Product.**—Humm Laboratories, Inc., a corporation, its issued capital stock owned in equal amounts by two individuals, Humbert Miragia and William H. H. Davis, latter of whom is president of Duart Manufacturing Co., Inc., Ltd.; Humm Laboratories, Inc., engaged in the manufacture of Humm hair dye products of which there are some thirty different shades, and in 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 and William H. H. Davis, in connection with the advertisement, offering for sale, sale, or distribution of the said hair dye preparations, designated "Humm," or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, they and each of them agreed to cease and desist forthwith from stating or representing, directly or by implication, that the use of said preparation, or a particular shade thereof, will restore or reproduce the true or natural color of the user's hair in 45 minutes or any other period of time; that the use of said preparation once makes the user an expert unless limited to qualified beauticians or hairdressers; that the use of said preparation will make all hair soft and silky; unqualifiedly that the said preparation will not deteriorate; or that it is an amazing new product. (Oct. 16, 1941.)

3237. **Cosmetics—Qualities, Properties or Results, and Composition.**—Beauty-Glo, Inc., a corporation, organized in August 1938, for the purpose of taking over the business theretofore conducted by Joseph Adelman, Ray Adelman, and Harry Adelman under the trade name "Beauty-Glo Cosmetic Products Company" and which business, consisting of the advertisement and sale of Beauty-Glo brand cosmetics in interstate commerce, was continued for more than 1 year subsequent to the aforesaid date by the said corporation in cooperation with the aforesaid individuals and William H. Cotton and later with Samuel

Scheff, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Beauty-Glo, Inc., and Joseph Adelman, Ray Adelman, Harry Adelman, William H. Cotton, and Samuel Scheff, in connection with the advertising, offering for sale, sale, or distribution of the aforesaid products, or any thereof, in commerce, as commerce is defined by the Federal Trade Commission Act, agreed and each of them agreed to cease and desist forthwith from representing, either directly or by implication, that any of said products, when applied externally to the face or skin, will revitalize or give new life to the skin or that it will help to eliminate freckles or have any effect on blemishes, pimples, coarse pores, or blotches, or that it will penetrate deeply into the pores, that it will remove wrinkles, lines, or blemishes or waken or reawaken near-dead tissues, that it contains any of the natural oils of the skin, that it will cure or prevent the recurrence of dandruff or scalp itch, or that it will stop or prevent the hair from falling out. (Oct. 17, 1941.)

3238. **Photographic Miniatures—Prepared for Exhibition, and Special Prices.**—Morrall Studios, Inc., a corporation, having its principal place of business, photographic studios, located at Rochester, N. Y., and Mark Austin, Seymour M. Blaufarb, and Louis Jacobs, copartners, who, through the said Mark Austin, became engaged, pursuant to certain contractual understandings with the said Morrall Studios, Inc., in a venture operated out of the aforesaid photographic studios in Rochester, N. Y., and which venture contemplated and for more than 1 year last past has resulted in the sale of so-called "Gold Tone" miniatures in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Morrall Studios, Inc., a corporation, and Mark Austin, Seymour M. Blaufarb, and Louis Jacobs, individuals, in connection with the advertisement, offering for sale, sale, or distribution of their so-called "Gold Tone" miniatures 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, either directly or by inference, that a designated miniature had been prepared for exhibition purposes or displayed at an exhibit, when in fact such was not the fact.

2. The use of the price representation "$40.00" or any other designated sum of money, either alone or in connection or conjunction with the words "regular price" or with any other word or words as indica-

tive of the purported selling price of a miniature which customarily sells for less; and from the use of the phrase "the extremely low price of $12.50" as descriptive of the price for which a miniature is offered for sale and sold, so as to import or imply or the effect of which tends or may tend to convey the impression or belief to cutomers or prospective customers that said price is a special one, that is to say, is less than the price for which said article is customarily sold in the usual course of business. (Oct. 17, 1941.)

3239. **Knitting Yarns—Composition, Source or Origin, and Manufacturer.**—William K. Caldwell, an individual doing business under the trade name Crescent Yarns, engaged in the mail order business of selling skeins and balls of knitting yarns in interstate commerce, in competition with other individuals, and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

William K. Caldwell, in connection with the advertisement, offering for sale, sale, or distribution of his yarn products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. Using the word "silk" or "chiffon" or any other silk-connoting word as descriptive of a product which is not composed of silk, the product of the cocoon of the silkworm.

2. The use of the word "wool" or of any other word or words of similar meaning or implication as descriptive of a product which is not composed of wool, and from the use of such word in any way so as to import or imply or the effect of which tends or may tend to convey the impression or belief that said product is composed wholly of wool, when in fact, it contains a fiber or fibers other than wool: *Provided, however*, That in the case said product is composed in substantial part of wool and in part of other material, said word or descriptive term may be used to truthfully designate or describe the wool content when immediately accompanied by a word or words printed in equally conspicuous type 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. Advertising, invoicing, offering for sale, selling, or distributing a product composed of rayon, either in whole or in part, without clearly and unequivocally disclosing such rayon content and, when the product is composed in part of rayon, from failing to disclose each constituent fiber or material by name in the order of its predominance by weight, beginning with the largest single constituent.

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

5. The use of the word "Shetland" as descriptive of a wool product not made in the Shetland Islands or made from wool not obtained from Shetland sheep.

6. Stating or representing through the use of such language as "we produce Crescent Yarns in our own mill," that the said William K. Caldwell makes or manufactures the yarns sold by him. The said individual also agrees to cease and desist from the use of the word "mill" or the words "From Factory To You," "We Sell direct to knitters," or any other words of similar tenor or import, the effect of which tends or may tend to convey the belief or impression that the said individual actually owns and operates or directly and absolutely controls the mill or factory in which said products sold by him are made. (Oct. 16, 1941.)

3240. **Dog Food—Composition, Qualities, Properties or Results, and Experimental Kennels.**—Lyman L. Busse, an individual, engaged in the sale and distribution in interstate commerce, of a food for dogs designated "Flash," 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.

Lyman L. Busse, in connection with the offering for sale, sale, or distribution in commerce as defined by the Federal Trade Commission Act, or the advertising by the means and in the manner above set forth, of his dog food designated "Flash" or any other product composed of substantially the same ingredients, whether sold under such name or any other name or names, agreed forthwith to cease and desist from:

1. Representing that such product contains "packer's edible beef," "packer's edible meat," "packer's edibles," "dehydrated meat," "meat" or "fish meat"; stating that any ingredient thereof is equal to 60 percent or any percentage of fresh meat; or representing in any manner, directly or by implication, that said product contains edible meat or fish.

2. Representing that such product contains "dried milk," "powdered milk," "buttermilk," or "egg yolks"; or any representation which tends or may tend to cause the belief that said product contains dried, powdered, or dehydrated whole milk or contains buttermilk or egg yolks which have not undergone a dehydrating or drying process.

3. Representing that such product is a "Balanced Dog Food"; or any representation the effect of which causes or has the capacity to cause the belief or impression that such product constitutes a balanced food or ration for dogs generally or for dogs of all breeds, ages, or activities.

4. Representing that he has tested and proved the ingredients contained in such product in his experimental kennels or that he maintains or operates an experimental kennel or kennels. (Oct. 16, 1941.)

3241. **Cold Tablets—Safety.**—Carnation Co., a corporation, engaged in the business of selling and distributing numerous items of merchandise, including a product designated "Carnation Cold Tablets," in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Carnation Co., in connection with the offering for sale, sale, or distribution of its product designated "Carnation Cold Tablets," or any other product of 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 or causing to be disseminated any advertisement by the means and in the manner above set forth, which advertising fails to clearly and unequivocally reveal therein that the habitual or excessive use thereof may be dangerous or that persons suffering from pathological conditions characterized by acute pain accompanied with nausea and vomiting should avoid the use thereof: *Provided, however*, That such advertisement need contain only the conspicuously printed statement "Caution: Use only as directed on label," if and when such label contains an appropriate caution against the improper use of the product and also adequate directions for the proper use thereof. (Oct. 20, 1941.)

3242. **Books and Encyclopedias—New, Free, Special Price, Endorsement, Etc.**—Encyclopedia Britannica, Inc., engaged for a number of years last past in the publication of books and in the sale thereof in interstate commerce, such sales being made generally in the form of combination offers, one offer including a 24-volume set titled Encyclopedia Britannica and a second offer including a 12-volume set called Britannica Junior; each of said offers also included the privilege of purchasing the Britannica Year Book published annually for a period of 10 years at a reduced rate, also the privilege of a 10-year membership in the so-called Britannica Research Bureau, and a 2-volume Century Dictionary or, in connection with the Britannica Junior offer, a so-called 12-volume Junior Book Shelf, in competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale of similar commodities including encyclopedias, through sales representatives in the field and also through large department stores, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Encyclopedia Britannica, Inc., in connection with the offering for sale or sale of its combination offers including its Encyclopedia Britannica in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from stating or representing, directly or by advertisements, or through its salesmen or representatives, or by any other means:

1. That said publications are new, up-to-the-minute, up-to-date, or that all the topics or subjects therein set forth are of such compilation and revision as to extend to or be abreast of an indicated time, when in fact such is not the case.

2. That said publications or any other item or items involved in its combination offer are or is given away free of cost or as a gratuity to purchasers because he or she is one of an educational, professional, or other selected group of persons or because he permits the use of his or her name for advertising purposes, or for any other reason.

3. That the price charged for the combination offer is a special one or that it is one, the acceptance of which is limited with respect to time.

4. That a designated sum of money has been spent in the revision of said publication, when in fact, the designated sum of money actually has not been spent as represented.

5. That the books composing the so-called Book Shelf have been recommended or endorsed by the American Library Association or that the said books have a retail price of an amount which is fictitious or in excess of the total price for which said books sell at retail on the open market in the usual course of trade. (Oct. 20, 1941.)

3243. **Hair Dye Product—Qualities, Properties, or Results.**—Fan Tan Co., Inc., a corporation, engaged in the sale and distribution, under the trade name "Black Strand Company," of a 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 advertisement, offering for sale, sale, or distribution of its product designated "Black Strand Hair Coloring" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the words "Just one application," or the word "instantly" or of any other word or words of similar meaning or implication, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that only a single application of said product will cause the hair to immediately assume and retain a particular shade or color, unless, if and when such word or words is or are used, it or they shall be accompanied by some other word or words

so as to clearly and unequivocally disclose the fact that the dyeing process must be repeated to accomplish such result. (Oct. 21, 1941.)

3244. **Lamps or Light Devices—Qualities, Properties or Results, and Theft Proof.**—Defiance Pressed Steel Co., engaged in the sale in interstate commerce of lights or lamps for use on motor driven vehicles, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Defiance Pressed Steel Co., in connection with the offering for sale, sale, or distribution of its lamps or light devices in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from the use in its advertisements or advertising matter of whatever kind or description, or in any other way, of any statement or representation, the effect of which tends or may tend to convey the impression or belief to purchasers that the beam of light produced by said devices is of such strength that it will penetrate any adverse weather condition or that it will give driving visibility of 100 feet in any fog, rain, or snow or visibility of 100 feet in any fog, rain, or snow or that the visibility supplied thereby under named weather conditions is greater than that which the said light can actually furnish under such conditions. The said corporation also agrees to cease and desist from stating or representing through the use of the words "anti-theft" or any other words of like import that its said devices are proof against being stolen from the vehicle to which they may be attached. (Oct. 27, 1941.)

3245. **Health Foods—Qualities, Properties or Results, Comparative Merits, Scientific or Relevant Facts, Etc.**—Solomon Sherman, an individual trading as Sherman Foods, engaged in the sale and distribution, in interstate commerce, of so-called health foods, including products designated "Miel de Maguey," "Germ of Wheat," "Redi-Meal," "Kelement," and "Melvite Food," 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.

Solomon Sherman in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from:

1. Representing, directly or inferentially, that the product designated "Miel de Maguey" is of antirachitic value, or is superior in nutritive and vitamin value to cod liver oil or is a substitute therefor; that acidosis is a basic factor in disease; that "Miel de Maguey" or cocktails prepared therewith alkalize, nourish, revitalize, or rejuvenate the cells of the body, or constitute a competent blood or

kidney purifier, blood builder, blood pressure or heart regulator, rheumatism helper, or energizer; that said product provides health insurance or is an elixir of life and health.

2. Representing that the product designated "Germ of Wheat" will build resistance or fortify the system against disease; that its use can be depended upon to combat constipation, aid digestion, improve the appetite, or cause steady nerves; that said product provides an adequate source of vitamin A; that vitamins A, B, E, and G are generally indicated as a supplement to the diet; that its food product, or products, containing vitamins B_1 or G, are indicated as a supplement to the diet unless, in direct connection with any such representation, it be clearly and unambiguously stated that the benefits claimed will obtain only when there is a deficiency or suboptimal supply of such vitamin or vitamins in the diet and also when a quantity of the product sufficient to supply such vitamin deficiency is used in the diet.

3. Representing that the product designated "Redi-Meal" constitutes a complete food or that lecithin is an important dietary element.

4. Representing, directly or by implication, that the product designated "Kelement" is a competent treatment or remedy for goiter, skin diseases, low vitality, neuritis, nervousness, overweight, rickets, anemia, headaches, weakness, asthma, stomach trouble, eczema, subnormal growth, mental exhaustion, rheumatism, kidney disorders, bladder disorders, acidosis, heart disorders, constipation, underweight, blood disorders, and liver disorders.

5. Representing that the product designated "Melvite Food" is a superior source of energy; that dextrose affords the quickest and most direct means of supplying vital energy to the body for the functioning of the vital organs, the mind and the muscles; or that dextrose is nonfattening or may be eaten without fear of a subsequent undue gain in weight.

6. Making any other misleading or deceptive statements or representations concerning the character, nature, quality, or value of his products with a tendency or capacity to mislead or deceive purchasers or the consuming public. (Oct. 28, 1941.)

3246. **Pencils—Value and Governmental Tests.**—Arthur Amer and Sol Amer, copartners trading as World Pencil Co., engaged in the sale and distribution of pencils 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.

Arthur Amer and Sol Amer, and each of them, in connection with the sale and distribution of their pencils in commerce as defined by

the Federal Trade Commission Act, agreed they will forthwith cease and desist from:

1. The use of the words or phrases "5¢ pencil" or "5¢ grade" as descriptive of such products; representing that such pencils are equal in value or quality to nationally advertised 5-cent pencils; or in any other manner misrepresenting the value or quality of the pencils offered for sale and sold by them.

2. Any statement or representation which causes or has the capacity to cause the belief or impression that their pencils have been tested and/or approved by the National Bureau of Standards or by any other agency or entity, governmental or otherwise, generally recognized as an authority in conducting tests of various products and reporting relative to the qualities or merits thereof. (Oct. 28, 1941.)

3247. **Permanent Wave Machine—Comparative Merits, Patents and Unique.**—E. Frederics, Inc., a New York corporation, engaged in the sale and distribution in interstate commerce of beauty parlor and barber shop equipment, including a permanent wave device or machine designated "Frederics Uni-Temp Machine," in competition with other corporations and with individuals, firms, and partnerships 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. Frederics, Inc., in connection with the offering for sale, sale, or distribution in commerce as defined by the Federal Trade Commission Act, or the advertising by the means and in the manner above set forth, of its product designated "Frederics Uni-Temp Machine," or any other machine of similar construction, whether sold under said name or any other name or names, agreed it will forthwith cease and desist from representing, directly or inferentially, that said machine gives the coolest permanent waves of any machine on the market; that said corporation has exclusive patent rights on thermostatically controlled heat for permanent waving; that its said machine is the only permanent waving machine using controlled heat; that other manufacturers of permanent waving machines have resorted to substitute temperature control methods; or that heaters sold by a certain manufacturer or competitor are not equipped with a thermostat or thermostats. (Oct. 29, 1941.)

3248. **Peat Product—Nature.**—Producing Corporation, a Wisconsin corporation, engaged in the business of mining and processing a peat product obtained from bogs located near Oconomowoc, Wis., in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Producing Corporation, in connection with the advertisement, offering for sale, sale, or distribution of its peat product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from the use of the words "peat moss" as descriptive of said product, and from the use of the words "peat moss" or "moss peat" either alone or in connection or conjunction with any other word or words or in any way, so as to import or imply or the effect of which tends or may tend to convey the impression or belief to purchasers or prospective purchasers that said product is moss peat, that is to say, a product consisting chiefly of the decomposed stems and leaves derived from species of Sphagnum mosses. (Oct. 29, 1941.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS[1]

040.[2] **Tobacco Habit Remedy—Qualities, Properties or Results, and "Pharmacal."**—J. E. Eggers, an individual trading as Newell Pharmacal Co., Clayton Station, St. Louis, Mo., vendor-advertiser, was engaged in selling an alleged treatment for the tobacco habit designated Tobacco Redeemer, consisting of a combination of drug preparations together with dietary information and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Tobacco Redeemer is certain to cure one of the tobacco habit.

(*b*) By use of the word "Pharmacal" in his trade name or otherwise that he prepares the preparations or maintains a pharmacy or pharmacal facilities, or that he maintains a laboratory wherein tests have been made indicating their efficacy.

The said J. E. Eggers further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 11, 1941.)

0304.[2] **Drug Products—Qualities, Properties or Results, Composition, Comparative Merits, Manufacturer, Safety, Etc.**—A. G. Luebert, an individual, 126 South Fifth Ave., Coatesville, Pa., vendor-advertiser, was engaged in selling drug products designated "Nox-Em Tablets and Capsules (combined)," "Iron Tonic Tablets," "Ka-No-Mor Capsules," "Nox-Em Jelly," "Nox-Pan Tablets," "Nox-Em Corn Plaster," and "Luebert's Laxative Tablets" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Nox-Em Tablets and Capsules are a cure or remedy for neuritis, gout, sciatica, rheumatism, or stiff or sore joints, or that they have any therapeutic value in the treatment of those conditions in excess of an analgesic to temporarily relieve minor muscular aches and pains attending those conditions and as a cathartic, diuretic, and stimulant.

(*b*) That Nox-Em Tablets and Capsules drive out, eliminate, cleanse, or rid poisons from the system or blood.

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[1] The stipulations in question are those of the radio and periodical division with vendor-advertisers. Period covered is that of this volume, namely, June 1, 1941, to October 31, 1941, inclusive. For digests of previous stipulations, see vols. 14 to 32 of Commission's decisions.

[2] Supplemental.

(*c*) That Nox-Em Tablets and Capsules purify the blood, stimulate the liver, or strengthen the bladder.

(*d*) That no other product is equal to the Iron Tonic Tablets.

(*e*) That the product Iron Tonic Tablets replaces what has been worn out in the blood or nerves, or that it restores the tone of the system.

(*f*) That the product Iron Tonic Tablets:

1. Cleanses the blood.
2. Insures a vigorous condition of the nervous system.
3. Produces proper activity of all the organs and functions of the body.
4. Rejuvenates the nervous system.
5. Builds up the system.
6. Is composed of chemical foods.
7. Affords a permanent or lasting effect.

(*g*) That no other product is as fast in therapeutic effect as Ka-No-Mor Capsules, or that by the use of this product relief is assured.

(*h*) That the product Ka-No-Mor Capsules is effective in relieving pains of all kinds or that any value it may have in the treatment of colds, neuralgia, lumbago, or fatigue exceeds that of an analgesic to temporarily relieve the symptoms of pain and discomfort associated therewith.

(*i*) That all kinds of torture respond to Ka-No-Mor Capsules.

(*j*) That Ka-No-Mor Capsules will relieve dizziness, carsickness, or seasickness.

(*k*) That Nox-Em Jelly affords free breathing or freedom from nose clogging.

(*m*) That by use of Nox-Pan Tablets there is no danger of the drug habit.

(*n*) That Nox-Em Corn Plaster will cure one of corns and callouses.

(*o*) That the Laxative Tablets are free from harsh effects.

(*p*) That he manufactures Nox-Em and Ka-No-Mor Capsules or from otherwise representing or implying that he manufactures any product which is not manufactured in a factory owned, controlled, or operated by him.

The said A. G. Luebert further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

The said A. G. Luebert further agreed that in the dissemination of advertising by the means and in the manner above set out of the medicinal preparations now designated Nox-Em Tablets and Capsules, Ka-No-Mor Capsules, and Nox-Pan Tablets, or any other preparations of substantially the same compositions or possessing substantially the same properties, whether sold under those names or any other names, he will forthwith cease and desist from disseminating any advertisements which represent directly or by implication that the said preparations are in all cases safe or harmless; or which advertisements fail to reveal that their frequent or continued use may be dangerous, causing serious blood disturbances, anemia, collapse, or a dependence on them, and that no more than the dosage recommended should be taken, and that they should not be given to children: *Provided, however*, That such advertisements need only contain a statement that the preparations should be used only as directed on the labels thereof if and when such labels either contain a caution or warning to the same effect or specifically direct attention

to a similar caution or warning statement in the accompanying labeling.

The said A. G. Luebert further agreed that in the dissemination of advertising by the means and in the manner above set out of the medicinal preparation now designated Luebert's Laxative 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, he will forthwith cease and desist from disseminating any advertisements which represent directly or by implication that the said preparation is in all cases safe or harmless or which advertisements fail to reveal that the said product should not be used when abdominal pains (stomach ache, cramps, colic), nausea (stomach sickness), or other symptoms of appendicitis are present, and that frequent or continued use thereof may result in dependence on laxatives and that if a skin rash appears, use of the product should be discontinued: *Provided, however*, That such advertisements need only contain a statement that 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. (June 16, 1941.)

01408.[1] **Medicinal Preparation—Qualities, Properties or Results, and History.**—Mantho-Kreoamo, Inc., a corporation, 305 North Center St., Clinton, Ill., vendor-advertiser, was engaged in selling an expectorant mixture, designated M-K—Mantho-Kreoamo 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 combat symptoms of cold infection or protect against or prevent colds, or soothe inflamed bronchial membranes, or allay fever; or

(*b*) That said preparation will furnish relief in cases of flu or bad colds in excess of such relief as may be afforded by its expectorant properties; or

(*c*) That the doctor from whose prescription the formula originated or was developed was a noted Illinois doctor, or had national fame.

The said Mantho-Kreoamo, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 29, 1941.)

01864.[2] **Medicinal Cream—Qualities, Properties or Results, Nature, and Composition.**—Bristol-Myers Co., a corporation, International Building, Rockefeller Center, New York, N. Y., vendor-advertiser, was engaged in selling a medicinal cream used as a counter-irritant and analgesic for certain aches and pains of the body, designated Minit-Rub and agreed, in connection with the dissemination of future

[1] Supplemental.
[2] Amended and substitute.

advertising, to cease and desist from representing directly or by implication:

(*a*) That "MINIT-RUB" affords relief from chest colds other than to relieve the symptoms associated with, or resulting from, chest colds.

(*b*) That "MINIT-RUB" penetrates to any muscle, other than superficial muscles or such muscles as may be reached by reflex action.

(*c*) That "MINIT-RUB" affords long-lasting relief.

(*d*) That "MINIT-RUB" is a special analgesic, or contains drugs other than those commonly used in analgesics.

(*e*) That "MINIT-RUB" contains pain-soothing ingredients that act at once in affording relief.

(*f*) That "MINIT-RUB" stimulates the circulation at the seat of the trouble, in any case other than where the seat of the trouble is superficial or muscular.

(*g*) That "MINIT-RUB" relieves the discomfort of improper breathing due to colds better than any other preparation.

(*h*) That "MINIT-RUB" overcomes insomnia, or is efficacious for said condition other than where said condition is due to excited nerves.

(*i*) That "MINIT-RUB" relieves throbbing or nervous headaches other than those due to temporary fatigue, overstrain, nervous tension, or nasal congestion.

(*j*) That "MINIT-RUB" affords relief from muscular aches, pains, and discomforts of every kind, or, by any other terminology, that it is of benefit in affording relief from any aches, pains, or discomforts in muscles other than superficial muscles or such muscles as may be reached by reflex action.

(*k*) That "MINIT-RUB" affords effective relief from sprains.

The said Bristol-Myers Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 18, 1941.)

02134.[1] **Air Rifle—Comparative Merits, Qualities, Properties or Results, and Unique.**—Crosman Arms Co., Inc., a corporation, Rochester, N. Y., vendor-advertiser, was engaged in selling an air rifle designated Crosman Silent Pneumatic and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That no air rifle other than that sold by Crosman Arms Co., Inc., is noiseless, requires no cleaning, uses low cost ammunition, has adjustable power, has no recoil, or produces no bullet splatter.

(*b*) That the power of its air rifle remains constant forever.

(*c*) That its air rifles are more accurate than any firearm.

(*d*) That its air rifles are as accurate as powder rifles, unless limited to accuracy for short ranges.

(*e*) That its air rifle is the only high powered repeating pneumatic rifle in the world.

The said Crosman Arms Co., Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

[1] Amended and substitute.

This stipulation was accepted in lieu of Stipulation 02134, which was accepted and approved by the Federal Trade Commission May 20, 1938. [26 F. T. C. 1489] (Sept. 3, 1941.)

02804. **Cigars—Composition and Source or Origin.**—Consolidated Cigar Corporation, a corporation, 730 Fifth Ave., New York, N. Y., vendor-advertiser, was engaged in selling a certain cigar designated "Harvester Cigar" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Harvester Cigars depend entirely for their flavor upon Havana tobacco or by the unqualified use of the phrase "Heart of Havana" or in any other manner that the filler of its cigar is composed predominately of tobacco grown in and imported from Cuba, or otherwise describing or referring to the source of the tobacco content in these cigars unless in all such descriptive matter the country of origin of each of the tobaccos used in said cigars shall be set forth or stated in the order of their predominance by weight in letters of equal size or conspicuousness and with equal emphasis.

The said Consolidated Cigar Corporation agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 2, 1941.)

02805. **Cottonseed Flour—Qualities, Properties, or Results.**—C. A. Sears, an individual doing business under the trade name Nutty Brown Mills, Harrisburg Station, Houston, Tex., vendor-advertiser, was engaged in selling a flour made from cottonseed and designated "Nutty Brown Flour." This flour is sold to bakers to be used in combination with wheat flour in making bread which is designated "Nutty Brown Bread" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Nutty Brown Bread—

1. Is beneficial or efficacious in reducing or maintaining body weight, unless used as an integral part of a diet intended for that purpose.
2. Contributes less fat-producing substances than ordinary breads.
3. Gives one the assurance of Vitamin B, adequacy; or
4. Is low in assimilable carbohydrates.

(*b*) That the protein of Nutty Brown Bread products is complete in its biologic value and supports normal growth.

(*c*) That the average thin slice of Nutty Brown Bread contains 20 calories, or from otherwise understating its caloric value.

(*d*) That Nutty Brown Bread is essentially a protein food.

The said C. A. Sears further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (June 2, 1941.)

02813.[1] **Correspondence Courses—Results, Price, Institate, Etc.**—Harry Hamann, an individual trading as Hamann Institute of Music, 3019

[1] Stipulations 02806 to 02812, inclusive, were accepted May 21, 1941, and will be found in vol. 32 at pp. 1811–1813.

North 24th Place, Milwaukee, Wis., vendor-advertiser, was engaged in selling correspondence courses for the study of the piano, Hawaiian (steel) guitar, and Spanish guitar, each designated Correspondence Course of 52 Lessons on Piano, or Hawaiian Guitar, or Spanish Guitar and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That his course or courses of instruction in music by correspondence will enable a purchaser thereof to play songs almost instantly, or learn to play current entertaining music practically overnight, or become a skilled or expert up-to-date player.

(*b*) That any price is the regular or usual price for any of his courses unless such price is the price at which the courses are currently, regularly or customarily sold.

(*c*) By the use of the word "Institute" in the trade name or any other name, syllables, or letters that simulate "Institute" in sound or spelling, or otherwise that his business is an institute.

(*d*) By the use of the word "Registrar" or any other word or title, or otherwise, that he employs a registrar in his business.

(*e*) By the use of the word "President" or any other word or title, or otherwise, that his business is a corporation or association or anything but a privately owned personally conducted business.

The said Harry Hamann further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreements. (June 9, 1941.)

02814. **Skin Cleanser—Qualities, Properties, or Results.**—The Philip Ritter Co., Inc., a corporation, 511 Fifth Avenue, New York, N. Y., was engaged in the business of conducting an advertising agency which disseminated advertisements for a preparation designated Grace Donohue Cleanser on behalf of Grace Donohue, 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, 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 of preserving a clear, smooth, or attractive complexion. (June 9, 1941.)

02815. **Chinese Filet Dinner or Cover Cloths—Composition.**—Larkin Co., Inc., a corporation, 680 Seneca Street, Buffalo, N. Y., vendor-advertiser, was engaged in selling Chinese filet dinner or cover cloths, and designated them as "Tuscany Lace" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That any dinner or cover cloths or other articles sold by it are Tuscany lace other than such articles made from laces that are genuine Tuscany lace. (June 10, 1941.)

02816. **Dog Preparation—Qualities or Results and Laboratories.**—J. M. Jones, an individual trading as Jones Laboratories, 724 West Trade Street, Charlotte, N. C., vendor-advertiser, was engaged in selling a drug preparation alleged to be effective in the treatment of running fits, designated "Jones' Dog Hulls" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Jones' Dog Hulls will stop running fits.

It is further agreed by the said J. M. Jones that he will forthwith cease and desist from representing directly or by implication by the use of the word "Laboratories" or any other term of similar import and meaning, as a part of his trade name, or in any other manner, that he owns, operates, or maintains a laboratory for the purpose of manufacturing, testing, and experimenting with his said preparation, Jones' Dog Hulls.

The said J. M. Jones further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 10, 1941.)

02817. **Preparations for the Prevention of Blackleg in Animals—Qualities, Properties or Results.**—Beebe Laboratories, Inc., a corporation, St. Paul, Minn., vendor-advertiser, was engaged in selling preparations for the prevention of blackleg in animals, designated Blackleg Aggressin (Cultural) and Blackleg Bacterin and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Blackleg Aggressin (Cultural) produces life immunity, or offers unequalled assurance, against blackleg.

(*b*) That Blackleg Aggressin (Cultural) or Blackleg Bacterin, or the combination thereof, produces immunity more rapidly or that lasts as long as that produced by the Natural Aggressin; or that one vaccination with said combination is sufficient to produce immunity that lasts for the life of the animal.

The said Beebe Laboratories, Inc., further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (June 11, 1941.)

02818. **Cosmetics and Medicinal Preparations—Qualities, Properties or Results.**—Newbro Manufacturing Co., a corporation, 188 Walker Street SW., Atlanta, Ga., vendor-advertiser, was engaged in selling the following cosmetics and medicinal preparations: Tuxedo Club Pomade; Queen Hair Dressing, also designated New Improved Queen Hair Dressing; Queen Instant Skin Whitener, also designated New Improved Queen Instant Skin Whitener and Queen Skin Whitener Ointment; Queen Skin Soap, also designated New Improved Queen Skin Soap; Queen Peroxide Vanishing Cream, also designated New Improved Peroxide Vanishing Cream; Queen Cold Cleansing Cream

and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That:

(*a*) Tuxedo Club Pomade invigorates the scalp or helps the hair as nothing else will.

(*b*) Queen Hair Dressing is a hair grower, or supplies food for the hair.

(*c*) Queen Hair Dressing penetrates around the roots of the hair, promotes growth of hair, makes kinky hair go, causes the hair to become soft or silky, or guarantees glossy hair, or that it lasts longer than other similar products.

(*d*) Queen Instant Skin Whitener improves the tone of the complexion or retards the formation of blackheads.

(*e*) Queen Skin Soap helps to heal skin blemishes.

(*f*) Queen Peroxide Vanishing Cream imparts fine grained appearance to the skin.

(*g*) Queen Cold Cleansing Cream loosens impurities or smoothes lines or wrinkles.

That said Newbro Manufacturing Co. further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (June 13, 1941.)

02819. **Hair Preparation—Qualities, Properties or Results, and Nature.**—Dave Boston and Wilma Boston, copartners trading as Valeria's Products, and Valeria's, 589 East Adams Avenue, Detroit, Mich., were engaged in selling a preparation designated Valeria'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*) Cause the natural oils of the scalp to be retained.

(*b*) Overcome dryness of the scalp.

(*c*) Stop excessive dandruff or falling hair; or

(*d*) Cause hair to grow.

The said Dave Boston and Wilma Boston further agreed that in the dissemination of advertising by the means and in the manner above set out, they will cease from representing by the use of the words "Hair Grower" in the designation of their preparation, or of any words of similar import or meaning, that said preparation will grow hair.

The said Dave Boston and Wilma Boston further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 13, 1941.)

02820. **Poultry Food Supplement—Unique, Qualities, Properties or Results, and Savings.**—Harry T. Campbell Sons' Co., a corporation, Towson, Baltimore, Md., vendor-advertiser, was engaged in selling a certain poultry food supplement designated "Campbell's Calcite Grit" and agreed, in connection with the dissemination of future

advertising, to cease and desist from representing directly or by implication:

(*a*) That Campbell's Calcite Grit is the only grit having a natural manganese content;

(*b*) That it is necessary to supply poultry with pure calcium in addition to the minerals contained in commercial feeds, unless specifically limited to feeds deficient in this mineral.

(*c*) That the feeding of this product will be of any appreciable benefit in producing thicker or smoother egg shells, increasing the fertility of hatching eggs or the vitality of poultry or in developing stronger bones or in producing better or more eggs unless specifically limited to its addition to diets deficient in calcium.

(*d*) That the use of Campbell's Calcite Grit assures a saving of half or any other specific amount or percentage of grit costs or that it can assure every user any decrease at all in grit or feed costs.

The said Harry T. Campbell Sons' Co. agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (June 16, 1941.)

02821. **Coal Tar Hair Dye Products—Safety.**—Montgomery Ward & Co., Inc., a corporation, Law Department, Chicago, Ill., vendor-advertiser, was engaged in selling certain coal tar hair dye products designated Inecto and 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. (June 17, 1941.)

02822. **Preparation for Cleansing Purposes—Insurance and Qualities.**—Tru Products Corporation, a corporation, 166 West Jackson Boulevard, Chicago, Ill., vendor-advertiser, was engaged in selling a preparation for cleansing purposes, designated Tru-Clean Tablets and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that:

(*a*) Its customers are protected by Lloyd's of London against any personal or property damage resulting from the use of Tru-Clean Tablets, and are afforded legal redress against Lloyd's of London for any such damage;

(*b*) Tru-Clean will restore the color of fabrics to their original brilliance and beauty.

The said Tru Products Corporation agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1941.)

02823. **Bread—Composition, Qualities, Properties or Results, Nature, Etc.**—The Rubel Baking Co., a corporation, Corner Melish Avenue and Bathgate Street, Cincinnati, Ohio, vendor-advertiser, was engaged in selling a bread designated Rubel's High Vitamin B1 Wheat Bread, which has also been designated Rubel's High Vitamin Wheat Bread, and which is made of wheat and wholewheat flour and baked with a yeast of an allegedly high vitamin B1 content and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That "Rubel's High Vitamin Wheat Bread" contains per loaf as many as 800 International Units of Vitamin B1, or contains more units of said vitamin, or of any other vitamin present, than is actually the case, or, when eaten in quantities ordinarily consumed, will supply the minimum daily nutritional requirement for vitamin B1; or

(*b*) By designating said bread product, "Rubel's High Vitamin Wheat Bread," or by designating the yeast with which it is baked, "High Vitamin Yeast," or in any other manner that said bread product is rich in vitamins generally or contains all the necessary vitamins, including all the factors in the vitamin B complex, in significant amounts; or

(*c*) That said bread product is a weight reducing food, or is incapable of increasing body weight, or, when substituted for rich, starchy or "fattening" foods in the ordinary diet, will provide a diet effective for weight reducing purposes, or, when added to, or made a part of, a reducing diet, will assure a reduction of weight without loss of energy and resistance or without any deleterious effects; or

(*d*) That said bread product is a "health" food, or is by itself capable of building or maintaining health or physical fitness, and from representing that the consumption of its said bread is indicated as a treatment for or preventive of anorexia, lowered resistance, "run down health," fatigue, nervousness, irritability, colds, constipation or indigestion; or

(*e*) That said bread product is necessary or adequate to supplement dietary vitamin deficiency; or

(*f*) That any one of the vitamins contained in said bread product is the most essential vitamin needed for building and maintaining good health.

The said Rubel Baking Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 18, 1941.)

02824. **Coffee—History, Unique and Comparative Merits.**—C. Coe Buchanan and Lyman H. Thomas, copartners trading as Buchanan-Thomas Advertising Co., 412 South Nineteenth Street, Omaha, Nebr., were engaged in the business of conducting an advertising agency which disseminated advertisements for coffee designated "Butter-Nut Coffee," on behalf of Paxton and Gallagher Co., Omaha, Nebr., and agreed,

in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Paxton and Gallagher Co. 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 Paxton and Gallagher Co.'s 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. (June 8, 1941.)

02825. **Devices for Treatment of Hay Fever, Rose Fever, and Seasonal Asthma—Qualities, Properties or Results.**—Allergy Research Institute, Inc., a corporation, 809 Walnut Street, Cincinnati, Ohio, vendor-advertiser, was engaged in selling two devices alleged to be effective in the treatment of Hay Fever, Rose Fever, and seasonal Asthma designated "Allergy Electric Mask" and "Allergy Electric Mask filters" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Allergy Electric Mask will remove the cause of, prevent, cure, or constitutes a medical treatment for hay fever, rose fever, or seasonal asthma.

(b) That the Allergy Electric Mask purifies or completely filters the air breathed or prevents pollens and molds from reaching the sensitive membranes.

(c) That the Allergy Electric Mask will filter out an appreciable or substantial percentage of pollens and molds or prevent any definite percentage from reaching the sensitive membranes.

The said Allergy Research Institute, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 23, 1941.)

02826. **Drug Product—Qualities and Composition.**—Reuben Barkow, an individual, 45 West Forty-fifth Street, New York, N. Y., was engaged in the business of conducting an advertising agency which disseminated advertisements for a drug product designated Vitey Perles on behalf of H. Pierce Weller, an individual operating under the trade name of Weller Co., Atascadero, Calif., 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 Reuben Barkow 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. (June 25, 1941.)

02827. **Hay Fever, Rose Fever and Seasonal Asthma Devices and Preparation—Qualities, Properties or Results, Institute, Etc.**—Medical Products Institute, Inc., a corporation, 809 Walnut Street, Cincinnati, Ohio, vendor-advertiser, was engaged in selling two devices and a drug preparation alleged to be effective in the treatment of Hay Fever, Rose Fever and seasonal Asthma designated "Hayrin Nasal Filters," "Hayrin Nasal Filter Pads," and "Hayrin Nasal Filter Pad Fluid" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Hayrin Nasal Filters will remove the cause of, prevent, cure, or constitute a medical treatment for Hay Fever, Rose Fever or seasonal Asthma.

(*b*) That Hayrin Nasal Filters, when used in combination with a filter pad impregnated with Hayrin Nasal Filter Pad Fluid, will overcome the symptoms due to pollens and molds which might enter the body.

(*c*) That Hayrin Nasal Filters purify or completely filter the air breathed, or prevent pollens or molds from reaching the sensitive membranes.

(*d*) That Hayrin Nasal Filters will be of aid in the treatment of or the prevention of colds.

(*e*) That Hayrin Nasal Filters have received recognition by persons not connected with the manufacture or sale thereof.

It is hereby agreed by Medical Products Institute, Inc., that in the dissemination of advertising, by the means and in the manner above set out, of a medicinal preparation now designated "Hayrin Nasal Filter Pad Fluid," or any other preparation of substantially the same properties, whether sold under that name or any other name or names, it will forthwith cease and desist from representing directly or by implication:

That Hayrin Filter Pad Fluid will overcome the symptoms due to pollens and molds which might enter the body.

The said Medical Products Institute, Inc., further agreed to cease and desist from representing by the use of the word "Institute" in its trade name, or by the use of any other word or words, or in any other manner, that it conducts an institute, devoted to the scientific study of the various ailments and conditions of the human body and to a study of competent and effective remedies, treatments and cures for such ailments and conditions.

The said Medical Products Institute, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 25, 1941.)

02828. **Periodical—Contest Eligibility.**—Henry G. Eisert, B. M. Eisert, and Henry F. Eisert, copartners doing business under the trade name of American Poultry Journal, 536 South Clark Street, Chicago, Ill., vendor-advertisers, were engaged in selling a periodical designated American Poultry Journal and agreed, in connection with the dis-

semination of future advertising, to cease and desist from representing directly or by implication:

(a) One must subscribe to the American Poultry Journal to become eligible to participate in a chick raising contest sponsored by them.

(b) By subscribing to the American Poultry Journal one will become eligible to participate in a chick raising contest or any other contest or in contest prizes when there are not disclosed in connection with such representations conditions which must be met before eligibility is established.

The said parties, Henry G. Eisert, B. M. Eisert, and Henry F. Eisert, agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 1, 1941.)

02829. **Dog Food—Price.**—Ford Hopkins Co., a corporation, 400 West Erie Street, Chicago, Ill., vendor-advertiser, was engaged in selling a dog food designated "Dime Brand Dog Food" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That the regular price of said product is 10¢, or any other amount in excess of the price at which the said product is generally sold at retail.

The said Ford Hopkins Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 8, 1941.)

02830.[1] **Cocomalt—Qualities, Properties or Results.**—R. B. Davis Co., a corporation, 38–40 Jackson Street, Hoboken, N. J., vendor-advertiser, was engaged in selling a food product designated Cocomalt and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Cocomalt substantially aids the digestion of starchy foods;

(b) That Cocomalt stimulates the appetite for other foods except to the extent that it may stimulate the appetite where lack of appetite is caused by vitamin B_1 deficiency.

The said R. B. Davis Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 11, 1941.)

02831. **Laxative—Qualities, Properties or Results and Safety.**—J. R. Hodges, an individual, doing business under the trade name of Amogen Co., 147 North Street, San Antonio, Tex., vendor-advertiser, was engaged in selling a laxative designated Amogen Tablets and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Amogen Tablets get the poison out of the system;

(b) That Amogen Tablets cause the bile to flow;

(c) That Amogen Tablets are effective in the treatment of biliousness, malaria, common colds and fever, poor digestion, acid or gas on the stomach, eating and

[1] Supplements stipulation 0978, 21 F. T. C. 1079.

drinking too much, headaches, neuralgia, rheumatism and other pains and fever, sallow complexion, pimples, sores, boils, skin irritations, coated tongue, bad breath or taste in the mouth;

(*d*) That Amogen Tablets will enable one to maintain good health and to avoid sickness.

That said J. R. Hodges further agreed, in connection with the advertising by the means and manner above set out, to cease and desist from disseminating any advertisements for the said preparation which fail to reveal that Amogen Tablets contain a mercury derivative which would be likely to result eventually in injury to health if taken over a long period of time, due to the cumulative action of mercury, 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 J. R. Hodges further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 11, 1941.)

02832. **Poultry Device—Qualities, Properties, or Results, Comparative Merits and Unique.**—J. Clayton Cridlebaugh, an individual trading as The Marvel Co., 1036 South Sixth Avenue, Arcadia, Calif., vendor-advertiser, was engaged in selling an antipick device designated "Marvel Hen Specs," which has been advertised and sold mainly for the purpose of controlling cannibalism in poultry and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Marvel Hen Specs will materially reduce tapeworm infestations or other infestations than are caused by fly eating;

(*b*) That any function which can be accomplished by a competitive antipick device can be accomplished only by Marvel Hen Specs;

(*c*) That Marvel Hen Specs are the only antipick device that has no mechanical action.

The said J. Clayton Cridlebaugh agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 15, 1941.)

02833. **Handkerchiefs—Nature of Manufacture and Source or Origin.**—C. Tischhauser, Inc., a corporation, 66 Worth Street, New York, N. Y., vendor-advertiser, was engaged in manufacturing and distributing to wholesalers, jobbers and other distributors, handker-

chiefs for resale to the purchasing public, certain of such handkerchiefs bearing various labels including the following:

HAND LOOM
Embroidered
HANDERKERCHIEF

FINEST
Hand Loom
EMBROIDERY

In a stipulation filed and approved by the Federal Trade Commission the vendor-advertiser agreed, in connection with the dissemination of future advertising, to cease and desist from labeling or otherwise referring to the handkerchiefs herein referred to as having been woven or embroidered in whole or in part on a hand loom, or from in any way using the words "hand loom" as referring to or descriptive of these handkerchiefs or any part thereof, or from the use of the words "hand loom" as referring to or descriptive of any handkerchief or portion thereof which has not in fact been woven on a hand loom.

It is also agreed by C. Tischhauser, Inc., that in connection with the manufacture, sale and distribution for resale, it will cease and desist from labeling or otherwise referring to handkerchiefs as of Swiss origin, and in the event the word "Swiss" or any other word is used as descriptive of or indicating the source of handkerchiefs, qualifying or explanatory words shall appear in size and style of type so as to be equally as conspicuous as and clearly in modification of the words so modified. (July 17, 1941.)

02834. **Medicinal Preparations—Qualities, Properties or Results and Nature.**—Bi-Tone Corporation, Inc., a corporation, First National Bank Building, Bluefield, W. Va., vendor-advertiser, was engaged in selling certain medicinal preparations designated Bi-Tone Liver Pills and Bi-Tone Wonder Tonic and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the product heretofore designated Bi-Tone Liver Pills controls the flow of bile, tones up the system, prevents dangerous complications of the liver or remedies or cures constipation or has any beneficial effect upon headaches, sick stomach, spots before the eyes, billiousness, sallow skin or dizzy spells except such as may result from the temporary relief of constipation.

(*b*) That the product Bi-Tone Wonder Tonic increases vitality or resistance to disease, assists nature in rebuilding a wornout nervous system, builds energy, cures morning headaches, upset stomach or run-down feeling, builds resistance to colds, influenza or other diseases which result from colds, rebuilds the health of children who are underweight, listless, cross and nervous, clears up skin blemishes, eruptions, inflammations or diseases, builds red blood corpuscles, insures good health, resistance to disease germs, or abundant

energy, builds blood, prevents abnormal blood pressure, relieves the symptoms of abnormal blood pressure or purifies the blood.

(c) That the product heretofore designated Bi-Tone Liver Pills when taken in conjunction with the product Bi-Tone Wonder Tonic corrects ailments originating in the liver, repairs the liver, or causes it to become active and healthy, or corrects any condition which causes one to feel sluggish, run-down and listless.

Bi-Tone Corporation, Inc., further agreed that in the dissemination of advertising by the means and in the manner above set out, it shall forthwith cease and desist from the use of the word "Liver" as a part of the brand name of the product heretofore designated Bi-Tone Liver Pills or from otherwise representing that it produces any beneficial effect upon the liver.

The said Bi-Tone Corporation, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 17, 1941.)

02835. **Hair Dye—Doctor and Qualities, Properties or Results.**—Eladio Santini and Sylvia Pietri, copartners doing business under the trade name of Dr. H. A. Pietri Co., 83 Hamilton Place, New York, N. Y., vendor-advertisers, were engaged in selling a hair dye designated Zenaida and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) By use of the prefiix "Dr." in their trade name that Zenaida is a preparation manufactured or offered for sale by a doctor of medicine.

(b) That Zenaida will banish gray hair.

(c) That Zenaida will restore hair to its original color.

(d) That Zenaida does not stain the clothing, hands or scalp.

The said Eladio Santini and Sylvia Pietri further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 17, 1941.)

02836. **Drug Preparation—Qualities, Properties or Results and Nature.**—Copeland Products, Inc., a corporation, 244 Wolf Street, Syracuse, N. Y., vendor-advertiser, was engaged in selling a drug preparation designated Dist-R-Tabs 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 Dist-R-Tabs in the treatment of dogs will prevent or remedy a run-down condition, suffering, permanent disability, death, distemper, colds, sinusitis, asthma or puerperal fever, or that it would be of benefit in the treatment of coughs beyond its value as an expectorant in assisting in expelling accumulations of mucus in the upper respiratory tract.

(b) That this product is an antiseptic or destroys germs in a dog's respiratory tract, or protects it against infection.

(c) That this product is of benefit when administered to humans for the prevention or treatment of colds, bronchitis, sinusitis, coryza, rhinitis or similar ailments.

The said Copeland Products, Inc. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 17, 1941.)

02837. **Cigars—Composition and Source or Origin.**—Garcia Grande Cigars Inc., a corporation, 141 Fifth Avenue, New York, N. Y., vendor-advertiser, was engaged in selling certain cigars designated "Garcia Grande Crowns," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Garcia Grande Crown cigars contain "100% Havana and other imported long filler tobaccos," or from making any other representation referring to or designating the geographical 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 of equal emphasis.

The said Garcia Grande Cigars Inc. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 18, 1941.)

02838. **Lingerie and Hosiery—Free, Profits or Earnings, Composition, Nature, Quality, Etc.**—Samuel K. Kreenberg, an individual, doing business under the trade name of Supreme Hosiery Co., 807 Roosevelt Road, Chicago, Ill., vendor-advertiser, was engaged in selling lingerie and hosiery and agreed, in connection with the dissemination of future advertising, to cease and desist from:

(*a*) Using the word "Free" or the term "without cost" or any word or term of similar import or meaning to designate or refer to any commodity or article of value offered as compensation for services performed or to be performed in connection with or related to the sale or distribution of any merchandise, commodity, articles of value, advertising or information or in any manner by any means representing or implying that such commodity or article of value is a gift unless all of the terms and conditions of such offer are clearly and adequately stated in equal conspicuousness and in immediate connection or conjunction with the word or term "free" or other word or term of similar import or meaning and there is no deception as to the price, value, quality, quantity, character or any other feature of any such commodities or articles of value or the services to be performed in connection with obtaining such commodity or article of value.

(*b*) Representing that prospective agents, salesmen, distributors, dealers, or other representatives can make profits or earnings within a specified period of time, which are in excess of the average net profits or earnings which have theretofore been consistently made in the like periods of time by its active full-time agents, salesmen, distributors, dealers or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

(*c*) Representing by use of such words as "up to," "as high as," or any words or terms of like import that prospective agents, salesmen, distributors, dealers, or other representatives can make earnings or profits within any specified period of time of any amounts which are in excess of the net average earnings or profits within like periods of time made by a substantial number

of its active full-time agents, salesmen, distibutors, dealers or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

(*d*) Using the unqualified terms "satin," "crepe" or any other descriptive terms of similar import or meaning indicative of silk to describe, designate or in any manner refer to any fabric or product which is not wholly composed 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.

(*e*) Using the unqualified term "satin," "crepe" or any other term or terms of similar import or meaning indicative of silk to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, provided that, in the case of a fabric or product composed in part of silk and in part of materials other than silk, such term or similar terms may be used as descriptive of the silk content when immediately accompanied by a word or words of equal conspicuousness accurately describing and designating such other materials in the order of their predominance by weight, beginning with the largest single constituent.

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

(*g*) Representing in any manner whatsoever that the hosiery manufactured or sold by him contains "silk" or "pure thread silk," the product of the cocoon of the silkworm, in greater quantity, percentage or degree than is actually the case.

(*h*) Advertising, offering for sale or selling, hosiery composed in whole or in part of rayon without clearly disclosing the fact that such hosiery is composed of rayon, and when such hosiery is 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 provided that if any particular fiber in said hosiery is not present in a substantial amount by weight, the percentage in which such fiber is present shall then be specifically disclosed.

(*i*) Using the words "silk" or "pure thread silk," or words of similar import and meaning, to describe, designate or refer to hosiery which is not composed wholly of silk, the product of the cocoon of the silkworm, provided that in the case of hosiery composed in part of silk and in part of materials other than silk, such words may be used as descriptive of the silk content if there are used in immediate connection and conjunction with the word "silk," 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 that if any particular fiber in said hosiery is not present in a substantial amount by weight, the percentage in which such fiber is present shall then be specifically disclosed.

(*j*) Representing, describing or designating that certain portions of his hosiery knitted from fibers other than silk are knitted from silk thread produced from the cocoon of the silkworm.

(*k*) Representing that certain portions of his hosiery are knitted with a greater number of threads than actually used in the knitting thereof.

(*l*) Representing, describing or designating certain of his hosiery to be Run-Resist or that said hosiery resists runs.

(*m*) Representing that service hosiery has the appearance of sheer hosiery.

(*n*) Representing that certain of his hosiery or portions thereof are knitted from lisle thread when the thread used in knitting said hose or portions thereof does not meet the standards required for lisle thread.

(*o*) Representing that certain of his hosiery is knitted with a greater number of needles than those actually used in the knitting thereof.

(*p*) Representing that the face of the leg of certain of his hosiery is plated with a greater number of threads of silk than actually used in the plating thereof.

(*q*) Representing, describing or designating that certain of his hosiery is wool faced in a percentage or proportion in excess of the actual quantity of wool used in facing said hosiery.

(*r*) Using the terms "Fashioned," "Full Fashioned," or "New Fashioned" alone or in combination with any other word or words to represent, describe or designate hosiery which is not actually made by joining the opposite sides of a fabric which has been knitted or woven flat and open in a form so that it makes a shaped hose when closed, or in which the fabric, so knit or woven, has been cut so that when closed it makes a shaped hose.

Samuel K. Kreenberg further agreed that in his future advertising, where a word or phrase is used in connection with a specific claim or representation of earnings or profits by way of qualification or limitation, such word, words, or phrases will be made equally as clear and plain as the specific claim or claims which they purport to limit or qualify.

Samuel K. Kreenberg further agreed that in computing the period of time during which specified earnings or profits were made he will include all of the time actually used for demonstrations, solicitations, and any other services performed in connection with either the sale, delivery, or collection of the purchase price by the particular agent, salesman, distributor, dealer or other representative who is alleged to have made such earnings or profits.

The said Samuel K. Kreenberg agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 18, 1941.)

02839. **Shoes—Ailments, Qualities, Properties or Results, Etc.**—Knapp Brothers, Inc., a corporation, 70 Bellevue Avenue, Brockton, Mass., vendor-advertiser, was engaged in selling Dr. George R. Davis Shoes and other shoes, designed to relieve various conditions of the feet and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That it has been ascertained that 90,000,000 or any other definite number or percentage of people in the United States suffer with some form of foot trouble.

(*b*) That doctors agree that 50 or any other number of diseases are the direct result of ailing feet or that any disease is the direct result of ailing feet.

(*c*) That the shoes stimulate normal circulation or that they possess an antiseptic toe lining.

(*d*) That the shoes give proper support to the arches unless explained in direct connection therewith that in unusual cases they are not equipped to do so.

(*e*) That the shoes assure perfect ankle alignment or that they bring freedom from foot ills.

(*f*) That the shoes correct, eliminate, prevent or banish flat feet or other kindred foot ills or defective posture.

(*g*) That the shoes afford instant relief.

(*h*) That the shoes will banish, correct, eliminate or prevent corns except when improperly fitted.

(*i*) That the wearing of the Dr. Geo. R. Davis Anti-Friction Shoes assures normal feet.

The said Knapp Brothers, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 18, 1941.)

02840. **Hair Dye Preparations—Manufacturer, Qualities, Properties or Results, History, Etc.**—Nu-Tone Products Corporation, a corporation, 151 West 28th Street, New York, N. Y., vendor-advertiser, was engaged in selling certain hair dye preparations designated "Tuch-Up" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the hair dye products which it sells are manufactured by it or by any other organization affiliated with or owned or controlled by Nu-Tone Products Corporation unless and until the hair dye products which it sells are manufactured by it or by some organization owned, operated or controlled by Nu-Tone Products Corporation.

(*b*) That the use of its hair dye products will cause hair to look natural or cause hair to have a soft texture or have any beneficial effect on hair texture.

(*c*) That the use of its hair dye products will banish, eliminate, end, or rid one of gray hair.

(*d*) That the use of its hair dye products will cause one to remain young.

(*e*) That its hair dye products are vegetable compounds.

(*f*) That the use of its hair dye products will cover hair roots or have any effect upon the color of hair roots.

(*g*) That hundreds of thousands or any other number of women have specified their requirements for a hair dye, or

(*h*) That its hair dye products are new or made of ingredients of recent origin or development.

The said Nu-Tone Products Corporation further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 18, 1941.)

02841. **Drug Preparation—Qualities, Properties or Results, Nature, Composition, Etc.**—Olive M. Goulet, an individual, trading as The Lacto-

Cal Laboratories, 1121 Ingraham Street, Los Angeles, Calif., vendor-advertiser, was engaged in selling a drug preparation designated "Lacto-Cal" 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 exert or have a beneficial influence on the nerves.

(b) That said preparation will speed up or aid digestion or exert a beneficial influence or reaction throughout the digestive tract.

(c) That said preparation will increase the flow of the gastric juices.

(d) That said preparation possesses tonic or stimulant effects or powers or that it is a general gland builder.

(e) That said preparation will feed the brain, nerves, tissues, testicles, or ovaries.

(f) That said preparation is a scientific compound of lactic acid and calcium.

(g) That said preparation provides or contains calcium in sufficient quantities to be of therapeutic value.

(h) That said preparation will make the eating of food easier or more comfortable.

(i) That said preparation is of value in the relief or treatment of nervous indigestion, colitis, stomach catarrh, gastric ulcers, difficulty in breathing, stomach gas or paralysis.

(j) That said preparation will reduce acidity or be of value in the relief or treatment of hyperacidity.

(k) That said preparation has any beneficial effect on the circulatory system or on metabolism.

(l) That said preparation will prolong life, make one live longer, or that it will enable one to live to be 100 years old, or any other definitely stated number of years.

(m) That said preparation contains Vitamin B, Vitamin D, or phosphorus.

(n) That said preparation, either because of its lactic acid content or any other ingredient, furnishes the only food required by the brain.

(o) That said preparation contains elements essential to the building of hemoglobin.

(p) That the general dietary condition of the American people is such as to make the purchase and consumption of said product necessary or advisable.

The said Olive M. Goulet further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (July 18, 1941.)

02842. **Girdles—Qualities, Properties or Results.**—Physicians' Supply Co., Inc., a corporation, 1127 Fourth Avenue, San Diego, Calif., vendor-advertiser, was engaged in selling girdles designated Air-Way Girdles and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) By the use of the designation "Air-Way Reducing Girdle," or by any other means, that wearing an Air-Way Girdle will cause one to reduce, or will effect

a definite reduction in weight or measurement, or result in the loss of fatty tissue.

(*b*) That Air-Way Girdles are non-absorbent.

(*c*) That the possibility of skin infection from excreted waste matter absorbed by a girdle is eliminated by wearing an Air-Way Girdle.

The said Physicians' Supply Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 18, 1941.)

02843. **Drug Preparation—Qualities, Properties or Results, Professional Approval, and Government Tests and Compliance.**—Charles J. Giezendanner, Jr., an individual operating under the trade name of The Giezendanner Co., Citizens Bank Building, Houston, Tex., was engaged in the business of conducting an advertising agency which disseminated advertisements for a drug preparation designated "Locao Belem" on behalf of the Belem Products Co., Houston, Tex., 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 Drug Law."

The said Charles J. Giezendanner, Jr., further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (July 18, 1941.)

02844. **Soaps, Cosmetics, Perfumes, Toilet Articles, and Culinary Products—Source or Origin and Composition.**—The Herb Farm Shop, Ltd., a corporation, 347 Fifth Avenue, New York, N. Y., vendor-advertiser, was engaged in selling a number and variety of soaps, cosmetics, perfumes, toilet articles and culinary products, designated:

Country Garden Cleansing Cream,
Country Garden Smoothing Cream,
Country Garden Under Powder Cream,
Country Garden Refresher,
Fragrant Meadow Cleansing Cream,
Fragrant Meadow Astringent,
Fragrant Meadow Under Powder Cream,
Fragrant Meadow Smoothing Cream,
Under Powder Mist,

Bath Essences,
Perfumes,
Toilet Water,
Bath Talcum.

In a stipulation filed and approved by the Federal Trade Commission the vendor-advertiser agreed, in connection with the dissemination of future advertising, to cease and desist from—

1. Using the phrase, "Herb Farm Shop of London," or the name "The Herb Farm Shop, Ltd.," or by any other words or phrases or in any other manner indicating, contrary to fact, that any of its products has an English or other foreign origin, unless in direct connection therewith it is clearly and conspicuously stated that such product is made, compounded or packaged (as the case may be) in the United States; or

2. Representing that any of its products is infused with or contains herbal oils unless, where such product does not contain a substantial amount of herbal oil, the percentage of herbal oil present is given in immediate connection therewith; and

3. Representing that the herbal oil contained in any of its products is present as an emulsion when such is not the fact. (July 18, 1941.)

02845. **Bread—Qualities, Properties or Results.**—Colonial Baking Co., a corporation, 4410 Gravois Avenue, St. Louis, Mo., vendor-advertiser, was engaged in selling Colonial Bread and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Colonial Bread is not fattening.
(*b*) That Colonial Bread is necessary in a reducing diet.
(*c*) That Colonial Bread in a reducing diet helps burn up body fat.
(*d*) That eating Colonial Bread helps one reduce safely.
(*e*) That six slices of Colonial Bread should be included in a properly balanced reducing diet.
(*f*) That six slices of Colonial Bread in a reducing diet will give one pep, energy and prevent one from becoming tired, fatigued, irritable or experience nervous strain.
(*g*) That Colonial Bread will protect one from the harmful residues that cause fatigue.
(*h*) That Colonial Bread should be included in the summer diet to enable one to feel fit.
(*i*) That Colonial Bread in the summer diet never gives one that heavy, overly full feeling.
(*j*) That Colonial Bread protects one's health while reducing.

The said Colonial Baking Co. further agreed not to publish or cause to be published any testimonials containing any representations contrary to the foregoing agreement. (July 18, 1941.)

02846. **Mineral Water—Qualities, Properties or Results.**—Michigan Magnetic Mineral Water Co., a corporation, and Natural Ray Mineral Water Co., a corporation, trading as such and as Michigan Mineral Water Co., St. Louis, Mich., vendor-advertisers, were engaged in bottling and selling mineral water under the brand

name Natural Ray Mineral Water and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that said product:

(*a*) Is a remedy or cure for stomach, bladder or kidney troubles, chronic constipation, paralysis, high blood pressure, anemia, glandular difficulties, gravel, albumen, gallstones, diabetic ailments, uric acid, arthritis, rheumatism, or the aches or ailments arising from any of the diseases or conditions mentioned.

(*b*) Is a safeguard, a body builder, a way to gain, retain or maintain health, a preventative of infantile paralysis or other illness, or an aid to muscle or bone development.

(*c*) Affects the appetite, the weight, or the ability to sleep, builds up resistance to colds or headaches, or wards off colds.

The said Michigan Magnetic Mineral Water Co. and the Natural Ray Mineral Water Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 23, 1941.)

02847. **Drug Products—Qualities, Properties or Results.**—Edward Howell, an individual trading as Medfood Laboratory, 210 South Kedzie Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling drug products designated Nutrase and Kleen and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That either of the products is a cure or a remedy for or that either of them will overcome food discomfort, indigestion, gas, heartburn, a heavy or an all-in feeling, acid stomach, catarrhal stomach or bowels, headaches, skin blemishes, dizziness, foul breath, gastro-intestinal symptoms, cancer, diabetes, liver trouble, abdominal trouble, gall bladder trouble, stomach or intestinal trouble, belching, pimples or sleeplessness.

(*b*) That Nutrase is free from drugs.

(*c*) That Nutrase will impart new life or energy.

(*d*) That Kleen affords perfect intestinal elimination.

The said Edward Howell further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 24, 1941.)

02848. **Medicinal Preparations for Animals and Poultry—Qualities, Properties, or Results.**—Henry A. Fischel, Inc., a corporation, 418 North Third St., Philadelphia, Pa., vendor-advertiser, was engaged in selling certain medicinal preparations designated Faunilin Tobacco Flakes and Faunalax Worm & Laxative Compound and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Faunilin Tobacco Flakes or the product hereinabove referred to as Faunalax Worm & Laxative Compound is effective in the prevention or treatment of worms in animals.

(*b*) That either of these products is of any benefit in the prevention or treatment of gapeworms or spiral stomach worms in poultry.

It is further agreed by Henry A. Fischel, Inc., that it will forthwith cease and desist from the use of the brand name "Faunalax Worm & Laxative Compound," or any other brand name which directly or indirectly represents that the product, hereinbefore referred to under that name, or any other product of substantially the same composition or possessing substantially the same properties, is effective in the prevention or treatment of worms in animals or of gapeworms or spiral stomach worms in poultry.

The said Henry A. Fischel, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 24, 1941.)

02849. **Door Check—Qualities, Properties or Results, Comparative Merits, New, and Free.**—Bloomfield Manufacturing Co., Inc., a corporation, doing business under the trade name of Kant-Slam Door Check Co., Bloomfield, Ind., vendor-advertiser, was engaged in selling a device to prevent doors slamming designated Kant-Slam Door Check and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) Operates in oil.
(*b*) Closes all doors.
(*c*) Will do the work of the most expensive door checks, or that there is nothing about it to get out of order.
(*d*) Is built, or operates, on a new principle.

It is further agreed by Bloomfield Manufacturing Co., Inc., that it will cease and desist from representing that a sample demonstrator will be given free to producers when such offer is conditioned upon a deposit being made before delivery.

The said Bloomfield Manufacturing Co., Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 24, 1941.)

02850. **Bread—Composition, Qualities, Properties or Results, and Nature.**—Frederic W. Ziv, Inc., a corporation, 2436 Reading Road, Cincinnati, Ohio, was engaged in the business of conducting an advertising agency which disseminated advertisements for a bread designated Rubel's High Vitamin B_1 Wheat Bread, which has also been designated Rubel's High Vitamin Wheat Bread, and which is made of wheat and whole-wheat flour and baked with a yeast of an allegedly high vitamin B_1 content on behalf of the Rubel Baking Co., a corporation, Cincinnati, Ohio and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That "Rubel's High Vitamin Wheat Bread" contains per loaf as many as 800 International Units of Vitamin B_1, or contains more units of said

vitamin, or of any other vitamin present, than is actually the case, or, when eaten in quantities ordinarily consumed, will supply the minimum daily nutritional requirement for vitamin B_1; or

(*b*) By designating said bread product "Rubel's High Vitamin Wheat Bread," or by designating the yeast with which it is baked, "High Vitamin Yeast," or in any other manner, that said bread product is rich in vitamins generally or contains all the necessary vitamins, including all the factors in the vitamin B complex, in significant amounts; or

(*c*) That said bread product is a weight reducing food, or is incapable of increasing body weight, or, when substituted for rich, starchy or "fattening" foods in the ordinary diet, will provide a diet effective for weight reducing purposes, or, when added to, or made part of, a reducing diet, will assure a reduction of weight without loss of energy and resistance or without any deleterious effects; or

(*d*) That said bread product is a "health" food, or is by itself capable of building or maintaining health or physical fitness, and from representing that the consumption of its said bread is indicated as a treatment for or preventive of lowered resistance, anorexia, nervousness, irritability, "run down health," fatigue, constipation, indigestion, or colds; or

(*e*) That said bread product is necessary or adequate to supplement dietary vitamin deficiency; or

(*f*) That any one of the vitamins contained in said bread product is the most essential vitamin needed for building and maintaining good health.

The said Frederic W. Ziv, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 28, 1941.)

02851. **Shoe White—Qualities, Properties or Results, Comparative Merits, and Guarantee.**—Plough, Inc., a corporation, Plough Building, Memphis, Tenn., vendor-advertiser, was engaged in selling Mufti Shoe White and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Mufti Shoe White will not rub off.
(*b*) That Mufti Shoe White provides twice the ordinary coverage.
(*c*) That Mufti Shoe White is more economical than other shoe whites.
(*d*) That Mufti Shoe White does not build up on leather.

It is hereby further agreed by Plough, Inc., in connection with the offering for sale, sale, and distribution of Mufti Shoe White in commerce as defined by said act, that whenever it represents that its product is guaranteed, the terms and conditions of said guarantee will be clearly set forth within the representation making such guarantee.

The said Plough, Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 29, 1941.)

02852. **Turkish Bath Cabinet—Qualities, Properties or Results, and Safety.**—Irene G. Fenton, an individual trading as Perspir-ator Manufacturing Co., First and Utah Sts., Toledo, Ohio, vendor-advertiser,

was engaged in selling a Turkish bath Cabinet designated Perspir-ator 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 said device, Perspir-ator, will rejuvenate the entire system or that it provides a way to gain health.

(*b*) That the use of said device is a cure, remedy, or a competent modality in the treatment of excess weight.

(*c*) That the use of said device will keep the pores open or induce proper elimination of body poisons.

(*d*) That the use of said device will afford relief to the nervous manifestations of women during menopause.

(*e*) That the use of said device will cure, break up, or is beneficial in the treatment of colds.

(*f*) That the use of said device will help to replace sallow, sluggish skin with a healthy, youthful glow, or will help to eliminate blackheads or the cause of acne and other skin blemishes.

(*g*) That the use of said device is a cure or remedy for symptoms of over-indulgence.

(*h*) That the use of said device will remove offensive wastes or make the body more hygienically clean, internally and externally.

(*i*) That the use of said device is a cure, remedy, or a competent modality in the treatment of rheumatism, lumbago, arthritis, neuralgia, indigestion, asthma, liver and kidney disorders, diabetes, skin eruptions, auto-intoxication, athlete's foot, and many other muscular aches and pains.

It is further agreed by Irene G. Fenton that in connection with the dissemination of advertising by the means and in the manner above set out she will forthwith cease and desist from disseminating any advertisements which fail to reveal that there is a possibility of normal persons fainting and suffering serious burns when using the said device unattended: *Provided, however*, That such advertisements need contain only a statement that the said device should be used only in accordance with the directions which accompany it, if and when such directions contain a caution or warning to the same effect.

The said Irene G. Fenton further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 1, 1941.)

02853. **Insecticide and Fungicide—Qualities, Properties or Results, and New.**—Hammond Paint & Chemical Co., a corporation, Beacon, N. Y., vendor-advertiser, was engaged in selling an insecticide and fungicide designated Kix formerly known as Triad 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 kill or control all forms of insect life or all types of beetles or all types of sucking or chewing insects; or

(*b*) That its product contains insecticides that are new.

The said Hammond Paint & Chemical Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 1, 1941.)

02854. **Coal Tar Hair Dye—Safety.**—Spiegel, Inc., a corporation, 1061 West 35th St., Chicago, Ill., advertiser-vendor, was engaged in selling coal tar hair dyes designated Lakro and Instant Clairol and agreed, in connection with the dissemination of future advertising, 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. (Aug. 4, 1941.)

02855. **Medicinal Preparation—Professional Approval and Qualities, Properties or Results, Etc.**—R. Keller, an individual trading as Olbas Co., Room 900, 500 Fifth Avenue, New York City, vendor-advertiser, was engaged in selling a medicinal preparation designated Olbas Herb Oil and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the essential oil from which Olbas is distilled is scarcely known in the western world.

(*b*) That every detail of Olbas's varied application is supported by clinical evidence from European physicians.

(*c*) That Olbas will ease the spasms of coughing, asthma, or irritation of the respiratory channels.

(*d*) That Olbas will relieve flatulence or digestive disturbances.

The said R. Keller further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 4, 1941.)

02856. **Cosmetics—Qualities, Properties, or Results, Composition, and Laboratories.**—A. M. Zendel, an individual, trading as Zendel Laboratories, 924 Kelly St., Bronx, N. Y., vendor-advertiser, was engaged in selling cosmetics designated Natural Cosmetics and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the skin and tissue fats are replenished by the absorption of any ingredient or vitamin contained in Natural Cosmetics or that any such ingredient

or vitamin is absorbed by the skin or in any manner conveyed to the sebaceous glands.

(*b*) That the external application of the lipids, lipoids, cholesterol, or lecithin contained in Natural Cosmetics is of therapeutic or dermatological value.

(*c*) That the use of Natural Cosmetics or any of them will correct or prevent such skin disorders or diseases as are caused by the local action of foreign matter upon the skin.

(*d*) That the external application of Natural Cosmetics or any of them will correct blemishes, modify, correct, or normalize dry or oily skin or produce a healthy complexion.

(*e*) That Natural Cosmetics meet every skin requirement.

(*f*) That Sun Tan Preparations divert the ultraviolet rays, absorb waves or contain a filter screen.

(*g*) That the application of Sun Liquid Cream will protect the body from overheating or shape or mould the body contour.

(*h*) That Natural Cosmetics will refine the skin, reduce or refine enlarged or stretched pores, clear blemishes, produce a youthful, healthy or clear complexion, rid the skin of accumulated waste, or purge the skin of dirt.

(*i*) That Natural Cosmetics will prevent blackheads, wrinkles, skin fissures, inflammation, pimples, or sagging skin or expel lines, wrinkles, or skin blotches.

(*j*) By the use of the designation "Vegetable Wrinkle Cream" or by any other means that any of his preparations prevents or removes wrinkles or lines.

(*k*) That Natural Cosmetics nourish the skin or tissues, promote new tissue growth, keep skin young or supple, or improve the contour of the bust or abdomen.

(*l*) By the use of the designation "Skin Food & Tissue Cream" or by any other means that any of his preparations is a skin or tissue food.

(*m*) That Natural Cosmetics will normalize the skin, help the pores relax, or remove deep seated pore dirt.

(*n*) That Natural Cosmetics will correct or cure scaly conditions or other disorders or diseases of the hands.

(*o*) That Natural Cosmetics will stimulate or clean the hair roots, retard dandruff growth, or invigorate the hair.

(*p*) That Lemon Cream bleaches.

(*q*) That the external application of the vitamins in Natural Cosmetics is beneficial to or of any effect on the health of the skin.

(*r*) That there is such a condition as "nervous skin" which can be benefited by Lettuce Cleansing Cream, or that such preparation will facilitate so-called "skin breathing."

(*s*) By the use of the designation "Acne Lotion" or by any other means that any of his preparations is of therapeutic value in the treatment of acne.

(*t*) That Natural Cosmetics contain any substances or factor now recognized by science as Vitamin F.

(*u*) By the use of the word "laboratory" or "laboratories" or any other word or words of similar import as part of the trade name, or as part of any name under which he may trade, or by any other means that he owns, operates, controls, or maintains an establishment where the products sold by him are tested, prepared, and compounded under the supervision and direction of competent scientists.

The said A. M. Zendel further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 4, 1941.)

02857. **Wild Fruit Juices—Qualities, Properties, or Results.**—Food Balance Corporation, a corporation, 519 North Central Ave., Chicago, Ill., vendor-advertiser, was engaged in selling foods designated Hercules Wild Blackberry Juice, Hercules Wild Cherry Juice, Hercules Wild Blueberry Juice, and Hercules Wild Elderberry Juice, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Hercules Wild Blackberry Juice will prevent or be of substantial benefit in the treatment of anemia; have any beneficial effect upon conditions evidenced by symptoms such as fatigue, listlessness, lack of energy, palpitation of the heart, pains in the head or in the back, or lack of sex vigor; or be of any material benefit to a woman during her menstrual periods.

(*b*) That Hercules Wild Cherry Juice will—

1. Serve as a general tonic, or is of substantial benefit in the treatment of people who are run down, weak, nervous, undernourished, convalescent, or anemic.
2. Invigorate the human system.
3. Strengthen, or in any other manner beneficially affect the heart muscles, muscular tissues, stomach walls, bowel muscles, liver, uterus, or any other part or parts of the human body.
4. Assist the process of "oxydation heat production"; or
5. Increase the alkalinity of the tissues, or prevent easy bleeding.

(*c*) That Hercules Wild Blueberry Juice—

1. Will tone or have any other beneficial effect upon the human system; or
2. Is an effective antacid or stomach remedy.

(*d*) That Hercules Wild Elderberry Juice—

1. Will exert an invigorative or curative effect, or in any other manner have any material influence upon the female generative system.
2. Will have any material beneficial effect upon women during the menopause, or upon young girls transcending from youth into maturity.

(*e*) That any of these juices will purify or have any other substantial effect upon the blood, or cure or overcome disorders of the human body, or that they are of any significant nutritional or medicinal value.

(*f*) That any of these products supplies any minerals or other elements in significant amounts.

The said Food Balance Corporation further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 4, 1941.)

02858. **Cosmetic—Qualities, Properties or Results, Composition, Unique, Etc.**—Elene of Vienna, Inc., a corporation, and Ella M. Schnuck, an individual, 522 Fifth Avenue, New York, N. Y., vendor-advertisers, were engaged in selling a cosmetic designated Dervita and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That Dervita—

(*a*) Corrects sagging facial contours or removes other evidence of age.

(*b*) Clears away lines of fatigue.

(*c*) Restores youthful color or facial contours.

(*d*) Clears the skin of eruptions or other blemishes.
(*e*) Keeps the skin youthful looking or free from blemishes.
(*f*) Drives out all the dirt in the pores, or
(*g*) Contains healing herbs.
2. That Dervita penetrates beneath the skin, operates under the skin with a vacuum action, or attacks impurities under the skin.
3. That Dervita works an "instant miracle" or is the only cosmetic that shows results in one treatment.
4. That the formula of Dervita has been used by great physicians for rejuvenation and for freeing the body of destructive poisons.

The said Elene of Vienna, Inc., and Ella M. Schnuck further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 5, 1941.)

02859. **Hair Preparations—Nature and Qualities, Properties or Results.**—Louise G. Ramsey, an individual trading as Certain-Gro Hair Preparations, Post Office Box 1446, Gary, Ind., vendor-advertiser, was engaged in selling hair preparations designated Certain-Gro Hair Preparations and Certain-Gro "Liquid" Hot Oil Treatment and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Certain-Gro Hair Preparation is a remedy or cure for baldness, falling hair, dandruff, and itching scalp.
(*b*) That Certain-Gro Hair Preparation will thicken, grow, improve the health and color of hair, prevent early baldness, and revitalize lifeless hair.
(*c*) That Certain-Gro "Liquid" Hot Oil Treatment will recondition, stimulate, and promote the growth of hair.

The said Louise G. Ramsey further agreed to cease and desist from representing, through the use of the term "Certain-Gro," or any other term of similar import or meaning to designate or describe such preparations, or in any other manner, that such preparations will grow hair.

The said Louise G. Ramsey further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 5, 1941.)

02860. **Book—Approval, Nature, Qualities, Properties or Results, Limited Supply, Special Price, New, Etc.**—Morris N. Beitman, an individual, doing business under the trade name of Supreme Publications, 3727 West 13th St., Chicago, Ill., vendor-advertiser, was engaged in selling a book entitled Complete Authorized Radio Servicing Course and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the publication of his book is authorized or approved by any competent authority; or
(*b*) That his book is a complete course, or a course of study, instruction, education, or training in radio service, electricity, or television; or

(*c*) That his book is an exact reprint or a reprint of a course of lessons or instructions sold by the Radio Technical Institute for $39, or any other price; or that the purchase and study of his book is equivalent to the correspondence courses of instructions sold under the name of Radio Technical Institute or any other correspondence course; or

(*d*) That his book has been accepted or backed by the Radio Industry, or that 43, or any other number of radio manufacturers helped to prepare the R. T. I. course or his book; or

(*e*) That his book contains everything about radio, or everything from simple facts to television, or three courses in one such as electricity and radio, practical and applied radio, and advanced training; or

(*f*) That his book will enable the buyer or reader to become a radio expert, or introduce him from the start to real servicing methods or equipment, or enable him to earn nice or substantial spare time money before reaching the 14th lesson, or at all; or

(*g*) That the quantity is limited, or in any manner that the number printed is less than enough to supply the anticipated demand, or that the number of books left is small or insufficient to supply the present or anticipated demand; or

(*h*) That the price is a special or reduced or an amazing or unusual bargain; or

(*i*) That he conducts or has ever conducted a school or institute offering a correspondence course; or

(*j*) That he employs an educational counsellor; or

(*k*) That prospective purchasers of his book are permitted to examine said book free; or

(*l*) That he or Supreme Publications is agent for someone else in the advertising and sale of his book; or

(*m*) That his book is a new edition of any previous publications or printing thereof.

It is further agreed by Morris N. Beitman, that in connection with the offering for sale, sale, and distribution of his book entitled "Complete Authorized Radio Servicing Course" in commerce as defined by the said act, he will forthwith cease and desist from disseminating any advertisement containing a testimonial written and signed by himself which advertisement fails to disclose that he is an interested party in the sale of said book. (Aug. 5, 1941.)

02861. **Drug Preparation and Device for Determining Vitamin Deficiency—Qualities, Properties or Results, Nature, Etc.**—Dr. Carlton Deederer, an individual doing business as Dr. Deederer Products, Department K–1, Miami, Fla., vendor-advertiser, was engaged in selling a drug preparation designated Vitamina and a device for determining vitamin A deficiency designated Vitaminascope and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication: That Vitamina—

(*a*) Will assure a state of good health to its users.

(*b*) Will in any manner benefit the health of its users except to the extent that it may benefit the health of those who suffer from a vitamin A deficiency.

(*c*) Will in any manner benefit the health of users suffering from high

blood pressure, exhaustion, or a weakened condition of the stomach or intestines.

(*d*) Is essential to the maintenance of a healthy, normal, or perfect skin.

(*e*) Will benefit the "average diet" by supplying a vitamin A deficiency.

(*f*) Is a super vitamin or in any way superior to or of more value than the vitamin A obtained from other sources.

(*g*) Is an activated vitamin.

(*h*) Will, of itself, supply food to or build cells for natural hair, the skin, the glands, the brain, or the eyes.

(*i*) Will change the glare recovery rating to normal.

(*j*) Will prevent or dissolve or help prevent or dissolve calcium deposits in the system.

(*k*) Will eliminate or prevent gray hair or baldness, or make hair grow.

and that the Vitaminscope—

Will accurately show the extent to which a vitamin A deficiency exists in and given case; will accurately show the extent to which a vitamin A deficiency is being supplied in any given case by the administration of any source of vitamin A; or, will standardize the amount of vitamin A in Vitamina.

The said Dr. Carlton Deederer further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 7, 1941.)

02862. **Drugs—Qualities, Properties or Results, Unique and Safety.**—Stop-Lite Products, Inc., a corporation, 849 South 6th East Street, Salt Lake City, Utah, vendor-advertiser, was engaged in selling three drugs designated Stop-Lites, Haps and Anti-Acid Tablets and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the tablet preparation designated Stop-Lites relieves a cold or is a remedy or cure for a cold, or that it is of any benefit in the treatment of a cold or rheumatism beyond inducing laxation and affording temporary relief from the physical discomfort symptoms incident to or associated therewith.

(*b*) That Stop-Lites are different from other products intended for the same purpose and use.

(*c*) That Stop-Lites constitute an effective internal antiseptic.

(*d*) That Anti-Acid Tablets aid digestion.

Stop-Lite Products, Inc., further agreed to cease and desist from representing that its product Stop-Lites is safe, or from disseminating any advertisement for Stop-Lites or for Haps which fails to reveal that frequent or continued use may be dangerous, causing serious blood disturbances, and that said products should not be administered in excess of the dosage recommended; *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 a warning to the same effect or specifically directs attention to a similar caution or warning statement in the accompanying labeling.

The said Stop-Lite Products, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 11, 1941.)

02863. **Food Products and Medicinal Preparations—Qualities, Properties or Results, Composition, Comparative Merits, Professional Approval and Safety.**—Walter Camp and Werner Orbach, copartners trading as The Vita Health Food Co., American Health Products Co., and Eastern Health Food Stores Assn., 3040 14th Street, N. W., Washington, D. C., vendor-advertisers, were engaged in selling various food products and medicinal preparations designated; Almano, Bro-Sak, Cali-Kelp Tablets, C-Veg-Salt, Dalmatian Sage Leaves, Nutrolac, O-Pep-O-Mint, Pomona Grape Juice, Seven Herbs Laxative and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Almano will furnish complete proteins and other elements found in the main dish of the meal, is complete in all the essential nutrients so that it may be used interchangeably with or in lieu of other protein foods, contains organic food minerals, is the purest and most wholesome of all protein foods, is readily digested, is many times as nourishing as beefsteak, eggs, codfish, and whole milk and costs less than these foods, is a "natural lubricant," has a beneficial effect on jaded appetites, or satisfies the tissue building requirements of the body;

(*b*) That Bro-Sak is suitable for use by diabetics, causes health to improve when substituted for sugar or saccharine, promotes better activity of all bodily organs, causes reduction in weight or adds solid healthy flesh to the underweight, is beneficial in cases of acid stomach, sluggish liver, rheumatism, and other ailments due to hyperacidity;

(*c*) That Cali-Kelp Tablets correct indigestion, skin troubles, rheumatism, rickets, obesity and other disorders, will strike at, remove or remedy the cause of body disorders, will be a valuable addition to the diet, or will have therapeutic value in cases of anemia, eczema, underweight and general debility;

(*d*) That C-Veg-Salt will reduce the harmful effects caused by the use of ordinary salt or that ordinary salt produces harmful effects or destroys health or is a slow poison, or that C-Veg-Salt is a valuable food accessory or has food value, or will keep the body alkaline;

(*e*) That a beverage or tea prepared from Dalmatian Sage Leaves is more beneficial than drugs when used in cases of insomnia, has a quieting effect upon the entire nervous system, and therapeutic value in the treatment of colds, fevers, influenza, dyspepsia or in cases of so-called "stomach-coughs";

(*f*) That Nutrolac will check harmful intestinal bacteria or will promote the growth of friendly ones, is a protective food, is nonfattening, will prevent or correct indigestion and gas acidity, is antacid, or is beneficial for "stomach sufferers";

(*g*) That a beverage or tea prepared from O-Pep-O-Mint is beneficial to the nerves, will neutralize body acids, arrest fermentation, flush the system of impurities, is an effective treatment for colds and beneficial for "stomach troubles" or has any therapeutic value because of the ingredients of potassium and manganese contained therein;

(*h*) That Pomona Grape Juice will rid the blood, organs and tissues of toxins and wastes, is an effective treatment in cases of bad breath, body odor, sleep-

lessness, sour stomach, bad blood, colds, catarrh, overweight, acidosis, prostatitis, will give relief from these disorders in twenty-four hours or in any definite period of time, or that this product is sent to all parts of the world;

(*i*) That Seven Herbs Laxative improves digestive action or promotes perfect digestion, keeps the ductless glands young, active and clean, is "*fat*-reducing," promotes secretion of the liver, improves kidney function or pancreas action, should be taken in "any" disease to remove the cause, or is recommended by doctors all over the world.

The said Walter Camp and Werner Orbach further agreed that in the dissemination of advertising by the means and in the manner above set out, of the medical preparation now designated Cali-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, they 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 only contain 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 Walter Camp and Werner Orbach further agreed that in the dissemination of advertising by the means and in the manner above set out, of the medical preparation now designated Seven Herbs Laxative, or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, they 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 there is potential danger in its use in cases when abdominal pain (stomach-ache, cramps, colic), nausea, vomiting (stomach sickness) or other symptoms of appendicitis are present, and that frequent or continued use of this preparation may result in dependence on laxatives, *Provided*, however, that such advertisement need only contain 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 Walter Camp and Werner Orbach further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 11, 1941.)

02864. **Medicinal Preparations—Qualities, Properties or Results, Safety and Composition.**—James M. O'Dell, an individual doing business as The Home Treatment Service, 1959 Cortland Street, Chicago, Ill., vendor-advertiser, was engaged in selling medical preparations designated Pur-Erb Compound No. 1, Laxative Tea Compound, Bathing Tea #22, Fu-Tina, Nerve Sedative Compound, and Home Ointment 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 one or more of said preparations constitutes a cure or remedy for ailments, pains, aches, or sickness, or that, through the use of said preparations health may be regained, the body, nerves or blood strengthened, all systems of the human body cleansed or healed, or operations eliminated; or

(*b*) That the use of one or more of said preparations constitutes a cure or an effective treatment for stomach disorders; or

(*c*) That through the use of said preparations one may regain vitality, health or strength and thus overcome any ailments or weak spots in one's body; or

(*d*) That through the use of their preparations having a laxative effect diseases can be cured, or that the use of one or more of said preparations constitutes a remedy or effective treatment for eye strain, rheumatism, arthritis, skin eruption, nervousness, insomnia, high blood pressure, catarrh, sinus trouble, tonsilitis, stomach trouble, intestinal or kidney disorders; or

(*e*) That any of said preparations will have a healing effect upon the wall of the stomach, or that the preparation designated Herbal Compound No. 1 (Pur-Erb Compound No. 1) or the preparation designated Fu-Tina will be effective in a case of acid deficiency in the stomach; or

(*f*) That Bathing Tea #22 is a remedy or effective treatment for pains or nervousness; or

(*g*) That Fu-Tina is an effective treatment in overcoming colitis or an effective treatment in overcoming constipation unless limited to cases of temporary constipation; or

(*h*) That Pur-Erb Compound No. 1—

1. Will soothe, cleanse, heal or tone the stomach, liver or gall-bladder.
2. Is a remedy or effective treatment for stomach disorders.
3. Will correct the digestion, assimilation or elimination.
4. Will purify the blood or prevent blood pressure on the heart.
5. Will soothe the gastric nerves or assume part of the digestive functions of the stomach.
6. Is an effective treatment in overcoming colitis or is an effective treatment in overcoming constipation unless limited to temporary constipation; or

(*i*) That the use of Nerve Sedative Compound will result in a healthy nervous system; or

(*j*) That Home Ointment is a remedy or effective treatment for rheumatism, neuralgia, soreness, chronic aches or bruises, or that said preparation is a remedy or effective treatment for skin troubles unless limited to those cases where the condition is caused by a parasitic infection, or that said preparation is safe for use or otherwise representing that said product is unconditionally safe for use.

The said James M. O'Dell further agreed to cease and desist from the use in the brand name of the product designated Pur-Erb Compound No. 1, or any other product of the same or substantially the same composition, of the word "Pur-Erb" or any other terminology representing, importing or implying that said product is composed entirely of herbs when such is not a fact.

The said James M. O'Dell further agreed to cease and desist from use in the brand name of the product designated Nerve Sedative Compound, or any other product of the same or substantially the same composition, of the words "Nerve Sedative," or any other terminology representing, implying or importing that said product possesses sedative properties.

The said James M. O'Dell further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 12, 1941.)

02865. **Medicinal Preparation—Approval, Nature and Qualities, Properties or Results.**—Salus Laboratory, Inc., a corporation, trading as Italian Imperial Co., 644 Pacific St., Brooklyn, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Tonico Del Cappuccino and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said preparation has been approved by legal authorities.

(*b*) That the said preparation is a general tonic or possesses other than bitter tonic properties.

(*c*) That said preparation will rebuild the body, renew energy, give new strength or vigor to the weak or a more natural healthy appearance to the complexion.

(*d*) That said preparation of itself will cause one to gain weight or that it possesses any value as a weight-builder in excess of that of a stomachic or stimulant to the appetite.

(*e*) That said preparation is a nerve tonic or is of value in the relief or treatment of persons suffering from nervousness unless such nervousness is due to or attributable to lack of appetite.

(*f*) That said preparation is indispensable for children or that it helps their growth or gives them more strength and that the results from the use of said preparation are immediate or that its effects are immediately noticeable.

(*g*) That said preparation will improve the quality of the blood.

(*h*) That said preparation possesses any therapeutic value in excess of that of a stomachic or stimulant to the appetite.

The said Salus Laboratory, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 13, 1941.)

02866. **Oil Filter—Unique and Government Approval.**—William Schwalge, an individual operating under the trade name of Reclaimo Manufacturing Co., 2306 North Western Ave., Chicago, Ill., vendor-advertiser, was engaged in selling an oil filter designated Reclaimo

and agreed, in connection with the dissemination of future advertising to cease and desist from representing directly or by implication:

(*a*) That no device other than Reclaimo removes kerosene and distillate from motor oil, or that no other such device applies heat from the exhaust manifold, or that Reclaimo is the only oil filter refiner available for use on automobiles, trucks, tractors and Diesel engines.

(*b*) That the National Bureau of Standards recommends oil reclaiming.

The said William Schwalge agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 12, 1941.)

02867. **Jewelry—Free, Diamonds, Qualities, Etc.**—W. K. Quinn and C. E. Quinn, copartners trading as Continental Diamond Co., Goodwin Block, Beloit, Wis., vendor-advertisers, were engaged in selling various articles of jewelry, said jewelry being for the most part simulated diamond rings and agreed, in connection with the dissemination of future advertising, to cease and desist from using the terms "free," "gift" or "free or extra cost" or any other terms of similar import or meaning to designate or describe a wrist watch or any other article of jewelry regularly included in a combination offer with simulated diamond rings or other similar articles of merchandise.

The said W. K. Quinn and C. E. Quinn also agreed to forthwith cease and desist from representing by the use of the word "diamond" or any abbreviation thereof, as part of their trade name or otherwise, that they sell diamonds.

The said W. K. Quinn and C. E. Quinn also agreed to forthwith cease and desist from representing directly or by implication that the man's wrist watch advertised and sold by them is shockproof.

The said W. K. Quinn and C. E. Quinn further agreed to forthwith cease and desist from the advertising or sale of finger rings marked in any manner so as to exaggerate or otherwise misrepresent the total or relative amount or fineness of gold therein contained.

It is also hereby agreed by W. K. Quinn and C. E. Quinn that in connection with the offering for sale, sale and distribution of their jewelry products in commerce as defined by the said Act, that they will forthwith cease and desist from representing that a wrist watch or any other article of jewelry is sent to prospective purchasers upon ordering a simulated diamond ring or any other article of jewelry unless the terms of the offer are clearly and fully explained to show that the said watch or other article of jewelry is not sent to prospective purchasers unless and until the purchase price of the ring or other article of jewelry has been paid in full.

The said W. K. Quinn and C. E. Quinn also agreed to forthwith cease and desist from representing directly or by implication that

the ladies' wrist watch advertised and sold by them is a jeweled watch.

The said W. K. Quinn and C. E. Quinn also agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 13, 1941.)

02868. **Health Food Products—Qualities, Properties or Results, Nature and Composition.**—Biofoods Corporation, a corporation, 16 West Twenty-second Street, New York, N. Y., vendor-advertiser, was engaged in selling certain health food products designated "Fortified Palm-Co," "Vimm's Wheat Germ Oil Vitamin E Capsules," "Vimm's Powdered Wheat Germ," and "Vimm's Whole Wheat Germ" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That "Fortified Palm-Co"

1. Is the "modern" Calcium Phosphorus Vitamin D aid.
2. Aids assimilation by the body or makes foods more easily digested.
3. Has a beneficial effect on symptoms of nervousness, low resistance, soft teeth, brittle nails and poor endurance unless these conditions are due to a lack of Calcium and Phosphorus in the diet, associated with a deficiency of Vitamin D.

(*b*) That "Vimm's Wheat Germ Oil Vitamin E Capsules"

1. Are a Vitamin E concentrate; or
2. Are a concentrated source of Vitamin E.

(*c*) That "Vimm's Powdered Wheat Germ"

1. Is rich in minerals.
2. Is "ideal" for infant feeding and those on bland diet.
3. Is an excellent source of Vitamins B_3, B_4, B_5 and B_6; or
4. Is an excellent source of Iron, Copper, Potassium, Phosphorus, Manganese, Magnesium and other valuable minerals.

(*d*) That "Vimm's Whole Wheat Germ"

1. Is a good source of Vitamin A.
2. Is an excellent source of Vitamins B_3, B_4, B_5, and B_6; or
3. Is an excellent source of Iron, Copper, Phosphorus, Potassium, Manganese, Magnesium, and other valuable minerals;

The said Biofoods Corporation further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 15, 1941.)

02869. **Cosmetic Preparation—Unique 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 Bleach 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:

That Nix Bleach Cream affects the skin in a new way, or a way different from that of other preparations.

The said Cole & Co. further agreed to cease and desist from representing, by the use of a 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. (Aug. 19, 1941.)

02870. **Medicinal Preparations—Qualities, Properties or Results, and Composition.**—Stanley N. Phillipps and Walter M. Grome, a copartnership doing business under the firm name Parks-Phillipps Health Foods Co., formerly Parks Health Food Co., 1542 Knowlton Street, Cincinnati, Ohio, vendor-advertiser, was engaged in selling medicinal preparations designated Phillipps Alfalfa and Mint Tea, Phillipps Wheat Germ Meal, Phillipps Vegetable Muceen Tablets, Vigro Garlic Tablets, Vigro Vitamin Tablets, and Vigro Laxative No. 2 and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Phillipps Alfalfa and Mint Tea is of any benefit in the treatment of prostate gland trouble, overacidity, arthritis and rheumatism.

(*b*) That Phillipps Wheat Germ Meal

1. Is rich in four vitamins.
2. Produces robust vitality.
3. Banishes that "played-out" feeling.
4. Revitalizes.
5. Is "Nature's concentrated energy-giving food," or
6. Restores needed elements to the diet or balances the diet.

(*c*) That Phillipps Wheat Germ produces any beneficial results in cases of nervous conditions and faulty digestion, except those cases caused by a deficiency of Vitamin B.

(*d*) That Phillipps Vegetable Muceen is of any appreciable benefit in the treatment of stomach ulcers, hyperacidity, stomach irritations or colon irritations.

(*e*) That Vigro Garlic Tablets

1. Are rich in Vitamins A, B and C.
2. Are rich in Allii Sulfide or Allii Isothiocyanate; or
3. Are rich in potassium, calcium, phosphorus, iodine; or
4. Are rich in food chemicals, vitamins or minerals.

(*f*) That Vigro Garlic Tablets possess any nutritional value or produce any appreciable therapeutic effect in excess of a slight temporary decrease in blood pressure.

(*g*) That Vigro Vitamin Tablets are super-rich in all the health-giving qualities that help to combat germs.

(*h*) That Vigro Vitamin Tablets

1. Build resistance against germs.
2. Fire one with new vitality or strength.
3. Help to eradicate colds; or
4. Provide any deficiency of the system with the necessary qualities for building up good health.

(*i*) That Vigro Vitamin Tablets

1. Help create better health; or
2. Furnish an abundance of protection against every possible winter sickness.

(*j*) That Vigro Laxative No. 2 is effective for increasing intestinal or liver activity.

The said Stanley N. Phillips and Walter M. Grome further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 20, 1941.)

02871. **Bread—Qualities, Properties or Results.**—Thomas Patrick, Inc., a corporation, Hotel Chase, St. Louis, Mo., was engaged in the business of conducting an advertising agency which disseminated advertisements for a food designated Colonial Bread on behalf of Colonial Baking Co., St. Louis, Mo., agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Colonial Bread is not fattening.

(*b*) That Colonial Bread is neccessary in a reducing diet.

(*c*) That Colonial Bread in a reducing diet helps burn up body fat.

(*d*) That eating Colonial Bread helps one reduce safely.

(*e*) That six slices of Colonial Bread should be included in a properly balanced reducing diet.

(*f*) That six slices of Colonial Bread in a reducing diet will give one pep, energy and prevent one from becoming tired, fatigued, irritable, or experience nervous strain.

(*g*) That Colonial Bread will protect one from the harmful residues that cause fatigue.

(*h*) That Colonial Bread should be included in the summer diet to enable one to feel fit.

(*i*) That Colonial Bread in the summer diet never gives one that heavy, overly full feeling.

(*j*) That Colonial Bread protects one's health while reducing.

The said Thomas Patrick, Inc., further agreed not to publish or cause to be published any testimonials containing any representations contrary to the foregoing agreement. (Aug. 21, 1941.)

02872. **Hair Preparations, Cosmetics, and Soap—Qualities, Properties or Results, and Nature.**—Cole & Co., a corporation, Sterick Building, Memphis, Tenn., was engaged in the business of conducting an advertising agency which disseminated advertisements for Tuxedo Club Pomade; Queen Hair Dressing, also designated New Improved Queen Hair Dressing; Queen Instant Skin Whitener, also designated New Improved Queen Instant Skin Whitener, and Queen Skin Whitener Ointment; Queen Skin Soap, also designated New Improved Queen Skin Soap; Queen Peroxide Vanishing Cream, also designated New Improved Peroxide Vanishing Cream; and Queen Cold Cleansing Cream, on behalf of Newbro Manufacturing Co. of Atlanta, Ga., and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that:

(*a*) Tuxedo Club Pomade invigorates the scalp or helps the hair as nothing else will.

(*b*) Queen Hair Dressing is a hair grower, or supplies food for the hair.

(*c*) Queen Hair Dressing penetrates around the roots of the hair, promotes growth of hair, makes kinky hair go, causes the hair to become soft or silky, or guarantees glossy hair, or that it lasts longer than other similar products.

(*d*) Queen Instant Skin Whitener improves the tone of the complexion or retards the formation of blackheads.

(*e*) Queen Skin Soap helps to heal skin blemishes.

(*f*) Queen Peroxide Vanishing Cream imparts fine grained appearance to the skin.

(*g*) Queen Cold Cleansing Cream looseps impurities or smoothes lines or wrinkles.

The said Cole & Co. further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Aug. 27, 1941.)

02873. **Cosmetic Preparations—Qualities, Properties or Results.**—Elizabeth Arden Sales Corporation, a corporation, 681 Fifth Avenue, New York, N. Y., vendor-advertiser, was engaged in selling various cosmetic preparations, including one designated Joie de Vivre. Other cosmetic preparations now sold by the said corporation are Ardena Sensation Cream and Ardena Skin Lotion, the former having previously been sold under the brand names of Ardena Anti-Brown Spot Ointment and Ardena Circulation Cream and the latter having been designated heretofore Ardena Skin Lotion 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 a brand name containing the words "Anti-Brown Spot" or "Circulation" or otherwise, that the product hereinabove designated Ardena Sensation Cream (formerly known as Ardena Anti-Brown Spot Ointment and Ardena Circulation Cream) will remove brown spots, freckles or other discolorations, or will stimulate or be of value to a sluggish skin, or will give one a clear, young or fresh skin or a skin void of sallowness, or stimulate or have any other appreciable effect upon the circulation.

(*b*) That said preparation designated Joie de Vivre will give or help to give a firm texture to the skin or change the contour of the face.

(*c*) That said preparation designated Ardena Skin Lotion has a tonic effect upon the skin.

The said Elizabeth Arden Sales Corporation further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 28, 1941.)

02874. **Electrical Devices for Charging Fences—Economy, Comparative Merits, Qualities, Properties or Results and Guarantee.**—Orrie A. Coburn, Dean A. Coburn, and Ronald O. Coburn, partners, doing business as Coburn One-Wire Fence Co. and Electrite Fence Co., 1005 Main St., Whitewater, Wis., vendor-advertisers, were engaged in selling electrical devices for electrically charging fences, designated Coburn Electric Fence Controllers and Electrite Fence Controllers, 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 their 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 cost of maintenance.

(b) That their electric fence controllers and fences require no attention, care, or maintenance service.

(c) That the use of their electric fence controllers will hold live stock as effectively as a concrete or steel enclosure.

(d) That the use of their electric fence controllers with a single wire will confine all live stock, will confine any animal of a size which would enable such animal to readily pass under or over that wire without coming in contact with it, or will confine any animal whose natural covering or coat would serve to insulate it from electric shock at the probable point of its contact with the wire.

(e) That the use of their electric fence controllers relieves the anxiety concerning the escape of live stock.

(f) That the use of their electric fence controllers is a positive, sure or certain method to confine live stock or will prevent the escape of livestock under all conditions; or

(g) That their electric fence controllers are guaranteed for a period of five years from date of purchase or for any other period in excess of that provided in the guarantee given to purchasers.

The said Orrie A. Coburn, Dean A. Coburn, and Ronald O. Coburn agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 3, 1941.)

02875. **Cosmetic—Success and Qualities, Properties or Results.**—Ferd. T. Hopkins, an individual operating under the trade name of Ferd. T. Hopkins & Son, 430 Lafayette Street, New York, N. Y., vendor-advertiser, was engaged in selling a cosmetic, designated Gouraud's Oriental Cream and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Gouraud's Oriental Cream—

1. Is used by famous stage and screen stars.
2. Prevents sun or wind burn.
3. Restores the skin of youth; or
4. Will retain the original attractiveness of the skin during swimming, sun bathing, or other outdoor sports.

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. (Sept. 3, 1941.)

02876. **Medicinal Preparation—Qualities, Properties or Results and Safety.**—Consolidated Royal Chemical Corp., a corporation operating under the trade name of Consolidated Drug Trade Products, 544

South Wells Street, Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated Hexin and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That in the dissemination of advertising by the means and in the manner above set out, of a medicinal preparation now designated Hexin, 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 Hexin will relieve a cold or that it is of any benefit in the treatment of a cold in excess of temporary relief from the physical discomfort symptoms incident to or associated with a cold.

(*b*) That it will cease and desist from disseminating any advertisment for Hexin which fails to reveal that frequent or continued use may be dangerous, causing serious blood disturbances and that the product should not be taken in excess of the dosage recommended: *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 Consolidated Royal Chemical Corp. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 3, 1941.)

02877. **Plasters—Qualities, Properties or Results, Unique or New.**—Spalding Plaster Co., Inc., a corporation, 179 Broad Street, Providence, R. I., vendor-advertiser, was engaged in selling a device designated "Spalding's Wonder Plasters" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the product designated Spalding's Wonderful Plasters will remedy or cure rheumatism, arthritis, neuritis or other ailments, or that it is of any benefit in the treatment of such conditions beyond the temporary relief of painful symptoms associated therewith.

(*b*) That this product will restore normal circulation throughout the system or will have any effect upon the circulation beyond tending to stimulate circulation at the site of application.

(*c*) That this product is entirely different from competing products, or that the principle involved in the "Spalding Method" is unique or new.

The said Spalding Plaster Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 3, 1941.)

02878. **Shampoo—Qualities, Properties or Results, Etc.**—Taylor-Rea Corp., a corporation operating under the trade name of House of Taylor-Rea, 1011, West Second St., Los Angeles, Calif., vendor-advertiser, was engaged in selling a shampoo designated Studio Girl Shampoo and agreed, in connection with the dissemination of future

advertising, to cease and desist from representing directly or by implication:

(a) That Studio Girl Shampoo has any effect upon the hair or scalp apart from the cleansing action upon the surface thereof, or that it removes embedded dirt, reaches below the surface through the pores or otherwise, reconditions or revitalizes hair, or is effective as a treatment for dry or parched hair.

(b) That the use of Studio Girl Shampoo enables hair to withstand the glare of studio kleig lights or restores normal characteristics to hair, the condition of which has been impaired by exposure to such lights, or that it makes hair soft or pliable.

(c) That Studio Girl Shampoo is the official shampoo of any motion picture studio.

The said Taylor-Rea Corp. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 3, 1941.)

02879. **Medicinal Preparations—Qualities, Properties or Results and Professional Approval.**—Paul R. Kemper, an individual trading as Luvos Clay Co. of America, and Luvos Minerals Co., Box 235, Palms Station, Los Angeles, Calif., vendor-advertiser, was engaged in selling medicinal preparations designated Luvos Pack and Luvos Minerals and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Luvos Pack is a remedy or cure for dermatitis, nose, mouth and throat ailments, swellings, infections, varicose ulcers, liver ailments, gall bladder ailments, kidney ailments, arthritis, sores, burns, fluorvaginalis, cuts, skin ailments or diseases, chest congestions, bronchitis, rheumatic ailments, neuralgic ailments, furunculosis, abscesses, diphtheria, purulent and malodorous wounds, inflammatory conditions of the glands and joints, traumatic lesions, eczema, acne or sunburn, or that it has any value in excess of that afforded by its poultice-like action in temporarily relieving pain and discomfort.

(b) That Luvos Minerals will prevent or eliminate or that it is a remedy or cure for colitis, diarrhea, gastritis, putrefactive conditions of the bowels, stomach ulcers, intestinal ulcers, catarrhal conditions, digestive disturbances, heart burn, belching, vomiting, halitosis, bloating, hemorrhoids, stomatitis, angina, stomach or intestinal ailments, liver or gall bladder ailments, metabolic ailments, cholera, rheumatism, arthritis, migrane, diabetes, arteriosclerosis, skin diseases, urticaria, eczema, furuncles, tonsilitis, fever conditions, fungus and ptomaine poisoning, general malaise, rundown conditions, headaches, loss of sleep, stomach or intestinal ailments including those caused by a lack of hydrochloric acid or alternating disorders, neurasthenia, autointoxication, hyperacidity, or in this connection that it will do more than aid in reducing hyperacidity.

(c) That Luvos Minerals has any therapeutic value in the treatment of throat irritations or infections.

(d) That either of the products is healing or that either is free from drugs or medication.

(e) That either of the products is prescribed by physicians or that in leading magazines space is devoted to the treatment of ailments with the products.

(*f*) That Luvos Minerals has any value when used for constipation in excess of such effect as it may afford as a mechanical aid to elimination.

(*g*) That Luvos Pack has any value when used for infant hygiene or as a retention enema in cases of mucuous colitis or as a vaginal douche.

(*h*) That Luvox Minerals has an influence on the metabolism or that it will bind poisonous material or that it reacts upon the whole body organism.

The said Paul R. Kemper further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 3, 1941.)

02880. **Medicinal Preparation—Qualities, Properties or Results.**—Fred E. Thieleman, an individual trading as Thieleman Drug Co., 22198 Michigan Ave., Dearborn, Mich., vendor-advertiser, was engaged in selling a medicinal preparation designated Thelorysus and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Thelorysus has any therapeutic value in the treatment of eczema, pimples, itch, or any skin ailments.

(*b*) That Thelorysus is an elixir which will stimulate general systemic resistance to psoriasis and resolve and abate persistent lesions.

The said Fred E. Thieleman further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 8, 1941.)

02881. **Electric Fence Controllers—Economy and Comparative Merits.**—The Electric Heat Control Co., a corporation, 9123 Inman Avenue, Cleveland, Ohio, vendor-advertiser, was engaged in selling certain electric fence controllers designated King Cattle Guard and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

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 cost and cost of maintenance.

The said The Electric Heat Control Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 8, 1941.)

02882. **Health Foods and Medicinal Preparations—Qualities, Properties or Results, Source or Origin, Composition, Professional Approval, Tested, Laboratory, Etc.**—Robert M. Froehlich, an individual, doing business under the trade name of Right-O Products Co., 635 West 170th St., New York, N. Y., vendor-advertiser, was engaged in selling a number of health foods and medicinal products designated "Rejuven," "Ureduce," "Testitotal," "Sengovan," "Okasa," "Oototal," and "Neuramag" and agreed, in connection with the dissemination of

future advertising, to cease and desist from representing directly or by implication:

(a) That the consumption of "Rejuven"—

1. Results in a return of bodily or mental freshness.
2. Causes the symptoms of fatigue or the feeling of old age to disappear.
3. Heightens the capacity for work or enjoyment.
4. Improves the texture of the skin and tissues.
5. Increases bodily strength or elasticity.
6. Restores vitality.
7. Is a nerve food.
8. Produces results on the psychological side.
9. Assists in building up the organism of the body to resist wastage, decay, or infirmity.

(b) That "Ureduce"—

1. Supplies certain mineral salts needed for normal gland function.
2. Aids the elimination of body wastes or prevents fermentation of the retention of body wastes in the system.
3. Takes off excess weight or fat without exercise, dieting, use of equipment, or loss of time.

(c) That "Testitotal"—

1. Promotes successful restitution by exclusive internal administration.
2. Has a maximal content of hormones.
3. Is a guarantee of the perfect integrity of the active endocrines.
4. Is of benefit in cases of functional sexual incompetency in men and in conditions of psychic incapacity.
5. Has beneficial effect on the organism in general.
6. Increases working capacity.
7. Causes turgor and symptoms of premature senility to disappear.
8. Removes troublesome skin affections such as acne and pruritus.
9. Improves the growth of hair.
10. Improves mental depression (memory) or nervous irritability.
11. Enhances vital energies.
12. Increases libido.
13. Strengthens potency.
14. Stops premature involution of testicles and prostate.
15. Increases sexual capacity or general tonus.
16. Counteracts the feeling of incompetency.

(d) That "Sengovan"—

1. Is made in Germany.
2. Is prepared according to the latest scientific experiences.
3. Contains an extract of male germoglands and Hypophysis Cerebri, Lecithine.
4. Gives marvelous or immediate results in all cases of sterility, sexual exhaustion, or impotence.
5. Is valuable as a nerve tonic.
6. Restores the buoyancy of youth.

(e) That "Okasa"—

1. Is a specific against impotence, Sexual Neurasthenia of men and women.
2. Has been tested or recommended by professors and doctors.
3. Has value for treating sexual depletion in men or women.
4. Is a rejuvenator.
5. Restores or maintains youth or vigor.

6. That its results are lasting.

(*f*) That "Ootota1"—

1. Is of value for preserving nervous vigor in women.

2. Is beneficial for avoiding the difficulties of the menopause.

3. Increases vital activities and nervous vigor in women suffering from the total absence of the endocrine secretions of the ovaries.

(*g*) That "Neuramag"—

1. Is an antipyretic.

2. Reduces temperature.

3. Does not burden the gastrointestinal tract.

4. Is an analgesic.

5. Reduces pain.

6. Is a sedative in infectious diseases or in all complaints starting with pains.

7. Removes the cause of the disturbance of sleep.

8. Is a prophylactic during influenza epidemics or is of value in helping one to counteract infectious diseases.

(*h*) That respondent's products are tested and standardized by the most recent physiological and chemical methods.

(*i*) That respondent maintains or operates a laboratory or laboratories unless and until such statement is true.

The said respondent, Robert M. Froehlich, further agreed not to publish or cause to be published in connection with his name the word "Doctor," or "Dr.," or any other abbreviation or simulation of said word, unless it is explained in connection therewith that he is not a doctor of medicine or a practitioner of medicine.

The said respondent, Robert M. Froehlich, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 15, 1941.)

02883. **Poultry Brooder and Battery Equipment and Poultry Feed—Qualities, Properties or Results, and Comparative Merits.**—John G. Poorman, an individual, Tinley Park, Ill., vendor-advertiser, was engaged in selling Poorman's Poultry Brooder and Battery Equipment and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Poorman's Poultry Brooder and Battery Equipment is as natural as a hen.

(*b*) That artificial temperatures of 90° to 100° cause stench or disease, or that said equipment eliminates such conditions or solves disease.

(*c*) That said equipment is more sanitary; or will brood stronger or healthier chicks or poults, or that growth would be more rapid than the products of all direct heated brooders; or that the mortality is likely to be any lower with this brooder than with other types of brooding equipment when properly operated.

It is hereby further agreed by John G. Poorman that in connection with the dissemination of advertising for Poorman's One Perfect Feed For All Ages—A Combination Mash and Scratch—by the means and in the manner above set out he will forthwith cease and desist from representing directly or by implication:

(*d*) That the use of said poultry feed when combined with cod liver oil will reduce mortality, improve health, improve meat or egg production, or that the chicks fed thereon will develop faster or mature more quickly, unless plainly indicated that such comparisons are with noncommercial all-mash diets.

The said John G. Poorman agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 15, 1941.)

02884. **Poultry Preparations—New, Source or Origin, and Qualities, Properties, or Results.**—Burrell-Dugger Co., a corporation, 50 Postal Station Building, Indianapolis, Ind., vendor-advertiser, was engaged in selling two drug preparations for poultry designated "Don Sung" and "Avicol" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Don Sung is a new product or is concentrated or that it is of Chinese origin.

(*b*) That Don Sung will cause pullets and hens to lay eggs or that it will increase egg production, in cases other than those of poultry whose ration is deficient in those particular elements supplied by this product.

(*c*) That the use of Don Sung or Avicol will keep poultry strong or healthy.

The said Burrell-Dugger Co. further agreed to cease and desist from making any representation regarding diarrhea or bowel disorders in poultry which directly or inferentially represents that Avicol is of any benefit in the prevention or treatment of all such cases, or is of any benefit in the prevention or treatment thereof when due to a parasitic infection or that Avicol is effective in the prevention or treatment of diarrhea or bowel disorders in poultry beyond its effect as an intestinal astringent.

The said Burrell-Dugger Co. agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Sept. 15, 1941.)

02885. **Medicinal Preparation—Qualities, Properties, or Results.**—H. E. Studier, an individual trading as Rev. H. E. Studier, 2059 Euclid Ave., Lincoln, Nebr., vendor-advertiser, was engaged in selling a medicinal preparation designated "Miracle Salve" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Miracle Salve is a remedy or cure for, or has any therapeutic effect in the treatment of pains, gout, arthritis, neuritis, neuralgia, sciatica, lumbago, inflammation, swellings, abscesses, skin troubles, frost-bite, burns, wounds, piles, varicose veins, throat troubles, tumors, ulcers, diseases of the skin, pains in the neck, disorders of the stomach and kidneys, boils, carbuncles, chilblains, old sores, varicocele, and all kinds of ailments.

The said H. E. Studier further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Sept. 15, 1941.)

02886. **Hair Preparations—Qualities, Properties or Results, and Nature.**—Emma G. Fulton, an individual doing business as Fulto School of Beauty Culture, 4808 Prairie Ave., Chicago, Ill., vendor-advertiser, was engaged in selling hair preparations, designated "Fulto Hair Grower, Plain," also sold under the name "Fulto Plain Hair Food," and other hair preparations designated "Fulto Liquid Hair Grower" and "Fulto Hair Grower (Double Strength)" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the product heretofore designated Fulto Hair Grower, Plain, also designated Fulto Plain Hair Food, will feed the scalp and hair.

(*b*) That the product heretofore designated Fulto Hair Grower, Plain, also designated Fulto Plain Hair Food; and the products heretofore designated Fulto Hair Grower (Double Strength) and Fulto Liquid Hair Grower, either alone or in combination, will grow hair or are remedies or cures for dandruff or for diseased scalps.

The said Emma G. Fulton further agreed to cease and desist from representing, through the use of the terms "Hair Grower" and "Hair Food" or any other terms of similar import or meaning to designate or describe such preparations, or in any other manner, that such preparations will grow hair or feed the scalp and hair.

The said Emma G. Fulton further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 15, 1941.)

02887. **Mineral Water—Qualities, Properties, or Results.**—Charles F. Dowd, Inc., a corporation, Richardson Building, Toledo, Ohio, was engaged in the business of conducting an advertising agency which disseminated advertisements for the product designated Mineral Water on behalf of Michigan Magnetic Mineral Water Co., a corporation, and Natural Ray Mineral Water Co., a corporation, St. Louis, Mich., and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that said product:

(*a*) Is a remedy or cure for stomach, bladder or kidney troubles, chronic constipation, paralysis, high blood pressure, anemia, glandular difficulties, gravel, albumen, gallstones, diabetic ailments, uric acid, arthritis, rheumatism, or the aches or ailments arising from any of the diseases or conditions mentioned.

(*b*) Is a safeguard, a body builder, a way to gain, retain or maintain health, a preventative of infantile paralysis or other illness, or an aid to muscle or bone development.

(*c*) Affects the appetite, the weight, or the ability to sleep, builds up resistance to colds or headaches, or wards off colds.

The said Charles F. Dowd, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 15, 1941.)

02888. **Veterinary Products—Qualities, Properties or Results, Etc.**—Frank A. Jelen, an individual, trading as Dr. Jelen's Veterinary Laboratories, 2312 L St., South Omaha, Nebr., vendor-advertiser, was engaged in selling various veterinary products, including wormers, poultry and hog medicines, and insecticides designated Dr. Jelen's Liquid Hog Medicine, Dr. Jelen's Flu-Id, Dr. Jelen's Liquid for Poultry, Dr. Jelen's Poultry Worm Powder, Dr. Jelen's Poultry Worm Tablets, Dr. Jelen's Worm Powder for Horses, and Dry Insecticide and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Dr. Jelen's Liquid Hog Medicine is effective in the treatment of swine influenza or intestinal infections in swine, or is effective in the treatment of worms in swine, or constitutes a general tonic for swine.

(*b*) That Dr. Jelen's Flu-Id is a competent remedy for swine influenza, or that it inhibits the spread or development of the disease, or that it is of any value in the treatment of swine influenza except to the extent that it might relieve some of the symptoms of the disease.

(*c*) That Dr. Jelen's Liquid For Poultry is effective as an intestinal antiseptic; that it destroys bacteria or the cultures of bacteria in the intestinal tract; that it is a competent remedy or an effective treatment for fowl cholera, fowl typhoid, bacillary white diarrhoea, coccidiosis or blackhead; and that it is of any value in the prevention of disease except to the extent that it might tend to destroy the viability of contaminating bacteria in drinking water, and with respect to coccidiosis and blackhead except to the extent that it might increase the resistance of poultry to these two diseases.

(*d*) That Dr. Jelen's Poultry Worm Powder removes pinworms or tapeworms.

(*e*) That Dr. Jelen's Poultry Worm Tablets destroy or remove tapeworms; that they are effective anthelmintics with respect to roundworms or pinworms so long as the tablets are recommended for use in ineffective dosage; and that kamala, an ingredient of the tablets, is effective as an anthelmintic.

(*f*) That Dr. Jelen's Worm Powder For Horses expels or destroys worms.

(*g*) That Dry Insecticide is safe for indiscriminate use about poultry; and that it removes lice or other external parasites from swine and poultry when applied in any manner other than directly on the hogs and poultry.

(*h*) That any of his said medicinal preparations has any therapeutic action by virtue of any ingredient therein when in fact such ingredient, as contained and combined in said preparation, is not present in an effective dosage and will not endow said preparation with such therapeutic action.

The said Frank A. Jelen further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 23, 1941.)

02889. **Drug Preparations—Qualities, Properties or Results, Unique, and Safety.**—W. E. Featherstone, an individual operating under the trade name of W. E. Featherstone Advertising Agency, 723–724 McIntyre Building, Salt Lake City, Utah, was engaged in the business of conducting an advertising agency which disseminated advertisements for

three drug preparations designated Stop-Lites, Haps, and Anti-Acid Tablets, on behalf of Stop-Lite Products, Inc., Salt Lake City, Utah, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the tablet preparation designated Stop-Lites relieves a cold or is a remedy or cure for a cold, or that it is of any benefit in the treatment of a cold or rheumatism beyond inducing laxation and affording temporary relief from the physical discomfort symptoms incident to or associated therewith.

(*b*) That Stop-Lites are different from other products intended for the same purpose and use.

(*c*) That Stop-Lites constitute an effective internal antiseptic.

(*d*) That Anti-Acid Tablets aid digestion.

W. E. Featherstone further agreed to cease and desist from representing that the product Stop-Lites is safe, or from disseminating any advertisement for Stop-Lites or for Haps which fails to reveal that frequent or continued use may be dangerous, causing serious blood disturbances, and that said products should not be administered in excess of the dosage recommended: *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 a warning to the same effect or specifically directs attention to a similar caution or warning statement in the accompanying labeling.

The said W. E. Featherstone further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 22, 1941.)

02890. **Drug Product—Qualities, Properties or Results, and 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 drug product designated Hexin on behalf of Consolidated Royal Chemical Corporation, Chicago, Ill., and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Hexin will relieve a cold or that it is of any benefit in the treatment of a cold in excess of temporary relief from the physical discomfort symptoms incident to or associated with a cold.

(*b*) That it will cease and desist from disseminating any advertisement for Hexin which fails to reveal that frequent or continued use may be dangerous, causing serious blood disturbances and that the product should not be taken in excess of the dosage recommended: *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 Benson & Dall, Inc. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 23, 1941.)

02891. **Skin Treatment—Scientific and Qualities, Properties or Results.**—H. W. Johnson, an individual trading as Dr. D. W. Tracy Co., 76 Franklin St., New Haven, Conn., vendor-advertiser, was engaged in selling a trio of products designated Dr. Tracy's Acnol Ointment, Dr. Tracy's Calsul Pills and Dr. Tracy's Laxamin Tablets, known as the Dr. Tracy Three Way Skin Treatment and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That his treatment is a modern or scientific treatment for skin blemishes, disorders or conditions; or

(*b*) That his treatment is a three-way treatment for skin blemishes, disorders or conditions; or

(*c*) That his preparation, now designated "Calsul Pills" is a blood purifier or that it helps to eliminate effete or waste matter from the blood, or that it feeds the corpuscles that attack or destroy germs or waste matter in the blood; or

(*d*) That his preparation, now designated "Laxamin Tablets," promotes or helps to promote the elimination of waste poisons from the bowels or helps to keep the bowels in a normal condition, or that it has any therapeutic value in excess of a mild laxative; or

(*e*) That his preparation, now designated "Acnol Ointment," will remove blackheads or skin blemishes or rehabilitate the skin or bring it back to normal; or

(*f*) That his said treatment or the use of any or all of his three preparations is a reliable or effective treatment for the cure, correction or prevention of skin blemishes, disorders or conditions such as pimples, acne, eczema, scars, blackheads, muddy complexion, scaly or blotchy skin or that it or they will clean out skin irritants, or erase, kill or remove surface germs, blotches, scars or other disfigurements, or restore or enable one to regain a clean, smooth skin; or

(*g*) That his said treatment has any therapeutic value in the treatment of skin blemishes, disorders or conditions in excess of an antiseptic, astringent emollient for external use.

The said H. W. Johnson further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 23, 1941.)

02892. **Rice—Quality, Comparative Merits, Qualities, Properties or Results, Government Approval, Etc.**—Comet Rice Mills, a corporation, Beaumont, Tex., vendor-advertiser, was engaged in selling rice, designated Comet Rice, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Comet Rice is of a higher grade than the U. S. Government's highest specifications for the best rice.

(*b*) That Comet Rice, packaged rice, or uncoated rice is of better or more uniform quality with fewer imperfections than bulk or coated rice.

(*c*) That the coating on bulk rice cannot be completely removed.

(*d*) That the use of bulk or coated rice endangers the health or that the coating of glucose or talc is injurious to the health.

(*e*) That Comet Rice or the bran layer of Comet Brown Rice contains appreciable or significant amounts of vitamins C or D, or that it has substantial or significant laxative properties.

(*f*) That consumption of rice prevents indigestion.

(*g*) That adding rice to the diet maintains good health or that better health or greater resistance to ills results from the addition of Comet Brown Rice to the diet.

(*h*) That the consumption of Comet Brown Rice prevents anemia or keeps complexions clear or glowing.

(*i*) That the vacuum sterilization process is exclusive with Comet Mills or has been officially approved by the U. S. Department of Agriculture.

The said Comet Rice Mills further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 26, 1941.)

02893. **Electric Fence Controllers—Qualities, Properties or Results, Economy, and Comparative Merits.**—Globe Machine & Manufacturing Co., a corporation, Albert Lea, Minn., vendor-advertiser, was engaged in selling certain electric fence controllers designated "Globe 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 with a single wire will confine all livestock, will confine any animal of a-size which would enable such animal to readily pass under or over that wire without coming in contact with it, or will confine any animal whose natural covering or coat would serve to insulate it from electric shock at the probable point of its contact with the wire; or

(*b*) 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 any such comparison all costs, including both initial costs and costs of maintenance.

The said Globe Machine and Manufacturing Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 26, 1941.)

02894. **Astrological Horoscopes, Books, and Literature—Corporation, Headquarters, Services, Qualities, Properties or Results, Nature, Etc.**—Mathilde M. Walls, an individual doing business under the trade name of Astrology Press, 1557 Milwaukee Ave., Chicago, Ill., vendor-advertiser, was engaged in selling astrological horoscopes, books, and literature and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) By use of the word "President" or the abbreviation therefor, in connection or conjunction with the name of anyone associated or connected with her business, that her business is a corporation.

(*b*) That she conducts, controls, owns, or operates the world's headquarters for astrological literature.

(c) That her astrological character readings disclose that one's future happiness is written in the stars.

(d) That she provides one with a large astrological forecast covering a period of 1 year ahead, which serves as a guide in important matters covering business, income, investments, changes, happiness, health, marriage, etc.

(e) That any of her books on astrology and numerology will enable one to win in all kinds of speculation, including stocks, horses, games, etc.

(f) That any of her books will enable one to become a medium or furnish detailed instruction or amazing information on the history and development of Visualization, Clairvoyance, Psychometry, Slate Writing, Trumpet Manifestations, Telepathy, or Spirit Photography.

(g) That her horoscope is an individual personal astrological life character reading peculiar to and especially prepared for the individual who submits his exact date of birth and not a general stereotyped prepared reading.

(h) That any of the aforementioned products will enable one to find himself, know himself, be somebody, have money, judge people, win love, or achieve success.

(i) That Saint-Germain is the world's No. 1 authority on Zodiac signs, horoscopes, and the language of the stars.

The said Mathilde M. Walls agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 29, 1941.)

02895. **Health Food, Medicinal Preparations and Cosmetics—Qualities, Properties or Results, Nature, Composition, Professional, Approval, Comparative Merits, Safety, Etc.**—Morris Botwen, an individual trading as Natural Health Products Co., 152 West Forty-second Street, New York, N. Y., vendor-advertiser, was engaged in selling products alleged to be effective in treating various conditions, designated Vitameal, Instant Manam, Vita-Ferro, Co-Veg, I-O-Sol, Sea Tabs, Natural Herb Tea, Vegeton Soap, Vegeton Hair Preparation, Vegeton Skin Cream, Tupelo Honey, Garlic and Parsley Pellets and Euca Pine Oil and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Vitameal:

(1) will enable one to gain quick energy or new energy or that it is a vitalized or a life food.

(2) will improve or fortify health or personality or increase huskiness, strength, vigor, buoyancy, energy, zest, endurance, pep, or popularity.

(3) will give one youthful beauty or sparkle or that it is beauty building or that it builds youthful or healthy bodies.

(4) normalizes overweight or that it is of value in causing a reduction of weight.

(5) is a tonic or that it will cause one to feel like a new person.

(6) is loaded with minerals or that it contains all of the minerals or vitamins essential or necessary to health.

(7) will increase living power or revitalize the body or brain.

(8) has any effect on the functioning of the glands or the development of flat chests or that it wil cause skinny or angular limbs to become natural or normal.

(9) builds healthy or living tissues or firm flesh or that it has any effect on the nerves.

(10) is a necessary addition to the diet or that it is of any aid in resisting disease or in keeping or maintaining regular bowel action.

(11) clears the system or builds it up.

(12) is recommended by food scientists or health doctors.

(13) will correct or keep one free from or that it is a cure or remedy for or that it is of value in the treatment of colds, tonsil trouble, catarrh, mucous conditions or coughs.

(*b*) That other cereals are sickness-producing or that they cause colds, tonsil trouble, catarrh, mucous conditions, coughs, constipation, listlessness, sluggishness, tiredness, dullness, indifference, backwardness, laziness, poor teeth, poor eyesight or adenoids, or from otherwise disparaging competing products.

(*c*) That Instant Manam is a cure or remedy for or that it is of value in the treatment of intestinal ulcers, duodenal ulcers, appendicitis, colds, gall bladder disorders, liver troubles, kidney disease, high blood pressure, toxemia (self-poisoning), heart disease, dyspepsia, listlessness, fatigue, anemia, hardening of the arteries, rheumatism, lumbago, neuritis, nervousness, irritability, piles, impaired eyesight, impaired hearing, loss of pep, impairment of female organs, impairment of male organs or premature old age.

(*d*) That Instant Manam is a stomach or intestinal cleanser or that it contains fruit dextrine or any other ingredient when such is not a fact.

(*e*) That Instant Manam is of any value as a digestive aid or that it helps normalize the digestive process or that it is soothing to stomach or intestinal nerves.

(*f*) That Instant Manam has any effect as an antacid or in neutralizing or overcoming stomach acidity.

(*g*) That Instant Manam will conquer or afford freedom from or that it is a cure or remedy for or that it is of value in the treatment of toxicity, indigestion, or gastritis, or that it has any effect in the treatment of constipation other than that of a bulk laxative.

(*h*) That Instant Manam increases vigor or that it affords a general or an all-around improvement in health or appearance.

(*i*) That Instant Manam affords a natural or gentle action or that it cleanses the system or bowels or strengthens the intestinal walls.

(*j*) That Instant Manam has a permanent effect or a triple action or that it is not habit-forming or that it is an approved product.

(*k*) That Vita-Ferro contains organic iron or that it is rich in iron, phosphorus or other organic materials or that it is a soy bean milk drink.

(*l*) That Vita-Ferro is revitalizing or that it will build tissue or increase red blood or that it is of aid in the treatment of anemia or of general debility.

(*m*) That Vita-Ferro is of value for under par or underweight persons.

(*n*) That Vita-Ferro:

(1) is especially beneficial for growing children or that it keeps them from being nervous or fretful.

(2) is a pep drink or that it vitalizes the system or gives strength or energy or is health building.

(*o*) That Co-Veg does not contain a stimulating drug or coffee or caffeine or that it is rich in any vitamin or mineral.

(*p*) That Co-Veg antidotes coffee effects or that it is alkaline or a coffee substitute or that by using the product one will not have sleepless nights or any of the after-effects of coffee.

(*q*) That Co-Veg is endorsed by doctors, dieticians or health authorities.

(*r*) That Co-Veg:

(1) gives or guards health or strength or builds resistance to disease of eyes, lungs, nasal passages, head passages, or sinuses, or that it guards against infection of the mucous membranes.

(2) guards the health of nerves or brain or that it helps create a normal appetite or aids normal growth or that it is vital, beneficial or necessary to children.

(3) affords a shield against or that it will prevent rickets or tooth decay or that it is of value in the treatment or prevention of rheumatism, neuritis, arthritis, acidosis, or scurvy.

(4) keeps the nerves or muscles in tune or that it will prevent or cure peevishness, grouchiness, listlessness or droopiness, or that it will cause one to grow healthy or to look or act younger.

(5) will enable one to sleep all night or that it is of value in the treatment of insomnia.

(*s*) That I-O-Sol:

(1) affords protection to the throat or that it will cause one to have firm or healthy gums.

(2) is unlike any other product on the market.

(3) contains an antiseptic or that it has an antiseptic effect.

(4) clears up germ breeding spaces or destroys bacteria or that it will prevent pyorrhea or other mouth diseases or that it aids in resisting disease.

(*t*) That Sea Tabs will afford a complete change in a run-down condition or that it is a cure or remedy for or of value in the treatment of that condition.

(*u*) That Sea Tabs is a gland tonic or that it will give one the vitality, pep or energy needed.

(*v*) That Sea Tabs will prevent or that it is a cure or a remedy for or of value in the treatment of goiter, skin diseases, low vitality, neuritis, nervousness, anemia, headaches, weakness, rickets, undergrowth, mental weariness, stomach trouble, rheumatism, kidney trouble, bladder trouble, acidosis, constipation, underweight, blood disorders, or liver disorders.

(*w*) That Sea Tabs will build up health or flesh, or that it will build up skinny, weak, nervous or run-down persons, or cause one to have a well developed or a well formed or a robust body.

(*x*) That Sea Tabs will increase energy or manliness or cause one to have alluring curves, ruby lips, glowing cheeks, high spirits, vivacity, or beauty.

(*y*) That Natural Herb Tea is a cure or a remedy for or of value in the treatment of skin eruptions, fatigue, listlessness, nervousness, catarrhal troubles, respiratory troubles, throat affections, or sleeplessness.

(*z*) That by use of Natural Herb Tea one will not feel or be fatigued or that it will increase energy.

(*aa*) That Vegeton Soap will remove all impurities or that it will free one from enlarged pores.

(*bb*) That Vegeton Soap will prevent athlete's foot or skin infections.

(*cc*) That Vegeton Soap is an approved soap or that it is entirely different.

(*dd*) That Vegeton Hair Preparation will prevent or stop or that it is a cure or remedy for or of value in the treatment of dandruff, lifeless, brittle or falling hair or itching scalp.

(*ee*) That Vegeton Skin Cream is antiseptic or that it restores moisture to the skin or that it is a cure or remedy for or of value in the treatment of muggy complexions or pimples.

(*ff*) That Vegeton Skin Cream will keep the skin soft, smooth or youthful or that it has any effect on wrinkles or that the skin needs any of its ingredients.

(*gg*) That Tupelo Honey is healing or that it is a cure or remedy for or of value in the treatment of asthma, colds or stomach distress or that it has any value for coughs except such as it may afford as a palliative relief for coughs due to colds or temporary irritations.

(*hh*) That Tupelo Honey may be safely used by diabetics without further disclosing that it should not be used by diabetics except under competent medical direction and advice.

(*ii*) That Garlic and Parsley Pellets is a cure or remedy for or of value in the treatment of high blood pressure.

(*jj*) That Garlic and Parsley Pellets will tone the system or that it is an antiseptic or a cleanser or that it will remove mucus.

(*kk*) That Natural Herb Tea, Euca Pine Oil or Vegeton Body Soap, when used alone or in combination, are of value in relieving or in the treatment of rheumatism, arthritis or neuritis.

The said Morris Botwen further agreed to cease and desist from using the term "Vita" as a part of the brand name for the products Vitameal and Vita-Ferro, or from otherwise representing or implying that they contain vitamins in significant amounts.

The said Morris Botwen further agreed to cease and desist from using the term "Ferro" as a part of the brand name for the product Vita-Ferro, or from otherwise representing or implying that it contains iron in significant amounts.

The said Morris Botwen further agreed to cease and desist from using the word "Instant" as a part of the brand name for the product Instant Manam, or from otherwise representing or implying that it has an instant action.

The said Morris Botwen further agreed to cease and desist from using the term "Veg" as a part of the brand name for the product Co-Veg, or from otherwise representing or implying that it is composed of vegetable ingredients.

The said Morris Botwen further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 29, 1941.)

02896. **Truss—Unique and Qualities, Properties or Results.**—The Dobbs Truss Co., Inc., a corporation, Farley Building, Birmingham, Ala., vendor-advertiser, was engaged in selling a device alleged to be helpful in the treatment of rupture, designated The Dobbs Truss and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That The Dobbs Truss is the first major advancement in truss designing or is wholly different from any truss.

(*b*) That The Dobbs Truss will hold any rupture.

(*c*) That The Dobbs Truss is a natural healer or will aid Nature in curing a rupture; and,

(*d*) That The Dobbs Truss brings muscles together in a manner that will cause or enable them to adhere.

The said The Dobbs Truss Co., Inc., further agreed not to publish or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Sept. 26, 1941.)

02897. **Fur Garments—Manufacturer, Price, Old as New and Earnings or Profits.**—Jack Abrams, Michael Abrams and Paul Holtzberg, copartners, trading as H. M. J. Fur Co., 150 West Twenty-eighth Street, New York, N. Y., vendor-advertisers, were engaged in selling certain fur garments including fur coats, capes and jackets and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) by the use of such terms or statements as "one of the oldest established fur manufacturers," "one of the country's leading fur garment manufacturers," "our designers," "our large scale production," "workmanship," or other words or statements of similar import or otherwise, that they manufacture fur garments or manufacture the fur coats, capes and jackets which they sell.

(*b*) that $9 or any other unrepresentative amount is the price of their fur coats unless such representation is qualified to show that the price stated does not represent the average cost of their coats.

(*c*) by failure to disclose that rebuilt fur coats are made with fur taken from used and worn coats, that such coats are new coats or coats made from new and unused fur.

(*d*) that prospective agents, salesmen, distributors, dealers or other representatives can make profits or earnings which are in excess of the average net profits or earnings which have heretofore been consistently made by their active fulltime agents, salesmen, distributors, dealers or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

The said individuals agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 1, 1941.)

02898. **Electric Fence Controllers—Price Economy, Comparative Merits, Qualities, Properties or Results, Unique and Guarantee.**—Florence M. Heidger doing business as Wholesale Electric Fence Co. and Leonard Heidger, Box 142, Hales Corners, Wis., vendor-advertisers, were engaged in selling electrical devices for electrically charging fences, designated Thoroughbred Electric Fencers and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That any specified amount is the customary, regular, or usual price of any electric fence controller when such amount is not, in fact, the bona fide actual selling price of such electric fence controller as established by the usual and customary sales in the normal course of business, or any specified amounts as savings which are not actual savings computed on the bona fide, usual and customary selling price for such electric fence controllers, in effect immediately prior in point of time to such representation.

(*b*) That the use of their 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 fences

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.

(*c*) That the use of their electric fence controllers with a single wire will confine all livestock, will confine any animal of a size which would enable such animal to readily pass under or over that wire without coming in contact with it, or will confine any animal whose natural covering or coat would serve to insulate it from electric shock at the probable point of its contact with the wire.

(*d*) That their electric fence controllers have features not found or obtainable in any other electric fence controller.

(*e*) That electric fence controllers costing less than Thoroughbred Electric Fencers are not safe and are not efficient.

(*f*) That they offer the only electric fence controllers which prevent current escape; or

(*g*) That their electric fence controllers are guaranteed for a period of 25 years from date of purchase or for any other period in excess of that provided in the guarantee given to purchasers.

The said Florence M. Heidger and Leonard Heidger agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Oct. 2, 1941.)

02899. **Electric Fence Controllers—Qualities, Properties or Results, Economy and Comparative Merits.**—Spiegel, Inc., a corporation, 1061 West 35th Street, Chicago, Ill., vendor-advertiser, was engaged in selling electrical devices for electrically charging fences, designated "Electric Shepherd" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) 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.

(*b*) That the use of its electric fence controllers ends fencing worries or eliminates fencing problems; or

(*c*) That the use of its electric fence controllers will effect any stated amount or percentages 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 cost of maintenance.

The said Spiegel, Inc. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 2, 1941.)

02900. **Food Product.—Qualities, Properties or Results and Composition.**—Paul C. Bragg, an individual trading as Live Food Products Co., 240 West Front Street, Burbank, Calif., vendor-advertiser, was engaged in selling a food product designated "Bragg's Grass Tablets" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said product will prevent sickness, promote health, or stimulate activity.

(*b*) That it is rich in Vitamin A.

(*c*) That it has any dietary value other than as a supplemental source of Vitamin A to the extent of the number of International Units that it contains.

The said Paul C. Bragg further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Oct. 7, 1941.)

02901. **Foods for Poultry, Livestock and Swine—Qualities, Properties or Results, Economy, Comparative Merits, Government Approval, and Tests.**—Fred K. Chandler, an individual operating under the trade name of The Tanvilac Co., 535–37 S. W. Seventh Street, Des Moines, Iowa, vendor-advertiser, was engaged in selling foods for poultry, livestock and swine, designated Improved Tanvilac (for all livestock and poultry), New Improved Tanvilac (for all livestock and poultry), Special Tanvilac (for dry feeding), and Tanvilac Corn Balancer, these particular products being referred to collectively in advertising as Tanvilac and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Tanvilac assures more eggs or increases fertility or hatchability of eggs or livability of chicks, or assures increased milk production or greater profits or a shorter feeding period or quicker gains, or that it will cut feed costs one-half or any other percentage or amount, as compared with all other feeds, or that it does things no other feed will do.

(*b*) That Tanvilac is pre-digested or that it pre-digests other feeds.

(*c*) That the Federal Government or any division or employee officially approves or recommends the use of Tanvilac.

(*d*) That Tanvilac supplies vitamin D to stock or poultry rations.

(*e*) That Tanvilac is of any therapeutic value in the treatment of worms in hogs or poultry or that it is of any benefit whatsoever in such conditions except to the extent to which it may supply actual dietary deficiencies contributing to the development or existence of worms.

(*f*) That Tanvilac will prevent or cure Necro.

(*g*) That Tanvilac has any properties of an antitoxin.

(*h*) That the use of Tanvilac minimizes death losses, or by any other terminology that it is of benefit in preventing or curing infectious diseases.

(*i*) That Tanvilac supplies essential feed elements never contained in home grains.

(*j*) That tests have been conducted by a meat packer showing that hogs fed Tanvilac are superior to others.

(*k*) That Tanvilac will cure, or is of any value in the treatment of, coccidiosis in chickens.

The said Fred K. Chandler further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 14, 1941.)

02902. **Medicinal Preparations—Qualities, Properties or Results, Etc.**—The Battle Creek Food Co., a corporation, Battle Creek, Mich., vendor-advertiser, was engaged in selling certain preparations desig-

nated LD-Lax and Lacto-Dextrin and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That LD-Lax relaxes or rests the colon or intestines.

(*b*) That it combats or allays infection in the colon or drives out harmful germs.

(*c*) That it is "nature's method."

(*d*) That it keeps one in perfect condition.

(*e*) That constipation is caused by any obstruction; which can be removed by LD-Lax.

(*f*) That it is tolerated by the human body in all conditions.

(*g*) That it is a remedy or cure for constipation.

(*h*) That it prevents the return of, overcomes, corrects or eliminates constipation.

(*i*) That it heals the colon.

(*j*) That it frees the intestinal system of poisonous wastes or putrefactive poisons.

(*k*) That it is of value as a treatment for stomach distress or stomach disorders.

(*l*) That it will restore health.

(*m*) That it will cause one to have an unblemished complexion.

(*n*) That it drives bacteria or germs out of the colon or eliminates bacteria or germs from the colon.

(*o*) That Lacto-Dextrin restores health to the digestive system, restores the intestinal system to a healthy balance, causes one to be healthy, restores health or insures health.

(*p*) That it possesses healing properties or is a remedy or cure for any disease, ailment or condition.

(*q*) That "auto-intoxication" is the cause of any ailments or diseases which can be cured or remedied by Lacto-Dextrin.

(*r*) That such conditions or diseases as continuous tired feeling, pimples, sour or acid stomach, gastric disturbances, high blood pressure, bad health, or other diseases are relieved by the use of Lacto-Dextrin.

(*s*) That it causes headaches, nervousness, exhaustion, morning fatigue, biliousness, eructations, intestinal flatulence, acne, skin troubles, colitis, constipation, faulty elimination, bad breath, sour stomach, gastric acidity, and other ailments to disappear.

(*t*) That it will prevent stomach misery.

(*u*) That it stops intestinal putrefaction, stops the formation of putrefactive poisons or drives bad or pernicious germs or bacteria out of the colon.

(*v*) That it will cause one to have an unblemished complexion.

(*w*) That it affords quick or permanent benefits.

(*x*) That the effects produced by Lacto-Dextrin are magical.

(*y*) That it relieves bowel discomfort or conditions caused by drinking impure water.

(*z*) That it is a remedy or treatment for intestinal influenza; or

(*aa*) That a graduate dietician or any other authority speaks during its radio broadcasts in behalf of Lacto-Dextrin when such is not the fact.

The Battle Creek Food Co. further agreed not to publish, or cause to be published, any testimonial containing any representations contrary to the foregoing agreement. (Oct. 16, 1941.)

02903. **"Cocomalt"—Qualities, Properties or Results.**—Joseph Jacobs, an individual, 6 East Forty-sixth Street, New York, N. Y., was engaged in the business of conducting an advertising agency which disseminated advertisements for a food product designated "Cocomalt" on behalf of R. B. Davis Co., Hoboken, N. J. and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement which represents directly or by implication that Cocomalt stimulates the appetite for other foods except to the extent that it may stimulate the appetite where lack of appetite is caused by Vitamin B_1 deficiency. (Oct. 16, 1941.)

02904. **Shoe Polishes and Dressings—Qualities, Properties or Results.**—Hecker Products Corporation, a corporation, 88 Lexington Avenue, New York, N. Y., vendor-advertiser, was engaged in selling Two-In-One Paste and Liquid Shoe Polishes and Two-In-One and Shinola White Shoe Dressings and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Two-In-One Paste or Liquid Polish is a protective coating against all stains or that no stains will penetrate through this protective coating into the shoe leather.

(*b*) That Two-In-One White Cleaner or Shinola White Cleaner will not rub off of shoes to which applied.

The said Hecker Products Corporation agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 20, 1941.)

02905. **Chicks, Hatching Eggs and Poultry Breeding Stock—Tested, Qualities, Properties or Results and Headquarters.**—P. J. Osborne, an individual, Holland, Mich., vendor-advertiser, was engaged in selling hatching eggs, chicks and poultry breeding stock and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That his chickens are tested by a veterinarian licensed by the U. S. Government.

(*b*) That the Fertility Testing Machine used by him in testing eggs for fertility enables him to determine the livability of chicks.

(*c*) That his so-called Osborne System Australorps are official world champion layers.

(*d*) That his farm is America's headquarters for white, buff, or black Australorps.

(*e*) That hybrid chickens are more disease resistant, lay on an average more eggs, and have longer laying life than pure-blood strain chickens.

The said P. J. Osborne agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 20, 1941.)

02906. **Children's Mind Training Course—Institute.**—E. M. Kellogg, an individual, doing business under the trade name of Children's Mind Training Institute, 1963 S. W. Burnside Street, Portland, Ore., vendor-advertiser, was engaged in selling a course for training the minds of children designated Children's Mind Training Program and agreed, in connection with the dissemination of future advertising, to cease and desist from:

Using the word "Institute" as a part of the trade name under which he conducts his business, or otherwise representing that his business is an institution or organization of learning with a staff of competent, experienced and qualified educators.

The said E. M. Kellogg agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 20, 1941.)

02907. **Dog Food Products—Economy, Qualities, Properties or Results and Composition.**—Gaines Food Co., Inc., a corporation, Sherburne, N. Y., vendor-advertiser, was engaged in selling certain dog food products designated "Gaines Dog Meal," variously designated and referred to in the advertisements as "Gaines Dog Food" or "Gaines," and "Gaines Formula 107–A" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Gaines Dog Meal will reduce or cut feeding costs 50% or effect any definitely stated percentage savings when compared with other dog foods of similar type.

(*b*) That Gaines dog foods are known as the veterinarian's dog food.

(*c*) That use of Gaines Dog Food can be depended upon to prevent or avoid eye infections.

(*d*) That use of Gaines Formula 107–A will assure the raising of every puppy in the litter.

(*e*) That Gaines Food can be relied upon to protect dogs against Ophthalmia or any other disease which is not entirely of nutritional origin.

(*f*) That the vitamins contained in Gaines Dog Foods will not deteriorate.

(*g*) That Gaines Dog Meal contains meat.

(*h*) That Gaines Dog Food will prevent skin troubles in dogs unless such troubles are of nutritional origin.

(*i*) That Gaines Foods will increase the number or size of litters except in those instances where it is clearly indicated that the bitches have been maintained on rations inadequate for reproduction.

(*j*) That Gaines Foods will make pups more true to type.

The said Gaines Food Co. further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Oct. 31, 1941.)

DECISIONS OF THE COURTS

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION[1]

CALIFORNIA RICE INDUSTRY, CHARLES S. MORSE, ET AL. v. FEDERAL TRADE COMMISSION[2]

No. 8844

(Circuit Court of Appeals, Ninth Circuit. June 4, 1941)

Ordered, that petition to correct alleged modified order of Commission, following and in accordance with decision of court in *California Rice Industry* v. *Federal Trade Commission*, 102 F. (2d) 716, 28 F. T. C. 1912, modifying the Commission's order in certain particulars and affirming the same in other particulars, so as to require respondents, their successors, etc., in connection with the offer, etc., in commerce, of rice and rice products, to cease and desist from concertedly fixing and maintaining uniform prices, etc., as in order in detail set forth, be dismissed without prejudice.[3]

Mr. Harry M. Creech, of San Francisco, Calif., for the petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Earl J. Kolb*, both of Washington, D. C., for the Commission.

Before DENMAN, MATHEWS, and HEALY, *Circuit Judges*.

ORDER DISMISSING PETITION, ETC.

Ordered petition of petitioners to correct alleged modified order of Federal Trade Commission presented by Mr. Harry M. Creech,

[1] During the period covered by this volume, namely, June 1, 1941, to October 31, 1941, the United States Supreme Court denied certiorari in *Adah Alberty, etc.* v. *Federal Trade Commission*, October 13, 1941, 314 U. S. 630, 62 S. Ct. 62. Decision of the Circuit Court of Appeals in this case, is reported in 118 F. (2d) 669, 32 F. T. C. 1871.

[2] Not reported in Federal Reporter. For case before Commission, *see* 26 F. T. C. 968.

[3] From the Commission's "Answer to Petition Initiating Proceedings to Have Modified Order of Federal Trade Commission Made Correct," it appears, among other things, that after the Commission had issued its said modified order and required report of compliance in writing therewith within thirty days (and subsequent to the filing of the motion in question), the Commission directed that the report of compliance filed with the Commission in accordance with the original order of the court be received and filed as report of compliance to the modified order of the Commission in question; that the Commission's modified order was properly issued in accordance with the terms and provisions of subsection (l) of Section 5 of the Federal Trade Commission Act, as amended; that such order is identical in terms with the decree of the court, and in accordance with the mandate thereof; and that, in view of acceptance by the Commission of the report of compliance theretofore received and filed as report of compliance for the modified order, there is no burden or harassment of the petitioners by reason of the issuance thereof.

counsel for the petitioners, Mr. Earl J. Kolb, counsel for the respondent, being present, and that said petition be dismissed without prejudice.

ALBERT T. CHERRY v. FEDERAL TRADE COMMISSION [1]

No. 8855

(Circuit Court of Appeals, Sixth Circuit. June 4, 1941)

Per curiam order dismissing without prejudice, for reasons below set forth, petition to review order of Commission in Docket 3416, 31 F. T. C. 1262, 1267, requiring respondent, in connection with the offer, etc., in commerce, of soap or soap products, to cease and desist from fictitious exaggerated price misrepresentation, as in said order set forth, and from supplying to or placing in the hands of house-to-house canvassers or others purchasing for resale soap or soap products thus price-marked or branded.

Mr. Robert C. Porter, of Cincinnati, Ohio, for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, of Washington, D. C., for the Commission.

Before HICKS, SIMONS, and MARTIN, *Circuit Judges*.

Per Curiam.

It appearing to the Court upon the representation of Albert T. Cherry, petitioner herein, by Robert C. Porter his attorney that following the filing of the within named action the respondent reopened the proceeding before the Federal Trade Commission and the petitioner desiring as a consequence to dismiss the within cause of action said cause of action is hereby dismissed without prejudice at petitioner's costs.

LIQUOR TRADES STABILIZATION BUREAU, INC., ET AL. v. FEDERAL TRADE COMMISSION [2]

No. 9730

(Circuit Court of Appeals, Ninth Circuit. June 4, 1941)

Order dismissing, in view of agreement for such dismissal, petition to review order of Commission in Docket 4093, 31 F. T. C. 1453, 1482, 1483, requiring, among other things, that respondent Liquor Trades Stabilization Bureau, Inc., and respondent Wholesale Liquor Distributors Association

[1] Reported in 121 F. (2d) 451. For case before Commission, *see* 31 F. T. C. 1262.

[2] Reported per curiam in 121 F. (2d) 455. For case before Commission, *see* 31 F. T. C. 1453.

of Northern California, Inc., and their respective officers, etc., cease and desist from enforcing or attempting to enforce any contract, etc., which classifies wholesalers, jobbers or dealers in alcoholic beverages with intent and effect of preventing or hindering any of them, or any class of them, from obtaining such beverages for resale, as set forth in order in question; and from enforcing, etc., any contract, etc., among distillers or among importers or among wholesalers, etc., purpose or effect of which is to maintain specified standard or minimum resale prices, discounts, etc., as in said order in detail set forth.

Sefton & Quattrin, of San Francisco, Cal., for petitioners.

Mr. W. T. Kelley, chief counsel, *Mr. Martin A. Morrison*, assistant chief counsel, *Mr. Floyd O. Collins* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for the Commission.

Before DENMAN, MATHEWS, and HEALY, *Circuit Judges*.

DECREE

The petitioners herein, having filed with this Court, on, to wit, January 30, 1941, their petition praying this court to review and set aside an order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of November 28, 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.

Upon consideration of the agreement for dismissal of the above-entitled petition filed January 30, 1941, *It is hereby ordered, adjudged, and decreed*, That said petition be, and hereby is dismissed, each party to bear its own cost on this petition to review.

FORD MOTOR COMPANY v. FEDERAL TRADE COMMISSION[1]

No. 8510

(Circuit Court of Appeals, Sixth Circuit. June 5, 1941)

UNFAIR METHODS OF COMPETITION—DETERMINATION OF—COMPETITIVE CONDITIONS AND PARTICULAR INSTANCES—ULTIMATE DECISION AS FOR COURT.

In determining validity of cease and desist order of Federal Trade Commission based on alleged violation of Federal Trade Commission Act by

[1] Reported in 120 F. (2d) 175. For case before Commission, *see* 30 F. T. C. 49. Rehearing denied June 25, 1941. Petition for certiorari denied by Supreme Court on October 20, 1941, 314 U. S. 668, 62 S. Ct. 130.

use of "unfair methods of competition" in interstate commerce, what constitutes "unfair methods of competition" must be decided in particular instances upon incidents in the light of existing competitive conditions and the court, not the commission, must ultimately determine, as a matter of law, what the phrase includes. Federal Trade Commission Act, Sec. 5, 15 U. S. C. A. sec. 45.

UNFAIR METHODS OF COMPETITION—ADVERTISING FALSELY OR MISLEADINGLY—WHERE CAPACITY OR TENDENCY TO MISLEAD PUBLIC INTO PURCHASE OF PRODUCT, PROCESS OR METHOD ESSENTIALLY DIFFERENT FROM ONE SUPPOSED—WHETHER INTENT MATERIAL ALSO.

"Unfair methods of competition," as used in the Federal Trade Commission Act prohibiting unfair methods of competition in interstate and foreign commerce, may consist generally of false advertising of a product, process or method which misleads, or has the capacity or tendency to mislead, the purchasing public into buying such product, process or method in the belief it is acquiring one essentially different, and the question does not depend upon the purpose of the advertisement nor upon the good faith or bad faith of the advertiser.

UNFAIR METHODS OF COMPETITION—PROHIBITION OF—PREREQUISITES TO APPLICATION OF STATUTE—UNFAIR INTERFERENCE WITH INTERSTATE TRADE AND DECEPTION OF PUBLIC AS.

A prerequisite to the application of the Federal Trade Commission Act prohibiting unfair methods of competition in interstate commerce is the unfair interference with interstate trade and such deception of the public as to cause it to buy and pay for something which it is in fact not getting.

UNFAIR METHODS OF COMPETITION—ADVERTISING FALSELY OR MISLEADINGLY—FINANCING PLANS—AUTOMOBILES—PRACTICES IN INDUSTRY CONCERNED AND THOSE RELATED—IF PUBLIC IN ANY EVENT MISLED INTO PURCHASE AT PRICE HIGHER THAN OTHERWISE.

In determining whether a "six percent plan" of financing retail sales of automobiles advertised by automobile manufacturer was unfair method of competition within Federal Trade Commission Act, the practices in the automobile industry or those in similar related enterprises were immaterial if the automobile manufacturer's advertisement misled the members of the public into purchasing manufacturer's automobiles at a higher cost than they otherwise would have paid.

UNFAIR METHODS OF COMPETITION—FALSE REPRESENTATIONS—IF FALSITY KNOWN AND NOT DECEPTIVE TO THOSE IN SAME OR SIMILAR ENTERPRISES.

A method of competition inherently unfair does not cease to be so because the falsity of the public representation has become so well known to those engaged in identical or similar enterprises as to no longer deceive them.

UNFAIR METHODS OF COMPETITION—ADVERTISING FALSELY OR MISLEADINGLY—FINANCING PLANS—AUTOMOBILES—"SIX PERCENT PLAN"—PROSPECTIVE PURCHASERS' VIEWPOINT AND PLAN AS A WHOLE AS CRITERIA.

In determining whether "six percent plan" of financing retail sales of automobiles advertised by automobile manufacturer violated Federal Trade Commission Act prohibiting unfair methods of competition in interstate commerce, the advertisement was required to be considered from the view-

point of prospective purchasers of the manufacturer's automobiles and in determining its capacity or tendency to mislead was required to be judged from its general fabric and not its single threads.

UNFAIR METHODS OF COMPETITION—ADVERTISING FALSELY OR MISLEADINGLY—FINANCING PLANS—AUTOMOBILES—"SIX-PERCENT PLAN"—IF INTEREST IN FACT ABOUT 11½ PERCENT AND AVERAGE MEMBER PUBLIC THEREBY DECEIVED.

Where automobile manufacturer's advertised "six percent plan" of financing retail sales of automobiles was such as to give impression to average member of public that manufacturer meant six percent simple interest annually on the remaining balance after deducting each successive monthly payment, whereas the actual credit charge computed in accordance with the [176] "six percent plan" amounted to approximately 11½ percent simple annual interest on the unpaid balance of installments due on automobile sold, the method used by manufacturer in sale of automobiles was an "unfair method of competition" within Federal Trade Commission Act.

FEDERAL TRADE COMMISSION ACT—SCOPE—AS PREVENTATIVE AND NOT COMPENSATORY.

The Federal Trade Commission Act prohibiting unfair methods of competition in interstate commerce was intended to afford a preventative remedy, not a compensatory one.

UNFAIR METHODS OF COMPETITION—IF DAMAGE EITHER TO PURCHASER OR COMPETITOR NOT SHOWN.

In proceeding by Federal Trade Commission against automobile manufacturer for using unfair methods of competition, the alleged fact that no damage had been shown by the offense complained of to purchaser of manufacturer's automobiles or to a competitor was no defense.

PUBLIC INTEREST—DETERMINATION OF IN UNFAIR METHOD OF COMPETITION PROCEEDINGS—FACTS OF EACH CASE AS SUBJECT FOR COMMISSION DISCRETION.

In determining whether a proceeding by Federal Trade Commission on complaint charging use of unfair methods of competition in interstate commerce is in the public interest, the commission exercises a broad discretion and each case must be determined upon its own facts.

ADVERTISING FALSELY OR MISLEADINGLY—IF CUSTOMERS ATTRACTED BY ADVERTISER'S DECEPTION—UNFAIR COMPETITIVE DIVERSION—PRESUMPTION OF.

Where misleading advertisements attract customers by means of deception perpetuated by the advertiser, it is presumed that business is thereby unfairly diverted from a competitor who truthfully advertises his process, methods or goods.

PUBLIC INTEREST—UNFAIR METHODS OF COMPETITION—ADVERTISING FALSELY OR MISLEADINGLY—"SIX PERCENT" FINANCE PLAN—AUTOMOBILES—WHERE INTEREST IN FACT ABOUT 11½ PERCENT AND AVERAGE MEMBER PUBLIC THEREBY DECEIVED.

A proceeding by Federal Trade Commission against automobile manufacturer, charged with use of unfair methods of competition in interstate commerce by advertising a "six percent plan" of financing retail sales of automobiles which gave average member of public impression that only six percent interest annually on remaining balance after deducting each

successive monthly payment was meant, whereas the actual credit charge computed in accordance with the six percent plan amounted to approximately 11½ percent simple annual interest on the unpaid balance of installments due on automobile sold, was in the interest of the public and was therefore within jurisdiction of the commission.

INTERSTATE COMMERCE—WHAT DOES AND DOES NOT CONSTITUTE—INTERCOURSE FOR PURPOSE OF TRADE, ETC.

"Interstate commerce" includes intercourse for the purpose of trade which results in the passage of property, persons or messages from within one state to within another state.

INTERSTATE COMMERCE—REGULATION—ESSENTIAL ADJUNCTS—COMMISSION POWER.

All of those things which stimulate or decrease the flow of commerce, although not directly in its stream, are essentially adjuncts thereto and Congress has power to confer their regulation on the Federal Trade Commission.

INTERSTATE COMMERCE—ADVERTISING FALSELY OR MISLEADINGLY—"SIX PERCENT" FINANCE PLAN—WHERE FOR SALE OF AUTOMOBILES BY DEALERS—WHETHER RELATION TO INTERSTATE COMMERCE SUBSTANTIAL AND CONTROL OF SUCH ACTIVITIES APPROPRIATE TO PROTECTION THEREOF.

Where automobile manufacturer sold automobiles wholesale to dealers, dealers' resale of automobiles to public, had such substantial relationship to "interstate commerce" that control of such activities was appropriate to its protection, so that Federal Trade Commission was justified in ordering manufacturer to cease and desist from advertising a misleading plan of financing retail sales of automobiles, as against contention that neither the plan itself nor its advertisement affected the sales of automobiles by manufacturer to its dealers, nor their transportation in interstate commerce, and that by time automobiles reached dealers manufacturer had received payment therefor and had no further interest therein.

CEASE AND DESIST ORDERS—SCOPE—IF REASONABLY LIMITED TO EVIL INVOLVED AND PRESERVATION OF COMPETITIVE AND PUBLIC RIGHTS.

Cease and desist orders of the Federal Trade Commission should go no further than reasonably necessary to correct the [177] evil complained of and preserve the rights of competitors and the public.

CEASE AND DESIST ORDERS—ADVERTISING FALSELY OR MISLEADINGLY—"SIX PERCENT" FINANCE PLAN—AUTOMOBILES—WHERE CHARGES IN FACT IN EXCESS OF.

Where automobile manufacturer was guilty of using unfair methods of competition by advertising a "six percent plan" of financing retail sales of automobiles, order of Federal Trade Commission requiring manufacturer to cease and desist from using the words "six percent" or the figure and symbol "6%" in certain forms of advertising in connection with the cost of or the additional charge for the use of deferred or installment plan of purchasing automobiles manufactured by it was proper.

(The syllabus, with substituted captions, is taken from 120 F. (2d) 175)

On petition to review and set aside order of Commission, petition denied and order affirmed.

Mr. Henry C. Bogle and *Mr. Thomas J. Hughes*, both of Detroit, Mich. (Bodman, Longley, Bogle, Middleton & Farley, of Detroit, Mich., on the brief), for petitioner.

Mr. Martin A. Morrison and *Mr. James M. Hammond*, both of Washington, D. C. (Mr. W. T. Kelley, Mr. Martin A. Morrison, Mr. James M. Hammond, and Mr. James W. Nichol, all of Washington, D. C., on the brief), for Commission.

Before HICKS, SIMONS, and HAMILTON, *Circuit Judges.*

HAMILTON, *Circuit Judge:*

This is a petition by the Ford Motor Company to review an order of the Federal Trade Commission requiring it to cease and desist from the use of the words "six percent" or the figure and symbol "6%" in certain forms of advertising in connection with the cost of, or the additional charge for, the use of a deferred or installment payment plan of purchasing automobiles manufactured by it.

On December 1, 1936, the Federal Trade Commission issued a complaint against the petitioner and the Universal Credit Corporation, which was served on petitioner, charging it with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act, U. S. C. A. title 15, section 45, 38 Stat. 717, 719, 720.

After the filing of separate answers by the petitioner and the Universal Credit Co. and before taking testimony in support of the complaint as to petitioner, the Commission, on May 9, 1937, approved a stipulation executed by the Universal Credit Corporation agreeing to cease and desist and on May 5, 1937, the Commission dismissed the complaint as to it. On January 10, 1938, petitioner filed a motion to dismiss the complaint, which motion was denied by the Commission.

Evidence was thereafter introduced by the Commission before a duly designated examiner who filed an intermediate report.

The proceedings thereafter came before the Commission for a final hearing upon the complaint, the answer of petitioner, testimony, briefs and oral argument and the Commission, after finding that the proceeding was in the interest of the public, found substantially as follows: that petitioner was a corporation organized and existing pursuant to the laws of the State of Delaware, with its principal office and place of business at Dearborn, Michigan, where it engages

in the business of manufacturing all types of automobiles, including trucks, which are shipped from its place of business and from its assembly plants located at various points in the United States, to purchasers in the various states of the United States and in the District of Columbia. To assist in carrying out distribution of its products, petitioner maintains numerous assembly plants in various states other than Michigan, where parts manufactured in Michigan are shipped and assembled into completed automobiles and trucks and shipped to purchasers or prospective purchasers in zones covering various states within shipping radius of said assembly plants. Petitioner is one of the largest producers, manufacturers and distributors of automobiles in the United States with wide influence in the automobile manufacturing industry as a whole.

The Chrysler Corporation, Nash-Kelvinator, Graham-Paige Motors Corporation, the Hudson Motor Car Co., the Reo Motor Co., and the Packard Motor Co., all are also engaged in the manufacture of automobiles in competition with petitioner and in the sale and distribution thereof in commerce between and among [178] the various states of the United States and the District of Columbia, cars manufactured by them being shipped from their factories in Michigan and elsewhere to all parts of the United States for sale to the purchasing public. Petitioner maintains several thousand retail dealer outlets throughout the United States with whom it has contracts to sell its cars wholesale at prices fixed by petitioner, the dealers agreeing to maintain places of business of a definite kind and nature and to sell the cars in a manner specified by petitioner. The dealers purchase their cars from petitioner for cash, sight draft or through the Universal Credit Corporation, a Michigan corporation organized by petitioner in 1928, for the purpose of furnishing credit to its dealers and retail purchasers. In May 1933, petitioner sold its entire stock in the Universal to the Commercial Investment Trust Co.

Petitioner's dealers agree to take retail orders for new cars on a specified order blank and operate their business generally in the manner outlined in their contracts with it. Petitioner sells its cars direct to dealers who take title to them and in turn the dealers sell to the public, but petitioner assists in the sales through wide and extensive advertising in newspapers, magazines, billboards and in other ways.

The business of the Universal Credit Corporation is confined entirely to financing the sale of petitioner's cars, accessories and parts sold to petitioner's dealers and to the financing of retail sales by dealers to the public, except where a used car of another make is traded in, when if requested, it will also finance the sale of such cars. Retail contracts are entered into between the buyer and the dealer, whereby

the retail buyer makes a down payment either in cash or by trading in a used car or sometimes both, leaving an unpaid balance which the purchaser agrees to pay over a period of twelve, eighteen or twenty-four months. The Universal Credit Corporation, pursuant to its arrangement with petitioner, and, if the dealer desires, purchases the installment contract and collects the payments.

Petitioner, in some instances, makes sales of its cars direct to dealers on a cash and delivery basis, payment being made direct to petitioner at time of delivery but usually payments are through transactions such as bill of sale and trust receipt, conditional sales contract, lease or chattel mortgage, having varying methods in the different localities. Petitioner then transfers its interest and title to the cars thus sold on a credit basis to the Universal Credit Corporation, receives the cash and the dealer thereafter deals direct with Universal in making payment.

The so-called "six percent plan" of financing the retail sale of automobiles was first used in 1935 by the General Motors Corporation, through its wholly-owned subsidiary, the General Motors Acceptance Corporation and was as follows:

"GENERAL MOTORS ACCEPTANCE
CORPORATION
REDUCES TIME PAYMENT COSTS
ON NEW CARS
With a new 6% Plan
SIMPLE AS A, B, C

A—TAKE YOUR UNPAID BALANCE.
B—Add cost of insurance.
C—Multiply by 6%—12 Months' plan.
(One-half of one percent per month for periods more or less than 12 months.)

That's your whole financing cost. No extras. No service fees. No other charges.[1]

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

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

[1] In some states a small legal documentary fee is required.

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

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

And finally—buyers under this new plan receive an insurance policy in the Gen[179]eral Exchange Insurance Corporation which protects them against Fire, Theft and Accidental Damage to their cars.

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

OFFERED ONLY BY DEALERS IN

CHEVROLET CARS & TRUCKS—PONTIAC—OLDSMOBILE—

BUICK—LASALLE—CADILLAC"

General Motors, through its subsidiaries, published many thousands of advertisements featuring this so-called "6% plan," some with the above explanation, others merely referring to a "6%" plan without explanation.

Other leading automobile manufacturing concerns promptly announced similar plans, all featuring the "6%" plan, determined approximately in the same manner as the General Motors, the first to do so being Chrysler, followed by Nash Motors, Reo, Hudson, Graham-Paige, Packard, and the petitioner, all appearing in advertisements in newspapers of general and wide circulation and all featuring in a conspicuous manner, the symbol "6%" or the words "six percent," and all determined in the same manner as the plan of petitioner.

Many independent finance companies engaged primarily in financing retail sales of automobiles were obliged to abandon their preexisting methods of computing charges in order to meet competitive disadvantages to which they were put by the publication and operation of the so-called "6%" plans of petitioner and others. Before that, the charges of all automobile finance companies were slightly higher than the rates under the so-called "6%" plan and were based on a flat charge for a specified credit over a definite period.

In January 1936, petitioner announced it had adopted the "6%" plan and issued throughout the country the advertisement found in the margin.[1]

Petitioner published many similar advertisements, some with the explanatory data in the advertisement quoted in the margin, others merely referring to the plan as follows:

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

6% Plan of Financing. Total cost of credit is only ½% monthly on original unpaid balance and insurance.

(6% for 12 months)

Petitioner published similar advertisements which it paid for out of a fund collected and controlled by it called the "Local or Dealers Fund," created by the collection from the dealers of a fixed charge for advertising on all cars sold by them, and charged on the invoice to the dealer and in turn passed on to the public by him. The "6%" plan of advertising was discontinued by petitioner about July 1936.

At the same time petitioner published the above outlined advertisements, the Universal Credit Corporation, acting concertedly with petitioner, published similar advertisements at its own expense, all of which were for the purpose of promoting the sale of petitioner's cars.

The respondent issued complaints against all the other larger automobile manufacturing companies at about the same time it issued the present complaint against petitioner, all of which were disposed of by a stipulation by each that it would cease [180] and desist from the practices complained of by the Commission with the exception of the petitioner and the General Motors Corporation. The stipulations in each case were similar and provided in part:

1

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

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

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

Your cost for this extension of credit is only one half of 1 percent a month on your original unpaid balance and insurance. This plan reduces financing charges for twelve months to 6 percent. For example, if you owe a balance of $400 for your car and insurance, you pay $24 for the year of credit; if the balance is $200 you pay $12. Your credit cost for one year is the original unpaid balance multiplied by 6 percent.

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

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

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

All of the companies executing these agreements to cease and desist carried them into effect and the respondent found that in the event petitioner resumed the advertisement of a "6%" plan, the companies which had agreed to cease and desist from the plan would be at a competitive disadvantage in the industry.

The "6%" plan was computed in actual practice as follows:

On a new car, the purchase price of which is $643 and on which the purchaser makes a down payment of $243, there is an unpaid balance of $400 due and if the dealer furnishes the insurance, its cost on the above transaction would be $15, the total balance to be paid by the purchaser would be $415 and where this amount is paid according to the 6% plan (or ½ of 1% a month) in 18 consecutive monthly payments of substantially $25 each, the charge of ½ of 1% a month for 18 months, or 9% on $415 would be $37.35, which, added to the original balance of $415, makes a total sum of $452.35.

This same transaction with an unpaid balance of $415 paid in a like manner at $25 a month over a period of 18 months on a straight 6% simple interest per annum basis, computed on the declining balances as reduced by monthly installments, would amount to $19.34 interest charge or $18.01 less than the charge made pursuant to petitioner's plan. Comparative tables prepared by an expert accountant in evidence in the case indicated that the credit charge under petitioner's "6%" plan amounted to approximately 11½% simple annual interest.

The 6% plan of all of petitioner's competitors were also computed in the above described manner and the average member of the public was under the impression the "6%" plan as advertised by petitioner and the other manufacturers meant 6% simple interest annually on the remaining balance after deducting each successive monthly payment.

The cars manufactured by petitioner at Dearborn, Michigan, and sold through retail dealers to the retail purchasers thereof throughout the United States and in the District of Columbia are in the regular flow of interstate commerce. The Commission found that the statements contained in petitioner's advertising matter with reference to its "6%" plan had the tendency to mislead and deceive, and did mislead and deceive, a substantial part of the purchasing public into the erroneous belief that petitioner's finance plan or method as outlined contemplates a simple 6% interest charge upon the deferred and unpaid balance of the purchase price of cars and tended to cause, and

has caused, the public to purchase automobiles from the petitioner through its dealers and agents because of this mistaken belief, when the actual credit charge, computed in accordance with the "6%" plan, amounts to approximately 11½% simple annual interest on the unpaid balance of the installments due on cars sold. It also found that these acts and practices of petitioner tended to unfairly divert trade to the petitioner and its dealers from competitors who correctly represented the cost of the credit charges for purchasing cars on the installment or deferred payment plan and a substantial injury had been done by petitioner to competitors in commerce among and between the various States of the United States and the District of Columbia.

The order to cease and desist of the Commission is found in the margin.[2]

[181] Petitioner seeks to avoid the questioned order on the following grounds:

1. That the method used by it in the sale of its automobiles was not unfair.

2. That the proceedings by the Commission to prevent the use of the method by the petitioner is not in the public interest.

3. That the method of the petitioner does not affect competition in interstate commerce.

4. That the desist order goes further than is reasonably necessary to correct the alleged evil and to protect the rights of competitors and the public.

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[2] This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the stipulation as to the facts, agreement to cease and desist and dismissal heretofore entered herein as to the respondent, Universal Credit Corporation, the answer of respondent, Ford Motor Co., the testimony and other evidence taken before Edward E. Reardon, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint, briefs filed herein and oral arguments by James M. Hammond, counsel for the Commission, and by Henry C. Bogle, counsel for the respondent, Ford Motor Co., and the Commission having made its findings as to the facts and its conclusion that said respondent, Ford Motor Co., has violated the provisions of the Federal Trade Commission Act:

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

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

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

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

By the Commission.

The relevant portion of section 5 of the Federal Trade Commission Act as it read at the time the present complaint was issued (Act of September 26, 1914, c. 311, 38 Stat. 717, 719–720; U. S. C. 1934 ed., title 15, § 45, 15 U. S. C. A. § 45) is as follows:

That unfair methods of competition in (interstate and foreign) commerce are hereby declared unlawful.

The phrase is not statutorily defined and its scope cannot be precisely determined and what constitutes "unfair methods of competition" must be decided in particular instances upon incidences in light of existing competitive conditions. *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495, 532–533. The courts, and not the Commission, must ultimately determine, as a matter of law, what this phrase includes. *Federal Trade Commission* v. *Beech-Nut Packing Company*, 257 U. S. 441, 453.

Unfair methods of competition as used in the act may consist generally of false advertising of a product, process, or method which misleads, or has the capacity or tendency to mislead, the purchasing public into buying such product, process, or method in the belief it is acquiring one essentially different. *Federal Trade Commission* v. *Winsted Hosiery Company*, 258 U. S. 483, 492–493; *Procter & Gamble Company, et al.* v. *Federal Trade Commission*, 11 F. (2d) 47 (C. C. A. 6). The question does not depend upon the purpose of the advertisement nor upon the good or bad faith of the advertiser. The point for consideration here is whether, under the facts and circumstances in connection with the publication of the advertisement, the language in and of itself, without regard to good or bad faith, is calculated to deceive the buying public into believing it is purchasing petitioner's cars at one price when in fact it is purchasing them at another. A prerequisite to the application of the statute in any case is the unfair interference with interstate trade and such deception of the public as to cause it to buy and pay for something which it is in fact not getting.

Petitioner contends that the method of competition here complained of is not unfair within the meaning of the act nor of the foregoing general rule, as it long has been the established practice of automobile manufacturers and vendors of merchandise on the deferred payment plan to charge an advance over what would be charged in a cash sale and that it also has been the common practice of banks and small loan [182] companies to advertise loans with a percentage added to the principal payable over fixed periods without calculating interest upon a declining balance. It also charges that the Federal Housing Administration and the Federal Electric Home and Farm Authority, two governmental agencies, use the same plan. It thus argues that the present advertisements were subject to the interpreta-

tion only that petitioner was adding a charge to the cash price of its cars because of the extension of credit to the purchaser.

The practices in the automobile industry or those in similar related enterprises are immaterial, if petitioner's advertisements misled the members of the public into purchasing its cars at a higher cost than they otherwise would have paid.

A method inherently unfair does not cease to be so because the falsity of the public representation has become so well known to those engaged in identical or similar enterprises as to no longer deceive them. *Federal Trade Commission* v. *Winsted Hosiery Company*, 258 U. S. 483, 494.

The average individual does not make, and often is incapable of making, minute calculations to determine the cost of property purchased on the deferred payment plan. Mechanization, industrialization, and urbanization have transformed the structure of our society and raised to the proportions of a major social problem, the protection of the installment purchaser against his own ignorance and the pressure of his need.

The present advertisement must be considered from the view of the prospective purchasers of petitioner's cars and, in determining its capacity or tendency to mislead, must be judged from its general fabric, not its single threads.

Kindred senses in the use of language may be so interwoven that the perplexities cannot be disentangled nor any reason be assigned why one should be ranged before the other. The advertisement here in question is susceptible to the construction that it contains two ideas; one, that it means simply an addition of six percent to the cash price of the car, charged for an extension of credit and the other, that it means ordinary interest at the rate of 6% on deferred installment payments. Either idea is so obscure that one blends into the other. The uncertainty of terms and commixture of ideas expressed by petitioner in its advertisement had the tendency to mislead. *General Motors Corp., et al.* v. *Federal Trade Commission*, 114 F. (2d) 33 (C. C. A. 2).

Petitioner's contention that the present proceedings were not in the interest of the public must be rejected. The Federal Trade Commission Act was intended to afford a preventative remedy, not a compensatory one, so that the suggestion no damage has been shown by the offense complained of to a purchaser of petitioner's cars or a competitor is no defense to the proceeding. *National Harness Manufacturers Asssociation* v. *Federal Trade Commission*, 268 F. 705 (C. C. A. 6).

The primary consideration in carrying out the purpose of the present act is the promotion and continuance of free enterprise and

competition in interstate commerce. Installment credit in varying forms is widely used in this country in the purchase of many types of property and especially affects the manufacturers of automobiles. No one can deny it is in the public interest in the sale on credit of such devices to prevent the use of methods which have a tendency and capacity to mislead the purchasing public and to unfairly damage the manufacturer's present or potential competitors and that such practices may be restrained. In determining whether a proceeding is in the public interest, the Commission exercises a broad discretion (*Federal Trade Commission* v. *Klesner*, 280 U. S. 19, 28) and each case must be determined upon its own facts. *Federal Trade Commission* v. *Beech-Nut Company*, 257 U. S. 441, 453. When misleading advertisements attract customers by means of deception perpetrated by the advertiser, it is presumed that business is thereby unfairly diverted from a competitor, who truthfully advertises his process, method or goods. *Federal Trade Commission* v. *Winsted Hosiery Company*, supra.

The advertisement in the case before us was in a concededly highly competitive field of business and its context was susceptible of attracting to petitioner the business of those who wished to finance the installment sales of automobiles at a simple 6% rate of interest. We conclude that under the circumstances of the instant case, the proceedings were in the interest of the public.

[183] Petitioner urges on us that neither the 6% plan itself, nor its advertisement, affected the sale of automobiles by the petitioner to its dealers, nor their transportation in interstate commerce, that petitioner sells only to its dealers and that by the time its cars reach them, wherever located, petitioner has received its payment therefor and has no further interest therein. It urges that the 6-percent plan and its advertising relate solely to the financing of payments on time sales of cars sold by its dealers to their customers and are matters with which it is not concerned, also that sales by its dealers to its customers are purely intrastate transactions.

Advertising goes hand in hand with volume of production and retail distribution. It operates to increase the demand for and availability of goods and to develop quickly consumers' acceptance of the manufactured products. Expressed another way, it breaks down consumers' resistance, creates consumers' acceptance, and develops consumers' demand.

The Federal Trade Commission Act was enacted under the power of Congress to regulate interstate and foreign commerce and by its express terms (sec. 4) (15 U. S. C. A. sec. 44) deals only with such commerce. Interstate commerce includes intercourse for the purpose of trade which results in the passage of property, persons or messages

from within one State to within another State. All of those things which stimulate or decrease the flow of commerce, although not directly in its stream, are essential adjuncts thereto and the Congress has power to confer on the Federal Trade Commission their regulation. *Stafford* v. *Wallace*, 258 U. S. 495, 516.

The use of advertising as an aid to the production and distribution of goods has been recognized so long as to require only passing notice. The economy of mass production is just as well known and the effects of advertising may be described as mass selling without which distribution would be lessened and a fortiori production correspondingly decreased. The present advertisement of the method for financing the purchase of petitioner's cars on credit was an integral part of their production and distribution.

The sale on credit of petitioner's cars by its local dealers, when separately considered, may be intrastate in character but when the activities of petitioner's local agencies are weighed in the light of their relationship to the petitioner, and its financing sales of cars, it is at once apparent that there is such a close and substantial relationship to interstate commerce that the control of such activities is appropriate to its protection.

Petitioner urges that the case of *Federal Trade Commission* v. *Bunte Bros., Inc.* (decided Feb. 17, 1941, 61 Sup. Ct. Rep. 580, 312 U. S. 349), is decisive here. In that case the alleged unfair method of competition was admittedly confined to activities wholly within the State of Illinois, and the Commission claimed jurisdiction on the ground that it had the duty to regulate intrastate activities in order to protect interstate commerce. The court held that no such power was implied in the act and declined to enforce the Commission's order. The cited case is without point.

Cease and desist orders of the Commission should go no further than reasonably necessary to correct the evil complained of and preserve the rights of competitors and the public and we are of the opinion that the order here did not violate this rule, but was necessary to protect the public against the species of deception alleged in the complaint. *General Motors Corporation* v. *Federal Trade Commission*, supra. The Commission's findings are supported by substantial evidence. Petition denied and order of Commission affirmed.

FEDERAL TRADE COMMISSION v. BIDDLE PURCHASING COMPANY[1]

No. 15624

(Circuit Court of Appeals, Second Circuit. June 5, 1941)

Order adjudging respondent in contempt of court's decree of May 9, 1938, affirming order of the Commission in Docket 3032, 25 F. T. C. 564, 577, requiring, among other things, that respondent Biddle Purchasing Company, its officers, etc., cease and desist from receiving or accepting any fee, etc., as brokerage or allowance in lieu thereof, etc., and from paying or granting to any purchaser any such fee or commission received or accepted by it in violation of the provisions of Section 2(c) of the Clayton Act, as amended by the Robinson-Patman Act; and fining said company in the sum of $500.00 as and for such contempt.[2]

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, of Washington, D. C., for the Commission.

Mr. Gilbert H. Montague, of New York City, for respondent.

BEFORE LEARNED HAND, CHASE, AND CLARK, *Circuit Judges.*

FINAL DECREE

This matter coming on this day for hearing upon the Federal Trade Commission's petition in aid of enforcement filed August 15, 1940 and bill of particulars filed February 18, 1941, the respondent Biddle Purchasing Company's amended answer filed June 3, 1941, and the stipulation executed and filed by the Federal Trade Commission and the respondent Biddle Purchasing Company on June 3, 1941, it is

Ordered, adjudged and decreed that:

1. The respondent Biddle Purchasing Company be and and it hereby is found and adjudged to have violated this court's decree of May 9, 1938 (affirming the cease and desist order entered against the respondent Biddle Purchasing Company by the Federal Trade Com-

[1] Not reported in Federal Reporter. For case before Commission, *see* 25 F. T. C. 564; and for decision of Circuit Court of Appeals for the Second Circuit affirming said order, *see* 96 F. (2d) 687, 26 F. T. C. 1511.

[2] Decision of the court affirming order of the Commission is reported in 96 F. (2d) 687, 26 F. T. C. 1511. Petition for certiorari to review such decision was denied by the Supreme Court on Oct. 17, 1938, 305 U. S. 634. Following the filing by the Commission of petition in aid of enforcement of court's decree affirming the Commission's order, the court, on Jan. 18, 1941, in *F. T. C. v. Biddle Purchasing Co.*, 117 F. (2d) 29, 32 F. T. C. 1840, granted in part the Commission's motion for bill of particulars incident to commission's said petition, and on March 13, 1941, 32 F. T. C. 1867, (not reported in Federal Reporter), denied the company's motion to dismiss the proceeding and granted the Commission's motion to refer the cause to the Commission as special master, etc. Thereafter, and following the filing by the company of an amended answer in the Commission's proceeding against it, court entered final decree as above set forth.

mission on July 17, 1937) by engaging in each of the several practices and consummating each of the several transactions described and set forth in the aforesaid petition in aid of enforcement and bill of particulars.

2. The respondent Biddle Purchasing Company be and it hereby is fined the sum of Five Hundred Dollars as and for a contempt of said decree; and the respondent Biddle Purchasing Company pay the said sum of Five Hundred Dollars to the Clerk of this Court on or before June 30, 1941.

PARFUMS CORDAY, INC. v. FEDERAL TRADE COMMISSION[1]

No. 215

(Circuit Court of Appeals, Second Circuit. June 16, 1941)

Per curiam order affirming, on the authority of the court's decision in *Fioret Sales Co. Inc.*, v. *Federal Trade Commission*, 100 F. (2d) 358, 28 F. T. C. 1955, order of Commission in Docket 3639, 29 F. T. C. 1043, 1049, requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of its perfumes, toilet waters and other cosmetic preparations, to cease and desist from representing, through use of term "Paris, France" or any other terms, etc., indicative of French or other foreign origin, that perfumes, etc., made or compounded in the United States are made or compounded in France or any other foreign country, and using any French or other foreign terms, etc., as in order in detail set forth, and subject to proviso thereof where foreign ingredients are included in domestically made product.

Mr. Joseph L. Hochman, of New York City, for petitioner.

Mr. J. T. Welch, and *Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, *Mr. S. Brogdyne Teu, II*, and *Mr. James W. Nichol*, all of Washington, D. C., for the Commission.

Before L. HAND, CHASE, and CLARK, *Circuit Judges.*

Per Curiam.

Order affirmed on opinion in *Fioret Sales Co., Inc.* v. *Federal Trade Commission*, 100 F. (2d) 358 (C. C. A. 2).

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[1] Reported in 120 F. (2d) 808. For case before Commission, *see* 29 F. T. C. 1043.

HERSHEY CHOCOLATE CORPORATION, PETER CAILLER KOHLER SWISS CHOCOLATES COMPANY, INC., LAMONT, CORLISS & COMPANY, SANITARY AUTOMATIC CANDY CORPORATION, BERLO VENDING COMPANY, AND CONFECTION CABINET CORPORATION v. FEDERAL TRADE COMMISSION[1]

No. 7103

(Circuit Court of Appeals, Third Circuit. June 30, 1941)

FINDINGS OF COMMISSION—WHERE SUPPORTED BY EVIDENCE.

The findings of the Federal Trade Commission are conclusive if supported by the evidence. Federal Trade Commission Act, Sec. 5 (c), 15 U. S. C. A. sec. 45 (c).

UNFAIR METHODS OF COMPETITION—CONCERT OF ACTION—DEALING ON EXCLUSIVE AND TYING BASIS—CANDY BAR MANUFACTURERS AND VENDING MACHINE OPERATORS.

An arrangement between candy bar manufacturers and certain operators of vending machines under which sale of candy bars suitable for vending machine trade was restricted to such operators, which cut off competitors' source of sup[969]ply, constituted "unfair competition" which was proper subject of order of Federal Trade Commission.

UNFAIR METHODS OF COMPETITION—CONCERT OF ACTION—DEALING ON EXCLUSIVE AND TYING BASIS—WHERE UNDULY RESTRICTIVE OR MONOPOLISTIC EFFECT.

An arrangement between manufacturers and distributors which tends unduly to hinder competitors or create a monopoly is unlawful.

PUBLIC INTEREST—COMPETITORS' SOURCES OF SUPPLY—WHERE MONOPOLISTIC TENDENCY IN RESPECT OF.

The making available to all competitors of commodities essential to open competition in the industry, thereby insuring a free and unobstructed flow of such commodities from manufacturer to consumer is in the "public interest" and any tendency to create a monopoly may become subject of an order of the Federal Trade Commission.

CEASE AND DESIST ORDERS—PUBLIC INTEREST—CONCERT OF ACTION—DEALING ON EXCLUSIVE AND TYING BASIS—CANDY BAR MANUFACTURERES AND VENDING MACHINE OPERATORS—WHERE ARRANGEMENT BETWEEN MANUFACTURER OF LEADING VENDING MACHINE BARS AND THREE LARGEST OPERATORS, AND COMPETITORS AND CUSTOMERS HAMPERED AND CUT OFF.

Where result of an arrangement, under which manufacturers of candy bars which enjoyed a greater consumer demand than any competing brands furnished bars suitable for vending machine trade only to the three largest operators of vending machines, had effect of making it difficult for operators' competitors to conduct their business because of inability to obtain bars at profitable prices, and the competitors' customers desiring to purchase the bars were deprived of opportunity to do so, an order of the Federal Trade Commission was appropriate, on ground that the "public interest" was involved.

[1] Reported in 121 F. (2d) 968. For case before Commission, *see* 28 F. T. C. 1057.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS FOR REVIEW—FULL AND FAIR HEARING—PROFFER OF PROOF AND CROSS-EXAMINATION—REJECTION AND RESTRICTION OF—WHERE OBJECTIONS NOT SEASONABLY TAKEN.

Where petitioners who sought review of order of Federal Trade Commission failed to avail themselves of remedy provided by the provision of the Federal Trade Commission Act relating to review of an order and rehearing, petitioners could not raise contention that they were deprived of full and fair hearing because of striking from record of proffer of proof and restriction on cross-examination of certain witnesses.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—ABANDONMENT—IF SHORTLY PRIOR TO COMPLAINT.

Alleged fact that unfair trade practices which were subject of order of the Federal Trade Commission were discontinued shortly before complaint was issued did not preclude the Commission from entering the order.

CEASE AND DESIST ORDERS—SCOPE—IF CERTAIN ITEMS EMBRACED NOT INCLUDED IN COMPLAINT.

An order of the Federal Trade Commission was not invalid because it referred to unfair practices in connection with certain items which were not included in the complaint, since the Commission's power was not limited to the enjoining of unfair acts of competitors only as evidenced in the past.

CEASE AND DESIST ORDERS—PARTIES—PARTICIPATION AS TEST OF BINDING EFFECT ON—WHERE PARTY PARTICIPANT AS PRINCIPAL OF EXCLUSIVE SELLING AGENT.

An order entered by the Federal Trade Commission was binding on all parties who participated in the unfair trade practices involved, including a party whose participation occurred through its exclusive selling agent.

(The syllabus, with substituted captions, is taken from 121 F. (2d) 968)

On petition for review of order of Commission, order affirmed, etc.

Mr. Bernard G. Segal, of Philadelphia, Pa. (Mr. Wm. A. Schnader, Mr. Howard S. McMorris, and Schnader & Lewis, all of Philadelphia, Pa., on the brief), for petitioner Berlo Vending Co.

Mr. Sol. A. Rosenblatt, and *Mr. William B. Jaffe*, both of New York City (Mr. Herman S. Rosenblatt, of New York City, on the brief), for petitioner Sanitary Automatic Candy Corp.

Mr. M. Robert Sturman, of Chicago, Ill., for Confection Cabinet Corp.

Mr. James W. Reynolds, of Harrisburg, Pa. (Mr. Wellington S. Crouse, on the brief), for Hershey Chocolate Corp.

Mr. Grosvenor Calkins, of Boston, Mass., for Kohler Swiss Chocolates Co. and another.

Mr. John Darsey, of Washington, D. C. (Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and Mr. Joseph J. Smith, [970] Jr., on the brief), for the Commission.

Before MARIS, CLARK, and GOODRICH, *Circuit Judges.*

CLARK, *Circuit Judge:*

The Federal Trade Commission finds that two of the petitioners, Hershey Chocolate Corp., and Peter Cailler Kohler Swiss Chocolate Co., are manufacturers of chocolate bars which enjoy a greater consumer demand than any competing brands. By contract the petitioners' sale of these bars in a size suitable for the vending machine trade was restricted to the three largest operators of vending machines, Sanitary Automatic Candy Corp., Berlo Vending Co. and Confection Cabinet Corp. This limitation in the selection of retail outlets is found to continue even after the expiration of the contract. Its effect is held to unfairly injure the competitors of the three chosen vending machine operators and to deprive the public to some extent of their most popular chocolate bars. The Commission further finds that the agreement and understanding which succeeded it was a practice which unduly restricted competition and tended to create a monopoly. It therefore ordered the two chocolate manufacturers, the sales agent of one, and the three vending machine companies, to cease and desist the continuance of the unfair methods of competition implicit in the agreement and understanding.

The six companies at whom the order was directed[1] have raised numerous objections to the findings and order. These objections seem to us to go to the weight of the evidence and to the inferences to be drawn therefrom. The petitioners have, in fact, worked at cross purposes. Hershey contends that its practices are not harmful because "there were thirty or forty other companies in the United States similarly engaged with 'Hershey' and 'Kohler' in the manufacture of chocolate candy products and many made solid chocolate bars suitable for vending machine use", whereas Kohler refutes this and objects to a lack of proof of substantial competition, claiming that Lamont and Hershey have but one competitor in this field.

The findings are conclusive upon us if supported by evidence.[2] This evidence discloses that the limitation and selection of retail

[1] Hershey Chocolate Corp., Peter Cailler Kohler Swiss Chocolate Co., Lamont, Corliss & Co., Sanitary Automatic Candy Corp., Berlo Vending Co., and Confection Cabinet Corp.

[2] *F. T. C. v. Curtis Publishing Co.*, 260 U. S. 568; *F. T. C. v. Algoma Lumber Co.*, 291 U. S. 67; *F. T. C. v. Standard Education Society*, 302 U. S. 112; *Minter v. F. T. C.*, 102 F. (2d) 69. See Daniels, Judicial Review of The Fact Findings of The Federal Trade Commission, 14 Washington Law Review 37; Conclusiveness of Findings of Fact By Federal Commission, 5 University of Chicago Law Review 495; Hankin, Conclusiveness of The Federal Trade Commission's Findings of Fact, 23 Michigan Law Review 233; Morrison, Judicial Review of Findings of Fact Found by The Federal Trade Commission, 4 Tulane Law Review 638.

outlets was brought about by an agreement between Lamont and the three vending machine operators. This agreement provided that the sale of Kohler chocolate bars for use in vending machines be restricted to the three largest operators of those machines. The nineteen other vending machine companies which formerly purchased Kohler products were notified that the manufacture of vending machine bars was discontinued. To keep the trade of the three largest vendors, Hershey was forced into a similar arrangement. Even after the termination of the exclusive distributor contracts neither Hershey nor Lamont, with a single exception, offered to sell to any other vending machine company a solid chocolate bar equal in size and weight to and at a price as low as the size, weight and price of the items sold to the three largest operators. This was clearly a cutting off of a competitor's source. This was unfair competition even under the National Industrial Recovery Act Codes.[3] The analogous situation of boycotts by wholesalers of certain retailers who violate trade provisions have been held unfair competition.[4] A scheme like the one be[971]fore us is unlawful where it tends unduly to hinder competitors or create a monopoly:

> The dogma has been that the Commission is not a censor of business morals, but that the practice must be characterized by deception, bad faith, fraud or oppression, or must be against public policy because of its dangerous tendency to hinder competition unduly or to create monopoly.
>
> Unfair Competition—Unfair Methods of Competition Within the Federal Trade Commission Act, 82 University of Pennsylvania Law Review 664, 665.[5]

The petitioners make three additional arguments. They assert that the proceeding is not in the public interest, that they were deprived of a full and fair hearing, and that the Board's jurisdiction had ended. As authority for their first point, they cite *F. T. C.* v. *Klesner*.[6] This case holds that the Commission has no jurisdiction where the public interest is not specific and substantial.[7] But the

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[3] *F. T. C.* v. *Wallace*, 75 F. (2d) 733; noted in Trade-Regulation—Unfair Trade Practices—Boycott of Sellers to "Irregular" Dealers—Conflict of Cease and Desist Order With Code, 35 Columbia Law Review 465.

[4] *Fashion Originators' Guild of America* v. *F. T. C.*, 312 U. S. 457, filed March 3, 1941; noted in Trade Regulation—Boycott By Business Group Held Illegal Per Se, 41 Columbia Law Review 941; see Trade Regulation—Federal Trade Commission Act—Unfair Methods of Competition—Boycott by Manufacturers' Trade Association to Suppress Style Piracy, 8 George Washington Law Review 1122; Handler, Unfair Competition, 21 Iowa Law Review 175, 202 et seq.

[5] *F. T. C.* v. *Raladam*, 283 U. S. 643; *F. T. C.* v. *Paramount Famous Lasky Corp.*, 57 F. (2d) 152; Decision criticized in Trade-Marks—Trade Names and Unfair Competition—Unfair Practices, 1 George Washington Law Review 136; see Handler, Unfair Competition, 21 Iowa Law Review 175, 251; Henderson, The Federal Trade Commission 245–326.

[6] 280 U. S. 19.

[7] The commentators have not agreed with the rationale of this decision. See Public Interest As A Jurisdictional Requirement Under Section 5 of the Federal Trade Commission Act, 43 Harvard Law Review 285; Trade Regulation—Degree of Public Interest Required to Vest Federal Trade Commission With Jurisdiction In Cases of Trade Name Simulation, 30 Columbia Law Review 270.

decision merely makes the point that the Commission cannot decide private quarrels between competitors. There can be no question about public interest where there is a clear tendency to monopoly. The making available to all competitors of commodities essential to open competition in the industry and thereby insuring a free and unobstructed flow of such commodities from the manufacturer to the consumer is certainly in the public interest. Under the exclusive distributor arrangements competitors of the three largest vending machine operators had difficulty in conducting their business because of their inability to obtain Hershey and Kohler products at profitable prices. Their customers desiring to purchase Hershey and Kohler products have been deprived of an opportunity to do so.

An alleged striking from the record of a proffer of proof and an alleged restriction on the cross-examination of certain witnesses are the bases for the claim that the petitioners were deprived of a full and fair hearing. Even if these contentions had merit, they cannot now be raised since the petitioners have failed to avail themselves of the remedy provided by section 5 (c) of the Federal Trade Commission Act.[8]

Finally the petitioners contend that the order is invalid in that the practices ordered ceased were discontinued shortly before the complaint was issued, and in that the order refers to unfair practices in connection with several confectionary items whereas the complaint was limited to one item. The Commission would have no power at all if it lost jurisdiction every time a competitor halted an unfair practice just as the Commission was about to act. The practice may have been discontinued but without the Commission's order it could be immediately resumed.[9] Likewise the Commission's power would be limited indeed if it were restricted to enjoining unfair acts of competitors only as evidenced in the past. To be of any value the order must proscribe the method of unfair competition as well as the specific [972] acts by which it has been manifested. In no other way could the Commission fulfill its remedial function.[10] The order is binding upon all petitioners, even Kohler whose participation in the arrangement occurred through Lamont, its exclusive selling agent.

The order of the Federal Trade Commission is affirmed. A decree enforcing it will be entered.

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[8] 15 U. S. C. A. § 45 (c); *California Lumbermen's Council* v. *F. T. C.*, 115 F. (2d) 178; see *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197.

[9] *Sears Roebuck & Co.* v. *F. T. C.*, 258 Fed. 307; *Fox Film Corp.* v. *F. T. C.*, 296 Fed. 353; *Fairyfoot Products Co.* v. *F. T. C.*, 80 F. (2d) 684; *Dr. W. B. Caldwell, Inc.* v. *F. T. C.*, 111 F. (2d) 899.

[10] *Western Meat Co.* v. *F. T. C.*, 4 F. (2d) 223, 224. The statute is not limited to the prevention of specified acts, but is aimed at prohibiting "unfair methods of competition," 15 U. S. C. A. § 45.

PERMA-MAID COMPANY, INC. v. FEDERAL TRADE COMMISSION [1]

No. 8516

(Circuit Court of Appeals, Sixth Circuit. June 25, 1941)

FINDINGS OF COMMISSION—WHERE BASED ON STIPULATION, CHIEFLY—EFFECT.

The findings of the Federal Trade Commission in a proceeding for prevention of unfair methods of competition, based almost entirely upon stipulation, were conclusive. Federal Trade Commission Act, sec. 5, 15 U. S. C. A. sec. 45.

CEASE AND DESIST ORDERS—DISPARAGEMENT AND MISREPRESENTATION OF COMPETITIVE PRODUCT—SALESMEN'S FALSE REPRESENTATIONS—WHERE INCLUDED AMONG COMPETITORS THOSE WHO DO NOT ENGAGE IN SUCH PRACTICE, AND TENDENCY TO INDUCE PURCHASE BY PUBLIC THEREBY—STAINLESS STEEL AND ALUMINUM COOKING UTENSILS.

Findings of the Federal Trade Commission that salesmen for corporation which sold and distributed stainless steel cooking utensils made false representations that food prepared or kept in aluminum utensils was detrimental to health, that there were among the corporation's competitors, distributors of utensils who did not make false statements concerning products of their competitors and that representations made by salesmen had tendency to induce public to purchase corporation's utensils, were sufficient to support cease and desist order entered against corporation.

CEASE AND DESIST ORDERS—DISPARAGEMENT AND MISREPRESENTATION OF COMPETITIVE PRODUCT—SALESMEN'S FALSE REPRESENTATIONS—IF PREVENTIVE EFFORTS THERETOFORE DIRECTED AGAINST BY EMPLOYER-SELLER, ABSENT SHOWING ACTION PRIOR TO COMPLAINT OR SUCCESS THEREOF—STAINLESS STEEL AND ALUMINUM COOKING UTENSILS.

Where Federal Trade Commission found that salesmen for corporation which sold and distributed stainless steel cooking utensils made false representations concerning effect of cooking food in aluminum utensils, finding of commission that corporation forbade its salesmen to make such representations, and for more than a year had on every occasion where a violation of its instructions had been called to its attention penalized its salesmen, did not require setting aside of cease and desist order entered against corporation, in absence of finding showing that corporation made any attempt to prevent unlawful practices prior to filing of complaint or of conclusive showing that effort made by corporation to prevent the practices was successful.

METHODS, ACTS AND PRACTICES—ABANDONMENT—WHERE AFTER COMPLAINT—WHETHER CONTROVERSY THEREBY MOOT.

Abandonment of unfair trade practices after complaint was filed by Federal Trade Commission would not render controversy "moot", even if abandonment was clearly shown.

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[1] Reported in 121 F. (2d) 282. For case before Commission, *see* 29 F. T. C. 1403.

UNFAIR METHODS OF COMPETITION—ABANDONMENT—COMMISSION DUTY.

The duty of Federal Trade Commission to prevent use of unfair method of competition in commerce is not discharged by abandoning complaint upon a showing that unlawful practices have been discontinued, since such showing constitutes no guaranty that they will not be resumed and the law prescribes only one effective method by which commission may discharge its duty, that is, by issuance of appropriate cease and desist order.

(The syllabus, with substituted captions, is taken from 121 F. (2d) 282)

On petition to review order of Commission, directing petitioner to cease and desist from making certain representations, wherein the Commission sought the enforcement of the order, [283] petition to review denied and appropriate decree to be entered affirming the order and decreeing its enforcement.

Mr. T. R. Iserman, of New York City (Larkin, Rathbone & Perry, of New York City, and Maxwell & Ramsey, of Cincinnati, O., on the brief), for petitioner.

Mr. Martin A. Morrison, of Washington, D. C. (Mr. W. T. Kelley, Mr. Martin A. Morrison, Mr. S. Brogdyne Teu, II, and Mr. James W. Nichol, all of Washington, D. C., on the brief), for the Commission.

Before HICKS, ALLEN, and HAMILTON, *Circuit Judges*.

HICKS, *Circuit Judge:*

Petition by the Perma-Maid Co., Inc., to review an order of the Federal Trade Commission directing it to cease and desist from,—

1. Representing that food prepared or kept in aluminum utensils is detrimental to the user thereof;

2. Representing that the preparation of food in aluminum utensils causes the formation of poisons;

3. Representing that the consumption of food prepared or kept in aluminum utensils will cause ulcers, cancers, cancerous growths and various other ailments, afflictions and diseases.

The Commission seeks the enforcement of the order.

The order is based upon findings from the evidence and upon a stipulation of the parties. In substance the findings are that petitioner, a corporation, has its principal place of business in Cincinnati, Ohio; that it is a subsidiary of the Electric Auto-Lite Co. and the selling agent and distributor of stainless steel cooking utensils manufactured by that company; that it has offices in various cities of the country and employs about three hundred salesmen who work therefrom and obtain orders for the purchase of cooking utensils in house to house canvassing; that utensils so ordered have been delivered by petitioner from Cincinnati to the purchasers in other states; that petitioner for more than one year prior to December 13, 1937, the date

of its answer to the complaint, has been thus engaged in interstate commerce; that in the sale of such utensils it is, and has been, engaged in substantial competition with other individuals, firms and corporations, who are and have been engaged in the business of manufacturing, selling and distributing in interstate commerce cooking utensils made from steel and other metal or materials; that petitioner's agents and salesmen have exhibited samples of its products to prospective purchasers and for the purpose of inducing the purchase of its products, have, upon their own initiative, made false, misleading and unfairly disparaging statements and representations with respect to the danger from the use of aluminum in the manufacture of kitchen utensils and the dire effects produced by aluminum materials upon foods prepared therein; that these false and misleading statements have been made in pamphlets, leaflets and circulars, and in sales talk to prospective purchasers. The Commission found the following to be typical of the various statements and representations made by petitioner's salesmen to would-be purchasers:

(1) Scientific information pertaining to the ingestion of aluminum compounds is now available. With all the Governmental reports of the deleterious effects of this metal before us, surely we should heed the warnings when we consider the fact that many millions of dollars worth of aluminum is used for the purpose of cooking and storing foods throughout the United States.

(2) The metal is soft and forms various poisons with the foods with which it is in contact.

(3) There is no objection to the use of this metal for casket purposes or as a mordant in the dye which is used to color the clothing which covers a corpse.

(4) The manufacturers of dyes state in their literature that we should NOT do our dyeing in aluminum—There is a reason.

(5) The substance is used for tanning hides, wall paper sizing, etc. It is the principal metal base used in making bricks, sewer pipe and road building materials. * * *

(6) Boil some of your drinking water in an aluminum dish for one-half hour, pour in a clear glass can and after cooling several hours note the white feathery substance in the bottom of the can. This is the poison dissolved from the utensil which readily combines with other chemicals forming aluminum compounds, some of these are: Aluminum acetate, chloride of aluminum, aluminum phosphate, aluminum sulphate. A host of other potent poisons are manufactured during the ordinary [284] process of cooking foods in aluminum dishes. These are formed according to the kind of food cooked therein.

(7) Did you ever find maggots in your aluminum pans? Do you know that such pans may be full of the most deadly bacteria known to science?

(8) Almost daily you read in the press of hundreds being poisoned by eating food cooked in aluminum. Do you know how such poisonings occur? If you do not, this circular will tell you.

(9) It has frequently happened that sauerkraut has eaten holes completely through the aluminum kettles in which it was prepared.

(10) Vegetables that are cooked with soda and salt will produce similar results.

(11) Corned beef corrodes most aluminum utensils. * * *

The Commission further found that these statements and representations have served as representations that food prepared or kept in aluminum utensils was detrimental to health and caused formation of poisons and that the consumption of such food would cause ulcers, cancers, cancerous growths and other ailments, afflictions and diseases.

It found that aluminum has for many years been used in the manufacture of cooking utensils and has been found to be satisfactory; that the consumption of food prepared or kept in aluminum kitchen utensils will not cause ulcers, cancers, cancerous growths or other ailments or diseases and that the preparation of food in aluminum utensils does not cause the formation of poison.

It further found that there are among the competitors of petitioner distributors of similar utensils made from aluminum, steel and other materials who do not falsely represent their products or make false and disparaging statements concerning the products of their competitors; that the false, misleading and unfairly disparaging representations made by petitioner's salesmen had the tendency to, and did, mislead and deceive a substantial number of persons, to whom they were made, into erroneously believing that aluminum cooking utensils are harmful and dangerous, thus inducing them to purchase petitioner's utensils instead of those of its competitors.

These findings based almost entirely upon stipulation are conclusive [Federal Trade Commission Act, Sec. 5] and sufficient to support the cease and desist order unless the order is completely negatived and destroyed by certain other findings upon which petitioner relies, i. e., the Commission found from the stipulation that the false and misleading statements and representations made in the pamphlets, leaflets and circular heretofore referred to were not printed, obtained or paid for by petitioner but were obtained and paid for by its agents and representatives from persons having no connection with or interest in petitioner's business. However, petitioner agrees that the acts of its agents were within the scope of their employment and that it must assume full responsibility therefor.

The Commission further found that upon discovering that certain of its agents had made the statements and representations and had distributed the pamphlets and other literature referred to, petitioner forbade them to make such statements and representations or to distribute such literature; and for more than one year had on every occasion, where a violation of its instructions had been called to its attention, discharged or otherwise penalized its agents for violating its orders.

These findings afford no warrant for setting aside the cease and desist order. They do not show that petitioner made any attempt to prevent the unlawful practices prior to the filing of the complaint

on November 20, 1937. They do not conclusively show that any effort at any time made by it to prevent the practices was successful. Moreover, an abandonment of the practices, even if clearly shown, does not render the controversy moot. Such is the latest pronouncement of the Supreme Court. *Federal Trade Commission* v. *Goodyear Tire & Rubber Co.*, 304 U. S. 257, 260. It is the duty of the Commission [Sec. 5 of Federal Trade Commission Act] "to *prevent* persons, partnerships or corporations from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce." [Italics ours.]

This duty is not discharged by abandoning the complaint upon a showing, not clearly made here, that the unlawful practices have been discontinued. Such showing constitutes no guaranty that they will not be resumed. See *Fed. Tr. Commission* v. *Wallace*, 75 F. (2d) 733, 738 (C. C. A. 8). The law prescribes one effective method, and one only, by which the Commission [285] may discharge its duty, i. e., the issuance of an appropriate cease and desist order. The order in no wise injures petitioner and will be an effective aid to it in its efforts to put a stop to the unfair practices.

The petition to review is denied and an appropriate decree will be entered affirming the order and decreeing its enforcement.

PEP BOYS—MANNY, MOE & JACK, INC. v. FEDERAL TRADE COMMISSION [1]

No. 7613

(Circuit Court of Appeals, Third Circuit. June 30, 1941)

FEDERAL TRADE COMMISSION ACT—SECTION 5—PROCEDURE—PUBLIC, RATHER THAN PRIVATE, INTEREST AS UNDERLYING

The procedure in the Federal Trade Commission Act is prescribed in the public interest as distinguished from provisions intended to afford remedies to private persons. Federal Trade Commission Act, sec. 5, 15 U. S. C. A. sec. 45.

UNFAIR METHODS OF COMPETITION—WHETHER EQUIVALENT TO UNFAIR COMPETITION, MERELY.

Under the Federal Trade Commission Act as originally enacted, the expression "unfair methods of competition in commerce are hereby declared unlawful" was intended to have a broader meaning than [159] "unfair competition."

UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES —WHEELER-LEA AMENDMENT—INTENT—COMPETITIVE PROCEDURAL REQUIREMENT THERETOFORE SET UP—EFFECT.

Under the Wheeler-Lea Act provision that unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are here-

[1] Reported in 122 F. (2d) 158. For case before Commission, *see* 31 F. T. C. 973.

by declared unlawful, the failure to mention competition in the later phrase manifests a legislative intent to remove the procedural requirements set up by a prior decision of the Supreme Court, and the Federal Trade Commission may now center its attention on the direct protection of the consumer. Federal Trade Commission Act, sec. 5, 15 U. S. C. A. sec 45, as amended.

METHODS, ACTS, AND PRACTICES—TRADE AND PRODUCT NAMES—APPROPRIATION AND USE OF EXTENSIVELY ADVERTISED, TO LESSEN OR INJURE COMPETITIVE BUSINESS—RADIOS.

Where seller of radios in interstate commerce took an extensively advertised name used by others and placed it upon seller's receiving sets, and name was selected because of contemplated advantage to seller by lessening or injuring business of present or potential rivals, the Federal Trade Commission, provided there was a specific and substantial public interest, could protect competitors against such methods of seller, or consumers against such practices.

METHODS, ACTS, AND PRACTICES—TRADE AND PRODUCT NAMES—APPROPRIATION AND USE OF EXTENSIVELY ADVERTISED, TO LESSEN OR INJURE COMPETITIVE BUSINESS—USE "REMINGTON" BY SELLER OF RADIOS—WHETHER UNFAIR METHOD, ETC.—UNINTENDED AND UNWITTING PURCHASE OF AVERAGE BUYER AS THEREBY INDUCED, AND PUBLIC INTEREST AS CRITERIA, RATHER THAN DECEPTIVE INTENT OR ACTUAL DECEPTION.

In determining whether seller of radios in interstate commerce under the name "Remington" was guilty of unfair methods of competition and unfair or deceptive practices in commerce in violation of Federal Trade Commission Act, the test was whether natural and probable result of seller's use of "Remington," made the average purchaser, unwittingly, under ordinary conditions, purchase that which he did not intend to buy, and a deliberate effort to deceive was not necessary nor was the Commission bound to find actual deception or that any competitor of seller had been damaged, but Commission was bound to find a specific and substantial public interest involved.

METHODS, ACTS, AND PRACTICES—TRADE AND PRODUCT NAMES—APPROPRIATION AND USE OF EXTENSIVELY ADVERTISED, TO LESSEN OR INJURE COMPETITIVE BUSINESS—USE "REMINGTON" BY SELLER OF RADIOS—WHETHER UNFAIR METHOD, ETC., AND PUBLIC INTEREST—WHERE LARGE NUMBER OF PURCHASES THEREBY EFFECTED BY UNADVISED PUBLIC.

Evidence that seller, which sold radios in competition with others in interstate commerce, had adopted the name "Remington," which had been used by others in business, for use on radios, and that as result thereof purchasers of 5,800 radios from 1935 to 1939 might have been deceived into purchasing an article which they might not have purchased if correctly informed as to its origin, warranted conclusion that purchasing public had a "specific and substantial interest" in protection against deception practiced by seller and that seller's acts constituted "unfair methods of competition in commerce", and "unfair or deceptive acts or practices in commerce" within Federal Trade Commission Act.

(The syllabus, with substituted captions, is taken from 122 F. (2d) 158)

On petition to review and set aside an order of the Commission, order affirmed and decree enforcing it entered.

Mr. Edward A. Kelly, of Philadelphia, Pa. (Mr. Edward A. Kelly, of Philadelphia, Pa., on the brief), for petitioner.

Mr. Martin A. Morrison, of Washington, D. C. (Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and Mr. Carrel F. Rhodes and Mr. James W. Nichol, special attorneys, all of Washington, D. C., on the brief), for the Commission.

Before MARIS and JONES, Circuit Judges, and WALKER, District Judge.

WALKER, *District Judge:*

The petitioner [1] is charged with unfair methods of competition in commerce and unfair or deceptive acts or practices in [160] commerce in violation of the Federal Trade Commission Act.[2] It is a Pennsylvania corporation and for a number of years prior to the cease and desist order of the Federal Trade Commission,[3] it engaged in the sale of radios, radio tubes, other radio parts, and automobile accessories through 52 stores operated by it and located in 7 of the States of the United States and in the District of Columbia.

In the conduct of its business petitioner adopted certain brands for a number of its products and in connection therewith obtained charters of incorporation under different titles, included among which was Windsor-Lloyd Products, Inc. The Windsor-Lloyd Products, Inc., was incorporated under the laws of the State of Delaware and thereafter caused to be registered in the United States Patent Office a certain trade-mark, to wit, "Remington," and in its statement to the United States Patent Office it said that the trade-mark had been adopted and used for radio receiving sets and radio tubes, electrical appliances, machines, and supplies. Petitioner entered into contracts with manufacturing companies for the manufacture of radio receiving sets to be sold exclusively by it, and to said sets it attached name plates which bore the name "Remington," the name or part of the name of a number of corporations transacting and doing business in the United States which are and have been favorably known to the purchasing public and which are and have been long established in various industries. Some of these, and we need

[1] Pep Boys—Manny, Moe and Jack, Inc., hereinafter referred to as petitioner or Pep Boys.

[2] Title 15 U. S. C. A. 45.

[3] Hereinafter referred to as Commission.

name only Remington Rand, Inc., and Remington Arms, use the name "Remington" as a trade name, mark, or brand for the products manufactured and sold by them.

The aforesaid radios were transported to the purchasers thereof in States other than the State where the shipment originated, and in the course and conduct of said business, petitioner was in substantial competition with corporations, firms, and individuals engaged in the sale and transportation of radios in commerce among and between the various States of the United States and in the District of Columbia.

The Commission concluded that the said acts and practices of Pep Boys were to the prejudice and injury of the public and petitioner's competitors and constituted unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

In 1914 the state of affairs with regard to the combatting of unlawful restraint of trade was unsatisfactory, and Congress yielding to continual demands offered as remedies the Federal Trade Commission Act[4] and the Clayton Act.[5] The procedure in the Federal Trade Commission Act is prescribed in the public interest as distinguished from provisions intended to afford remedies to private persons.[6] As enacted, section 5[7] provided: "Unfair methods of competition in commerce are declared unlawful." This expression, new in the law, was intended to have a broader meaning than "unfair competition" and it was to be determined in particular instances upon evidence in the light of particular competitive conditions and of what is found to be specific and substantial public interest.[8] When the Supreme Court was required to pass thereon in *Federal Trade Commission* v. *Raladam Co.*,[9] it emphasized competition and minimized public interest, by holding there must be a finding or evidence from which the conclusion legitimately can be drawn, that the unfair methods of competition substantially injure or tend to injure the business of a competitor or of competitors generally whether legitimate or not. It is said the decision provoked serious criticism in many quarters because it left the consumer virtually unprotected by weakening if not actually nullifying the powers expressly delegated to the Commission for the protection of the public and the consumer.[10]

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[4] Title 15 U. S. C. A. 45.

[5] Title 15 U. S. C. A. 12.

[6] *Amalgamated Utility Workers, et al.* v. *Consolidated Edison Co. of N. Y. Inc., et al.*, 309 U. S. 261, 268, 60 S. Ct. 561, 565; *Federal Trade Commission* v. *Klesner*, 280 U. S. 19, 25, 50 S. Ct. 1, 3.

[7] 38 Stat. 719, 15 U. S. C. A. 45.

[8] *A. L. A. Schechter Poultry Corp. et al.* v. *U. S.*, 295, U. S. 495, 55 S. Ct. 837.

[9] 283 U. S. 643, 51 S. Ct. 587.

[10] Derenberg. Trade-mark Protection and Unfair Trading (1936) pages 172, 173.

whether or not the criticism was justified [161] is now immaterial because *Federal Trade Commission* v. *Royal Milling Co., et al.*[11] and *Federal Trade Commission* v. *Algoma Lumber Co.*[12] paved the way for *Federal Trade Commission* v. *R. F. Keppel & Bros., Inc.*,[13] wherein the court recognized the Commission's jurisdiction in cases of unfair trading regardless of whether or not it is the public in general or a particular class of competitors whose interest demands the suppression of the practice complained of. This recognition of public interest was approved by Congress in 1938 with the enactment of the Wheeler-Lea Act,[14] the pertinent part of which reads: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful." The failure to mention competition in the later phase shows a legislative intent to remove the procedural requirement set up in the Raladam case and the Commission can now center its attention on the direct *protection of the consumer* where formerly it could protect him only indirectly through the protection of the competitor.[15]

The logic of the prseent trend of the law is apparent when we realize how helpless the Commission would be under the rule of the Raladam case where all the competitors in the industry were using the same practice or where the offender had a monopoly in a field which did not compete with any other field.

In this matter however, we do have competition. The record shows there are about 50 different radio manufacturers making radio sets, tubes, and parts; that it is a competitive industry. Therefore, when the petitioner took an extensively advertised and well known name and placed it upon its radio receiving sets, it did so because the name had, in its opinion, certain intangible qualities which would promote sales, and we must conclude that it was selected because of contemplated advantage by lessening or otherwise injuring the business of present or potential rivals. The Commission, provided there is a specific and substantial public interest, can protect competitors against such methods or consumers against such acts or practices.

The test is whether the natural and probable result of the use by petitioner of the name "Remington" makes the average purchaser unwittingly, under ordinary conditions purchase that which he did not intend to buy. A deliberate effort to deceive is not necessary nor must the Commission find actual deception or that any competitor of petitioner has been damaged,[16] but it must find a specific

[11] 288 U. S. 212, 53 S. Ct. 335.
[12] 291 U. S. 67, 54 S. Ct. 315.
[13] 291 U. S. 304, 54 S. Ct. 423.
[14] 52 Stat. 1028, 15 U. S. C. A. 45.
[15] 39 Columbia Law Review, 262. 53 Harvard Law Review 836, 837. *Minter* v. *Federal Trade Commission* (*Cir. 3*), 102 F. (2d) 69, 70.
[16] *Federal Trade Commission* v. *Balme*, 23 F. (2d) 615 (Cir. 2).

and substantial public interest.[17] Various ways in which the public interest may be involved have been stated, namely, an unfair method employed under circumstances which include flagrant oppression of the weak by the strong, or when the aggregate loss entailed may be so serious and widespread as to make the matter one of public consequence and no private suit would be brought to stop the unfair conduct, since the loss to each of the individuals affected is too small to warrant it,[18] or where consumers or dealers prefer to purchase a given article because it was made by a particular manufacturer or class of manufacturers, they have a right to do so and this right cannot be satisfied by imposing upon them an exactly similar article or one equally as good but having a different origin.[19]

The result of petitioner's act or practice is that purchasers of 5,800 radios from 1935 to 1939 may have been deceived into purchasing an article which they might not have bought if correctly informed as to its origin. We are of the opinion that the purchasing public is entitled to be protected against the species of deception practiced by the petitioner and that its interest in such protection is specific and substantial.

The order of the Commission is affirmed. A decree enforcing it will be entered.

FEDERAL TRADE COMMISSION v. FREDERICK A. CLARKE[1]

No. 1553-BH

(District Court for the Southern District of California, Central Division. July 18, 1941)

EVIDENCE—TRADE SECRETS—DISCLOSURE—REFUSAL TO TESTIFY AS INVOLVING—WHERE PROCEEDING UNDER SECTION 5—IF ANSWER MATERIAL AND NECESSARY—PUBLIC INTEREST AS AFFECTING—SECTIONS 9 AND 10.

In a proceeding under section 5, involving question as to whether or not representations made in connection with the offer and sale in commerce of asserted food product, allegedly a drug, constituted the use of unfair and deceptive acts and practices therein in violation of the provisions of said section, and, as material and necessary to the answer thereto, the proportions of the ingredients contained in said alleged drug, respondent individual could not, upon the ground that such proportions involved the disclosure of his trade secret, refuse to answer, in view of the fact that in such proceeding the Commission, in effect, is the government itself, acting in

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[17] *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, 53 S. Ct. 335.
[18] *Federal Trade Commission* v. *Klesner*, 280 U. S. 19, 50 S. Ct. 1.
[19] *Federal Trade Commission* v. *Royal Milling Co.*, *supra*.
[1] Not reported in Federal Reporter. Court's decision was appealed by respondent to the Circuit Court of Appeals for the Ninth Circuit on October 11, 1941, and is pending at the present writing.

the interests of the public, and, notwithstanding probability of injury to witness in disclosure entailed, private rights must give way where the good order of society is involved and essential disclosure be made in order that the issue may be correctly determined; and ordered that witness appear and testify at time and place named, under penalty of being subject to contempt proceeding or criminal prosecution, or both, under the provisions of the statute.

Mr. Merle P. Lyon, of Washington, D. C., for the Commission.
Mr. Eldon V. Soper, of Los Angeles, Calif., for defendant.

Before HARRISON, *District Judge*.

The COURT: Gentlemen, this presents an interesting and intriguing question of law, one that has interested the Court considerably. He has not only been interested in studying and reading the authorities submitted by counsel on both sides, but has spent considerable time in independent research. And it is true that there is a conflict in authorities, and some of the conflicts cannot be reconciled, in my way of thinking.

In this case the facts are virtually agreed to, but there is a wide difference of opinion as to the law that is applicable to those particular facts.

The affidavit and answer recognizes the fact that the complaint was filed before the Federal Trade Commission after the effective date of the 1938 amendment.[2] An answer was filed, Mr. Clarke appeared before the Commission at a hearing, answered certain questions and refused to answer such questions as would tend to reveal the formula of his product, claiming that it would be revealing a trade secret. Upon that basis he declined to answer.

An order for an application was made to the Court for an order requiring Mr. Clarke to appear and to give evidence and, in pursuance to that order, Mr. Clarke did appear and did give evidence, but declined to answer the question, "What are the proportions of those different ingredients?" which question followed the testimony of Mr. Clarke wherein he testified concerning the various ingredients that went into this products, but he declined to reveal the proportions of each ingredient.

It seems to me that in view of the language of the complaint filed by the Federal Trade Commission under the 1938 amendment, the

[2] Complaint in question, in the matter of Frederick A. Clarke, trading as Boncquet Laboratories, Docket 3660, which issued on December 8, 1938, alleged that respondent disseminated false and misleading advertisements in connection with the offer and sale of his so-called "Boncquet Blood Building Tablets," also known as "Boncquet Tablets" or "Boncquet Hemo-Tabs," which he falsely represented as a food which would regenerate the blood and was scientifically processed so as to have and retain vitamins A, B, E, and G, and which, as represented by him, would accomplish various valuable results, when in fact it was not a food, but a drug, and would not accomplish the results claimed therefor, and was without significant value in any anemic condition.

Commission had jurisdiction to conduct the hearing. It also appears to me that the question as to the contents of his product or the formula was a material question. So it comes down to the question as to whether or not Mr. Clarke could refuse to testify on the ground that it would tend to reveal a trade secret.

Under section 46 of title 15, U. S. C. A. under subdivision (*f*), it would appear that it was contemplated that under some circumstances there would be revealed to the Federal Trade Commission trade secrets.

The powers of the Commission are broad and the scope of its investigative powers is also broad, providing that a proper complaint has been filed indicating that the Commission has jurisdiction.

Counsel for Mr. Clarke has cited a number of cases on page 3, particularly the case of *Federal Trade Commission* v. *P. Lorillard Company*, 283 Fed. 999, and I think that the three cases there cited all hold in substance the same.

I notice in this case of *Federal Trade Commission* v. *P. Lorillard Company*, the case in 283 Fed., this language:

> It was not intended to grant an unlimited power of inquisition or an unlimited right of access to books and papers of private parties not engaged in any public service or a search without basis of some facts tending to establish a charge of wrongdoing.

That case naturally wouldn't apply to the case at bar, for there is a complaint charging wrongdoing.

Of course, some of the other cases go off on the question of whether or not the parties are engaged in interstate commerce. In this case that question is not involved because it is recognized by both parties that Mr. Clarke is so engaged.

I have read this case of *Carver* v. *Pinto Leite*, found in 7 Law Reports, page 90, also the case of *Tetlow* v. *Savournin*, 15 Phila. 170, and other Federal cases cited by counsel for Mr. Clarke. There is no question in the Court's mind but that that Philadelphia case and the case found in the Law Reports tend to uphold him in his position.

Reference is also made to the case of *United States* v. *Basic Products Company*, 260 Fed. 472 and, like I mentioned a moment ago, that case went off on the fact that the party against whom the complaint had been filed was not engaged in interstate commerce.

I feel that the case of *Moxie Nerve Food Company* v. *Beach*, 35 Fed. 465, also tends to uphold Mr. Clarke's counsel, as well as the *Star Kidney Pad Company* v. *Greenwood*, 3 Ontario Reps. 280.

However, I doubt whether, if that case were tried in an American court, that an American court would hold as it was held in that case. That was a case where a suit was had on a promissory note that had been given for certain pads, and the defense was that the notes were

obtained by a fraudulent representation, and I believe that our present-day method of trying cases would have permitted the defendant to have demonstrated that the pads were not as represented. And while the court did say in there, "That question would have to be solved by the experience of the sufferer rather than the skill of an expert, and the composition of the pads having formed no part of the inducement of the defendant to buy them," it indicates that the composition and the representations as to composition were not the real issue.

It is rather interesting to note that the cases that tend to uphold Mr. Clarke's position are, most of them, from 60 to 70 years old. I do not mean to infer that a rule that was recognized by a court in 1871 or 1881 or 1883 should be disregarded because of the lapse of time, but it is interesting because it indicates a trend of authorities.

I feel, as I stated before, that the question was material to the issue being tried by the Commission and that Mr. Clarke should have answered the question unless, as stated, that it be deemed a trade secret.

I also feel that in referring to the cases cited by Mr. Clarke's counsel by reason of their age have been, to a marked extent, overruled by more recent cases. The tendency of courts and of fact-finding bodies is to find the most direct method of ascertaining the truth.

I think that was boiled down and very clearly set forth in the case of *Funk* v. *United States*, 290 U. S. 371, wherein the court states:

> The fundamental basis upon which all rules of evidence must rest if they are to rest upon reason is their adaptation to the successful development of the truth, and since experience is of all teachers the most dependable, and since experience is also a continuous process, it follows that a rule of evidence at one time thought necessary to the ascertainment of truth should yield to the experience of a succeeding generation whenever that experience has clearly demonstrated the falsity or unwisdom in the old rule.

If I remember correctly, that case goes into the question and discusses somewhat the matter of privilege, and tends to restrict privileges afforded to witnesses wherever the granting of such privilege would tend to withhold the truth from the court.

We have a case from our own district entitled *Perkins Oil Well Cementing Company* v. *Owen*, 293 Fed. 759, wherein Judge James wrote the opinion. Among other things, he said:

> Courts have held, and not a few of them, especially in earlier decisions, that the mere fact that a party might in a suit, even a civil one, be required by the judgment to pay a sum in excess of a compensatory amount to his adversary, would entitle him, when examined as a witness, to claim the privilege. This was extending the constitutional protection under the plea of analogy to a limit which is not now recognized to be reasonable. In 28 Ruling Case Law, page 425, the editor gives expression to what seems to be the modern rule, where it is stated:

"However, it has been held that the privilege of a witness does not apply to penalty of a purely remedial character, and the distinction between the provisions of a remedial statute for the enforcement of the remedy and a penal statute has been stated to be that the penalty imposed by the remedial statute is not imposed as a punishment for a public wrong, but as a redress for a private grievance."

Now, you take again, following some of the authorities cited by counsel by Mr. Clarke, he cites Wigmore and he underlines this part:

What the state of the law actually is would be difficult to formulate precisely. It is clear that no absolute provision for trade secrets is recognized. On the other hand courts are apt not to require disclosure except in such cases and to such extent as may appear to be indispensable for the ascertainment of truth.

In the first place, that citation recognizes that there is no absolute provision for the protection of a man and his trade secrets, and he is required to disclose them except where it is not indispensable for the ascertainment of the truth.

I believe there is another citation that also recognizes that. In the case of *DuBois* v. *Thomas*, 122 Southern 495 and 154 Miss. 286, referred to in Mr. Clarke's counsel's memorandum, it is cited to show that where a trade secret is relative to an issue being tried, and its disclosure is essential in order that the issue may be correctly determined and justice administered, a witness is not privileged to refuse to disclose it. The case of *DuBoise* v. *Thomas*, found in 122 Southern at 495, clearly makes it incumbent upon a witness to reveal his trade secrets.

We also have the case In Re *Edge Ho Holding Corporation*, 176 N. E. 537, which tends to so hold, as well as other cases cited by counsel for the Commission, which it is not necessary to review.

But after a careful study I feel confident that the present tendency of the law is to require a person to answer questions that are necessary to be answered in the ascertainment of the truth.

We have here a number of cases in which the litigants were private parties and only private rights were involved. In this case we have as the moving party the Federal Trade Commission which, in effect, is the Government itself acting in the interests of the public, because if its activities were not in the interests of the public, it would not have the right to conduct such hearings.

It seems to me that the question asked is material, that in order to ascertain the facts it will be necessary for the witness to answer the question heretofore referred to.

I am not unmindful of the fact that this may work a hardship on Mr. Clarke. I approached this question really as a mediator between the parties because I felt, when it was first presented to me, that Mr. Clarke was perfectly justified in taking the position that he

took. But after studying the authorities and giving it considerable thought, I feel that the position of the Federal Trade Commission is correct.

I also recognize the fact that there is a probability that the revealing of this trade secret may be injurious to Mr. Clarke, but private rights must give way where the good order of society is involved.

It seems to me that it would be a very peculiar situation that the Federal Trade Commission, in holding hearings, could not obtain answers to material questions. Counsel has questioned the jurisdiction of this Court and the proceeding by which we have arrived at the present point in the proceedings, but if Mr. Clarke would decline to answer such questions it would absolutely thwart the Federal Trade Commission in its investigation promulgated by reason of the complaint.

I feel that it is going to be incumbent upon Mr. Clarke to answer the question as to what are the proportions of the different ingredients contained in his product.

I do not feel inclined at this time to unceremoniously direct a commitment against Mr. Clarke for contempt, because I feel that this is a serious question and he is entitled to his day in court to have the matter heard and passed upon, and I am going to give Mr. Clarke an opportunity to answer the question. Of course, if he desires to stand pat and not answer the question, the Court will be called upon and compelled at that time to exercise whatever authority it may have. It may even become necessary for the issuance of a commitment.

I think in that respect that the parties involved should not overlook the fact that not only are we involved here with a question of a commitment for contempt, but if the Commission had seen fit they could have proceeded under section 50 of title 15 U. S. C. A., which provides a very severe penalty, of a fine of not less than $1,000 nor more than $5,000, or for not more than one year in jail, or both such fine and imprisonment. It isn't the responsibility of the Court, but it will be a matter for the Federal Trade Commission to determine whether they want to proceed through contempt or through criminal prosecution, or by both.

May I inquire as to when the present hearing is continued to?

Mr. LYON. The present hearing has been continued to next Tuesday afternoon at 2 o'clock, July 22, 1941, at room 229 in the Post Office Building, Los Angeles, Calif.

The COURT. It is the order of the court that Frederick A. Clarke appear before the trial examiner of the Federal Trade Commission next Tuesday afternoon at 2:00 p. m., July 22, 1941, and there continue with his examination and testimony and answer the question, "What are the proportions of those different ingredients?" referred

to in his examination heretofore taken and referred to in the transcript. If Mr. Clarke appears and answers the question, the Court will dismiss these proceedings, otherwise we will see you all again, gentlemen.

Mr. SOPER. I appreciate the industry with which Your Honor has approached this question, and I regret the apparent conclusion you have come to.

Mr. LYON. May we have a short continuance of this case for the purpose of ascertaining whether or not Mr. Clarke will answer the question?

The COURT. If he fails to answer this, you will have to present it by a petition and order to show cause.[3]

THE STEVENSON CORPORATION, CHARLES R. STEVENSON, T. M. HARRISON, C. H. FERRIS, N. M. PERRIS, E. G. ACKERMAN, A. H. DYER, R. E. CASE, F. L. SWEETSER, W. R. GUTHRIE, A. P. NONWEILER, S. M. HUDSON, R. R. BLISS, L. P. PLATT, HOWARD MARVIN, AND D. M. METZGER, V. FEDERAL TRADE COMMISSION[1]

No. 17197

(Circuit Court of Appeals, Second Circuit. August 4, 1941)

Ordered, pursuant to stipulation, that petition to review order of Commission in Docket 3556, 30 F. T. C. 665, 703, requiring petitioners, as included in respondents in said proceeding, to cease and desist from entering into, etc., or aiding or abetting the carrying out of any agreement, etc., with intent or effect of restricting, restraining, or monopolizing or eliminating competition in the purchase or sale in commerce of fruit and vegetable veneer containers, and, in pursuance of any such agreement, etc., fixing or maintaining uniform prices, discounts, etc., and doing other acts and things, as in order in detail set forth, be withdrawn and the proceedings dismissed without prejudice, etc., as below set forth.

Mr. William W. Corlett, of New York City, for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, of Washingtonn, 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

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[3] Following the appearance of Mr. Clarke at the Federal Trade Commission hearing at the time and place named by the court, and his continued refusal to answer the question, a further petition to show cause was filed herein, and after hearing thereon on July 30, 1941, order of commitment was entered by the court on said date, from which order appeal was taken as heretofore noted to the Circuit Court of Appeals for the Ninth Circuit.

[1] Not reported in Federal Reporter. For case before Commission, *see* 30 F. T. C. 665.

cease and desist order of the Federal Trade Commission, respondent herein (dated March 15, 1940), filed in the office of the clerk of this court on the 9th day of May 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.

(sg) WILLIAM W. CORLETT,
William W. Corlett,
Attorney for the Petitioners.

(sg) W. T. KELLEY,
W. T. Kelley,
Chief Counsel
Federal Trade Commission.

JULY 30, 1941.
So ordered.
AUGUST 4, 1941.

D. E. ROBERTS, *Clerk.*

ROBERT C. BUNDY, INDIVIDUALLY AND TRADING AS THE JACKSON SALES COMPANY v. FEDERAL TRADE COMMISSION[1]

No. 9656

(Circuit Court of Appeals, Fifth Circuit. August 25, 1941)

Order, on petitioner's motion, dismissing petition to review Commission's order in Docket 3422, 31 F. T. C. 18, 26, requiring respondent, his representatives, etc., in connection with offer, etc., in commerce of bedspreads, blankets, silverware, cosmetics, and numerous other articles, to cease and desist from making use of lottery merchandising schemes, as in said order set forth.

Mr. Richard Hail Brown, of Birmingham, Ala., for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, of Washington, D. C., for the Commission.

JUDGMENT

On consideration of the motion filed by the petitioner in the above entitled and numbered cause, through Richard Hail Brown, Esq., counsel for said petitioner, *it is ordered* by the Court that said cause be, and it is hereby, dismissed.

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[1] Not reported in Federal Reporter. For case before Commission, *see* 31 F. T. C. 18.

RALADAM COMPANY v. FEDERAL TRADE COMMISSION[1]

No. 8026

(Circuit Court of Appeals, Sixth Circuit. Oct. 7, 1941)

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS FOR REVIEW—WHERE PRIOR PROCEEDING, INVOLVING SAME CONCERN AND PRODUCT, SUBJECT SUPREME COURT DECISION—WHETHER RES JUDICATA—IF DIFFERENT PERIOD OF TIME AND REPRESENTATIONS.

Where the United States Supreme Court affirmed an order of the Circuit Court of Appeals vacating a cease and desist order of the Federal Trade Commission, on ground that no substantial competition was shown by proof to have been injured or threatened with injury to a substantial extent by use of alleged unfair methods complained of, the Supreme Court's judgment was not "res judicata" on issues presented by a subsequent petition to set aside an order of the commission which involved a different period of time and representations and raised additional issues. Federal Trade Commission Act, sec. 1 et seq., as amended, 15 U. S. C. A., sec. 41 et seq.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS FOR REVIEW—WHERE PRIOR PROCEEDING, INVOLVING SAME CONCERN AND PRODUCT, SUBJECT SUPREME COURT DECISION—WHERE HOLDING OF LATTER NO JURISDICTION FOR LACK OF INJURY TO OR THREAT TO SUBSTANTIAL COMPETITION—IF EVIDENCE IN SUBSEQUENT AND INSTANT PROCEEDING NOT RADICALLY DIFFERENT.

Where the United States Supreme Court in reviewing an order vacating cease and desist order of Federal Trade Commission held that commission had no jurisdiction to make the order because there was no showing that substantial competition was injured or threatened with injury by [35] use of alleged unfair methods complained of, the Circuit Court of Appeals was required to follow Supreme Court on issue of jurisdiction in subsequent proceeding involving same company unless evidence in subsequent proceeding presented radically different situation.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS FOR REVIEW—METHODS, ACTS, AND PRACTICES—JURISDICTION—DETERMINATION OF AS PREREQUISITE PRELIMINARY TO CONSIDERATION OF MERITS.

On petition to review order of Federal Trade Commission, requiring petitioner to cease and desist from engaging in certain type of advertising, the Circuit Court of Appeals was required to resolve question of jurisdiction preliminarily to any consideration of the petition on the merits.

FEDERAL TRADE COMMISSION ACT—SECTION 5—COMPLAINTS UNDER—PREREQUISITES TO.

The Federal Trade Commission must, as a prerequisite to complaint under statute, determine whether there is reason to believe that unfair method of competition in commerce is being used, that proceeding would be to interest of the public and that such interest is specific and substantial.

UNFAIR METHODS OF COMPETITION—UNFAIR TRADE METHODS—WHETHER PER SE EMBRACED IN TERM.

Unfair trade methods are not per se "unfair methods of competition" within statute authorizing restraint.

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[1] Reported in 123 F. (2d) 34. For case before Commission, *see* 24 F. T. C. 475.

UNFAIR METHODS OF COMPETITION—CORRECTIVE ACTION—PREREQUISITES—INJURY, OR THREAT OF SUBSTANTIAL, TO COMPETITION, PRESENT OR POTENTIAL, AS SUFFICING.

In proceeding to restrain unfair methods of competition, it is sufficient to show that present or potential substantial competition is injured or threatened with substantial injury.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS FOR REVIEW—FINDINGS—WHERE FOUNDED ON SPECULATION—ADVERTISING PRACTICES.

On petition to review order of the Federal Trade Commission requiring petitioner to cease and desist from engaging in certain types of advertising, the Circuit Court of Appeals cannot approve finding of commission based upon pure speculation.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—IF INJURY OR THREATENED INJURY TO COMPETITORS NOT ESTABLISHED—OBESITY REMEDY.

Evidence failed to establish injury or threatened injury to competitors of petitioner as result of allegedly misleading advertisements made by petitioner in connection with sale and distribution in interstate commerce, of preparation used in treatment of obesity, and hence the Federal Trade Commission was without jurisdiction to enter cease and desist order against petitioner.

(The syllabus, with substituted captions, is taken from 123 F. (2d) 34)

On petition to review and set aside a cease and desist order of Commission, order of the Commission set aside.

Mr. Rockwell T. Gust, of Detroit, Mich. (Butzel, Eaman, Long, Gust & Bills, Mr. Rockwell T. Gust, and Mr. David A. Howell, all of Detroit, Mich., on the brief), for petitioner.

Mr. Martin A. Morrison, of Washington, D. C. (Mr. W. T. Kelley, Mr. Martin A. Morrison, Mr. Harry D. Michael, and Mr. James W. Nichol, all of Washington, D. C., on the brief), for the Commission.

Before HICKS, SIMONS, and ALLEN, *Circuit Judges.*

HICKS, *Circuit Judge:*

For the second time the Raladam Company petitions this court to review and set aside an order of the Federal Trade Commission directing it to cease and desist from certain practices with reference to offering for sale, and sale and distribution, in interstate commerce, of a preparation known as Marmola and used in the treatment of obesity.

In the previous case [42 F. (2d) 430] we vacated the order of the Commission on the ground that the evidence failed to disclose the existence of competition within the meaning of the act [15 U. S. C., sec. 41 et seq.]; and on the further ground that it was not shown that the representations in the advertising of Marmola that it was a safe and scientific remedy were in fact false.

[36] The Supreme Court affirmed the order [*F. T. C.* v. *Raladam Co.*, 283 U. S. 643] on the ground that no substantial competition, present or potential, was shown by the proof or from necessary inference, to have been injured, or threatened with injury to a substantial extent by the use of the alleged unfair methods complained of. The court held that jurisdiction of the Commission to make the order was lacking in the absence of a showing of competition, and that the proceeding must be dismissed. The Supreme Court and this court refused to grant motions to modify the order to permit the taking of additional evidence on the question of injury to competitors. Thereupon the Commission filed its amended complaint charging petitioner with certain violations of the act subsequently to the date of its cease and desist order in the first proceeding and in due course it issued an order requiring petitioner to cease and desist from making certain specified representations in its advertising of Marmola.

Petition for review was filed here on May 19, 1938, which was subsequent to an amendment of the Act effective March 21, 1938 (52 Stat. 112, 15 U. S. C. A., sec. 41 et seq., 1940 Cum. Pocket Part). Under the amendment the Commission is not required to file a petition for an order of enforcement, this Court having jurisdiction upon the filing of the petition to review the record. However, since the amended complaint was filed prior to the amendment, the violations charged, if we come to that question, must be construed in the light of the wording of the act as of that time.

Petitioner contends that the issues here are *res adjudicata*. We do not agree thereto. This case involves a different time period and representations which raise issues other than whether Marmola is a safe and scientific remedy. Moreover, all that was decided by the Supreme Court was that the Commission had no jurisdiction to issue the order under the evidence presented. The holding of this court that it appeared that the safe and scientific nature of Marmola as a remedy for obesity was a matter of opinion rather than one for factual determination must yield to the Supreme Court's opinion that there was no jurisdiction to issue the order in the first place. In the light of the ruling of the Supreme Court the assumption by that court that the advertisements of Marmola were dangerously misleading and that a proceeding to prevent their use was in the interest of the public, must be regarded by us as it was by the Supreme Court, i. e., simply an assumption for the purposes of its decision.

We must follow the Supreme Court upon the issue it decided, that of jurisdiction, unless the evidence in this case presents a radically different situation as to petitioner's competitors. We are bound to

resolve the question of jurisdiction preliminarily to any consideration on the merits. In considering jurisdiction the Supreme Court stated that there are three distinct prerequisites for a cease and desist order, namely, (1) that the methods complained of are unfair; (2) that they are methods of competition in commerce; and (3) that a proceeding by the Commission to prevent a use of the methods appears to be in the interest of the public. In order to simplify its consideration of the second prerequisite, the court, as we have noted, assumed the existence of the first and third. As to the second, it said:

> Thus, the Commission is called upon first to determine, as a necessary prerequisite to the issue of a complaint, whether there is reason to believe that a given person, partnership or corporation has been or is using any unfair method of competition in commerce; and, that being determined in the affirmative, the Commission still may not proceed unless it further appear that a proceeding would be to the interest of the public, and that such interest is specific and substantial. *Federal Trade Comm.* v. *Klesner*, 280 U. S. 19, 28, Unfair trade methods are not *per se* unfair methods of *competition.*

It continued that the word "competition" imported the existence of present or potential substantial competition and that the unfair methods must be such as unjustly affected or tend to affect the business of these competitors; that—

> While it is impossible from the terms of the act itself, and in the light of the foregoing circumstances leading up to its passage, reasonably to conclude that Congress intended to vest the Commission with the general power to prevent all sorts of unfair trade practices in commerce apart from their actual or potential effect upon the trade of competitors, it is not necessary that the facts point to any particular trader or traders. It is enough that there be present or potential substantial coompetition, which is shown by proof, or appears by necessary inference, to have been injured, or to be [37] clearly threatened with injury, to a substantial extent, by the use of the unfair methods complained of.

The court then applied these principles to the facts, saying:

> Findings of the Commission justify the conclusion that the advertisements naturally would tend to increase the business of respondent; but there is neither finding nor evidence from which the conclusion legitimately can be drawn that these advertisements substantially injured or tended thus to injure the business of any competitor or of competitors generally, whether legitimate or not. None of the supposed competitors appeared or was called upon to show what, if any, effect the misleading advertisements had, or were likely to have, upon his business. The only evidence as to the existence of competitors comes from medical sources not engaged in making or selling "obesity cures," and consists in the main of a list of supposed producers and sellers of "antifat remedies" compiled from the files and records of the Bureau of Investigation of the American Medical Association, a list which appears to have been gathered mainly from newspapers and advertisements.

The court went on to say that it was impossible to determine from the record whether these "competitors" were injured by petitioner's

advertising or whether they were in any sense real competitors, and if the preliminary assumption of competition is without foundation, jurisdiction to make the order fails.

On the issue of competition the Commission in paragraph 3 of its "Findings as to the Facts" had this to say:

> During the time above mentioned, other individuals, firms and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of medicines, preparations, systems, methods, books of instruction, and other commodities, articles, and means designed, intended, and used for the purpose of effecting weight reduction. Such other individuals, firms and corporations have caused and do now cause their said medicines, preparations, systems, methods, books of instruction, and other articles and means, when sold by them, to be transported from various States of the United States to, into and through States other than the State of origin of the shipments thereof. Respondent has been, during the aforesaid time, in substantial competition, in the sale of Marmola, with such other individuals, firms and corporations. Some of such competing products are sold direct to the consuming public while others are sold to wholesale and retail dealers through whom they are in turn sold to members of the public for their use.
>
> Respondent's preparation is in competition with all medical preparations sold and used for reducing purposes regardless of whether such preparations are of the so-called "patent medicine" type or are pharmaceutical preparations which may be bought by members of the consuming public on their own initiative or on the prescription of a physician. Competing products include, also, the following: Medical preparations which are used as adjuvants in the treatment of obesity, such as laxative salts; preparations sold and used for the purpose of effecting the lessening of the consumption of fat producing foods; and books of instruction on the subjects of diet or exercise, or both, intended and used for the purpose of effecting reduction by one or both of these means; * * *
>
> Respondent, in its advertising matter, recognizes that competing products are not confined to those preparations or products of the same general character as Marmola by specifically advising and urging the use of Marmola for reducing, instead of the use of diet, exercises, purgatives, cathartics, salts, laxatives, and other methods used for effecting reduction.

These findings were based upon the testimony of two or three drug and chain store operators that they sold, over the counter, several patented reducing remedies in addition to Marmola. They testified that ordinarily these remedies were stocked after advertising had created a demand for them. There was slight evidence that one or two companies selling the patented remedies had had a recent decline in sales. Only one or two witnesses were expressly questioned as to whether they considered Marmola a competing preparation. One emphatically disclaimed any such competition. There was no substantial evidence supporting the formula of the Supreme Court "that these advertisements substantially injured, or tended thus to injure the business of any competitor * * *." It appears that the majority in number of these "competitors" were likewise in

the business of commercially exploiting obesity remedies by advertising them to the general public.

In the previous case we expressed our disbelief "that the machinery of the Commis[38]sion was intended to give governmental aid to the protection of this kind of trade and commerce." The Supreme Court although not finding it necessary to decision, tentatively approved our view upon this feature.

We have greater difficulty with those "competitors" who have published books of instruction on the subject of diet or exercise, and those who are engaged strictly in the sale and distribution of ethical remedies which were advertised and otherwise made known to physicians, but even in these instances there was no substantial evidence that the Marmola advertising even tended to injure the sale of these publications and preparations. We find no evidence in the record upon which a substantial inference can be based that this was so. We cannot approve the finding of the Commission upon pure speculation. Marmola's sole connection with these distributees is through the slender thread that each has some relation to obesity reduction. These so-called "competitors" are not engaged in the sale of an apparently standardized product as in the case of *Federal Trade Commission* v. *Winsted Co.*, 258 U. S. 483. In the present case "the competitors" approached the treatment of obesity from widely divergent viewpoints. We cannot say that the class who consult physicians about their ailments or "who read up" thereon, were, or would be, drawn by this advertising into the class of those who have been deceived by nostrums held out to accomplish miracles of healing.

The order of the Commission is set aside.

PENALTY PROCEEDINGS

UNITED STATES V. PIUMA[1]

Civ. No. 927-RJ

(District Court, Southern District of California, Central Division July 22, 1941)

JURISDICTION OF COMMISSION—INTRASTATE COMMERCE—IF UNFAIR METHODS IN AFFECT DETRIMENTALLY INTERSTATE COMPETITORS.

Under Federal Trade Commission Act, Federal Trade Commission has power to control only transactions in interstate commerce, and has no power to control purely intrastate businesses, even though unfair methods of competition are used which detrimentally affect interstate competitors. Federal Trade Commission Act, sec. 1 et seq., 15 U. S. C. A., sec. 41 et seq.

CIVIL PENALTY PROCEEDINGS—JURISDICTION OF COMMISSION—INTERSTATE COMMERCE—COMPLAINTS—ADVERTISING FALSELY OR MISLEADINGLY—IF FAIRLY DEDUCIBLE IN CONNECTION WITH INTERSTATE BUSINESS AND NO OBJECTION RAISED.

In action by Federal Government to recover civil penalties prescribed by Federal Trade Commission Act, where it was fairly deducible from complaint that advertisements complained of as unfair competition were made in connection with interstate business, and defendant raised no objection to form of complaint, lack of definiteness in complaint would not prevent giving judgment for Federal Government if it was otherwise so entitled. Federal Trade Commission Act, sec. 5 (1), 15 U. S. C. A., sec. 45 (1).

CEASE AND DESIST ORDERS—ADVERTISING FALSELY OR MISLEADINGLY—JURISDICTION OF COMMISSION—COMMERCE, COMPETITION, AND PUBLIC INTEREST AS PREREQUISITE TO.

Where complaint before Federal Trade Commission charged and commission found that defendant was engaged in interstate commerce, that he falsely advertised his products, that he was in substantial competition with others in interstate commerce, and that proceeding was in interest of public, commission had jurisdiction to issue cease and desist order requiring defendant to refrain from making certain representations concerning merits of his product.

FEDERAL TRADE COMMISSION ACT—FINALITY OF ORDERS, FAILING STATUTORY APPEAL—WHEELER-LEA AMENDMENT—PURPOSE.

The purpose of 1938 amendment to Federal Trade Commission Act, providing that a cease and desist order of Federal Trade Commission becomes final unless defendant files a petition for review with Circuit Court of Appeals within 60 days from date of service of commission's order, is to bring doctrine of "res judicata" [120] into commission's jurisprudence. Federal Trade Commission Act, sec. 5 (g), 15 U. S. C. A., sec. 45 (g), as amended by Wheeler-Lea Act of 1938.

CIVIL PENALTY PROCEEDINGS—CEASE AND DESIST ORDERS—FINALITY OF ORDERS, FAILING STATUTORY APPEAL—ADVERTISING FALSELY OR MISLEADINGLY.

Where Federal Trade Commission found that defendant's advertisements of defendant's product were false and issued a cease and desist order, and

[1] Reported in 40 F. Supp. 119. For case before Commission, *see* 24 F. T. C. 939.

defendant's opportunity to challenge commission's findings was lost when defendant failed to petition for a review prior to time provided in 1938 amendment to Federal Trade Commission Act, defendant was not entitled to trial on facts determined by commission in an action brought by Federal Government in District Court to recover civil penalties prescribed by act for violation of cease and desist order. Federal Trade Commission Act, sec. 5 (d, g, l), 15 U. S. C. A., sec. 45 (d, g, l), as amended by Wheeler-Lea Act, of 1938.

FEDERAL TRADE COMMISSION ACT—FINALITY OF ORDERS, FAILING STATUTORY APPEAL—DUE PROCESS.

The giving finality to cease and desist order of Federal Trade Commission under Federal Trade Commission Act upon defendant's failing to petition for a review by Circuit Court of Appeals within time prescribed in act is consonant with "due process of law."

UNFAIR METHODS OF COMPETITION—ADVERTISING FALSELY OR MISLEADINGLY—IF COMPETITORS INJURED.

The use of false and misleading advertising which injures competitors in interstate commerce constitutes "unfair competition" within meaning of Federal Trade Commission Act.

CIVIL PENALTY PROCEEDINGS—CEASE AND DESIST ORDERS—ADVERTISING FALSELY OR MISLEADINGLY—"GLENDALE" PREPARATION AS GLAND TONIC AND BEST GLAND REMEDY KNOWN—IF ADVERTISEMENT, AFTER BECOMING FINAL OF ORDER, AS "GLAND TABLET" AND "ONE OF BEST GLAND REMEDIES KNOWN."

Where cease and desist order of Federal Trade Commission required defendant to refrain from representing that his product "Glendage" was a gland tonic, and that preparation was best gland remedy known, and order became final upon defendant's failing to petition for a review by Circuit Court of Appeals within time prescribed by Federal Trade Commission Act, subsequent advertisements by defendant of his product as a "gland tablet", and that it was "one of best gland remedies known," constituted violations of the order, authorizing Federal Government to recover civil penalties prescribed by the act.

(Syllabus, with substituted captions, is taken from 40 F. Supp. 119)

On plaintiff's motion for summary judgment upon the pleadings, judgment for plaintiff.

Mr. Wm. Fleet Palmer, United States Attorney, by *Mr. John M. Gault*, Assistant United States Attorney, both of Los Angeles, Cal., for plaintiff.

Mr. C. M. Castruccio, of Los Angeles, Calif., for defendant.

JENNEY, *District Judge:*

This is an action by the United States to recover civil penalties prescribed by the Federal Trade Commission Act, 15 U. S. C. A. § 41 (*l*). The plaintiff has moved for summary judgment upon the pleadings.

Defendant sells and distributes, from his place of business in Los Angeles to customers in various States and in the District of Columbia, a medical preparation known as "Glendage."

The complaint alleges and the answer admits the issuance and service by the Federal Trade Commission of a complaint dated September 5, 1934; the appearance and answer of the defendant before the Commission; the issuance and service upon the defendant of a cease and desist order dated April 6, 1937; and the failure of the defendant to seek review of that order. The pleadings in the proceeding before the Commission are attached to the complaint.

The cease and desist order of the Commission requires defendant to refrain from representing, directly or indirectly:

1. That said preparation is a gland tonic.
[121] 2. That said preparation will restore vigorous health.
3. That said preparation is the best gland remedy known.
4. That said preparation constitutes a remedy for glands.

The order further requires defendant to refrain from making, or continuing to make, six other statements concerning the merits of the product.

It is further alleged in the complaint that defendant has caused to be published, in newspapers having a wide interstate circulation, advertisements soliciting the sale of Glendage in various States of the United States and in the District of Columbia. The advertisements are each alleged to be substantially as follows:

Money-Back
Gland Tablet
Calls for Trial

Every cent will be refunded if results from Glendage are unsatisfactory. That's how sure we are that we have one of the best gland tablets known. Thousands of tests have proven this to our full satisfaction. You, too, may prove it without risking a penny.

Glendage, in convenient tablet form, is the private prescription of Jos. A. Piuma, Graduate Pharmacist. It contains the extracts from the glands of healthy animals and its purpose is to help stimulate all the glands to healthy activity. You will be surprised at its invigorating action. Vigorous health is necessary for success in all activity today.

Asthma, * * *

Thirteen publications are alleged, the complaint setting forth the name of the newspaper and the date published. Defendant admits that, "as alleged in paragraphs VIII and IX of the complaint, he has continued the sale of his said product, and has since advertised the same in the manner and form alleged * * *." There is no denial of any of the publications charged.

In paragraph IX it is alleged that by reason of the representations the defendant did violate the order and become liable to pay not more than $5,000 for each violation. The prayer asks $60,000 with costs.

Plaintiff failed to allege directly that the advertisements were made in connection with offers or sales in interstate commerce. The

limitation of the power of the Federal Trade Commission to transactions in interstate commerce is settled by a recent decision of the Supreme Court in *Federal Trade Commission* v. *Bunte Brothers, Inc.*, 312 U. S. 349, 61 S. Ct. 580, 85 L. Ed. 881. The court there held that under the Federal Trade Commission Act, 15 U. S. C. A § 41 et seq., the Commission has no power to control purely intrastate businesses even though unfair methods of competition are used which detrimentally "affect" interstate competitors. The court placed its decision upon principles of statutory construction, and did not question the constitutional power of Congress to confer upon the Commission power over intrastate transactions which "affect" interstate commerce. From the complaint in the instant case it is fairly deducible that the advertisements were made in connection with interstate business. Since the defendant has not raised any objection to the form of the complaint, this possible lack of definiteness will not prevent the court from giving judgment for the plaintiff if it is otherwise so entitled.

The question before the court is this: Except as to the amount of damages, is there here raised a genuine issue as to any material fact? If not, plaintiff may be entitled to judgment as a matter of law.

Defendant opposes the motion for a summary judgment, first, on the ground that the order of the Commission was void as beyond the jurisdiction of the Commission. This question has already been decided adversely to the defendant by our associate, Judge McCormick, who denied defendant's motion to dismiss. This court concurs in the holding of its associate that the prerequisites to the exercise of power by the Commission set forth in *Federal Trade Commission* v. *Raladam Co.*, 1931, 283 U. S. 643, 646, 51 S. Ct. 587, 75 L. Ed. 1324, 79 A. L. R. 1191, were disclosed in the proceeding before the Commission. The complaint before the Commission charged and it was found that defendant was engaged in interstate commerce; that he falsely advertised his product; that he was in substantial competition with others in interstate commerce; and that the proceeding was in the interest of the public. There is no need to look to amendments to the Federal Trade Commission Act to determine whether the Commission had jurisdiction, and the court does not do so.

Defendant's second objection is that, before the court can hold that the order was [122] violated, it must be determined by this court, as a question of fact, whether Glendage is "a gland tonic."

In 1937, even after the issuance of a cease and desist order, the burden of moving under the statute as it then read was upon the Commission. To secure compliance with the order, the Commission was then required to seek an order of enforcement from the Circuit Court of Appeals. It was only after a further violation of the court's order that sanctions might be imposed upon the defendant. The de-

fendant was permitted, if he desired, to appeal to the Circuit Court for an order setting aside the Commission's order even though the Commission had not theretofore petitioned for an order of enforcement. No time limit was set by the Act within which either of such actions had to be taken. However, under the amendatory Wheeler-Lea Act of 1938, Section 45 (*g*) of Title 15, U. S. C. A., it is provided that an order of the Commission becomes final unless the defendant files a petition for review with the Circuit Court of Appeals within sixty days from the date of service of the Commission's order. This 1938 amendment also provides that, as to orders served on or before the date of the enactment of the amendment, the sixty-day period shall run from the date of the enactment of the amendment (March 21, 1938). See footnote following 15 U. S. C. A. § 45 (*l*). The cease and desist order issued against the defendant in this suit, therefore, became final May 20, 1938.

Is it the province of this court to try the truth or falsity of the defendant's advertisements already found to be false by the Commission? The answer to this question depends upon the meaning to be given the word "final" as used in subsection (*g*).

The purpose of the provision was to bring the doctrine of res judicata into the Federal Trade Commission's jurisprudence. Hearings before the Committee on Interstate and Foreign Commerce on H. R. 3143, 75th Cong. 1st Sess. (1937) 56–58; 39 Columbia L. Rev. 271; 34 Ill. L. Rev. 626–629; The Control of False Advertising under the Wheeler-Lea Act, Milton Handler, 6 Law and Contemp. Prob. 91.

Other subsections of Section 45, Title 15, U. S. C. A. should be considered in determining the meaning to be given subsection (*g*). The review by the Circuit Court of Appeals is upon the entire record, including all evidence taken. The findings of the Commission, if supported by evidence, are conclusive. The court is, therefore, in a position to pass upon the facts. In this court we do not have the record before the Commission, and must necessarily accept the findings of that body. Moreover, subdivision (*d*) provides: "The jurisdiction of the circuit court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive."

Considering the scheme of the statute in its entirety, it is apparent that the defendant is not entitled thereunder to a trial in this court on facts determined by the Commission. Defendant's opportunity to challenge the Commission's findings was lost when he failed to petition for review prior to May 20, 1938. Giving finality to the order of the Commission when the defendant has the right of appeal is consonant with due process. *Shields* v. *Utah Idaho Cent. R. Co.*, 305 U. S. 177, 59 S. Ct. 160, 83 L. Ed. 111.

The Commission determined that the advertising, against which the order was issued, was false and misleading. In his affidavit in opposition to the motion for summary judgment defendant states that he will present expert testimony and evidence of users to establish the capacity and tendency of the product to produce beneficial results. Such evidence should have been submitted in the proceeding before the Commission. This court will not now retry that issue.

At the time the complaint was issued by the Commission the use of false and misleading advertising which injures competitors was an unfair method of competition within the meaning of the statute. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 1922, 258 U. S. 483, 42 S. Ct. 384, 66 L. Ed. 729; *L. & C. Mayers Co.* v. *Federal Trade Commission*, 2 Cir., 1938, 97 F. (2d) 365; *Justin Haynes & Co.* v. *Federal Trade Commission*, 2 Cir., 1939, 105 F. (2d) 988.

In *Federal Trade Commission* v. *Raladam*, *supra*, the review was upon the entire record before the Commission, and the court held that there was no evidence of the existence of competitors. Here the court is bound by the finding of the Commission that there were interstate competitors who were injured.

Although paragraphs IV and V of the answer deny that the defendant has violated the order of the Commission, defendant does not take the position that this mat[123]ter cannot be decided by the Court on the motion for summary judgment. No testimony is necessary to enable the Court to determine that the meaning and spirit of the advertisements violate the order. The substitution of "gland tablet" for "gland tonic" or "one of the best gland remedies known" for "the best gland remedy known" does not materially change the nature of the representations. In addition to these particular violations, the Court is of the opinion that the advertisement as a whole violated the cease and desist order.

There being no substantial issue of fact in dispute, the plaintiff is entitled to summary judgment upon the present state of the pleadings.

The motion to vacate Judge McCormick's order of January 25, 1941, is denied.

Judgment for plaintiff on account of 13 violations in the amount of $250 each, or a total of $3,250, in addition to costs.

It is so ordered.

During the period covered by this volume, i. e., June 1, 1941 to October 31, 1941 inclusive, two other cases involving civil penalty proceedings under Section 5 (1) of the Federal Trade Commission Act for violation of cease and desist orders of the Commission were settled and civil penalties amounting to $2,000.00, in addition to those set forth in the preceding case, collected.

Said cases were—

United States v. *Levore Co. et al.* United States District Court for the Northern District of Illinois, Eastern Division; judgment entered for $500 and satisfied August 25, 1941.

The Commission had ordered J. K. Levy, alias J. K. Lee, and David Levy, individually and trading as Levore Co., their representatives, etc., in connection with the offer, etc., in interstate commerce of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities, to cease and desist:

1. From supplying to or placing in the hands of others punch cards, pull cards, or push cards for the purpose of enabling such persons to dispose of or sell by the use thereof, said or similar products.

2. From mailing, shipping, or transporting to their agents or distributors or to members of the public, punch, push, or pull cards so prepared or printed as to enable said persons by the use thereof to sell or distribute said or similar products.

3. From selling or otherwise disposing of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities by the use of punch, push or pull cards.

4. From in any manner selling or otherwise disposing of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities by the use of devices depending upon lot or chance.

5. From directly or indirectly representing that they are manufacturers unless and until they own, operate, or control a factory wherein their products are made or manufactured; or

6. From representing in any manner that their radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities are free or given away, when such is not the fact.[2]

United States v. *Oppenheim, Collins & Co., Inc.* United States District Court for the Southern District of New York; consent decree entering judgment in the sum of $1,500 and costs and also enjoining the conduct proscribed by the order to cease and desist, September 5, 1941.

Respondent, Oppenheim, Collins & Co., Inc., their representatives, etc., in connection with the offering for sale, etc., of wearing apparel in interstate commerce, had been ordered to cease and desist from using the words "silk," "crepe," "taffeta," or "satin", as descriptive of products which are not composed of silk, the product of the cocoon of the silk worm, but which are composed of a material or materials other than silk.[3]

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[2] Docket 2607, Aug. 9, 1937, 25 F. T. C. 722, 732.
[3] Docket 3160, Aug. 21, 1937, 25 F. T. C. 903, 908

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[1] Page references to stipulations of the radio and periodical division are indicated by italicized page references. Such stipulations are also distinguished by figure "0" preceding the serial number, e. g., "01," "02," etc

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[1] Covering practices included in cease and desist orders and stipulations, at p. 1875, in instant volume. For index by commodities involved rather than practices, *see* Table of Commodities, preceding.

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[1] Page references to stipulations of the radio and periodical division are indicated by italicized page references. Such stipulations are also distinguished by figure "0" preceding the serial number of the stipulation, e. g., "01", "02", etc.

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