

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

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MEMBERS OF THE FEDERAL TRADE COMMISSION AS OF
JUNE 30, 1942

WILLIAM A. AYRES, *Chairman*.

Took oath of office August 23, 1934, and September 24, 1940.¹

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.

CHARLES H. MARCH.

Took oath of office February 1, 1929, and August 27, 1935.¹

EWIN L. DAVIS.

Took oath of office May 26, 1933, and August 31, 1939.¹

ROBERT E. FREER.

Took oath of office August 26, 1935, and September 19, 1938.² Reappoint-
ment for second term confirmed January 28, 1939.

OTIS B. JOHNSON, *Secretary*.

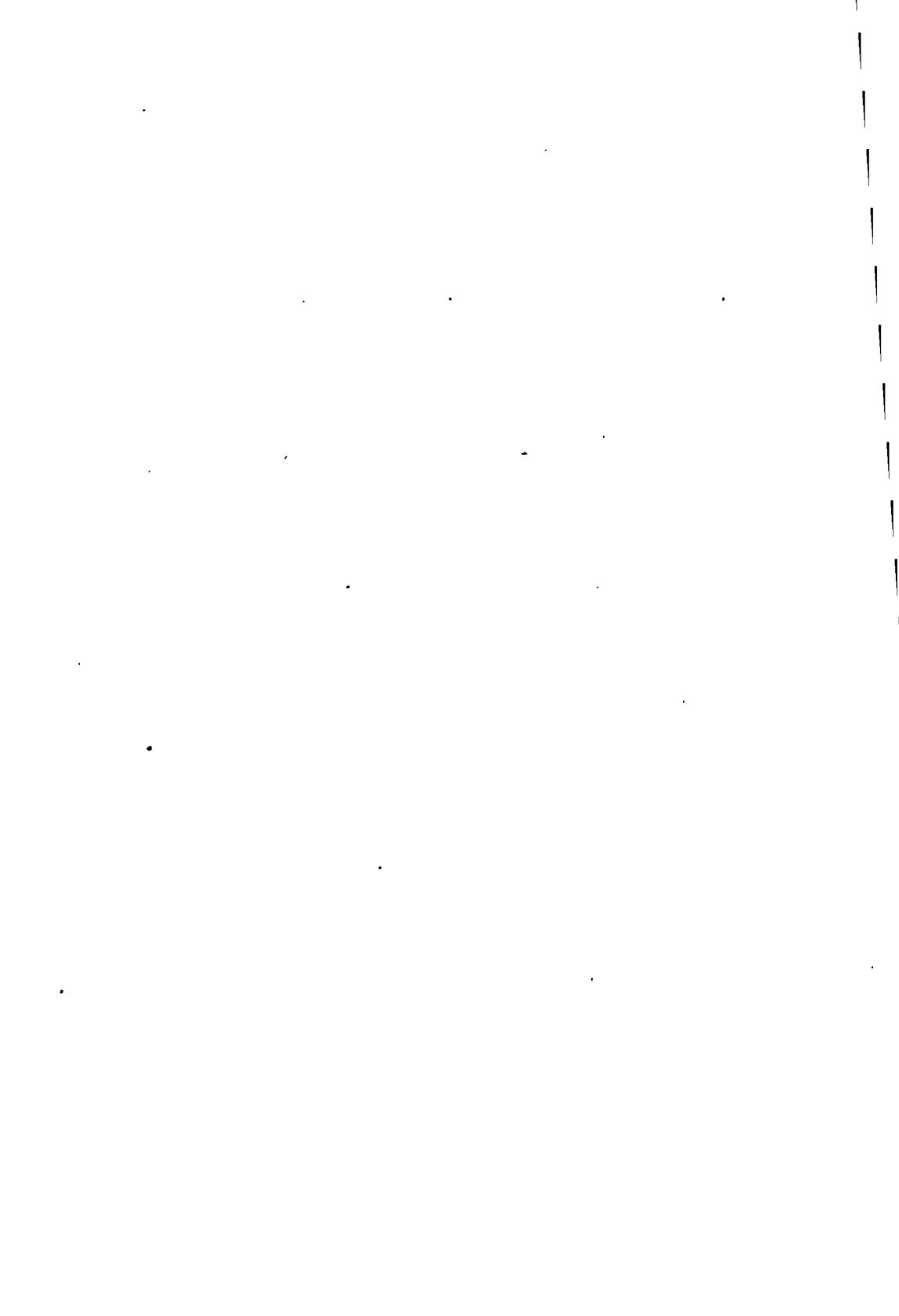
Took oath of office August 7, 1922.

¹ Second term.

² Recess appointment.

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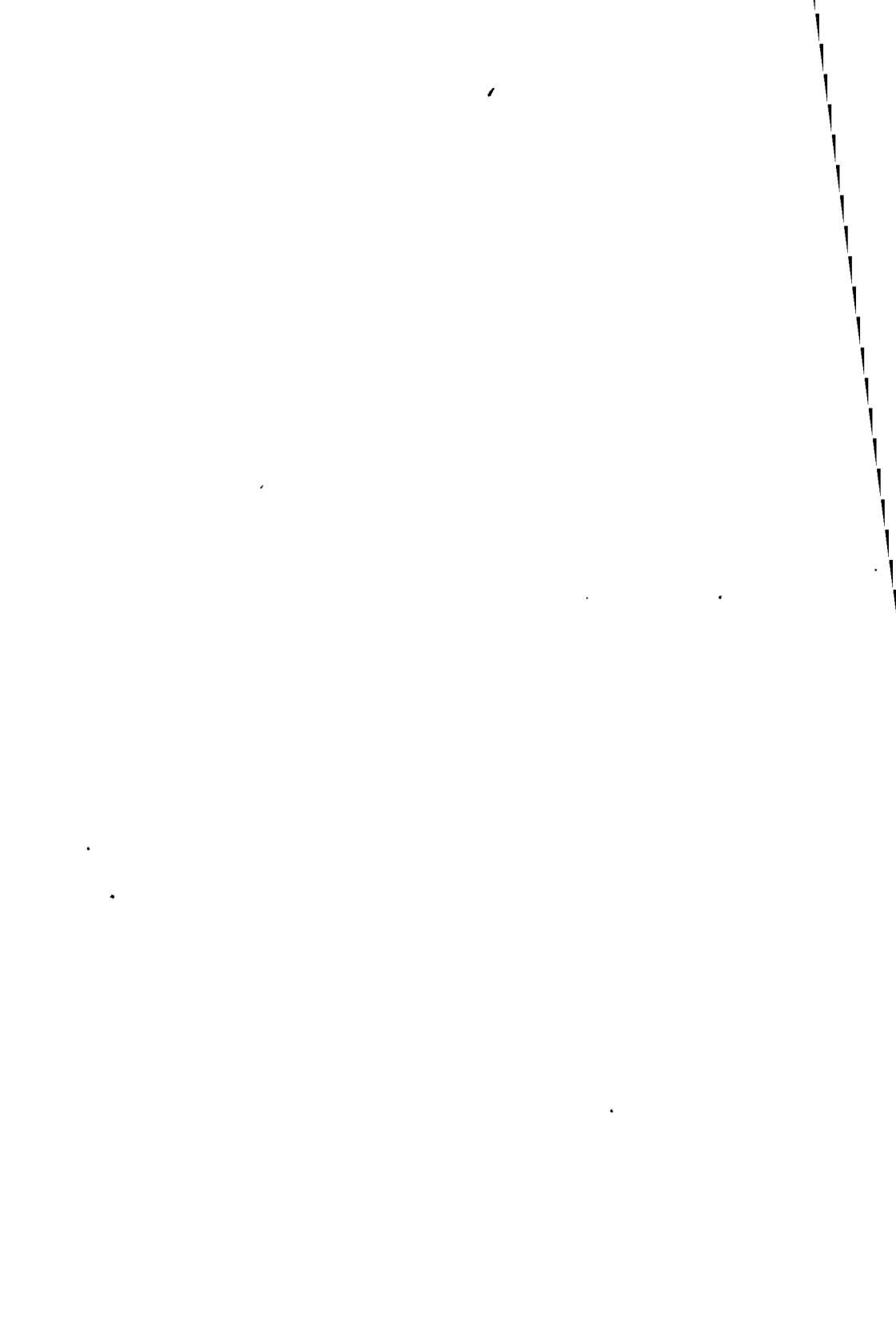
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¹ Interlinear citations are to the reports of the National Reporter System and to official United States Supreme Court Reports in those cases in which the proceeding, or proceedings as the case may be, have been there reported. Such cases do not include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

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

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¹ Interlocutory order. See also S. & D. 721.

² For interlocutory order, see "Memoranda," 28-1965 or 1938 S. & D. 485.

³ For interlocutory matter, see "Memoranda," 28-1968 or 1938 S. & D. 489.

⁴ For interlocutory order, see "Memoranda," 20-744 or S. & D. 720.

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⁷ For order of Circuit Court of Appeals on mandate, see "Memoranda," 20-741 or S. & D. 189.

⁸ Interlocutory order. See S. & D. 722.

⁹ For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

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

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

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

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

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

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

- Holloway & Co., M. J., et al.----- (C. C. A.) 22-1149; 31-1829.
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- Imperial Candy Co.----- (C. C. A.) 28-1894.
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¹⁷ For interlocutory order, see "Memoranda," 28-1968 or 1938 S. & D. 489.

¹⁸ For certain prior interlocutory proceedings, see also "Memoranda," 28-1967 or 1938 S. & D. 488.

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

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

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

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

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May's Cut Rate Drug Co.....	(D. C.) 30-1713.
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²³ For order of the Supreme Court of the District of Columbia, denying petition for writ of mandamus etc., see "Memoranda," 20-742 or S. & D. 704.

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

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

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* For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.

* For interlocutory order, see "Memoranda," 20-744 or S. & D. 718.

* For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

- New York Premium Novelty Co. (Alexander Weiler et al.) (C. C. A.) 34-1789.
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- Norden Ship Supply Co., Inc., et al. (Winslow et al.) (C. C. A.) 4-578.
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²⁹ For interlocutory order, see "Memoranda," 28-1965 or 1938 S. & D. 485.

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

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

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

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

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

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

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

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

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

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³⁸ For interlocutory order of lower court, see "Memoranda," 28-1966 or 1939 S. & D. 486.

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

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* For Interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

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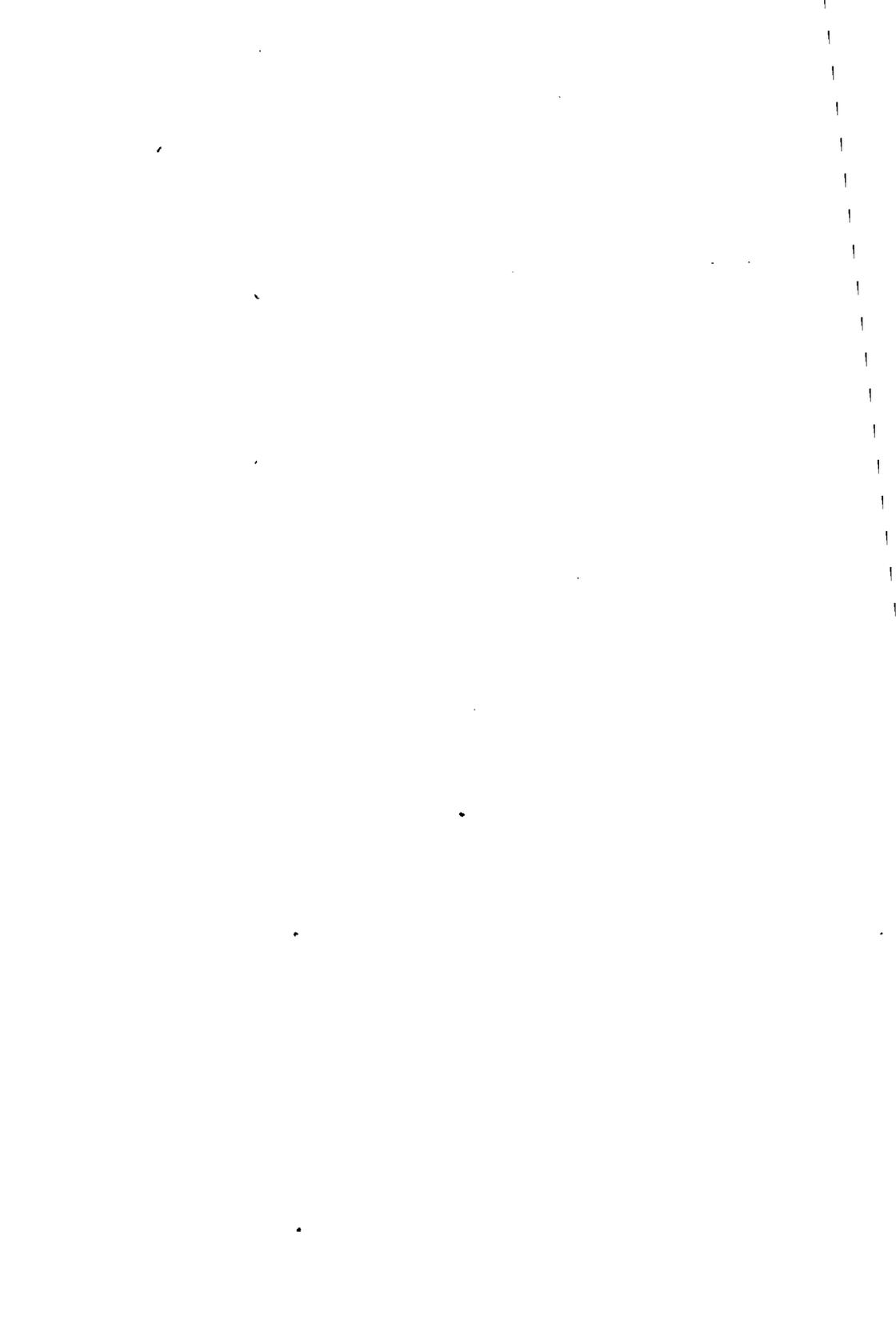
⁴¹ For Interlocutory order, see "Memoranda," 28-1968 or 1938 S. & D. 490.

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

⁴³ For interlocutory order, see "Memoranda," 20-743 or S & D. 716



FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, NOVEMBER 1, 1941, TO JUNE 30, 1942

IN THE MATTER OF

MILWAUKEE JEWISH KOSHER DELICATESSEN 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 3908. Complaint, Mar. 22, 1940¹—Decision, Nov. 4, 1941

Where a corporate association made up of five individuals who operated the only five delicatessen stores in the city of Milwaukee specializing in kosher products and who had, for a number of years, consistently dealt, as had their predecessors, in the "Wilno" or "Kosher Zion" brands of kosher meat products, or both, for which there had been developed such a demand that the success of a delicatessen store was substantially dependent upon its ability to handle one or both of said brands, purchased by said individuals from the two Chicago producers thereof or from their Milwaukee factory representative or distributor thereof, respectively;

Following the opening by one B of a retail delicatessen store specializing in kosher products, and said B's custom of keeping his store open seven days each week, including Fridays when the other five were closed, and of announcing, through signs, generally lower prices than those of his competitors, to whom such practices were objectionable; said B's failure to accede to suggestions from the aforesaid distributor that he heed complaints about his low prices and remove the signs, and his further refusal to become a member of the Association in question, upon finding that to do so would require his Friday closing and abandonment of his price signs; in pursuance of a common course of action and mutual understanding, with intent of lessening competition in said products and hindering sale thereof, as below set forth—

(a) Took measures to hinder, obstruct and prevent said B from purchasing aforesaid kosher and kosher style meats or allied products from said seller-manufacturers thereof; and

Where said two concerns, manufacturer-sellers of the aforesaid "Wilno" and "Kosher Zion" brand products, and their respective factory representative and distributor in said city, following unsuccessful efforts to persuade him to change his said practices in accordance with the wishes of said five delicatessen store owners—

¹ Amended and supplemental.

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- (b) Refused to accept further orders from B for aforesaid products, essential to the conduct of his business, and further sought to prevent him from securing such products indirectly, through efforts to locate his sources of supply; with the result that B, unable to purchase from either of said concerns products in question through usual direct contacts, eventually abandoned purchase thereof from wagon jobbers in Chicago, as too expensive and otherwise unsatisfactory in choice and quality of products thereby obtainable;

With effect of unduly restraining and restricting interstate commerce in kosher meats and depriving the purchasing public in city aforesaid of the benefits of free and open competition in the distribution of such products:

Held, That such acts, agreements, understandings, and practices constituted unfair methods of competition in commerce.

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

Mr. Lynn C. Paulson for the Commission.

Mr. A. V. Hiken, of Milwaukee, Wis., for Milwaukee Jewish Kosher Delicatessen Ass'n and its members.

Henry J. and *Charles Aaron*, of Chicago, Ill., for Vienna Sausage Manufacturing Co., Wilno Kosher Sausage Co., Jules Ladany, William Ladany and David Kurman.

Mr. David H. Feldman and *Mr. Moe M. Forman*, of Chicago, Ill., for David Berg & Co., Irving Bisk, Philip Bisk, Louis Gross and Kosher-Zion Sausage Co.

McInerney, Epstein & Arvey, of Chicago, Ill., for Sinai Kosher Sausage Factory and Jacob Levin.

Mr. Samuel J. Schrinisky, of Milwaukee, Wis., for Zurkoff Food Products Co.

Mr. Harry E. Samson, of Milwaukee, Wis., for Independent Neighborhood Grocers Alliance and its officers.

AMENDED AND SUPPLEMENTAL COMPLAINT¹

Pursuant to the provisions of the Federal 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 individuals, firms, and corporations named in the caption of this amended and supplemental complaint, 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:

PARAGRAPHS 1. Respondent, Vienna Sausage Co., is a corporation (place of incorporation unknown), with its principal office and

¹ By stipulation in the record Kosher Zion Sausage Co. was also included as respondent. See findings at p. 8.

place of business at 1215-17 South Halsted Street, Chicago, Ill. It is engaged in the business of manufacturing and distributing kosher meat products.

Respondent, Wilno Kosher Sausage Co., is a corporation (place of incorporation unknown), subsidiary to and wholly owned by respondent Vienna Sausage Co. It has the same offices and place of business as the respondent Vienna Sausage Co. and it is engaged in the manufacture and distribution of kosher meat products under the brand name of "Wilno."

Respondent, Jules Ladany, an individual, is president of respondents Vienna Sausage Co. and Wilno Kosher Sausage Co.

Respondent, William Ladany, an individual, is manager of respondents Vienna Sausage Co. and Wilno Kosher Sausage Co.

Respondent, David Kurman, an individual, is a factory representative of respondent Vienna Sausage Co. and of Wilno Kosher Sausage Co., and has his office and principal place of business at 342 North Water Street, Milwaukee, Wis.

Respondent, David Berg & Co., is a corporation (place of incorporation unknown), with its principal office and place of business at 449 West 37th Street, Chicago, Ill. It is engaged in the manufacture and distribution of kosher meat products under the brand name of "Kosher-Zion."

Respondent, Irving Bisk, an individual, is general manager of respondent David Berg & Co.

Respondent, Philip Bisk, an individual, is president of respondent David Berg & Co.

Respondent, Louis Gross, an individual, is a factory representative for respondent David Berg & Co., and has his office and principal place of business at 1330 West North Avenue, Milwaukee, Wis.

Respondent, Sinai Kosher Sausage Factory is a corporation (place of incorporation unknown), with its principal office and place of business at 3351-59 South Halsted Street, Chicago, Ill. It is engaged in the manufacture and distribution of kosher meat products under the brand name of "Sinai."

Respondent, Jacob Levin, an individual, is president of respondent Sinai Kosher Sausage Factory.

Respondent, M. Zurkoff, an individual, is sole proprietor of Zurkoff Food Products Co. and has his office and principal place of business at 1138 West Walnut Street, Milwaukee, Wis. He is a distributor for respondent Sinai Kosher Sausage Factory.

Respondent, Milwaukee Jewish Kosher Delicatessen Association, sometimes hereinafter referred to as respondent association, is a corporation organized and existing under and by virtue of the laws of

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the State of Wisconsin, with its office and principal place of business at 710 West Walnut Street, in the city of Milwaukee, in said State.

Respondent, Joseph Plotkin, an individual, is proprietor of a delicatessen store and has his office and principal place of business at 2901 North Oakland Street, Milwaukee, Wis. He is engaged in selling kosher meat products at retail. He is president of respondent Milwaukee Jewish Kosher Delicatessen Association.

Respondent, Aaron Guten, an individual, is proprietor of a delicatessen store. He has his office and principal place of business at 4907 West Center Street, Milwaukee, Wis., and is engaged in the sale of kosher meat products at retail. He is a member of respondent Milwaukee Jewish Kosher Delicatessen Association.

Respondent, Carl Guten, an individual, is proprietor of a delicatessen store located at 16th and North Avenue, Milwaukee, Wis. He is engaged in the sale of kosher meat products at retail and is a member of respondent Milwaukee Jewish Kosher Delicatessen Association.

Respondent, R. Cohen, an individual, is proprietor of a delicatessen store located at 17th and North Avenue, Milwaukee, Wis. He is engaged in the sale of kosher meat products at retail and is a member of respondent Milwaukee Jewish Kosher Delicatessen Association.

Respondent, M. Guten, an individual, is proprietor of a delicatessen store located at 712 West Walnut Street, Milwaukee, Wis. He is engaged in the sale of kosher meat products at retail and is a member of respondent Milwaukee Jewish Kosher Delicatessen Association.

Respondent, Independent Neighborhood Grocers Alliance, hereinafter sometimes referred to as respondent Alliance, is an association of grocers doing business in the city of Milwaukee, organized under the laws of the State of Wisconsin. Its officers are respondents J. I. Weiss, president, Louis Zbar, Secretary, and Louis Berson, treasurer. Respondent, J. I. Weiss, has his office and principal place of business at 2400 North Twenty-fourth Street. Respondent Louis Zbar has his office and principal place of business at 1811 North Ninth Street, Milwaukee. Respondent Louis Berson has his office and principal place of business at 4823 West Center Street, Milwaukee, Wis.

PAR. 2. In the course and conduct of their respective businesses, respondents Vienna Sausage Co., Wilno Kosher Sausage Co., David Berg & Co., and Sinai Kosher Sausage Factory, sometimes hereinafter referred to as respondent manufacturers, sell and cause to be sold and ship and cause to be shipped kosher meat products to purchasers located in the State of Wisconsin and to purchasers located in the several States of the United States other than the State of Illinois, in which the said respondent manufacturers have their offices and prin-

Complaint

cipal places of business, and, in the aforementioned manner, have maintained for more than 1 year last past, 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.

Respondents, David Kurman and Louis Gross, are factory representatives for respondents Wilno Kosher Sausage Co., and David Berg & Co., respectively, and sell to and solicit orders from individuals and purchasers in the State of Wisconsin for products manufactured by their principals in the State of Illinois, and when orders are received transmit them to their principals to be filled and shipped, as aforesaid, and otherwise further the interests of their principals in the State of Wisconsin by servicing orders received and shipments made, by selecting new accounts, by making collections, and by promoting goodwill for the products manufactured by their respective principals.

Respondent, M. Zurkoff, purchases products manufactured by respondent Sinai Kosher Sausage Factory in the State of Illinois and resells them to purchasers in the State of Wisconsin, causing said products to be shipped from the said Sinai Kosher Sausage Factory in Illinois to his place of business in the city of Milwaukee, State of Wisconsin.

Respondents, Joseph Plotkin, Aaron Guten, Carl Guten, R. Cohen, and M. Guten, sometimes hereinafter referred to as respondent delicatessen store operators, purchase a substantial part of the products and supplies necessary and desirable in the conduct of their said businesses from respondent manufacturers and cause said products to be shipped from respondent manufacturers' respective places of business in the State of Illinois to their respective places of business in the city of Milwaukee, Wis.

Respondent Milwaukee Jewish Kosher Delicatessen Association promotes the mutual interests of its members, and respondent Independent Neighborhood Grocers Alliance promotes the mutual interests of its members.

PAR. 3. More than 1 year prior to 1940, respondents entered into an understanding, combination, agreement, and conspiracy, and thereafter have carried out and are continuing to carry out said understanding, combination, agreement, and conspiracy, to suppress, restrain, hinder, and lessen competition in the sale of kosher meat products in commerce between the several States of the United States and the State of Wisconsin; to control the sale and distribution of kosher meat products in the city of Milwaukee, Wis.; to stabilize the price at which kosher meat products are sold at retail in the city of Milwaukee, Wis.; to prevent and hinder individuals, firms, and corporations from operating establishments for the sale of kosher meat

the State of Wisconsin, with its office and principal place of business at 710 West Walnut Street, in the city of Milwaukee, in said State.

Respondent, Joseph Plotkin, an individual, is proprietor of a delicatessen store and has his office and principal place of business at 2901 North Oakland Street, Milwaukee, Wis. He is engaged in selling kosher meat products at retail. He is president of respondent Milwaukee Jewish Kosher Delicatessen Association.

Respondent, Aaron Guten, an individual, is proprietor of a delicatessen store. He has his office and principal place of business at 4907 West Center Street, Milwaukee, Wis., and is engaged in the sale of kosher meat products at retail. He is a member of respondent Milwaukee Jewish Kosher Delicatessen Association.

Respondent, Carl Guten, an individual, is proprietor of a delicatessen store located at 16th and North Avenue, Milwaukee, Wis. He is engaged in the sale of kosher meat products at retail and is a member of respondent Milwaukee Jewish Kosher Delicatessen Association.

Respondent, R. Cohen, an individual, is proprietor of a delicatessen store located at 17th and North Avenue, Milwaukee, Wis. He is engaged in the sale of kosher meat products at retail and is a member of respondent Milwaukee Jewish Kosher Delicatessen Association.

Respondent, M. Guten, an individual, is proprietor of a delicatessen store located at 712 West Walnut Street, Milwaukee, Wis. He is engaged in the sale of kosher meat products at retail and is a member of respondent Milwaukee Jewish Kosher Delicatessen Association.

Respondent, Independent Neighborhood Grocers Alliance, hereinafter sometimes referred to as respondent Alliance, is an association of grocers doing business in the city of Milwaukee, organized under the laws of the State of Wisconsin. Its officers are respondents J. I. Weiss, president, Louis Zbar, Secretary, and Louis Berson, treasurer. Respondent, J. I. Weiss, has his office and principal place of business at 2400 North Twenty-fourth Street. Respondent Louis Zbar has his office and principal place of business at 1811 North Ninth Street, Milwaukee. Respondent Louis Berson has his office and principal place of business at 4823 West Center Street, Milwaukee, Wis.

PAR. 2. In the course and conduct of their respective businesses, respondents Vienna Sausage Co., Wilno Kosher Sausage Co., David Berg & Co., and Sinai Kosher Sausage Factory, sometimes hereinafter referred to as respondent manufacturers, sell and cause to be sold and ship and cause to be shipped kosher meat products to purchasers located in the State of Wisconsin and to purchasers located in the several States of the United States other than the State of Illinois, in which the said respondent manufacturers have their offices and prin-

cipal places of business, and, in the aforementioned manner, have maintained for more than 1 year last past, 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.

Respondents, David Kurman and Louis Gross, are factory representatives for respondents Wilno Kosher Sausage Co., and David Berg & Co., respectively, and sell to and solicit orders from individuals and purchasers in the State of Wisconsin for products manufactured by their principals in the State of Illinois, and when orders are received transmit them to their principals to be filled and shipped, as aforesaid, and otherwise further the interests of their principals in the State of Wisconsin by servicing orders received and shipments made, by selecting new accounts, by making collections, and by promoting goodwill for the products manufactured by their respective principals.

Respondent, M. Zurkoff, purchases products manufactured by respondent Sinai Kosher Sausage Factory in the State of Illinois and resells them to purchasers in the State of Wisconsin, causing said products to be shipped from the said Sinai Kosher Sausage Factory in Illinois to his place of business in the city of Milwaukee, State of Wisconsin.

Respondents, Joseph Plotkin, Aaron Guten, Carl Guten, R. Cohen, and M. Guten, sometimes hereinafter referred to as respondent delicatessen store operators, purchase a substantial part of the products and supplies necessary and desirable in the conduct of their said businesses from respondent manufacturers and cause said products to be shipped from respondent manufacturers' respective places of business in the State of Illinois to their respective places of business in the city of Milwaukee, Wis.

Respondent Milwaukee Jewish Kosher Delicatessen Association promotes the mutual interests of its members, and respondent Independent Neighborhood Grocers Alliance promotes the mutual interests of its members.

PAR. 3. More than 1 year prior to 1940, respondents entered into an understanding, combination, agreement, and conspiracy, and thereafter have carried out and are continuing to carry out said understanding, combination, agreement, and conspiracy, to suppress, restrain, hinder, and lessen competition in the sale of kosher meat products in commerce between the several States of the United States and the State of Wisconsin; to control the sale and distribution of kosher meat products in the city of Milwaukee, Wis.; to stabilize the price at which kosher meat products are sold at retail in the city of Milwaukee, Wis.; to prevent and hinder individuals, firms, and corporations from operating establishments for the sale of kosher meat

products at retail in competition with the establishments operated for such sale by these respondents; and to suppress, hinder, restrain, and eliminate competition in the retail sale of kosher meat products in said city of Milwaukee, Wis.

Pursuant to this understanding, combination, agreement, and conspiracy, and in furtherance of it, said respondents have performed and done, and are now performing and doing, the following acts and things:

(1) Established and maintained retail prices for kosher meat products in the city of Milwaukee, Wis.; (2) prevented the sale in the city of Milwaukee of kosher meat products manufactured in the State of Illinois and the several States of the United States other than the State of Wisconsin, and prevented distribution and shipment of kosher meat products manufactured in the several States of the United States other than the State of Wisconsin in and into the city of Milwaukee, Wis., in commerce; (3) prevented one or more individuals who operate a place of business for the sale and distribution of kosher meat products at retail in the city of Milwaukee, Wis., from obtaining supplies that are in demand by the purchasing public of the said city of Milwaukee, to wit, "Wilno," "Kosher-Zion," and "Sinai" brands of kosher meats, which said brands of kosher meats are available to respondent delicatessen and grocery store operators; (4) prevented one or more individuals engaged in the retail sale and distribution of kosher meat products in the city of Milwaukee from obtaining certain brands of kosher meat products well-known to the purchasing public of the city of Milwaukee and available to the respondent delicatessen and grocery store operators, and from obtaining said well-known brands of kosher meat products at prices and under conditions at which said well-known brands are available to the respondent retailers; (5) used other diverse methods and practices to fix retail prices for kosher meat products in the city of Milwaukee and to prevent individuals, firms, and corporations other than the respondents from purchasing kosher meat products from manufacturers and distributors thereof located outside the State of Wisconsin, and from selling and distributing kosher meat products in said city of Milwaukee.

PAR. 4. Said understanding, combination, agreement, and conspiracy and the acts done and performed, and being done and performed thereunder and pursuant thereto, as hertofore described, have had and do have the effect of unlawfully restricting and restraining the movement of kosher meat products in commerce between and among the several States of the United States, and

more particularly have had and do have the effect of restraining, restricting, and lessening the movement of kosher meat products in commerce from the State of Illinois into the State of Wisconsin, and of restraining, diminishing, and curtailing the sale and shipment of kosher meat products between the several States of the United States and the State of Wisconsin; of unduly restricting and restraining the sale at retail of kosher meat products by individuals, firms, and corporations operating stores in the city of Milwaukee; of substantially enhancing prices of kosher meat products to the consuming public in the city of Milwaukee, Wis.; of unduly restricting and restraining individuals, firms, and corporations other than the respondents from operating and in the operation of stores for the sale of kosher meat products at retail in the city of Milwaukee; of eliminating price competition among and between respondent manufacturers and among and between respondent manufacturers and other manufacturers of kosher meat products; of eliminating, lessening, restricting, and restraining competition between and among respondent store operators in the city of Milwaukee and of suppressing and preventing competition from store operators and those desiring to operate stores who are not respondents; of depriving the purchasing public of the city of Milwaukee, Wis., of the benefits which normally flow from competition among and between retail stores which serve the trade in the city of Milwaukee and from the benefits of competition that would otherwise exist were it not for the control of the sale and distribution at retail of kosher meat products that now exists in the respondents by virtue of their understanding, combination, agreement, and conspiracy and the acts and things that said respondents have performed and done and are now performing and doing thereunder and pursuant thereto as described in this amended and supplemental complaint.

The acts and practices of the respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of kosher meat products in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in the respondents the power to control and enhance prices; have created in the respondents a monopoly in the sale of kosher meat products in such commerce; have unreasonably restrained such commerce in kosher meat 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 October 4, 1939, issued and subsequently served its complaint upon respondents Milwaukee Jewish Kosher Delicatessen Association, a corporation, Joseph Plotkin, Aaron Guten, Carl Guten, R. Cohen, and M. Guten, members of said respondent Milwaukee Jewish Kosher Delicatessen Association. After the filing of answers and the taking of testimony in support of and in opposition to said complaint, the Commission on March 22, 1940, issued and subsequently served its amended and supplemental complaint upon the aforesaid corporate respondent and the aforesaid individual respondents, individually and as members of the corporate respondent; and upon Vienna Sausage Co., a corporation, and Wilno Kosher Sausage Co., a subsidiary corporation, Jules Ladany and William Ladany, individually and as officers of Vienna Sausage Co. and Wilno Kosher Sausage Co.; David Berg & Co. and Irving Bisk and Philip Bisk, individually and as officers of David Berg & Co.; Sinai Kosher Sausage Factory and Jacob Levin, individually and as an officer of Sinai Kosher Sausage Factory; David Kurman, M. Zurkoff, and Louis Gross; Independent Neighborhood Grocers Alliance, a corporation, and its officers, J. I. Weiss, president, Louis Zbar, secretary, and Louis Berson, treasurer. By stipulation the amended and supplemental complaint was amended to include as a respondent Kosher Zion Sausage Co., a corporation. Respondents stipulated that the testimony and evidence taken pursuant to the original complaint be made a part of the record of the proceedings pursuant to the supplemental and amended complaint.

After the issuance of the said amended and supplemental complaint and the filing of answers by 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 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 amended and supplemental 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 arguments 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, Milwaukee Jewish Kosher Delicatessen Association, is a corporation organized and existing under the laws of the State of Wisconsin, having its principal office and place of business at 710 West Walnut Street, Milwaukee, Wis.

Respondent, Joseph Plotkin, an individual, is a member and president of the Milwaukee Jewish Kosher Delicatessen Association and operates a retail delicatessen store in Milwaukee, Wis.

Respondent, Aaron Guten, is a member of the Milwaukee Jewish Kosher Delicatessen Association and operates a retail delicatessen store in Milwaukee, Wis.

Respondent, Carl Guten, is a member of the Milwaukee Jewish Kosher Delicatessen Association and operates a retail delicatessen store in Milwaukee, Wis.

Respondent, Rubin Cohen (referred to in the complaint as R. Cohen), is a member of the Milwaukee Jewish Kosher Delicatessen Association and operates a retail delicatessen store in Milwaukee, Wis.

Respondent, Meyer Guten (referred to in the complaint as M. Guten), is a member of the Milwaukee Jewish Kosher Delicatessen Association and operates a retail delicatessen store in Milwaukee, Wis.

Respondent, Vienna Sausage Co., is a corporation organized and existing under the laws of the State of Illinois, having its principal place of business at 1215-17 South Halsted Street, Chicago, Ill.

Respondent, Wilno Kosher Sausage Co., is a corporation organized and existing under the laws of the State of Illinois, having its principal place of business at 1215-17 South Halsted Street, Chicago, Ill., and is a subsidiary of respondent Vienna Sausage Co.

Respondent, Jules Ladany, an individual, is an officer of respondents Vienna Sausage Co. and Wilno Kosher Sausage Co. and is active in the direction and management of the affairs of said corporations.

Respondent, William Ladany, an individual, is an officer of respondents Vienna Sausage Co. and Wilno Kosher Sausage Co. and is active in the direction and management of the affairs of said corporations.

Respondent, David Berg & Co., is a corporation organized and existing under the laws of the State of Illinois, having its principal place of business at 449 West Thirty-seventh Street, Chicago, Ill.

Respondent, Kasher Zion Sausage Co., is a corporation organized and existing under the laws of the State of Illinois, having its office and principal place of business at 449 West Thirty-seventh Street, Chicago, Ill.

Respondent, Irving Bisk, an individual, is an officer of respondents David Berg & Co. and Kasher Zion Sausage Co. and is active in the direction and management of the business of said corporations.

Respondent, Philip Bisk, an individual, is an officer of respondents David Berg & Co. and Kasher Zion Sausage Co. and is active in the direction and management of the business of said corporations.

Respondent, Sinai Kasher Sausage Factory, is a corporation of unknown domicile having its office and principal place of business at 3351-59 South Halsted Street, Chicago, Ill.

Respondent, Jacob Levin, an individual, is an officer of respondent Sinai Kasher Sausage Factory and is active in the direction and management of the business of said corporation.

Respondent, David Kurman, an individual, is the factory representative of respondent Wilno Kasher Sausage Co. in Milwaukee, Wis., and has his office and place of business at 342 North Walnut Street in that city.

Respondent, Max Zurkoff (referred to in the complaint as M. Zurkoff), an individual, has his office and place of business at 1128 West Walnut Street, Milwaukee, Wis., and is distributor in that city for the products of Sinai Kasher Sausage Factory.

Respondent, Louis Gross, an individual, has his office and principal place of business at 1531 West North Avenue, Milwaukee, Wis., and is the distributor in that city for the products of the Kasher Zion Sausage Co.

Respondent, Independent Neighborhood Grocers Alliance, is a corporation organized and existing under the laws of the State of Wisconsin, having its office and principal place of business at 710 West Walnut Street, Milwaukee, Wis.

Respondent, Joseph I. Weiss (referred to in the complaint as J. I. Weiss), an individual, is a member and president of respondent Independent Neighborhood Grocers Alliance.

Respondent, Louis Zbar, an individual, is a member and secretary of respondent Independent Neighborhood Grocers Alliance.

Respondent, Louis Berson, an individual, is a member and treasurer of respondent Independent Neighborhood Grocers Alliance.

PAR. 2. Respondents Vienna Sausage Co. and its subsidiary Wilno Kasher Sausage Co., David Berg & Co. and its subsidiary Kasher Zion Sausage Co., and Sinai Kasher Sausage Factory, all of Chicago, Ill., are engaged in the production, sale, and distribution of kosher

and/or kosher style meat products of many kinds and in the course and conduct of their respective businesses sell, and cause such products to be sold, to purchasers located in many States of the United States other than the State of Illinois, and cause such products, when sold, to be transported through and into other States.

PAR. 3. For many years there have been only five delicatessen stores in Milwaukee, Wis., specializing in kosher products; that is, products sanctioned by Jewish dietary law. These stores are operated by respondents Joseph Plotkin, Rubin Cohen, Aaron Guten, Carl Guten, and Meyer Guten, the last three named being brothers. On at least two occasions in recent years others have unsuccessfully attempted to operate delicatessen stores specializing in kosher products in competition with the respondents. The five operators of delicatessen stores named as respondents in this proceeding formed an association in about 1935 which they caused to be incorporated under the name "Milwaukee Jewish Kosher Delicatessen Association." Meetings of this association were held from time to time for the purpose of discussing and acting upon matters of interest to its members.

Kosher products are also sold at retail in Milwaukee by numerous grocers, but such stores carry limited lines of such products and the delicatessen stores depend largely upon meat products for their revenue. For a number of years the five delicatessen store operators named and their predecessors in business consistently dealt in the "Wilno" and/or "Kosher Zion" brands of meat products and there has been developed in Milwaukee among consumers of kosher and kosher style meat products a consumer preference and demand for these brands of products to the extent that the success of a delicatessen store is in substantial part dependent upon the ability of the operator thereof to purchase and have available for sale to customers one or both of these brands of meat products. The "Wilno" brand is produced and distributed by the Wilno Kosher Sausage Co., and the "Kosher Zion" brand is produced and distributed by Kosher Zion Sausage Co. There are other producers of competing products who sell in the Milwaukee market but the two named are the most important factors in the Milwaukee kosher meat products trade. The next in importance in that market is probably the Sinai Kosher Sausage Factory.

PAR. 4. The "Wilno" brand products are represented in Milwaukee by respondent David Kurman, a former delicatessen store operator. He is factory representative there for respondent Wilno Kosher Sausage Co., and to a limited extent calls upon customers of that concern, accepts orders for its products which he transmits to his principal, and attends to the adjustment of any disputes which arise between his principal and its customers. In most instances, however,

purchasers of "Wilno" products in Milwaukee mail or telephone their orders to the factory in Chicago. In all cases shipments of "Wilno" products are made from the factory direct to the purchaser in Milwaukee and Kurman receives a commission on all such sales in Milwaukee regardless of whether or not the order was sent through him.

The "Kosher Zion" brand products are distributed in Milwaukee exclusively by Louis Gross, a brother-in-law of the three Guten brothers. Gross is a jobber and regularly solicits orders for "Kosher Zion" products from retailers in Milwaukee. Large orders for such products are filled by the shipment from the factory in Chicago direct to the purchaser in Milwaukee but smaller orders and emergency orders are filled by delivery from a stock of "Kosher Zion" products which Gross maintains.

The products of Sinai Kosher Sausage Factory are distributed in Milwaukee by Max Zurkoff, a jobber, who handles the "Sinai" brand products and numerous other commodities.

PAR. 5. In 1936 Carl Bach entered the retail delicatessen business in Milwaukee by opening a store at 923 West Walnut Street specializing in kosher delicatessen products such as pepper meat, corned beef, and numerous types of sausage and cold meats. At the time Bach opened his store he obtained his supplies of meats and meat products principally from Louis Gross, and to a minor extent from Max Zurkoff. In order to promote his newly established business Bach kept his store open 7 days each week and from time to time placed signs in the window of and inside his store announcing the prices at which various products were offered for sale to the public. Bach gradually became more important from a competitive standpoint. His practice of keeping his store open on Friday when the other five stores were closed and of announcing his prices (which were generally lower than those of his competitors) was objectionable to his competitors. Louis Gross advised Bach that he had received complaints from his other customers about the price signs which Bach maintained and about his prices being too low, and unless the signs were removed Gross might have to discontinue selling to him. Bach did not accede to this suggestion and after further remonstrances Gross refused to make any more sales to Bach.

Bach was invited by Joseph Plotkin to a meeting of the Milwaukee Jewish Kosher Delicatessen Association, which meeting was attended by the members of that association; namely, Plotkin, Cohen, and the three Gutens. At this meeting Bach was asked to become a member of the association on condition that he close his store on the day they had agreed upon; namely, Friday. Objections were then made by members of the association to the prices at which Bach sold certain

of his products, including corned beef, wieners, and salami, and he was accused of "chiseling." Members of the association came to the conclusion that \$1.25 for corned beef, 40 cents a pound for salami, and 38 cents a pound for wieners were the proper prices for those products. Bach was then selling wieners at 35 cents a pound, salami at 38 cents, and corned beef at 85 cents, which he considered fair prices affording him a reasonable profit. Understanding that if he joined he would have to assent to the Friday closing and abandon his price signs, Bach declined to become a member of the association.

PAR. 6. Having been unable to persuade David Kurman, the factory representative for "Wilno" products to accept orders from him, and Louis Gross, the distributor for "Kosher Zion" products having refused to make any further sales to him because of the objections of the members of the Milwaukee Jewish Kosher Delicatessen Association to his price signs and his refusal to close on Fridays, Bach began making trips to Chicago in his automobile and there purchasing and bringing home with him the brands of delicatessen meats which he wanted but could not purchase in Milwaukee. Bach continued these trips to Chicago at intervals of 1 or 2 weeks for several months, making purchases principally from the factories producing "Wilno" and "Kosher Zion" products. Finally, on the occasion of one of these visits to the salesroom of the "Wilno" plant in Chicago for the purpose of purchasing meats, he was called into the office of that concern, where Jules Ladany stated that he had learned Bach's identity and that objections had come to him from members of the Milwaukee Jewish Delicatessen Association to his making sales to Bach. Ladany advised him to get together with Plotkin, the Gutens, and the other delicatessen operators in Milwaukee, and stated that he would be willing to come to Milwaukee and arrange a meeting between Bach and the other delicatessen operators. Some time thereafter Jules Ladany and David Kurman called at Bach's store in Milwaukee and discussed with him the closing of his store on Friday and the removal of the price signs. After Bach declined to accede to suggestions concerning Friday closing and holding his prices to the level of the prices of other delicatessen operators, Ladany and Kurman left, advising Bach that they would discuss the matter with the other delicatessen dealers in Milwaukee and advise him. Nothing further was heard from these parties by Bach, and when he attempted to make further purchases from the "Wilno" plant in Chicago he was informed by the person there who had formerly served him that Ladany had ordered that no further sales be made to Bach, and thereafter Bach was unable to purchase "Wilno" products at the factory in Chicago.

During at least a part of the time that Bach purchased "Wilno" products from the plant in Chicago he also purchased "Kosher Zion" products from the plant of that concern in Chicago, and he had the same experience at that source of supply as he had at the "Wilno" plant. An officer of the concern producing "Kosher Zion" products talked to Bach on the occasion of one of his calls at the salesroom of the plant for the purpose of purchasing and advised him to get together with the other delicatessen operators in Milwaukee with respect to Friday closings and maintaining prices. Subsequently Bach was unable to make further purchases at the "Kosher Zion" plant.

For some time after Bach was unable to purchase from either the "Wilno" or "Kosher Zion" plants he secured the products of those concerns by purchasing from wagon jobbers of these products in Chicago by stopping them on the street and there purchasing supplies from them. At about this time Jules Ladany of the Vienna Sausage Co. and the Wilno Kosher Sausage Co. wrote to Aaron Guten under date of November 25, 1938, stating in part:

I want to further advise you about this other situation and I want you to believe me, that I do not sell this fellow directly, nor do we know from whom he is buying our product indirectly, and further than that, we are not encouraging this man to buy our products either directly or indirectly at this time. While I will be very happy to cooperate with you fellows toward trying to straighten out the situation, I certainly must have your cooperation in getting you to locate the source of his supplies, so that I can handle it from this end. You can understand that, being in Chicago, I am not able to find from whom he is buying—that will have to come from you in Milwaukee. However, I trust that the matter will be ultimately straightened out to everybody's satisfaction.

Subsequently, on December 6, 1938, Jules Ladany wrote Aaron Guten in part as follows:

I want you to know that we made several attempts to obtain the information which we discussed in Chicago a week ago Friday, but were unsuccessful in doing so; consequently I do not know what can be done relative to the matter at hand unless the desired information comes from someone in Milwaukee.

We still feel as we do about this situation; namely, that we want to be cooperative and if you fellows will take it upon yourselves to learn all the facts necessary, so that we can then handle the situation in Chicago, we will be only too happy to do it. As it stands today, we can do nothing about it, because we do not know where to start from.

If I feel a little better tomorrow or Thursday I may come to Milwaukee to see if we can check further in this situation. If I am not able to do this, would like to have you drop me a line and send me that information that I seek.

* * * * *

P. S. Copies of this letter are being forwarded to the other people in Milwaukee.

Similar letters were written on the same day by Jules Ladany to Carl Guten, Meyer Guten, and Joseph Plotkin.

Bach finally in large measure discontinued purchasing "Wilno" and "Kosher Zion" products from wagon jobbers in Chicago because their prices were higher than factory prices and because he was unable to secure a satisfactory choice of products of the quality desired.

As a result of continued pressure from competitors of Bach, Max Zurkoff, distributor of the products of Sinai Kosher Sausage Factory, refused to sell to Bach for a short period of time, possibly 2 weeks, but thereafter resumed selling to him. Bach, however, never purchased substantial quantities of "Sinai" products and for trade reasons was not particularly interested in this brand. There was no occasion for the Sinai Kosher Sausage Factory to refuse to sell to Bach and there was no such refusal. Respondent Jacob Levin of that company talked to Ladany and Bisk about the situation in which Bach was involved in Milwaukee but the record does not show that he took any action with respect thereto.

Some of the members of the Milwaukee Jewish Kosher Delicatessen Association were also members of the Independent Neighborhood Grocers Alliance. Apparently at the instigation of these common members the latter association cooperated with the former to a limited extent and for a short time with respect to the situation in which Bach was involved. The record does not indicate, however, that this cooperation was of material consequence.

PAR. 7. A number of the respondents have attempted explanations of their conduct on various grounds. For example, David Kurman testified that his refusal to accept orders for "Wilno" products from Bach was due to the fact that there were already enough outlets for "Wilno" products in Milwaukee and he did not desire to establish any more. Nevertheless, subsequently a member of the Plotkin family opened a new delicatessen store and was able to secure "Wilno" products without any difficulty. On direct examination Irving Bisk indicated only the vaguest knowledge of any difficulties Bach may have had in purchasing delicatessen meats and said that his company never refused to sell to Bach as far as he knew. He testified that he had never attended any meetings of the Milwaukee Jewish Kosher Delicatessen Association. A Commission attorney testified that he interviewed Irving Bisk prior to the issuance of the complaint in this proceeding and that Bisk stated to him that he had attended two or three meetings of that association. In subsequent testimony Bisk continued his denial of ever having attended a meeting of the Milwaukee Jewish Kosher Delicatessen Association and suggested

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that confusion may have arisen with respect to this because he may have said that he had talked to Plotkin, the Gutens, or Cohen at various times, and he further testified that he did not even know of the existence of the Milwaukee Jewish Kosher Delicatessen Association until the occasion of his interview with the Commission attorney. In this connection, the following is an extract from a letter written by Aaron Guten, secretary of the Milwaukee Jewish Kosher Delicatessen Association to Jules Ladany on October 14, 1937, prior to the date the Commission's attorney first visited Irving Bisk:

Our association has incurred some debts which have to be paid. When you were in Milwaukee last, we discussed said matter with you, and you agreed to pay 50 percent of said costs and the Kosher Zion Sausage Co. was to pay the 50 percent.

The testimony contains other contradictions, including blanket denials by certain of the respondents, but upon the whole record the Commission concludes that for many years the five members of the Milwaukee Jewish Kosher Delicatessen Association have in substance dominated that portion of the delicatessen business of Milwaukee specializing in kosher products; have worked with the Ladanys and the Bisks, concentrating in the distribution of the "Wilno" and "Kosher Zion" meat products so that they have become, and are, the most important products to the retail kosher delicatessen trade in Milwaukee; and, when unable to coerce Bach into joining with them, have attempted with the agreement, aid, cooperation, and assistance of the Ladanys, the Bisks, Kurman, and Gross to drive Bach out of business in the manner heretofore stated. The said understanding and agreements have had the tendency and effect of unduly restraining and restricting interstate commerce in kosher meats and of depriving the purchasing public in Milwaukee of the benefits of free and open competition in the distribution of kosher meats.

CONCLUSION

The aforesaid acts, agreements, understandings, and practices 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 amended and supplemental complaint of the Commission, 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 arguments of counsel, and the Commission having made its findings as to the facts and its

conclusion that certain of said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Milwaukee Jewish Kosher Delicatessen Association, a corporation, and Joseph Plotkin, Aaron Guten, Carl Guten, Rubin Cohen, and Meyer Guten, individually and as members of said association; Wilno Kosher Sausage Co., a corporation, and Jules Ladany and William Ladany, individually and as officers of said corporation; Kosher Zion Sausage Co., a corporation, and Irving Bisk and Philip Bisk, individually and as officers of said corporation; David Kurman, an individual; and Louis Gross, an individual; their representatives, agents, and employees; or any two or more of such respondents or their representatives, 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 any mutual understanding, combination, agreement, or conspiracy for the purpose or with the effect, directly or indirectly, of lessening competition in the course of trade in kosher and/or kosher style meat and allied products, or hindering, restraining, or preventing sales of any such products in the course of commerce to purchasers or would-be purchasers by the following methods, or any of them:

1. Hindering, obstructing, or preventing Carl Bach, or any other would-be purchaser in Milwaukee, Wis., from purchasing kosher and/or kosher style meats or allied products from manufacturers or other sellers outside the State of Wisconsin.

2. Hindering, obstructing, or preventing any manufacturer or other seller outside the State of Wisconsin from selling kosher and/or kosher style meats or allied products to Carl Bach or any other would-be purchaser in Milwaukee, Wis.

3. Requesting, advocating, or urging any course of action prohibited in paragraphs 1 and 2 hereof.

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 appearing in the findings as to the facts in this matter, that the complaint herein be, and the same hereby is, dismissed as to respondents Vienna Sausage Co., a corporation; David Berg & Co., a corporation; Sinai Kosher Sausage Factory, a corporation; Jacob Levin, individually and as an officer of Sinai Kosher Sausage Factory; Max Zurkoff, an individual; Independent Neighborhood Grocers Alliance, a corporation, and its officers, Joseph I. Weiss, Louis Zbar, and Louis Berson.

IN THE MATTER OF
**MAX A. WASSERMAN, TRADING AS EXCEL
 MERCHANDISE AND NOVELTY CO.**

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

Docket 4029. Complaint, Feb. 9, 1940—Decision, Nov. 4, 1941

Where a corporation engaged in the competitive interstate sale and distribution of sauce pans, dripolators, coffee percolators, pillows, smoking stands, electric table lamps, fountain pens, ash trays and other articles of merchandise in commerce—

(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 in interstate commerce 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 for similar purposes 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; and intended to be, and used only by ultimate purchasers thereof for distribution of other merchandise by lot or chance as above set forth;

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

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packed and assembled assortments comprised of various articles of such merchandise, together with such cards and boards, and retail dealer buyers of such assortments, either as direct or indirect purchasers, and retailers who made up their own assortments, exposed same to purchasing public and sold or distributed such articles 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 teaching and encouraging gambling among members of 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 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 practices thus involved were contrary to public policy of United States; and refrained from supplying to or placing in hands of others such cards, boards or any other similar devices for 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 public and constituted unfair acts and practices in commerce.

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.
Levin & Marshall, of Omaha, Nebr., for respondent.

COMPLAINT

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

individually and trading as Excel Merchandise & 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:

Count 1

PARAGRAPH 1. Respondent, Max A. Wasserman, is an individual trading as Excel Merchandise & Novelty Co., with his principal office and place of business located at 1316 Farnam Street, Omaha, Nebr. Respondent is now and for some time last past has been engaged in the sale and distribution of sauce pans, dripolators, coffee percolators, pillows, smoking stands, electric table lamps, fountain pens, ash trays, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise when sold to be transported from his aforesaid place of business in Omaha, Nebr., to purchasers thereof, at their respective points of location, in the various States of the United States other than the State of Nebraska and in the District of Columbia. There is now and for some time last past has been a course of trade by respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, as described in paragraph 1 hereof, the respondent in selling and distributing his said merchandise has supplied his 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 25 numbers arranged in a square, which numbers correspond to the numbers on the tally sheet; and a number of small wooden squares on each of which appears a

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number. Each of said Bingo cards has a different group of numbers thereon, and 1 of said cards appears substantially as follows:

Nos. 1 to 15 Nos. 16 to 30 Nos. 31 to 45 Nos. 46 to 60 Nos. 61 to 75

BINGO				
1	16	33	46	66
6	27	35	55	61
5	23	Free 0 Free	58	68
13	21	37	53	67
2	20	43	56	63
START WITH LETTER O IN CENTER, FREE 5 NUMBERS ACROSS ANY LINE WINS 2 12 DIFFERENT WAYS TO BINGO				
One Star Series. Total Sets 1,365 Cards. Printed in U. S. A.				

By means of said Bingo set, said merchandise is distributed to the purchasing public in substantially the following manner: 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

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then places the said wooden squares in a container and so mixes them that the numbers thereon are concealed until one of said wooden squares is withdrawn from the container by the operator. In the center of the participant's Bingo card is a square marked "Free" and each participant places a marker thereon before the aforesaid drawing of said numbers is begun. The operator then proceeds with the drawing of numbers from the aforesaid mixing container and calls out the number appearing on each wooden square as said square 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 respondent's said assortments of merchandise, together with said Bingo sets, either directly or indirectly, 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 his 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 his merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said sales plan

or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged, involves a game of chance or the sale of a chance to procure an article of merchandise at a price 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 his 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, Max A. Wasserman, is an individual trading as Excel Merchandise & Novelty Co., with his principal office and place of business located at 1316 Farnam Street, Omaha, Nebr. Respondent is now, and for some time last past has been, engaged in the sale and distribution of devices commonly known as push cards and punchboards to dealers in 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 Omaha, Nebr., to purchasers thereof, at their respective points of location, in various

States of the United States other than the State of Nebraska 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 his business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, to dealers push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of 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 disc 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 an 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 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 enter-

prise. 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 to said persons, firms and corporations from said competitors, who do not sell or use said devices.

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 February 9, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Max A. Wasserman, individually and trading as Excel Merchandise & Novelty Co., charging him 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. Subsequently, the respondent filed an answer to the Commission's complaint admitting all the material allegations of fact set forth in said complaint and waiving all intervening

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Max A. Wasserman, is an individual trading as Excel Merchandise & Novelty Co., with his principal office and place of business located at 1316 Farnam Street, Omaha, Nebr. Respondent is now and for some time last past has been engaged in the sale and distribution of sauce pans, dripolators, coffee percolators, pillows, smoking stands, electric table lamps, fountain pens, ashtrays, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise when sold to be transported from his aforesaid place of business in Omaha, Nebr., to purchasers thereof, at their respective points of location, in the various States of the United States other than the State of Nebraska and in the District of Columbia. There is now and for some time last past has been a course of trade by respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, as described in paragraph 1 hereof, the respondent in selling and distributing his said merchandise has supplied his 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 25 numbers arranged in a square, which numbers correspond to the numbers on the tally sheet; and a number of small wooden squares on each of which appears a number. Each

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of said Bingo cards has a different group of numbers thereon, and one of said cards appears substantially as follows:

Nos. 1 to 15 Nos. 16 to 30 Nos. 31 to 45 Nos. 46 to 60 Nos. 61 to 75

BINGO				
1	16	33	46	66
6	27	35	55	61
5	23	Free 0 Free	58	68
13	21	37	53	67
2	20	43	56	63
START WITH LETTER O IN CENTER, FREE 5 NUMBERS ACROSS ANY LINE WINS 2 12 DIFFERENT WAYS TO BINGO				
One Star Series. Total Sets 1,365 Cards. Printed in U. S. A.				

By means of said Bingo set, said merchandise is distributed to the purchasing public in substantially the following manner: 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 squares in a container and so mixes them that the numbers thereon are concealed until one of said wooden squares is withdrawn from the container by the operator. In the

center of the participant's Bingo card is a square marked "Free" and each participant places a marker thereon before the aforesaid drawing of said numbers is begun. The operator then proceeds with the drawing of numbers from the aforesaid mixing container and calls out the number appearing on each wooden square as said square 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 respondent's said assortments of merchandise, together with said Bingo sets, either directly or indirectly, 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 his 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 his merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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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 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 his said competitors who do not use the same or equivalent sales plans or methods.

PAR. 5. In the course and conduct of his business, the respondent is now, and for some time last past has been, engaged in the sale and distribution of devices commonly known as push cards and punchboards 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 his aforesaid place of business in Omaha, Nebr., to purchasers thereof, at their respective points of location, in various States of the United States other than the State of Nebraska 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 his 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 disc 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 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 purchas-

ing 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

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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 his 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 dealers' merchandise, as hereinabove found, are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further 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, Max A. Wasserman, individually and trading as Excel Merchandise & Novelty Co., or trading under any other name or names, his representatives, agents, or employees, directly

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or through any corporate or other device, in connection with the offering for sale, sale, and distribution of sauce pans, dripolators, coffee percolators, pillows, smoking stands, electric table lamps, fountain pens, ashtrays, 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 devices, which said Bingo sets, punchboards, push or pull 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 Bingo sets, punchboards, push or pull cards or other devices, either with assortments of merchandise or separately, by which said Bingo sets, punchboards, push or pull 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.

4. Supplying to or placing in the hands of others punchboards, push or pull cards or other devices which are to be used or may be used in selling or distributing any merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

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

Syllabus

IN THE MATTER OF
BERLAND SUPPLY COMPANY, INC., ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3861. Order, November 10, 1941

Modified order in proceeding in question, in which findings and cease and desist order were made as of July 9, 1941, 33 F. T. C. 547, requiring respondents, including respondent Hotel, Restaurant and Tavern Equipment Association, and its members, in connection with the offer, etc., in commerce of glassware to cease and desist from—

Continuing, entering into, or assisting each other in carrying out any conspiracy, etc., among themselves, between any two or more of them, or between the officers, etc., of any two or more of them, to—

- (a) Refuse to sell glassware to any person, partnership, or corporation;
- (b) Cut off the source or sources of supply of any person, etc., or hinder, etc., any person, etc., in the effort to obtain supplies of glassware for sale or resale in trade and commerce or otherwise deprive any person, etc., of opportunity to compete in the sale or resale thereof;
- (c) Determine or designate who shall be a wholesaler of said products, and who not, in Milwaukee and the surrounding trade area, or in any other trade area in the United States;
- (d) Coerce or persuade any wholesaler, retailer, or dealer of glassware to refrain from engaging in price competition in the sale and distribution thereof in commerce; and
- (e) Limit the number of persons, partnerships, or corporations who may participate in trade and commerce in glassware or limit or proscribe or seek to limit or proscribe the right of any person, etc., to conduct trade or commerce according to its own free will thereof.

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 & Emshwiler, of Hartford City, Ind., for Indiana Glass Co.

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MODIFIED ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon the request of respondent Anchor-Hocking Glass Corporation, by its attorney, that the cease and desist order entered in this case by the Commission on July 9, 1941, be modified, and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the cease and desist order aforesaid be, and the same hereby is, modified to read as follows:

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 respondents Berland Supply Co., Inc.; S. J. Casper Co., Incorporated; I. Shapiro, Inc.; Louis M. Mintz, trading as Mintz Supply Co.; W. A. Reinemann, trading as Hotel & Restaurant Supply Co.; National Beverage Distributing Co.; Anchor-Hocking Glass Corporation; West Virginia Glass Specialty Co.; Indiana Glass Co.; 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.

(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,

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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 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
SALT PRODUCERS' 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 4320. Complaint, Sept. 18, 1940—Decision, Nov. 10, 1941

Where a salt producers' association; twenty salt producers, members thereof with one exception, manufacturing, selling, and distributing a large percentage of all the salt produced in the United States, and in active and substantial competition with each other and with other members of the industry prior to and but for the practices below described; and a corporation which they employed for the purposes below set forth, together with its president and treasurer—

Entered into and carried out certain agreements, combinations, and conspiracies with intent and effect of restraining, monopolizing, and suppressing and eliminating competition in the interstate sale of salt; and pursuant thereto and in furtherance thereof—

- (a) Concertedly fixed and maintained uniform prices, terms, and conditions in the sale of salt; set up a system of price zones throughout the United States and agreed to and did cooperate in the maintenance of delivered prices which they fixed and established within each of such zones;
- (b) Agreed to and did exchange price lists and information for use in fixing delivered zone prices, discounts, and terms and conditions of sale;
- (c) Agreed to and did curtail production of salt; and
- (d) Agreed to and did file invoices and other reports with said association to secure enforcement of such agreements; and

Where said association, pursuant to such understandings, etc.,—

- (e) Collected from and distributed among such producers and other participants in said agreements useful statistics, lists showing the current delivered prices, terms, and conditions of sale, names of dealers and distributors to be allowed special discounts, and other information; and

Where corporation above referred to, employed by producers herein from about November 1935 to about August 1939, and its president and treasurer;

Following their preliminary survey of the business concerned and distribution among producers herein of composite figures (and to each separate producer, corresponding figures pertaining to it alone) covering volume of sales and average yield f. o. b. plant for delivered price zones established, plant capacity, marketing expense, and financial returns; report of its conclusion that there was a large excess productive capacity, that composite net earnings were small in relation to investment, that composite figure of sales expenses was inordinate in relation to prices received, and that such conditions were caused by efforts of each participant to obtain an increased portion of the total volume of business without due regard to net return and sales expense; and advice that the consequences of continuance of such practice would inevitably be an inadequate return upon investment to the individual participant, and excessive and uneconomic marketing costs;

- (f) Collected and disseminated aforesaid business figures monthly with sales figures reduced to common denominator terms for the several grades of salt in-

volved; prepared and distributed to participants a composite annual financial statement; at monthly meetings of the association explained current statistics prepared by them and submitted charts indicating current volume and net dollar realization for the various zones, along with opinion as to the trend of demand and the volume of consumption to be expected; sent a separate monthly chart to each participant showing relation of his current volume to total expected demand, in comparison with relation of his prior volume to past total volume; audited participants' statistical data at their offices advising each individual management that, in sale of a homogenous product such as salt, they could increase their normal volume relationship only by taking some of another producer's volume at lowered prices which would inevitably be met by other participants, with result of further reducing return upon investment; and urged any participating management producing at a greater rate than its past production to consider the injurious consequences to it if it continued to produce at such higher ratio; and

Where said producer members, incident to aforesaid surveys and program; as stated—

(g) Cooperatively reported and submitted the intimate details of their businesses the analysis of experts jointly employed, and obtained from them a harmonized estimate of current and future market conditions, and thereby, and through use of other methods as above set forth, acted in concert to preserve a static condition of their respective businesses with regard to production, sales, and delivered prices, and to maintain price zones within which they made effective such prices from their widely separated producing plants; and

Where aforesaid non-member participant—

(h) Cooperated with the members of said association in carrying out the agreements, combinations and conspiracies herein set forth;

With the result that the normal conflict of contending competitive forces engendered by an honest desire for gain was thereby restrained and suppressed, and that competition in price and otherwise to which the public had long looked for protection was destroyed, and with the effect of unduly restricting and restraining the sale of salt in trade in commerce; of eliminating competition as aforesaid; and 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:

Held, That the acts and practices above described, under the circumstances 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 said producers in the sale of salt in commerce, placed in them the power to control and enhance prices, created in them a monopoly in the sale of salt in commerce, unreasonably restrained such commerce, and constituted unfair methods of competition.

Mr. Floyd O. Collins and Mr. DeWitt T. Puckett for the Commission.

Miller, Gorham, Wescot & Adams, of Chicago, Ill., for Salt Producers Association, Barton Salt Co., Cayuga Rock Salt Co., Colonial Salt Co., Myles Salt Co., Ltd., Mulkey Salt Co., Ohio Salt Co., Saginaw Salt Products Co., Union Salt Co. and Watkins Salt Co.

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Putney, Twombly & Hall, of New York City, for Avery Salt Co., Detroit Rock Salt Co., and International Salt Co.

Williams, Martindell, Carey & Brown, of Hutchinson, Kans., for Carey Salt Co.

Mr. Lester E. Waterbury, of New York City, for Diamond Crystal Salt Co., Inc.

Carroll, McElwain & Ballantine, of Louisville, Ky., for Jefferson Island Salt Co., Inc.

Hennings, Green, Henry & Evans, of St. Louis, Mo., for Hardy Salt Co.

Stearns & McBride, of Chicago, Ill., for Morton Salt Co. and Ruggles & Rademaker Salt Co.

Mandeville, Waxman, Buck, Teeter & Harpending, of Elmira, N. Y., for Worcester Salt Co.

Mr. Thomas Creigh, of Chicago, Ill., and *Mr. Gilbert H. Montague*, of New York City, for American Salt Corp.

Wise, Corlett & Canfield, of New York City, for Stevenson, Jordan & Harrison, Inc., and various officers and employees of said corporation.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the association, corporations, firms, and individuals, hereinafter described and named 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, Salt Producers Association, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office at 2137 Book Building, Detroit, Mich. It was organized and for the past several years has acted as a trade association for the promotion and protection of the interests of its members who are engaged in the manufacture and sale of salt.

PAR. 2. Respondent, Avery Salt Co., is a corporation organized and existing under and by virtue of the laws of the State of West Virginia, with its principal office and place of business at American Bank Building, New Orleans, La. Said respondent corporation is a wholly owned subsidiary of respondent International Salt Co., hereinafter mentioned.

PAR. 3. Respondent, Barton Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business in Hutchinson, Kans.

PAR. 4. Respondent, Carey Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business in Hutchinson, Kans.

PAR. 5. Respondent, Cayuga Rock Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in Myers, N. Y.

PAR. 6. Respondent, Colonial Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at 2065 Manchester Road, Akron, Ohio.

PAR. 7. Respondent, Detroit Rock Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business at 12841 Saunders Street, Detroit, Mich.

PAR. 8. Respondent, Diamond Crystal Salt 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 at St. Clair, Mich., and its principal place of business at 250 Park Avenue, New York, N. Y.

PAR. 9. Respondent, International Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in Scranton, Pa.

PAR. 10. Respondent, Jefferson Island Salt Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky, with its principal office and place of business at 401 West Main Street, Louisville, Ky.

PAR. 11. Respondent, Hardy Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business at 800 South Vandeventer Street, St. Louis, Mo.

PAR. 12. Respondent, Morton Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 208 West Washington Street, Chicago, Ill.

PAR. 13. Respondent, Myles Salt Co., Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business at 1048 Constance Street, New Orleans, La.

PAR. 14. Respondent, Mulkey Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business at 154 Bagley Avenue, Detroit, Mich.

PAR. 15. Respondent, Ohio Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business in Wadsworth, Ohio.

PAR. 16. Respondent, Ruggles & Rademaker Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 208 West Washington Street, Chicago, Ill. Said respondent corporation is a wholly owned subsidiary of respondent Morton Salt Co., hereinbefore mentioned.

PAR. 17. Respondent, Saginaw Salt Products Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business in Saginaw, Mich.

PAR. 18. Respondent, Union Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at Sixty-fifth Street and New York Central R. R., Cleveland, Ohio.

PAR. 19. Respondent, Watkins Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in Watkins Glen, N. Y.

PAR. 20. Respondent, Worcester Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 40 Worth Street, New York, N. Y.

PAR. 21. Respondent, American Salt 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 in the New York Life Building, Kansas City, Mo.

PAR. 22. Respondent, Stevenson Corporation, a corporation organized, existing and doing business under the laws of the State of New York, and Charles R. Stevenson, T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R.

Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. B. Platt, Howard Marvin, and D. M. Metzger are partners doing business under the firm name of Stevenson, Jordan and Harrison, with their principal place of business at 19 West Forty-fourth Street, New York, N. Y. The said respondents are engaged in business management and business engineering.

PAR. 23. Respondents described in paragraphs 2 to 20, inclusive, hereinafter referred to as member respondents, are members of the respondent association named in paragraph 1, and respondent American Salt Corporation, hereinbefore described in paragraph 21, in the course and conduct of their business, manufacture, sell, and distribute a large percentage of all the salt produced in the United States. The said member respondents and respondent American Salt Corporation sell their products to wholesalers, dealers and consumers located at various points throughout the United States and when sales are made, and as a part thereof, regularly have shipped, and do ship, said products to the purchasers thereof at their respective points of location in the several States of the United States other than in the States of origin of the shipments. Said member respondents and respondent American Salt Corporation maintain a current of trade in commerce in said products between and among the several States of the United States and in the District of Columbia.

Prior to the adoption of the practices hereinafter described, said member respondents and respondent American Salt Corporation were in active and substantial competition with each other and with other members of the industry in making and seeking to make sales of their products in trade in commerce between and among the several States of the United States and in the District of Columbia; but for the practices hereinafter described such active and substantial competition would have continued until the present and said member respondents would now be in active and substantial competition with each other and with other members of the industry. Beginning about October 1935, all the respondents entered into understandings, agreements, combinations and conspiracies. Said understandings, agreements, combinations and conspiracies were entered into, and thereafter carried out, for the purpose and with the effect of restricting, restraining, monopolizing, suppressing, and eliminating competition in the sale of salt in trade in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 24. Pursuant to said understandings, agreements, combinations, and conspiracies and in furtherance thereof, said member respondents, with the active cooperation of the other respondents named herein, have done and performed, and still do and perform, the following acts and things:

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(1) Said member respondents and respondent American Salt Corporation agreed to fix and maintain, and have fixed and maintained, uniform prices, terms, and conditions in the sale of salt.

(2) Said member respondents and respondent American Salt Corporation have agreed to establish and have established, a system of zones throughout the United States to aid in the establishment and fixing of prices of salt.

(3) Said member respondents and respondent American Salt Corporation have agreed to cooperate, and have cooperated, in the maintenance of the various prices determined for particular zones.

(4) Said member respondents and respondent American Salt Corporation have agreed to curtail, and have curtailed, the production of salt, and for the purpose of securing enforcement of the agreement to curtail production member respondents and respondent American Salt Corporation have filed, and do file with said respondent association, invoices and other reports.

(5) Said member respondents and respondent American Salt Corporation have agreed to exchange, and have exchanged, through the medium of said respondent association, price lists in order to establish the prices at which salt is to be sold.

(6) Said member respondents and respondent American Salt Corporation have agreed to exchange, and have exchanged, information to be used in connection with the fixing of prices, discounts, terms, and conditions of sale of salt.

(7) Said respondent association collects from and distributes among member respondents and other participants in said agreements statistical information used and useful in carrying out said agreements, and they distribute from time to time among said member respondents and non-members participating in said agreements, lists showing the current prices, terms and conditions of sale, dealers and distributors to be allowed special discounts and other information used and useful in carrying out said agreements.

(8) Respondent Stevenson Corporation and the individual respondents doing business under the firm name Stevenson, Jordan and Harrison, heretofore specifically named in paragraph 22 hereof, in the course and conduct of their business, as aforesaid, have actively participated in by directing, recommending, and supervising the foregoing acts and things done by said respondents in furtherance of said understandings, agreements, combinations, and conspiracies.

(9) Said member respondents and respondent American Salt Corporation have used, and are now using, other methods and means designed to suppress and prevent competition and restrict and restrain the sale of salt in said commerce.

PAR. 25. Each of the said respondents at the times herein mentioned acted in concert with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 26. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto, and in furtherance thereof, as hereinabove alleged, have had, and do have, the effect of unduly restricting and restraining the sale of said salt in trade in commerce 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 between and among the respondents in said commerce, and of eliminating competition between and among said respondents.

The acts and practices of the respondents as herein alleged are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of salt 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 salt in such commerce; have unreasonably restrained such commerce in salt, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 18, 1940, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers, the Commission by orders entered herein granted the motions of said respondents Salt Producers Association, a corporation, Avery Salt Co., Barton Salt Co., The Carey Salt Co., Cayuga Rock Salt Co., Colonial Salt Co., Detroit Rock Salt Co., Diamond Crystal Salt Co., Inc., International Salt Co., Jefferson Island Salt Co., Inc., Hardy Salt Co., Morton Salt Co., Myles Salt Co., Ltd., Mulkey Salt Co., Ohio Salt Co., Ruggles & Rademaker Salt Co., Saginaw Salt Products Co., Union Salt Co.,

Watkins Salt Co., and Worcester Salt Co., to withdraw their answers and to substitute therefor answers admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts; granted the motion of respondent American Salt Corporation to withdraw its motion to dismiss the complaint and its answer and to substitute therefor and accept as its answer a statement of facts including an admission of all the material allegations of fact set forth in said complaint and waiving all intervening procedure and hearings as to said facts; and granted the motion of respondents Stevenson Corporation, a corporation, and its officers, 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. B. Platt, Howard Marvin, and D. M. Metzger, a partnership doing business under the firm name of Stevenson, Jordan & Harrison, to make a part of the record and receive in lieu of taking testimony or further hearings in this proceeding a statement of admitted facts submitted by them; which substitute answers and admissions of facts were duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint, substitute answers and answers and statements of admitted 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. Respondent, Salt Producers Association, hereinafter referred to as respondent association, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office at 2137 Book Building, Detroit, Mich. It was organized and for the past several years has acted as a trade association for the promotion and protection of the interests of its members who are engaged in the manufacture and sale of salt.

Respondents whose names appear in the following tabulation are members of the Salt Producers Association, and each is organized and exists by virtue of the laws of the State and has its principal office or place of business at the address shown:

Avery Salt Co., State of West Virginia, American Bank Building, New Orleans, La.;

Barton Salt Co., State of Kansas, Hutchinson, Kans.;

Findings

- The Carey Salt Co., State of Kansas, Hutchinson, Kans.;
- Cayuga Rock Salt Co., State of Delaware, Myers, N. Y.;
- Colonial Salt Co., State of Ohio, 2065 Manchester Road, Akron, Ohio;
- Detroit Rock Salt Co., State of Michigan, 12841 Saunders Street, Detroit, Mich.;
- Diamond Crystal Salt Co., State of Delaware, St. Clair, Mich.;
- International Salt Co., State of New Jersey, Scranton, Pa.;
- Jefferson Island Salt Co., State of Kentucky, 401 South Main Street, Louisville, Ky.;
- Hardy Salt Co., State of Missouri, 800 South Vandeventer Street, St. Louis, Mo.;
- Morton Salt Co., State of Illinois, 208 West Washington Street, Chicago, Ill.;
- Myles Salt Co., Ltd., State of Louisiana, 1048 Constance Street, New Orleans, La.;
- Mulkey Salt Co., State of Michigan, 154 Bagley Avenue, Detroit, Mich.;
- Ohio Salt Co., State of Ohio, Wadsworth, Ohio;
- Ruggles & Rademaker Salt Co., State of Michigan, 208 West Washington Street, Chicago, Ill.;
- Saginaw Salt Products Co., State of Michigan, Saginaw, Mich.;
- Union Salt Co., State of Ohio, Sixty-fifth Street and New York Central R. R., Cleveland, Ohio;
- Watkins Salt Co., State of Delaware, Watkins Glen, N. Y.;
- Worcester Salt Co., State of New York, 40 Worth Street, New York, N. Y.

Respondent, American Salt 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 in the New York Life Building, Kansas City, Mo.

Respondent, Stevenson, Jordan & Harrison, Inc. (the corporate name of which was Stevenson Corporation until about August 6, 1940, and which was referred to in the complaint under its said former name) is a corporation organized, existing, and doing business under the laws of the State of New York, having its principal place of business at 19 West Forty-fourth Street, New York, N. Y. The individual respondents Charles R. Stevenson, T. M. Harrison, C. H. Ferris, N. M. Perris, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. B. Platt, Howard Marvin, and D. M. Metzger (referred to in the complaint as members of a partnership trading under the name Stevenson, Jordan & Harrison) are, with the exception of Charles R. Stevenson and

D. M. Metzger, employees of respondent Stevenson, Jordan & Harrison, Inc., the said Charles R. Stevenson and D. M. Metzger being, respectively, president and treasurer of said corporation. Respondent E. G. Ackerman (referred to in the complaint as a member of said partnership) was an employee of Stevenson, Jordan & Harrison, Inc., until about December 31, 1940, at which time he terminated his connection with said corporation.

PAR. 2. The respondents, Avery Salt Co., Barton Salt Co., The Carey Salt Co., Cayuga Rock Salt Co., Colonial Salt Co., Detroit Rock Salt Co., Diamond Crystal Salt Co., Inc., International Salt Co., Jefferson Island Salt Co., Inc., Hardy Salt Co., Morton Salt Co., Myles Salt Co., Ltd., Mulkey Salt Co., Ohio Salt Co., Ruggles & Rademaker Salt Co., Saginaw Salt Products Co., Union Salt Co., Watkins Salt Co., Worcester Salt Co., and American Salt Corporation, hereinafter referred to as respondent producers, in the course and conduct of their business manufacture, sell, and distribute a large percentage of all the salt produced in the United States. Said producers sell their products to wholesalers, dealers, and consumers located at various points throughout the United States and when sales are made, and as a part thereof, regularly have shipped, and do ship, said products to the purchasers thereof at their respective points of location in the several States of the United States other than in the States of origin of the shipments. Said respondent producers maintain a current of trade in commerce in said products between and among the several States of the United States and in the District of Columbia.

PAR. 3. Prior to the adoption of the practices hereinafter described said respondent producers were in active and substantial competition with each other and with other members of the industry in making, and seeking to make, sales of their products in trade in commerce between and among the several States of the United States and in the District of Columbia. But for the practices hereinafter described such active and substantial competition would have continued until the present and said respondent producers would now be in active and substantial competition with each other and with other members of the industry. Beginning about October 1935 all the respondents except 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. B. Platt, and Howard Marvin entered into, and thereafter carried out, certain understandings, agreements, combinations, and conspiracies for the purpose and with the effect of restricting, restraining, monopolizing,

suppressing, and eliminating competition in the sale of salt in trade in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 4. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said respondent producers, with the active cooperation of respondents, Salt Producers Association, Stevenson, Jordan & Harrison, Inc., Charles R. Stevenson, and D. M. Metzger, have done and performed the following acts and things:

1. Said respondent producers agreed to fix and maintain, and have fixed and maintained, uniform prices and terms and conditions in the sale of salt.

2. Said respondent producers have agreed to establish, and have established, a system of zones throughout the United States to aid in the establishment and fixing of delivered prices of salt within each of such zones.

3. Said respondent producers have agreed to cooperate, and have cooperated, in the maintenance of the various delivered prices determined for particular zones.

4. Said respondent producers have agreed to exchange, and have exchanged, through the medium of said respondent association, price lists in order to establish the delivered prices at which salt is to be sold within the various zones.

5. Said respondent producers have agreed to exchange, and have exchanged, information to be used in connection with the fixing of delivered prices within the various zones, discounts, and terms, and conditions in the sale of salt.

6. Said respondent producers have agreed to curtail, and have curtailed, the production of salt, and for the purpose of securing enforcement of the agreement to curtail production respondent dealers have filed, and do file, with said respondent association invoices and other reports.

7. Said respondent association collects from and distributes among the respondent producers and other participants in said agreements statistical information used and useful in carrying out said agreements, and distributes from time to time among said respondent producers and other members of the industry participating in said agreements lists showing the current delivered prices, terms, and conditions of sale, names of dealers and distributors to be allowed special discounts, and other information used and useful in carrying out said agreements.

8. Respondent, Stevenson, Jordan & Harrison, Inc., was employed by said respondent producers from about November 1935 to about August

1939. As an employee of respondent producers Stevenson, Jordan & Harrison, Inc., and Charles R. Stevenson and D. M. Metzger, as president and treasurer thereof, respectively, in the course and conduct of their business as aforesaid, have actively participated in directing, recommending, and supervising the foregoing acts and things done by said respondent producers in furtherance of said understandings, agreements, combinations, and conspiracies. In that connection they were employed by each of the respondent producers in November 1935, to make a survey of all the business of the production, sale, and distribution of salt which had been conducted by said respondent producers during the previous period of four years and ten months. Stevenson, Jordan & Harrison, Inc., through said survey developed figures for various kinds of salt covering production, sales (both by volume and dollar realization), plant capacities, marketing expenses, and financial returns. There were established in the United States certain marketing territories or delivered price zones and the survey developed for each of the years covered by it, among other things, the volume of salt sold in each of said territories or zones and the average yield f. o. b. plant from said sales. Figures obtained from the respondent producers were combined in the survey to make composite figures. Each of said respondent producers was furnished these composite figures, together with its own individual figures, for each of the years covered by the survey, but no respondent participating in the survey was given any figures of any other respondent.

The survey further covered a study of the plant capacity to manufacture salt of each of the respondents participating in the survey, which likewise was combined into a composite figure, a study of marketing expenses combined into a composite figure, and a compilation of the financial returns likewise combined into a composite figure. Each respondent participating in the survey was given his plant capacity as compared with the total capacity of all of the respondents, his marketing expenses as compared with the composite marketing expense figure, and his financial return as compared with the composite financial return figure. No respondent was given the figures of any other respondent participating in the survey with respect to the plant capacity, the marketing expenses, or the financial return of any other respondent.

Said survey was completed in April 1936 and was presented to the individual respondent producers at a meeting in Chicago, Ill., in that month. At said meeting the facts developed by said survey were discussed by representatives of Stevenson, Jordan & Harrison, Inc., and it was pointed out that the composite figures developed by said survey indicated two things: First, that there was a large excess of

capacity to produce salt over the demand therefor, and that the composite net earnings of the respondents participating in the survey were small in relation to the investment in plants and properties; and, second, that the composite figure of sales expenses was inordinate in relation to the sales price received for the product. The representatives of Stevenson, Jordan & Harrison, Inc., further expressed the view that the conditions disclosed by these composite figures were caused by unremitting efforts of each individual respondent participating in the survey to obtain for himself an increased portion of the total volume of business obtainable without due regard to the net return on sales of the product and without due consideration to the sales expense involved.

For a period of some 30 days after said meeting in Chicago, representatives of Stevenson, Jordan & Harrison, Inc., visited the offices of the respondents who had participated in said survey and discussed with officials of said respondents the details of said survey as applied to the individual business of said respondents. On said visits representatives of Stevenson, Jordan & Harrison, Inc., advised the individual managements of the respondents participating in said survey that if each said individual management should continue in the endeavor to secure a volume of business entirely disproportionate to that obtained in the past and as indicated by the survey, the consequences of such action would inevitably be an inadequate return to the individual respondent upon investment and excessive and uneconomic cost of marketing the product, and that it was the opinion of Stevenson, Jordan & Harrison, Inc., that these were the fundamental economic truths developed by the survey.

After this work was completed another meeting of representatives of the respondent producers was held with representatives of Stevenson, Jordan & Harrison, Inc., and at this meeting said respondent producers employed Stevenson, Jordan & Harrison, Inc., to collect monthly from each participating respondent its business figures for each marketing territory or zone covering production, sales (both by volume and dollar realization), and marketing expenses, and to disseminate to each participating respondent composite figures of production, sales (both by volume and dollar realization), and marketing expenses, and likewise to set out against such composite figures for each participating respondent its own individual figures. As the figures were to deal with several classes or grades of salt differing substantially in value, all figures covering sales were to be reduced to common denominator terms. It was also understood that Stevenson, Jordan & Harrison, Inc., would collect annually financial statements from those of the participating

respondents who were willing to furnish the same and from these figures would prepare a composite financial statement which would be distributed to those of the respondents who gave their individual financial statements. It was understood further that Stevenson, Jordan & Harrison, Inc., would from time to time send its representatives to the offices of the participating respondents to audit the figures submitted to it by said participating respondents so that there could be an assurance of the accuracy of all figures collected and disseminated by Stevenson, Jordan & Harrison, Inc. No participating respondent was to be given, nor was any such respondent actually given, the individual figures of any other participating respondent with respect to production, sales (both by volume and dollar realization), marketing expenses, or financial figures.

The respondent Salt Producers Association held meetings of its members monthly, and after the employment of Stevenson, Jordan & Harrison, Inc., by said respondent producers one or more representatives of Stevenson, Jordan & Harrison, Inc., attended these meetings. At these meetings such representative or representatives explained the current statistics prepared and submitted charts indicating for various delivered price zones current volume and net dollar realization, and at times indicated their opinions of the trend of demand for salt and the volume of consumption to be expected in the various marketing territories or delivered price zones, and sent a separate chart each month to each participating respondent showing its current volume and the relation thereof to the total expected demand in comparison with its actual prior volume and the actual past total volume.

From time to time Stevenson, Jordan & Harrison, Inc., sent representatives to the offices of the participating respondents to audit the statistical data submitted to Stevenson, Jordan & Harrison, Inc., and to impress upon the management of each individual participating respondent the necessity of considering the consequences to each individual business of any substantial variance from its ratio of actual past production as shown by the survey. The managements of the participating respondents were told by these representatives of Stevenson, Jordan & Harrison, Inc., that they could increase their normal volume relationship with respect to current business only by taking some of another producer's volume; that in the sale of a homogenous product such as salt any attempt to secure such increased volume could only be made by lowering price; that if lower prices were offered by one participating respondent they would inevitably be met by other participating respondents, so that the

final result would not be to obtain any substantial increased volume of business but merely to lower the entire price structure and thus further to reduce the return upon investment. When current statistical data disclosed that one of the participating respondents was producing at a rate substantially greater than its past production as disclosed by the survey, a representative of Stevenson, Jordan & Harrison, Inc., urged such respondent's management to consider the injurious consequences to the company if it continued to produce at this higher ratio and did not relate its production to the volume relationship between its past production and the total production as disclosed by the survey figures.

The surveys and program as above described were made and carried out in every particular. Respondent members thereby cooperatively reported and submitted the intimate details of their respective businesses for the analysis of experts and interpreters jointly employed and obtained from them a harmonized estimate of current and future market conditions. Respondent members thereby, and through the use of the other methods set forth in paragraphs 3 and 4 of these findings, have acted in concert and in cooperation to preserve a static condition of their respective businesses with regard to production, sales, and delivered prices and in the maintenance of price zones within which they made effective the same delivered prices from their respective and widely separated producing plants. The normal conflict of contending competitive forces engendered by an honest desire for gain was thereby restrained and suppressed. By the substitution of such concerted action for such conflict respondents destroyed that competition in price, and otherwise, to which the public has long looked for protection.

9. The respondent, American Salt Corporation, is not, and has not been at any time mentioned herein, a member of respondent Salt Producers Association, but has cooperated and acted in concert with the members of respondent association in carrying out the agreements, combination, and conspiracies herein found.

PAR. 5. Each of the respondents herein except 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. B. Platt, and Howard Marvin, at the times herein mentioned acted in concert with one or more of the other respondents in doing and performing the acts and things hereinabove found in furtherance of said understandings, agreements, combination, and conspiracies.

PAR. 6. The aforesaid understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant there-

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to, and in furtherance thereof, as hereinabove found, have had, and do have, the effect of unduly restricting and restraining the sale of said salt in trade in commerce 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 between and among the respondents in said commerce, and of eliminating competition between and among said respondents.

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 salt in commerce, as "commerce" is defined in 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 salt in such commerce, have unreasonably restrained such commerce in salt, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission and the answers of the corporate respondents Salt Producers Association, Avery Salt Co., Barton Salt Co., The Carey Salt Co., Cayuga Rock Salt Co., Colonial Salt Co., Detroit Rock Salt Co., Diamond Crystal Salt Co., Inc., International Salt Co., Jefferson Island Salt Co., Inc., Hardy Salt Co., Morton Salt Co., Myles Salt Co., Ltd., Mulkey Salt Co., Ohio Salt Co., Ruggles & Rademaker Salt Co., Saginaw Salt Products Co., Union Salt Co., Watkins Salt Co., and Worcester Salt Co., admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts; the answer of American Salt Corporation, a corporation, admitting all the material allegations of fact set forth in said complaint, certain additional facts, and waiving all intervening procedure and further hearing as to said facts; and the answer and statement of admitted facts filed by respondents Stevenson, Jordan & Harrison, Inc. (referred to in the complaint under its former name, Stevenson Corporation), a corporation, and its officers Charles R. Stevenson and D. M. Metzger, president and treasurer, respectively, and its employees, T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Acker-

man, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. B. Platt, and Howard Marvin (referred to in the complaint as members of a partnership trading under the name Stevenson, Jordan and Harrison), and the order of the Commission granting the motion of respondents Stevenson, Jordan & Harrison, Inc., and its said officers and employees that the Commission receive said statement of admitted facts in lieu of taking testimony or further hearing and that the statement of admitted facts be made a part of the record in this proceeding; and the Commission having made its findings as to the facts and its conclusion that the aforesaid respondents, except T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetzer, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. B. Platt, and Howard Marvin, have violated the provisions of section 5 of the Federal Trade Commission Act.

It is ordered, That the respondents, Salt Producers Association, a corporation, Avery Salt Co., a corporation, Barton Salt Co., a corporation, The Carey Salt Co., a corporation, Cayuga Rock Salt Co., a corporation, Colonial Salt Co., a corporation, Detroit Rock Salt Co., a corporation, Diamond Crystal Salt Co., Inc., a corporation, International Salt Company, a corporation, Jefferson Island Salt Co., Inc., a corporation, Hardy Salt Co., a corporation, Morton Salt Co., a corporation, Myles Salt Co., Ltd., a corporation, Mulkey Salt Co., a corporation, Ohio Salt Co., a corporation, Ruggles & Rademaker Salt Co., a corporation, Saginaw Salt Products Co., a corporation, Union Salt Co., a corporation, Watkins Salt Co., a corporation, Worcester Salt Co., a corporation, American Salt Corporation, a corporation, their officers, servants, agents, and employees, and Stevenson, Jordan & Harrison, Inc., Charles R. Stevenson and D. M. Metzger, respectively president and treasurer of said Stevenson, Jordan & Harrison, Inc., and their agents, servants, and employees, or any two or more of said respondents, with or without the cooperation of others not parties hereto, in connection with the offering for sale, sale, and distribution of salt in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, or carrying out, or directing, instigating, or cooperating in, any common course of action, mutual agreement, combination, or conspiracy, to fix or maintain the prices of salt or curtail, restrict, or regulate the production or sale thereof, and from doing any of the following acts or things pursuant thereto:

1. Establishing or maintaining uniform prices for salt, or uniform terms and conditions in the sale thereof, or in any manner agreeing

upon, fixing, or maintaining any prices, including terms and conditions of sale, at which salt is to be sold.

2. Adhering, or promising to adhere, to filed or published prices or terms and conditions of sale for salt pending the filing of changes therein with respondent Salt Producers Association, or with any other agency, or with each other.

3. Establishing or maintaining delivered price zones, or making quotations and sales of salt upon a delivered price basis under a zone system whereby the cost of salt delivered to buyers within each respective zone is made identical at all destinations within such zone.

4. Exchanging, directly or through the Salt Producers Association, or any other agency, or clearing house, price lists, invoices, and other records of sale showing the quantity, current prices and terms and conditions of sale allowed by respondent corporations to dealers and distributors; provided, however, that nothing herein shall prevent the respondent association from collecting and disseminating to the respective respondent manufacturers figures showing the total volume of sales of salt without disclosing the sales volume of individual producers.

5. Exchanging, directly or through the medium of the Salt Producers Association, or any other agency, the names of distributors or dealers who receive special discounts.

6. Curtailing, restricting, or regulating the quantity of salt to be produced and sold by any respondent corporation by any method or means during any given period of time.

7. Doing, or causing to be done, any of the things forbidden by this order through the medium of respondents, Stevenson, Jordan & Harrison, Inc., Charles R. Stevenson, or D. M. Metzger, or any other corporation, firm, or individual.

It is further ordered, That respondents, Stevenson, Jordan & Harrison, Inc., and Charles R. Stevenson and D. M. Metzger as officers thereof, and their agents, servants, and employees, do forthwith cease and desist from doing or performing any of the things forbidden by this order, or aiding, assisting, or cooperating in the performance thereof.

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

It is further ordered, That nothing in this order is to be construed as prohibiting the respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are not pro-

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hibited by the provisions of an act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (the Sherman Act), as amended.

It is further ordered, That for the reasons appearing in the findings as to the facts the complaint herein be, and hereby is, dismissed as to the following respondents: 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. B. Platt, and Howard Marvin.

IN THE MATTER OF
**GENERAL MOTORS CORPORATION, AND GENERAL
 MOTORS SALES CORPORATION**

COMPLAINT, FINDINGS, AND MODIFIED ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 3152. Complaint, June 15, 1937—Decision, Nov. 12, 1941

Where a corporate automobile manufacturer, products of which, including parts and accessories made through several subsidiaries, constituted a substantial portion of all those made and sold in the United States, and which operated through five motorcar divisions, named to correspond with the cars made by it; and a sales corporation to and through which it competitively sold such automobile parts, etc., and which (1) supervised its dealers through a large field organization, (2) entered into agreements or "franchises" with them, under which dealer undertook not to sell or use second-hand parts or any not made or authorized by manufacturer, seller had right to check dealer's stock of parts, and dealer, if it thought such stock insufficient, was obligated to order immediately such parts as it might recommend; and (3) construed dealer's obligation to stock only "genuine parts" as covering, in addition to items for repair and replacement, its various accessories also—

In carrying on not as incident to their sale of automobiles, but as substantial portion of their entire business, to the promotion of which they directed numerous activities, sale of "parts" and accessories, which included a great variety of items theretofore sold in competition with the independent jobber and identical therewith, such as ball bearings, battery cables, brake linings, and numerous others; embraced many made by independent manufacturers for aforesaid manufacturer, differing from said manufacturers' similar items, sold through such jobbers, only in their sale, by said sales corporation, under its own identification, as "genuine"; and included many others which were made by many reputable manufacturers and were of like quality and design; or which, not necessary to the car's mechanical operation, had no bearing upon its performance and good-will—

- (a) Adopted a program of acts and practices which were designed to and did intimidate and coerce its dealers and compelled them to purchase parts and accessories solely from said selling corporation, and prohibited purchases from outside sources except in cases of emergency when the "genuine" part or accessory was not available in the warehouse of manufacturer in question; and as a part of said various acts and practices—
- (1) Made its indeterminate dealer franchises a means of coercion and intimidation through its practice of renewing or canceling such franchises at the annual meetings called by the zone managers for their respective districts, at which time each dealer, following personal interviews with representatives of the parts and accessories and other departments, and final interview with the zone manager, as condition to renewal, was required to secure the approval of each and agree with said manager on his prospective requirements;

- (2) Coerced, through threat of cancelation implicit in aforesaid practice, dealers into the purchase of parts and accessories beyond their requirements, and, under its plan designed to limit dealer's purchases of parts and accessories to those sold by it, delivered, in many cases, automobiles equipped with various accessories which he had not ordered; shipped to him, with or without cars and without prior order therefor, accessories; and, in many cases, made shipments of parts and accessories, treating as orders therefor, dealer's required projection of future needs;
- (3) Made use of its monthly parts order plan—under which dealer's last monthly order was compared with the present one—to intimidate, coerce and compel dealers to buy parts and accessories;
- (4) Made use of its monthly inspection of the dealers' stocks and establishments to coerce them into purchasing its parts and accessories only, through threatening, directly and by implication, upon discovery of parts and accessories other than those supplied by it, that unless practice was discontinued, recalcitrants' contracts would be canceled; furthering such threats through arrangements for interviews with respective zone managers, in whom, as was known, rested power to recommend cancelation; and
- (5) In some cases delayed new car shipments to dealers who had refused to handle only parts and accessories sold by it, and in certain cases canceled dealers' contracts after controversy over use of parts and accessories, though, ostensibly, upon other grounds;

With the result that independent jobbers who, as competitors, sold the products of independent manufacturers, including numerous items identical with those sold by two corporations in question, and embracing many sold also by said corporations under their own identification as "genuine" replacement parts, and many others not necessary to the car's mechanical operation and having no bearing upon its performance or good-will, were thereafter unable to sell in substantial quantities to dealers such parts and accessories as heaters, radios, antifreeze solutions, spark plugs, and many others; dealers of said sales corporation were intimidated, coerced and compelled to purchase accessories and supplies only from it; substantial trade was diverted to corporations in question from their competitors engaged in the manufacture and interstate sale and distribution of automobile accessories and supplies; competing manufacturers were deprived of a market for their products; and there was a tendency unduly to hinder competition and create a monopoly in said first named corporation in automobile accessories and supplies:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and said corporations' competitors, and constituted unfair methods of competition in violation of section 5 of the Federal Trade Commission Act; and

Where aforesaid corporations—

- (b) Entered into agreements or "franchises" with dealers handling their respective lines of automobiles, parts and accessories and sold their parts on the condition, agreement or understanding that the purchaser would not sell or use parts other than those acquired from them, without limitation to parts' necessity to car's mechanical operation and lack of availability, in like quality and design, from other sources;

With the tendency to create a monopoly in replacement parts used on said manufacturer's cars; of removing as customers of independent manufac-

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turers and jobbers some 14,000 dealers in cars in question, and all associate dealers and selected independent garages who, under plan pushed by them, had agreed to purchase only parts supplied by dealers of said corporations, estimated for one division alone as amounting to about 15,000 in 1936:

Held, That such acts and practices of said corporations in selling replacement parts on the condition, agreement or understanding that purchaser should not use or deal in those of a competitor had the effect of substantially lessening competition, tended to create a monopoly in products in question and constituted a violation of section 3 of the Clayton Act, as amended.

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

Mr. Everett F. Haycraft and *Mr. Merle P. Lyon* for the Commission.

Mr. Edward B. Wallace, *Mr. Albert M. Levert* and *Mr. John Thomas Smith*, of New York City, for respondents.

COMPLAINT

Count 1

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

PARAGRAPH 1. Respondent, General Motors Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its general office and place of business in the city of Detroit, State of Michigan. It is now, and for more than three years last past has been, engaged in the manufacture of automobiles, automobile accessories, automobile parts, and automobile supplies, and in the sale thereof, by and through subsidiaries to automobile retail dealers located throughout the several States of the United States, the territories thereof, and in the District of Columbia, causing said products when sold to be transported from the places of manufacture in various States of the United States to the purchasers thereof located in States other than the place of manufacture thereof, and there is now and has been for more than three 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.

The said respondent, General Motors Corporation, in the sale of automobiles and automobile parts, through its said subsidiaries to automobile retail dealers, as aforesaid, has entered into and now has contracts or franchises with said automobile dealers for the resale of said products, which said franchises constitute a major asset of said dealers. The number of automobile dealers having such franchises has constituted for more than 3 years last past, and now constitutes, a substantial proportion of all the automobile dealers in the United States.

The number of automobiles manufactured by said respondent and sold through its said subsidiaries as hereinbefore and as hereinafter described, for more than 3 years last past has constituted, and now constitutes, a substantial proportion of all the automobiles manufactured and sold in the United States. The total volume of automobile parts, automobile accessories, and automobile supplies sold by said respondent through its said subsidiaries as hereinbefore and as hereinafter described, has for more than 3 years last past constituted, and now constitutes, a substantial proportion of all the automobile parts, automobile accessories and automobile supplies manufactured and sold in the United States.

In the course and conduct of its said business, as hereinbefore and as hereinafter described, said respondent, General Motors Corporation, has been for more than 3 years last past, and now is, in substantial competition in the sale of automobiles, automobile parts, automobile accessories, and automobile supplies, in commerce between and among the various States of the United States, the territories thereof, and in the District of Columbia, with other corporations and with persons, firms, and partnerships.

PAR. 2. For more than 3 years prior to October 23, 1936, or thereabouts, the sales of automobiles, parts, accessories, and supplies manufactured by said General Motors Corporation were made through and by subsidiary corporations, among which were Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, and Cadillac Motor Car Co., at whose respective factories said General Motors Corporation manufactured the automobiles sold by such subsidiary corporations and at whose respective factories said General Motors Corporation also manufactured automobile parts, accessories and supplies for use in and on automobiles sold by said General Motors Corporation through the aforesaid subsidiaries. For more than 3 years prior to October 23, 1936, respondent General Motors Corporation also sold as described in paragraph 1 hereof, automobile parts, automobile accessories, and automobile supplies through another subsidiary, General Motors Parts Corporation, a Delaware corpora-

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tion, with its principal office and place of business located in the city of Detroit, State of Michigan; and for more than 3 years prior to October 23, 1936, respondent General Motors Corporation also sold as described in paragraph 1 hereof, automobile parts, automobile accessories, and automobile supplies through said General Motors Parts Corporation, such parts, accessories, and supplies having been manufactured by other corporations subsidiary to respondent General Motors Corporation, and by persons, firms, partnerships, and corporations associated and affiliated, by contractual relationship or otherwise, with said respondent General Motors Corporation or one or more of its subsidiaries.

PAR. 3. On October 23, 1936, or thereabouts, the aforesaid subsidiaries Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., and General Motors Parts Corporation, were dissolved and all of their assets acquired by respondent General Motors Corporation, which upon such acquisitions organized as a wholly owned and controlled subsidiary respondent General Motors Sales Corporation, a Delaware corporation with its principal office in Detroit, Mich., which since its organization on October 23, 1936, or thereabouts, has conducted and still conducts the business theretofore conducted by said Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., and General Motors Parts Corporation.

PAR. 4. In the course and conduct of their businesses hereinbefore described, said respondent General Motors Corporation and said Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., and General Motors Parts Corporation, for more than 3 years prior to October 23, 1936, or thereabouts, by intimidation, oppression, and coercion compelled dealers in makes of automobiles manufactured by said General Motors Corporation, against their will, to purchase accessories and supplies for use on such automobiles only from said Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., or General Motors Parts Corporation, or from other corporations, or from persons, firms, or partnerships associated or affiliated with said General Motors Corporation, said Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, or Cadillac Motor Car Co., or said General Motors Parts Corporation. As a part of such intimidation, oppression, coercion, and compulsion, said Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, and Cadillac Motor Car Co., during said period shipped to such dealers automobiles equipped with accessories not ordered by such dealers and shipped accessories and supplies (not

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attached to automobiles) not ordered by such dealers and threatened such dealers with cancellation of their franchises for selling such automobiles, unless they accepted and paid for such accessories and supplies not ordered by them, and as a part of such intimidation, oppression, coercion, and compulsion, because of the refusal of certain of their dealers to accept unordered accessories and supplies, canceled their respective franchises with such dealers.

PAR. 5. Said respondent, General Motors Corporation, and its subsidiaries, General Motors Parts Corporation, Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, and Cadillac Motor Car Co., by the use of the practices and methods described in paragraph 4 hereof, for more than 3 years prior to October 23, 1936, or thereabouts, diverted substantial trade from manufacturers of automobile accessories and automobile supplies engaged in competition with the corporations named in this paragraph, and with persons, firms, and partnerships associated or affiliated with said corporations, in the sale of said products between and among the various States and territories of the United States and the District of Columbia; and deprived said competitors of a market for the sale of said products manufactured and sold by said competitors as aforesaid; and, did substantial injury to substantial competition and tended unduly to hinder competition and to create a monopoly in General Motors Corporation in commerce, in automobile accessories and automobile supplies, between and among the various States and territories of the United States and in the District of Columbia.

PAR. 6. In the course and conduct of their business hereinbefore described, said respondent, General Motors Corporation, and said respondent, General Motor Sales Corporation, since October 23, 1936, or thereabouts, by intimidation, oppression, and coercion have compelled dealers in makes of automobiles manufactured by said General Motors Corporation, against their will, to purchase accessories and supplies for use on such automobiles only from said General Motors Sales Corporation or from corporations or from persons, firms and partnerships associated or affiliated with said General Motors Corporation or said General Motors Sales Corporation. As a part of such intimidation, oppression, coercion, and compulsion, said General Motors Sales Corporation, since October 23, 1936, or thereabouts, has shipped to such dealers, automobiles equipped with accessories not ordered by such dealers, and has shipped accessories and supplies (not attached to automobiles) not ordered by such dealers, and has threatened such dealers with cancellation of their franchises for selling such automobiles, unless they accepted and paid for such accessories and supplies not ordered by them, and as a part

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of such intimidation, oppression, coercion, and compulsion, because of the refusal of certain of their dealers to accept unordered accessories and supplies, have cancelled their respective franchises with such dealers.

PAR. 7. Said respondents, General Motors Corporation and General Motors Sales Corporation by the use of the practices and methods described in paragraph 6 hereof, at all times since October 23, 1936, or thereabouts, have diverted and are now diverting substantial trade from manufacturers of automobile accessories and supplies, engaged, in competition with said respondents, in the sale of said products between and among the various States and territories of the United States and in the District of Columbia; and, have deprived and are now depriving said competing manufacturers of a market for the sale of said products manufactured and sold by said competing manufacturers as aforesaid; and, said respondents have done and are now doing substantial injury to substantial competition, and have tended, and are now tending, unduly, to hinder competition and to create a monopoly in General Motors Corporation in commerce, in automobile accessories and automobile supplies, between and among the various States and territories of the United States and in the District of Columbia.

PAR. 8. The above alleged acts and practices of respondents General Motors Corporation and General Motors Sales Corporation are all to the injury and prejudice of the public and said respondents' competitors and constitute unfair methods of competition within the intent and meaning of section 5 of an act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Count 2

The Federal Trade Commission having reason to believe that General Motors Corporation and General Motors Sales Corporation, hereinafter called 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 (the Clayton Act), hereby issues this its complaint against said respondents and states its charges with respect thereto as follows, to-wit:

PARAGRAPH 1. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraph 1 of count 1 of this complaint to the same extent and as though the allegations of said paragraph 1 of said count 1 were set out in

full herein, and said paragraph 1 of said count 1 is incorporated herein by reference and made a part of the allegations of this count.

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

PAR. 3. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraph 3 of count 1 of this complaint to the same extent and as though the allegations of said paragraph 3 of said count 1 were set out in full herein, and said paragraph 3 of said count 1 is incorporated herein by reference and made a part of the allegations of this count.

PAR. 4. In the course and conduct of its business described in paragraphs 1 and 2 of count 1 of this complaint, respondent, General Motors Corporation, and the aforesaid Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., and General Motors Parts Corporation, in the course of commerce between and among the various States of the United States and the District of Columbia as described in said paragraphs 1 and 2 of said count 1 of this complaint, for more than 3 years prior to October 23, 1936, or thereabouts, made sales and contracts for the sale of automobile parts on the condition, agreement, and understanding that the purchasers thereof should not deal in the automobile parts of a competitor or competitors of said respondent, General Motors Corporation, and the aforesaid Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., and General Motors Parts Corporation, the effect of which said sales and contracts for sale upon such condition, agreement, and understanding may have been to substantially lessen competition or tend to create a monopoly in respondent General Motors Corporation, said Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., and said General Motors Parts Corporation, in commerce between and among the various States of the United States and the District of Columbia in automobile parts.

PAR. 5. The aforesaid acts of said respondent, General Motors Corporation, and of the aforesaid Chevrolet Motor Co., Buick Motor Co., Pontiac Motor Co., Olds Motor Works, Cadillac Motor Car Co., and said General Motors Parts Corporation constituted a violation of the provisions of section 3 of the hereinabove mentioned act of

Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act).

PAR. 6. In the course and conduct of their businesses described in paragraphs 1, 2, and 3 of count 1 of this complaint, respondent General Motors Corporation and respondent General Motors Sales Corporation, in the course of commerce between and among the various States of the United States and the District of Columbia, described in said paragraphs of said count, have made sales and now are making sales, and contracts for the sale, of automobile parts on the condition, agreement, and understanding that the purchasers thereof shall not deal in the automobile parts of a competitor or competitors of said respondents, the effect of which said sales and contracts for sale upon such condition, agreement, and understanding may be, or may have been, to substantially lessen competition or to 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 automobile parts.

PAR. 7. The aforesaid acts of said respondents, General Motors Corporation and General Motors Sales Corporation, constitute a violation of the provisions of section 3 of the hereinabove mentioned act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and 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, commonly known as the Clayton Act, the Federal Trade Commission, on June 15, 1937, issued and subsequently served its complaint in this proceeding upon the respondents, General Motors Corporation, a corporation, and General Motors Sales Corporation, a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Federal Trade Commission Act, and also charging them with violation of the provisions of section 3 of said act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes." 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 Everett

F. Haycraft, attorney for the Commission, and in opposition to the allegations of the complaint by Albert M. Levert, attorney for the respondents, before John L. Hornor and W. W. Sheppard, 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. Approximately 30,000 pages of testimony were taken before Trial Examiner John L. Hornor, including approximately 11,000 pages of Commission's case in chief. The remaining 8,000 pages of testimony were taken before Trial Examiner W. W. Sheppard. A report upon the entire evidence was submitted by Trial Examiner W. W. Sheppard without objection of counsel for the respondents. Trial Examiner John L. Hornor did not submit a report upon the evidence taken before him or join in the report upon the evidence submitted by Trial Examiner W. W. Sheppard. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers thereto, testimony and other evidence, report of Trial Examiner W. W. Sheppard upon the evidence, and exceptions filed thereto by counsel for the Commission, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel; and the Commission having duly considered the matter and having given detailed consideration to the testimony and other evidence, as well as the report of Trial Examiner W. W. Sheppard upon the evidence, and exceptions filed thereto, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, General Motors Corporation, is a Delaware corporation, with its general office and place of business in the city of Detroit, State of Michigan, and is now, and for several years last past has been, engaged in the manufacture of automobiles under trade names of "Cadillac," "LaSalle," "Buick," "Oldsmobile," "Pontiac," and "Chevrolet," and replacement parts, accessories, and supplies for said automobiles under the trade names of "Cadillac," "LaSalle," "Buick," "Oldsmobile," "Pontiac," "Chevrolet," and "G. M.," which said products have been, since on or about October 23, 1936, sold through and by respondent General Motors Sales Corporation, a Delaware corporation, to dealers located throughout the several States of the United States, and in the District of Columbia, and such products, when so sold, have been, and are now being, transported and shipped from the factories of said respondent General Motors

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Corporation to said dealers located in States other than the State in which said products have been, and are being manufactured. Said respondent General Motors Sales Corporation is a wholly owned subsidiary of respondent General Motors Corporation.

Respondents maintain, and at all times mentioned herein, have maintained a course of trade in said automobiles, replacement parts, accessories, and supplies in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, respondents are now, and for more than 3 years last past have been, engaged in substantial competition in the sale of automobiles, automobile parts, accessories, and supplies, with other corporations and with persons, firms, and copartnerships 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. Prior to October 23, 1936, the respondent General Motors Corporation sold its said automobiles, replacement parts, automobile accessories, and supplies manufactured as aforesaid, through and by the following subsidiary corporations, which were operated as divisions of General Motors Corporation, namely, Cadillac Motor Car Co., Buick Motor Co., Olds Motor Works, Pontiac Motor Co., and Chevrolet Motor Co., and also through its subsidiary, the General Motors Parts Corporation, a Delaware corporation, with its principal office and place of business located in the city of Detroit, State of Michigan.

PAR. 4. On or about November 30, 1936, the said Cadillac Motor Car Co., Buick Motor Co., Olds Motor Works, Pontiac Motor Co., Chevrolet Motor Co., and General Motors Parts Corporation were dissolved and their assets acquired by said respondent General Motors Corporation, and the business of selling automobiles, parts, accessories, and supplies theretofore conducted by said corporations was thereafter conducted by said respondent General Motors Sales Corporation.

PAR. 5. Respondent General Motors Corporation, since November 30, 1936, has conducted its operations through five motorcar divisions, namely, Chevrolet Motor Division, Pontiac Motor Division, Olds Motor Works Division, Buick Motor Division, and Cadillac Motor Car Division. Said respondent General Motors Corporation sells the automobiles, replacement parts, accessories, and supplies manufactured by it in its various divisions to General Motors Sales Corporation. Respondent General Motors Sales Corporation is also divided into motorcar divisions corresponding to the various manufacturing divisions of respondent General Motors Corporation.

PAR. 6 Respondent General Motors Sales Corporation, in the sale of automobiles, parts, accessories, and supplies to automobile dealers, maintains its principal or central office in the General Motors Building, city of Detroit, State of Michigan, and maintains regional and zone offices throughout the several States of the United States and employs parts and accessories salesmen, who contact dealers handling cars manufactured by the respondent General Motors Corporation. In this respect said respondent General Motors Sales Corporation operates through separate divisions for each respective make of car sold by it.

PAR. 7 Dealers who are selected by the respondent General Motors Sales Corporation are required to meet certain standards, particularly of a financial nature, dependent upon the locality of the dealer and the territory granted. In addition, said respondent maintains a degree of supervision over such dealers, for which purpose a large field organization is maintained. This field organization may be illustrated by the Chevrolet organization as of June 30, 1937, which is typical. The general sales manager was at the head of the Chevrolet Division of General Motors Sales Corporation, and under him were two assistant general sales managers. Under these were 9 regional managers, each of whom was in charge of a region comprising 3 or more States. Under each regional manager were approximately 47 zone managers, each in charge of a zone comprising a part of one or more States. Under each zone manager were field representatives or district managers, each of whom was assigned to a specific territory, usually a county or other small subdivision. These field representatives made frequent calls on dealers, inquired as to business and economic conditions, offered advice and suggestions, made periodic audits, collected data, and, in general, obtained detailed information concerning dealers' business operations. The distribution of parts and accessories in the respective regions above described was supervised by regional parts and accessories managers. Each zone in turn had a parts and accessories manager, who supervised the distribution of parts and accessories to Chevrolet dealers located in their respective zones. Working under these zone parts and accessories managers were 146 zone parts and accessories salesmen contacting the Chevrolet dealers at regular intervals, usually monthly, promoting the sale of parts and accessories to Chevrolet dealers.

PAR. 8. General instructions are issued in the form of bulletins, circulars, and manuals by parts and accessories managers of the respective divisions of the respondent General Motors Sales Corporation to their respective zone officials, and through them and by them to salesmen for the respective divisions, as to the methods and practices

to be employed by said salesmen in the sale of said replacement parts, accessories, and supplies sold to the respective dealers located throughout the United States. In addition, oral instructions are given to salesmen by these respective division and zone officials at meetings of said officials and salesmen held from time to time at central, regional, and zone offices.

PAR. 9. One of the most important duties imposed upon the replacement parts and accessories salesmen employed by respondent General Motors Sales Corporation is to see that the respective dealers handle and keep in stock only "genuine" General Motors parts and accessories, which, in practice, means to the dealer, a part or accessory manufactured by or at the instance of General Motors Corporation and sold and distributed by the various divisions of General Motors Sales Corporation. These parts and accessories are identified by either the division trade-mark, the General Motors trade-mark, or sealed parts packages bearing General Motors identification. In practice, as indicated by accessory catalogs and accessory order pads, the term "accessory" is used to include all items other than parts, and covers various items which might otherwise be considered as supplies, such as cleaner, polishing cloth, dressing, polish, etc.

PAR. 10. There are several subsidiaries of General Motors Corporation engaged in the manufacture of parts and accessories. Among these are Delco-Remy Corporation, New Departure Manufacturing Company, A. C. Spark Plug Co., Packard Electric Co., Delco Products Corporation, and Delco Appliance Corporation. The parts and accessories manufactured by these several subsidiaries are sold and distributed by the respondent General Motors Sales Corporation to General Motors dealers. In addition, there was organized a wholly owned subsidiary of General Motors Corporation known as United Motors Service, Inc., which is also engaged in the sale and distribution of parts and accessories, manufactured by these various subsidiaries, through and by means of distributors and jobbers located throughout the United States. It is estimated that there are approximately 3,000 jobbers of United Motors Service, Inc., handling either all or part of United Motors Service line. There are certain items of the United Motors Service line, manufactured by subsidiaries of General Motors Corporation, which are not handled by some of the divisions of the General Motors Sales Corporation. As to such items, the dealer is supplied either direct by the United Motors Service, Inc., or permitted to purchase such items from authorized jobbers of United Motors Service, Inc. The United Motors Service, Inc., does not carry the entire line of General Motors parts, but, instead,

confines itself chiefly to accessories manufactured by the various subsidiaries of General Motors Corporation. While there is evidence in the record that some dealers have from time to time purchased certain items from jobbers of the United Motors Service, Inc., this practice is not encouraged, and even jobbers of the United Motors Service line have had difficulty in selling parts and accessories to General Motors dealers. Furthermore, objections have been made, from time to time, by replacement parts and accessories salesmen of respondent General Motors Sales Corporation, particularly in the Chevrolet Division, to dealers using and stocking accessories and supplies purchased from authorized United Motors Service dealers for the alleged reason that such items did not constitute "genuine" parts or accessories.

PAR. 11. For the purpose of increasing the sale of parts, the respondent General Motors Sales Corporation induces its dealers to become wholesalers or distributors of "genuine" parts among various garages in the vicinity where the dealer is located. The dealer selects several representative garages, designated as "Selected Independents," who have no car sales agreements with any other automobile manufacturer and who will agree to use only "genuine" parts in the repair of General Motors cars. Such selected independent garages are then issued discount cards entitling them to purchase parts from the dealer at a discount of 25 percent, and, in addition, such garages are loaned a "Genuine Parts" sign and furnished other service of an informative and advertising nature by the division zone office. The nature of this arrangement and the allowance of this discount to independent dealers appears in Pontiac's District Managers Training Course, in which it is stated as follows:

Many dealers do not appreciate that Pontiac's net prices on competitive parts are much lower in almost every instance than the jobber's parts. To grant these long discounts Pontiac must insist that dealers purchase all of their parts from Pontiac.

PAR. 12. In order to promote the sale of parts, a distinction has been made between "fast-moving" and "slow-moving" parts. For example, in its "Operating Manual" for the "genuine parts" department for the year 1934, issued by the Chevrolet Motor Co., it was estimated that there were approximately 15,500 parts listed in Chevrolet master parts catalogs, of which only 841 parts, or approximately 6 percent, come within the classification of "fast-moving parts." Since the "fast-moving" parts are the only ones which can be profitably stocked and handled, it is recommended by respondent General Motors Sales Corporation that the dealer stock only such "fast-moving" parts and

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carry a very limited supply of the "slow-moving" parts. For the purpose of facilitating the stocking and handling of the "fast-moving" parts a "balanced parts stock plan" has been developed, which consists of steel bins and a supply of parts which have been carefully selected by the parts department. The dealer, in addition, carries a monthly parts inventory control record and orders parts each month as his supply is depleted.

PAR. 13. A plan somewhat similar to the balanced parts system is used in connection with accessories, except that the dealer, instead of carrying an inventory control record, follows an accessories projection system, which is operated in the same manner as used by the dealer in ordering new cars, whereby each month the dealer estimates the quantity of accessories he will sell during the next 30 days. Such estimates or projections are usually made with the sales representative and are based upon the estimated quantity of accessories in proportion to the sale of new cars.

PAR. 14. The respondent General Motors Sales Corporation enters into agreements popularly known as "franchises" with automobile dealers handling its respective lines of automobiles, parts, and accessories, which said agreements set forth the terms and conditions under which sales of automobiles, parts, and accessories are made to the respective dealers. Under these agreements or franchises, respondent General Motors Sales Corporation grants to the dealers the right to sell motor vehicles, chassis, parts, and accessories in certain defined territory described in an appendix thereto which is made a part of the franchise or agreement. The dealers accept these franchises and agree to make all sales in accordance therewith.

In the appendix to said franchise agreements (except those with dealers located in the State of Texas) the following clause is set forth with respect to the sale of "genuine new Chevrolet parts":

Dealer agrees that he will not sell, offer for sale, or use, in the repair of Chevrolet motor vehicles and chassis, second-hand or used parts, or any part or parts not manufactured by or authorized by the Chevrolet Motor Division, General Motors Sales Corporation.

A similar clause likewise appears in the franchise agreements executed by the other divisions of General Motors Sales Corporation, namely, Pontiac, Oldsmobile, and Buick.

PAR. 15. In the appendix to the agreement between respondent General Motors Sales Corporation and their respective dealers located in the State of Texas, a clause differing from that appearing in its usual contracts is set forth with respect to the sale of "genuine new parts,"

of which the following statement appearing in the contract of the Chevrolet Motor Division is an example:

Dealer agrees that he will not sell, offer for sale, or use, in the repair of Chevrolet motor vehicles and chassis, as genuine new Chevrolet parts, any part or parts not manufactured by or authorized by the Chevrolet Motor Company.

PAR. 16. The agreements or franchises entered into between General Motors Sales Corporation through its various divisions and its respective dealers contain no date of termination but provide that the contract can be canceled by the General Motor Sales Corporation by giving three months' written notice and the payment of certain damages to cover loss of rent for the premises. The dealer may cancel the contract by giving 1 month's written notice of intention to terminate.

PAR. 17. In addition to the clauses above described, the agreements or franchises entered into between respondent General Motors Sales Corporation and its respective dealers contain the following clause with respect to inspection of repair part stocks of the dealers:

Seller shall have the right at any reasonable time in business hours to inspect and check over dealer's stock of repair and replacement parts, and if, in seller's judgment, a sufficient quantity of parts for repair and replacement purposes are not then in dealer's stock, dealer hereby agrees to immediately order such parts as may be recommended by seller.

PAR. 18. In the enforcement of the above provisions of the contract with respect to dealers' selling and using only "genuine" parts and with respect to checking dealers' repair and replacement parts, it was customary for representatives of respondent General Motors Sales Corporation to consider the obligation to purchase only "genuine" parts as extending to and covering various accessories sold by said respondent. Such representatives, in soliciting business from dealers and in checking dealers' supplies to determine necessity of purchasing additional items, have led the dealers to believe that under the terms and conditions of the agreement or franchise the dealer was required to purchase accessories, as well as repair and replacement parts, and, as a result, dealers did purchase accessories, as well as parts, because of such belief.

PAR. 19. The distinction between parts and accessories has been somewhat confusing even to the officials of respondents' various divisions. For example, B. M. Smarr, a witness called by the respondents, stated that he had been in the employ of General Motors Corporation for approximately 19 or 20 years and was supervisor of parts pricing and compiling of parts sales statistics, and determined the parts necessary

to be serviced by Chevrolet to give complete service coverage on Chevrolet cars. In his testimony this witness stated:

We were a long time finding out what we were going to call parts and what we were going to call accessories. We finally licked that by letting one fellow take care of them all. * * * Sorry to say that was me. I was obliged to put a part number on them. So, if it was an accessory I put a number on it and if it was not an accessory I wouldn't put the number on.

PAR. 20. As new models of cars were developed, many items previously considered as accessories became standard equipment and, as such, came within the classification of parts. There are, consequently, a large number of so-called parts which have no connection with the mechanical operation of the automobile, many of which were formerly accessories and became parts solely because of their inclusion in standard equipment. For example, such items as the following appear in parts catalogs issued by the respondent General Motors Sales Corporation: floor mats, rear-view mirrors, ornamental radiator caps, ash receivers, windshield wipers, sunshades, sun visors, arm rests, etc. The following items, considered at one time as accessories, became parts of the Chevrolet car between the years 1925 and 1936: bumpers, wire wheels, thermostats, wind wings, trunks, spring covers, rear-view mirrors, gasoline gauges, safety glass, air cleaners, metal tire covers, sun visors, vacuum windshield wipers, pedal pads, shock absorbers, arm rests, stop lights, heat indicators, tire locks, and ash receivers.

PAR. 21. The sale of parts and accessories is not incidental to the sale of automobiles or the maintaining of the good will toward the automobiles manufactured and sold by the respondents, but, instead, constitutes a substantial portion of the business transacted by the respondents. The Chevrolet Motor Division distributed to its various zone managers and salesmen, a manual entitled, "Distribution of Automotive Replacement Parts Yesterday and Today," which appears in the record as Commission's Exhibit No. 111. In this manual it was estimated that in 1936 there were ten competitors to one Chevrolet dealer engaged in the sale and distribution of parts and accessories but that by reason of promotional activities adopted by the Chevrolet Division, these competitive odds were overcome, and, during the year 1936, the Chevrolet Division was successful in obtaining 38.5 percent of the estimated potential parts business. As stated in this exhibit, "Chevrolet Motor Division has spent more money than any other manufacturer in the industry, in the development of service, parts, and accessories sales for Chevrolet dealers."

PAR. 22. With reference to accessories, the above exhibit contains the following statements:

For example * * *

Jobbers formerly sold to Automobile Dealers in mixed carload lots * * *.

- * Automobile Bumpers,
 - * Motor Meters,
 - * Demountable Rims,
 - * Locking Steering Wheels,
 - * Door and Transmission Locks,
- and

MANY OTHER ITEMS.

And in recent years * * *

CAR DEALERS

* * * have concentrated on the sale of other Accessories in order to obtain needed Gross Profits * * *.

With The Result * * *

that the Jobbers quickly lost the bulk of this business * * * because * * *

THEY COULD NOT DEAL IN CUSTOM BUILT ACCESSORIES
FOR EXAMPLE

the jobbers never had a chance to get the

CAR RADIO BUSINESS

The Car Dealers hold this business because most new car accessories are bought by our customers at the time they purchase their new cars from the Dealers.

PAR. 23. Various activities of a promotional nature have been adopted by respondent General Motors Sales Corporation for the purpose of stimulating the sale of parts and accessories, among which are the following, which have been listed in the above exhibit No. 111:

- (1) Annual review, inventory, check-up, and training meeting for dealers and their parts managers.
- (2) Parts managers training course.
- (3) Monthly group meetings.
- (4) Independent garagemen's meeting, conducted by Chevrolet dealers and assisted by Chevrolet field personnel.
- (5) Parts mart magazine for dealers' parts managers.
- (6) Chevrolet dealer's news, featuring training and promotional ideas applying to parts and service activities.
- (7) Monthly film service on parts and accessories retail merchandising.
- (8) Monthly store arrangement and trim service.
- (9) The establishment of 145 parts and accessories representatives to assist dealers in the balancing of their parts and accessories stocks,

who are trained to promote parts and accessories retail sales for dealers to move merchandise from their shelves in accordance with agreed monthly programs set up by the zone offices.

(10) Monthly inventory control pads supplied to dealers.

(11) Additional 3 percent discount and free freight on certain parts and accessories monthly orders.

(12) Lot net prices on 388 highly competitive items to meet competition.

(13) Parts packaging program in which 1500 items are distributed in sales-producing containers.

(14) The establishment of the broadest and most effective parts distributing system in the industry.

(15) Fifteen thousand selected independent garages signed up for wholesale discount and supplied with parts list material, without cost to them.

(16) Independent garage bin at special price.

(17) Parts advertising in national trade magazines.

(18) Government parts contract "provides mandatory purchases of genuine Chevrolet parts".

(19) Radio service.

(20) Modern parts store program designed for the merchandising of parts and accessories.

(21) Accessories display service.

(22) Special merchandise displays, such as individual counter cards, etc.

(23) Cash prizes to members of dealers' organizations for unusual selling records and performance.

PAR. 24. In the course of its dealings with dealers, the respondent General Motors Sales Corporation adopted acts and practices which were designed to, and did, intimidate such dealers, and which coerced and compelled them to purchase parts and accessories solely from the respondent General Motors Sales Corporation and prohibited purchases from outside sources except in cases of emergency when the "genuine" part or accessory was not available in General Motors' warehouse. There are approximately 14,000 General Motors dealerships, exclusive of associate dealers, located throughout the country, the status of each of which is determined by a franchise agreement which is subject to annual renewal and to cancellation on very short notice, without cause. Although every dealer is an independent businessman, the supervision and control exercised by General Motors Sales Corporation over his business operations is almost as complete as if the dealer were an agent in all respects. Every dealer acquires a substantial investment in buildings, cars,

parts, and accessories, and builds up goodwill in a community. Consequently, a canceled dealership leaves the respondents with one less retail outlet, which can be readily replaced, but leaves the disfranchised dealer without a business and burdened with his substantial investment, in the liquidation of which he is likely to sustain a heavy loss.

PAR. 25. Although the original franchise or agreement made with the dealer runs for an indefinite period of time, it is customary to renew such contracts the latter part of each year for the ensuing year. In this connection it is customary for the zone manager to call meetings of the dealers in each of the districts, at which all dealers attend. After a sales talk, usually by the zone manager, the dealers present are required to attend a series of personal interviews with representatives of various departments of General Motors Sales Corporation, such as the parts and accessories departments, with a final interview with the zone manager, at which time the requirements for the coming year are reviewed, as arrived at in interviews with the various departments, including the parts and accessories department. The dealer is required to secure the approval of each of these representatives and to agree with the zone manager on the subject of car requirements before the franchise agreement is renewed. Such arrangement carries with it an implied threat of cancelation unless satisfactory arrangements are made with the parts and accessories managers, as well as the zone manager, and, to this extent, a number of dealers have been coerced into the purchase of parts and accessories over and above their requirements because of such implied threat of cancelation of the contract.

PAR. 26. As a further means of coercion and compulsion in order to prevent dealers from purchasing parts and accessories from outside sources, the respondent General Motors Sales Corporation has, in many cases, delivered automobiles equipped with various accessories which were not ordered by the dealer, and has shipped accessories to the dealers, with or without cars, without prior order therefor. In addition thereto, it was customary for said respondent to require the dealers to project future requirements in parts and accessories, and in many cases the said respondent thereafter treated such projections as orders and made shipments thereon. The entire plan was so designed as to prevent a dealer from making any purchases from jobbers or other manufacturers and to eliminate all parts and accessories other than those sold and distributed by the respondent General Motors Sales Corporation.

PAR. 27. The following statements which appear in Pontiac's District Managers Training Course are examples of instructions given to district managers by the respondent General Motors Sales Corporation to force the purchase of accessories by dealers:

Check over the dealer's copy of first two current months dealer shipping specifications against last groups agreed upon last month's projection.

Then if dealer has failed to specify as agreed upon, try and sell him on stepping up his group orders on the last shipping specifications (due in zone on 5th of current month) to balance his original order with you.

When dealers fail to order the "C" and "W" groups on their specification sheets as agreed upon, car distributors should automatically include these groups on the dealers' specifications, up to the percentage originally agreed upon by the dealer and district manager. (The "C" and "W" groups referred to in the above quotation appear previously in said training course as "Group C, electric clock" and "Group W, ash receiver, cigar lighter, visor vanity mirror, gear shift bail.")

PAR. 28. Among the forms of intimidation and coercion used by the respondent General Motors Sales Corporation to compel dealers to buy parts and accessories from said respondent are the monthly parts order plan, the monthly inspection of bins, accessories, and establishments of dealers, and inspection of dealers' stock of repair and replacement parts under terms of the franchise agreement authorizing representative of said respondent to make such inspection and authorizing such representative to require the purchase of additional parts as may be considered necessary, which have enabled the said respondent to coerce dealers into purchasing respondent's parts and accessories and to prohibit purchases from outside sources. The requirement that only "genuine" parts be handled by the dealer and the use of identifying tags and markers permit and enable the representatives of said respondent, when checking the dealers' parts, to object to the presence in dealers' supply room of various materials not furnished and supplied by said respondent.

The real purpose of such inspections and the use of monthly parts order plan is typified by Commission's exhibit 59, which is District Managers Training Course and consists of instruction to district managers on parts and accessories. It contains a program of operation of a plan between district managers and their dealers "in developing the greatest potential volume and profit on parts and accessories for their dealers and for Pontiac." In this exhibit there appears the following illustration of methods to be used in soliciting the dealers' monthly parts orders and to get the dealers to send in their orders on due dates:

Checking the dealer's purchases. On each dealer contact, check the last monthly order paid with the present one to see dealer is ordering his parts on 60-day basis. Check his parts bins to see if any outside purchases are being made, and why. Cover outside purchases invoices with parts man and see that future purchases of outside material do not include any parts or accessories supplied by Pontiac.

PAR. 29. In cases where inspections have been made by representatives of the respondent, and parts and accessories other than those supplied by the respondents were found on the dealer's premises, threats have been made, both directly and by implication, that unless the practice on the part of the dealer was discontinued and only parts and accessories supplied by the respondent General Motors Sales Corporation carried in stock, the dealer's contract would be canceled. Such implied threats were further made by the representative or district manager arranging for an interview with the zone manager for the purpose of discussing the dealer's practices, the dealer knowing that the zone manager has the power to recommend the cancellation of his contract. In some cases where a dealer has refused to handle only parts and accessories sold and distributed by the respondent General Motors Sales Corporation, there has been a delay in a shipment of new cars to such dealers. There is also in the record evidence of cancellation of certain contracts after a controversy over the use of parts and accessories has occurred, but which cancellations were ostensibly based upon other grounds.

PAR. 30. The volume of sales of "genuine" Chevrolet parts to Chevrolet dealers by the Chevrolet Division of General Motors Corporation and the Chevrolet Motor Car Co. Division of General Motors Sales Corporation for the years 1929 through 1936 was as follows:

1929 -----	\$35, 383, 264	1933 -----	\$17, 347, 625
1930 -----	31, 114, 662	1934 -----	22, 934, 544
1931 -----	24, 818, 527	1935 -----	26, 089, 779
1932 -----	18, 064, 509	1936 -----	33, 055, 912

The volume of sales of "genuine" Chevrolet accessories to Chevrolet dealers by the Chevrolet Division of General Motors Corporation and the Chevrolet Motor Car Co. Division of General Motors Sales Corporation for the years 1929 through 1936 was as follows:

1929 -----	\$8, 078, 065	1933 -----	\$8, 335, 909
1930 -----	7, 656, 581	1934 -----	10, 289, 902
1931 -----	9, 376, 246	1935 -----	13, 901, 277
1932 -----	6, 171, 463	1936 -----	25, 811, 532

PAR. 31. The volume of sales of "genuine" Pontiac parts to Pontiac dealers by the Pontiac Motor Division of General Motors Corporation and the Pontiac Division of General Motors Sales Corporation for the years 1932 through the first 6 months of 1937 was as follows:

1932 -----	\$1, 562, 166	1935 -----	\$1, 967, 130
1933 -----	1, 274, 576	1936 -----	2, 882, 983
1934 -----	1, 557, 169	1937 (first 6 months) -----	1, 821, 333

The volume of sales of "genuine" Pontiac accessories to Pontiac dealers by the Pontiac Motor Division of General Motors Corpora-

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tion and the Pontiac Division of General Motors Sales Corporation for the years 1932 through the first 6 months of 1937 was as follows:

1932 -----	\$172,566	1935 -----	\$1,759,890
1933 -----	486,040	1936 -----	3,511,087
1934 -----	1,040,190	1937 (first 6 months) -----	3,047,638

PAR. 32. The volume of sales of "genuine" Oldsmobile parts to Oldsmobile dealers by the Olds Motor Works Division of General Motors Corporation and the Oldsmobile Division of General Motors Sales Corporation for the years 1934 through the first 6 months of 1937 was as follows:

1934 -----	\$1,448,377	1936 -----	\$3,047,432
1935 -----	1,926,285	1937 (first 6 months) -----	1,553,050

The volume of sales of "genuine" Oldsmobile accessories to Oldsmobile dealers by the Olds Motor Works Division of General Motors Corporation and the Oldsmobile Division of General Motors Sales Corporation for the years 1934 through the first 6 months of 1937 was as follows:

1934 -----	\$1,110,235	1936 -----	\$5,091,185
1935 -----	3,358,106	1937 (first 6 months) -----	3,919,724

PAR. 33. The volume of sales of "genuine" Buick parts to Buick dealers by the Buick Motor Co. Division of General Motors Corporation and the Buick Division of General Motors Sales Corporation for the years 1929 through 1936 was as follows:

1929 -----	\$7,912,855	1933 -----	\$3,346,279
1930 -----	7,470,731	1934 -----	2,969,342
1931 -----	6,860,228	1935 -----	2,652,016
1932 -----	4,726,936	1936 -----	3,130,968

The volume of sales of "genuine" Buick accessories to Buick dealers by the Buick Motor Co. Division of General Motors Corporation and the Buick Division of General Motors Sales Corporation for the years 1930 through 1936 was as follows:

1930 -----	\$4,141,034	1934 -----	\$1,081,643
1931 -----	3,711,783	1935 -----	1,964,289
1932 -----	1,781,103	1936 -----	5,455,439
1933 -----	1,035,879		

PAR. 34. One of the classes of competitors to General Motors Sales Corporation in the parts and accessories field is the independent jobber. Prior to 1930 the number of independent jobbers was estimated at approximately 6,000. These jobbers supplied merchandise to independent garages and car dealers and assisted them with technical knowledge and mechanical facilities. They formerly

handled supplies, tools, equipment, specialties, accessories, and a fair line of replacement parts. During the depression years competition in the manufacture of automobiles forced car manufacturers to include, as standard equipment, many items which were formerly sold as accessories. As car manufacturers began to include accessories as standard equipment, the independent jobbers had to find ways and means of replacing this lost business and during the depression years 1930-1933 substantially increased their sales in tools, service equipment, and replacement parts. In order to do this, many jobbers opened and established a number of branches located near their customers, enabling them to intensify their merchandising activities in concentrated areas and to give better service to their parts customers.

PAR. 35. The independent jobbers sell the products of independent replacement part manufacturers, some of whom manufacture for the car manufacturer, including respondent General Motors Corporation, as follows: Ball bearings, battery cables, brake linings, clutch disks and facings, coils, cylinder-head gaskets, fan belts, head lamps, radio hose, king pin replacement units, lamp bulbs, mufflers, piston rings, piston pins, pistons and piston-pin assemblies, spark plugs, spark plug wire sets, valve springs, and many other items.

PAR. 36. Many of such items which are manufactured by independent manufacturers for General Motors Corporation and used by General Motors Sales Corporation as "genuine" replacement parts are identical in quality and design with those sold by these same manufacturers to independent jobbers, the only difference between such parts and those sold by General Motors as "genuine" parts being the stamp placed on the outside of the package by the manufacturer who packages such parts for General Motors Sales Corporation. Other replacement parts handled by independent jobbers as well as General Motors Sales Corporation which are identical, are AC spark plugs, Stromberg and Carter carburetors, piston rings, hydraulic brakes, wheels, and the Borg-Warner clutch. There are also many reputable manufacturers who manufacture parts of like quality and design to those parts manufactured by General Motors Corporation or sold by General Motors Sales Corporation.

PAR. 37. Subsequent to 1933, independent jobbers handling replacement parts and accessories for General Motors cars have been unable to sell such merchandise in substantial quantities to General Motors dealers for use on General Motors cars, being told by parts men of such dealers that they are supposed to buy only "genuine" parts and accessories in packages that bear General Motors trade-

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mark and are recommended for General Motors cars. Parts and accessories which independent jobbers have been unable to sell to General Motors dealers for the reasons specified above, are heaters, radios, anti-freeze solutions, spark plugs (both AC and Champion), cylinder-head gaskets, manifold gaskets, brake linings, cigar lighters, brake fluid, pistons, piston rings, valves, bearings, ignition parts, gear-shift balls, batteries, ignition cables, spark-plug wires, carburetors, carburetor parts, chemicals and polishes, axles, radiator cleaners, fan belts, clutches, and gears.

PAR. 38. When a General Motors dealer sells a car to a purchaser, there goes with such car a warranty or guaranty by the General Motors Corporation warranting such motor vehicle, including original equipment placed thereon by the manufacturer, except tires, to be free from defects in material or workmanship under normal use and service. The obligation under this warranty is limited to making good at its factory any part or parts within 90 days after delivery of such vehicle to the original purchaser, or before such vehicle has been driven 4,000 miles, whichever event shall first occur. This warranty does not apply to cars which have been repaired or altered outside of an authorized General Motors service station, which, in the judgment of the manufacturer, affects its stability and reliability, or which car has been subjected to misuse, negligence, or accident. The respondents have introduced evidence to the effect that in order to maintain the good will of its various divisions and protect its guaranty it is necessary to maintain supervision over the parts used and sold by its individual dealers. However, all of the parts which come within the restrictive provision of the contract, set out in paragraph 14 hereof, are not necessary to the mechanical operation of the car, and the performance, or lack of performance, of such parts would have no bearing upon either the warranty issued or the good will of the division of General Motors selling a car. Furthermore, there are a large number of parts which are supplied by manufacturers to jobbers which are identical in material and construction with parts furnished by these same manufacturers to General Motors Corporation.

PAR. 39. The number of automobiles manufactured by the respondent General Motors Corporation and sold through its subsidiary, respondent General Motors Sales Corporation, has constituted, and now constitutes, a substantial portion of all the automobiles manufactured and sold in the United States. The General Motors cars in operation constitute approximately 36 percent of all cars and trucks in operation. For the year 1936 there was a total of 25,378,655

cars and trucks in operation in the United States. Of this number, there were 1,129,779 Buicks, 702,671 Oldsmobiles, 1,013,857 Pontiacs, and 6,455,872 Chevrolets, or a total of 9,302,179 General Motors cars, exclusive of Cadillac, in operation in the United States. The total volume of automobile parts and automobile accessories and supplies sold by the respondent General Motors Corporation through its subsidiary, respondent General Motors Sales Corporation, has constituted, and now constitutes, a substantial proportion of all the automobile parts and automobile accessories and supplies manufactured and sold in the United States. For example, during the year 1936, the respondent General Motors Sales Corporation sold \$42,117,295 in parts and \$39,869,243 in accessories and supplies, exclusive of parts and accessories sold by the Cadillac Division and exclusive of parts and accessories sold by the United Motors Service, Inc. Such sales constitute a substantial portion of the sales of parts and accessories in the United States, and, when limited to parts and accessories for General Motors automobiles, constitute a substantial portion of the parts and accessories sold and used on General Motors automobiles.

PAR. 40. The use by the respondent General Motors Sales Corporation of the acts and practices hereinabove described, has had, and now has, the capacity and tendency to, and does, intimidate General Motors dealers and coerce and compel them to purchase accessories and supplies only from the respondent General Motors Sales Corporation, with the result that substantial trade has been diverted to the respondents from their competitors who are engaged in the manufacture and in the sale and distribution of automobile accessories and supplies in commerce among and between the various States of the United States and in the District of Columbia; and has deprived, and is now depriving, said competing manufacturers of a market for the sale of said products manufactured and sold by said competing manufacturers, as aforesaid; and has had, and now has, a tendency to unduly hinder competition and to create a monopoly in General Motors Corporation in commerce in automobile accessories and supplies between and among the various States of the United States, and in the District of Columbia.

PAR. 41. The Commission further finds that the use by the respondents of the acts and practices hereinabove described, of selling parts on the condition, agreement, or understanding that the purchaser thereof shall not sell or use parts of a competitor, has had, and now has, the effect of substantially lessening competition; and has had, and now has, a tendency to create a monopoly in replacement

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parts used on General Motors cars. By means of the provision in the contract that General Motors dealers will not sell, offer for sale, or use, parts not manufactured by or authorized by the General Motors Sales Corporation, practically all dealers in General Motors cars, to the number of approximately 14,000, have been removed as customers and prospective customers of independent manufacturers and jobbers; and there have likewise been removed as customers and prospective customers of such manufacturers and jobbers, all associate dealers and selected independent garages who have agreed to purchase only parts supplied by General Motors dealers, and which garages are estimated as being approximately 15,000 for the Chevrolet Division alone in the year 1936.

PAR. 42. On the completion of the testimony taken in this case, the respondents made a motion before the trial examiner to strike the testimony of certain witnesses. This motion was sustained in part and the testimony of certain witnesses stricken from the record. An appeal from this ruling of the trial examiner was taken by the attorney for the Commission and is now pending before the Commission. The testimony stricken by the trial examiner on this motion is more or less cumulative and not necessary to the decision in this case, and it is, accordingly, not necessary for the Commission to pass upon this motion or consider this testimony in making its findings.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found, are all to the prejudice and injury of the public and of said respondents' competitors, and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act; and the acts and practices of the respondents in selling replacement parts on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in replacement parts of a competitor, has the effect of substantially lessening competition and a tendency to create a monopoly in replacement parts used on General Motors cars, and constitutes a violation of 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 DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, testimony and other evidence taken before John L. Hornor

¹ Order published as modified by Commission on June 25, 1942.

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and W. W. Sheppard, trial examiners of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, report of Trial Examiner W. W. Sheppard upon the evidence and exceptions filed thereto, 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 respondents have violated the provisions of the Federal Trade Commission Act and 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, and the Commission having issued its order herein to cease and desist on November 12, 1941, and the respondent having filed with the Commission on June 11, 1942, its request for modification of said order:

It is ordered, That the respondents, General Motors Corporation, a corporation, and General Motors Sales Corporation, a corporation, and their respective officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of automobile accessories, automobile supplies, and other similar products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Requiring automobile dealers in connection with contracts or franchises or selling agreements with said automobile dealers for the sale of new motor vehicles, by means of intimidation or coercion, to purchase or deal in accessories or supplies sold and distributed by the respondents, or by any one designated by them, for use in and on automobiles sold by the respondents.

(2) Canceling, or directly or by implication threatening the cancellation of, any contract or franchise or selling agreement with automobile retail dealers for the sale of new motor vehicles, because of the failure or refusal of such dealers to purchase or deal in accessories or supplies for use in and on automobiles manufactured or sold by the respondents, sold and distributed by the respondents, or by any one designated by the respondents.

(3) Canceling, or directly or by implication threatening the cancellation of, any contract or franchise or selling agreement with automobile retail dealers for the sale of new motor vehicles, for purchasing or dealing in accessories or supplies for use in and on automobiles sold by the respondents, not obtained from respondents or from other sources designated by the respondents.

(4) Shipping accessories or supplies for use in and on automobiles sold by the respondents without prior orders therefor, or canceling,

or directly or by implication threatening the cancellation of any automobile retail dealer contract or franchise or selling agreement for the sale of new motor vehicles, because of a failure or refusal to accept accessories or supplies for use in and on automobiles sold by the respondents shipped without prior order.

(5) Refusing or threatening to refuse, to deliver automobiles to automobile retail dealers in connection with contracts or franchises with said automobile retail dealers for the sale of new motor vehicles because of a failure or refusal of such dealers to purchase or deal in accessories or supplies for use in and on automobiles sold and distributed by the respondents, or by any one designated by them.

(6) The use of any system or practice, plan, or method of doing business, for the purpose, or having the effect, of coercing or intimidating automobile retail dealers who have contracts or selling agreements or franchises of the respondents for the sale of new motor vehicles into purchasing or dealing in accessories or supplies manufactured or supplied by the respondents, or by any one designated by them, for use in and on automobiles sold by the respondents.

It is further ordered, That the respondents, General Motors Corporation, a corporation, and General Motors Sales Corporation, a corporation, and their respective officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with any franchise or agreement for the sale of automobiles or in connection with the sale, or making of any contract for the sale of, automobile parts in commerce as "commerce" is defined in that act of Congress 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, do forthwith cease and desist from:

Entering into, enforcing, or continuing in operation or effect, any franchise or agreement for the sale of automobiles, or any contract for the sale of, or selling, automobile parts in connection with contracts or franchises or selling agreements with automobile retail dealers for the sale of new automobiles on the condition, agreement, or understanding that the purchasers thereof shall not use or sell automobile parts other than those acquired from the respondents, unless such condition, agreement, or understanding be limited to automobile parts necessary to the mechanical operation of an automobile, and which are not available, in like quality and design, from other sources of supply.

It is further ordered, That the respondents shall, within 30 days after this modified order becomes final, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this modified order.

Syllabus

IN THE MATTER OF
UNITED BUYERS CORPORATION, ET AL.

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

Docket 3221. Complaint, Aug. 31, 1937—Decision, Nov. 13, 1941

Where a corporation, the stockholders of which, during a period of nearly 5 years, consisted of about 51 wholesale grocery concerns in cities in 18 States, competitive with other wholesale grocers, and which functioned as a cooperative buying organization for its stockholders, securing quantity discounts and advertising allowances from sellers for them, furnishing them with market reports and advice, and, among other things, services of trained field men to improve their merchandising methods—

- (a) Received and accepted from sellers, brokerage or commissions upon the purchase of commodities in interstate commerce by itself or by its stockholders, and in transactions in which it acted for and in behalf of, and under the direct control of, its respective stockholder buyers, any benefits received by sellers from its activities being merely incidental to the services rendered by it to its stockholders; and transmitted such brokerage or commissions or allowances to its said stockholder buyers, in services and in money in the form of dividends; and

Where 6 wholesale grocers, stockholder buyers of aforesaid corporation, and fairly representative of the approximately 51 stockholders—

- (b) Received brokerage or commissions upon their purchases made through or for said corporation or under arrangements directed thereto, through transmission to them by said corporation of cash dividends resulting from payment by sellers of brokerage or commissions upon said purchases; and

Where some 7 concerns, typical of more than 300 manufacturers who sold and shipped grocery and allied products in interstate commerce to wholesale grocers, including stockholders of said corporation and their competitors—

- (c) Paid, along with other sellers, brokerage fees and commissions in substantial sums upon the purchases in interstate commerce of said corporation's stockholder wholesale grocers, on transactions in which any benefits received by them, as sellers, from said corporation's activities were incidental merely to the services rendered by it to its stockholder grocers:

Held, That such payment and receipt of brokerage, as above set forth, constituted violations of Section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. W. W. Sheppard* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. Allen C. Phelps and *Mr. J. J. Smith, Jr.* for the Commission.

Mr. I. J. Berkson, of Chicago, Ill., for respondent United Buyers Corporation, and respondent individuals, as officers and directors thereof; with whom also appeared for former *Taylor & Conradi*, of Washington, D. C.

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Squire, Sanders & Dempsey, of Cleveland, Ohio, for William Edwards Co.

Kirkland, Fleming, Green, Martin & Ellis, of Washington, D. C., for Angelus Campfire Co.

Weil, Gotshal & Manges, of New York City, for Champion Chemical Works.

Mr. George F. Nelson, of Chicago, Ill., for J. B. Inderrieden Co.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," as amended by an act of Congress, approved June 19, 1936, entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," the Federal Trade Commission, having reason to believe that the respondents named above in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (c) of section 2 of said act as amended, hereby issues its complaint against the said respondents, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, United Buyers Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 111 West Washington Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondents, Arthur E. Koeniger, of 530 Washington Boulevard, Oak Park, Ill.; Eli P. Gale, of 127 North Madison, La Grange, Ill.; W. Wendell Caldwell, of 2310 Asbury Street, Evanston, Ill.; Helen M. Driscoll, of 5460 University Avenue, Chicago, Ill.; and Stella E. Nordlund, of 6326 North Talman Avenue, Chicago, Ill., are the president, vice president in charge of buying, vice president in charge of merchandising, secretary and treasurer, respectively, of the respondent, United Buyers Corporation.

PAR. 3. Respondents, Arthur E. Koeniger, Eli P. Gale; Paul E. Painter, of the Bluffton Grocery Co., Bluffton, Ind.; Milton E. Rolfsmeyer, of H. P. Lau Co., Lincoln, Nebr.; Alfred M. Copps, of the Copps Co., Stevens Point, Wis.; Eldon B. Smith, of the Lima-Kenton Grocery Co., Lima, Ohio; and Oliver J. Lecklider, of the

S. Zollinger Co., Piqua, Ohio, and each of them, are members of the board of directors of United Buyers Corporation.

PAR. 4. Respondent, H. P. Lau Co., is a corporation organized and existing under and by virtue of the laws of the State of Nebraska, with an office and principal place of business located at 245 North Eighth Street, in the city of Lincoln, State of Nebraska. Respondent, Bluffton Grocery Co., is a corporation organized and existing under and by virtue of the laws of the State of Indiana, with an office and principal place of business in the city of Bluffton, State of Indiana. Respondent, Lima-Kenton Grocery Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with an office and principal place of business at 311 East Market Street, in the city of Lima, State of Ohio. Respondent, S. Zollinger Co., is a corporation organized and existing under the laws of the State of Ohio, with an office and principal place of business at 101 South Wayne Street, in the city of Piqua, State of Ohio. Respondent, Copps Co., is a corporation having an office and principal place of business located at Stevens Point, Wis. Respondent, Wm. Edwards' Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with an office and principal place of business at 1300 West Ninth Street, in the city of Cleveland, State of Ohio.

Each of the said respondents in this paragraph hereinabove named are and for more than 1 year last past have been engaged in the business of buying in interstate commerce, commodities, particularly foodstuffs, groceries, and allied products from numerous and divers manufacturers, importers, and other sellers of such merchandise, including those parties respondent named in paragraph 5 hereof as "respondent sellers," located in States other than the States in which said buyer respondents are located, and in reselling such commodities and merchandise at wholesale to their respective retail customers.

Each of said respondents so engaged in the wholesale grocery business is a share-holding member of the respondent, United Buyers Corporation, the terms and arrangements of which membership are hereinafter more fully set out and described. They are named as parties respondent, both individually and as representative of a group or class of a large number of wholesale grocery concerns, each of whom is likewise a share-holding member in United Buyers Corporation, and all of whom are hereby made respondents without being individually named herein, because they constitute a class or group too numerous to be brought before the Commission in this proceeding without manifest inconvenience and delay. The respond-

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ents in this paragraph hereinabove named are fairly representative members of this group or class of wholesale grocery concerns, and they, and each of them, are now and for some time past have been engaged in practices similar to those hereinafter charged against the members of the class who are specifically named as respondents. All respondents of this class are hereinafter designated and referred to as "buyer respondents."

PAR. 5. Respondent, Allison-Bedford Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 2309 South Keeler Avenue, Chicago, Ill. Respondent, Angelus Campfire Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 4800 West 66th Street, Chicago, Ill. Respondent, Blue Seal Products Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 3400 West Forty-eighth Street, Chicago, Ill. Respondent, Bordo Products Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 541 North Franklin Street, Chicago, Ill. Respondent, Champion Chemical Works, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 43 East Ohio Street, Chicago, Ill. Respondent, Cupples Co., is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with an office and principal place of business located at St. Louis, Mo. Respondent, Dean Milk Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 20 North Wacker Drive, Chicago, Ill. Respondent, J. B. Inderrieden Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 514 West Erie Street, Chicago, Ill.

Said respondents, and each of them in this paragraph named, are, and for more than 1 year last past, have been engaged in the business of selling commodities, particularly foodstuffs, groceries, and allied products, to numerous and divers wholesalers, jobbers, merchants, and dealers, including the buyer respondents hereinabove, in paragraph 4 hereof, named, and which buyers are usually located in States other than the States in which said sellers are respectively located.

Said respondent sellers are fairly typical and representative members of a large group or class of manufacturers, processors, importers,

and producers engaged in the common practice of selling a substantial portion of their commodities in interstate commerce to the said buyer respondents, who use the purchasing services of respondent United Buyers Corporation. Said group or class of sellers comprises a large number, to wit: approximately 150 of such manufacturers, processors, importers, and producers, too numerous to be individually named herein as respondents or to be brought before the Commission in this proceeding without manifest inconvenience and delay, but each of whom has been and is engaged in practices similar to those hereinafter charged against those sellers herein specifically named as parties respondent. The respondents in this paragraph named are hereinafter designated and referred to as "respondent sellers."

PAR. 6. Respondent United Buyers Corporation is now, and since the time of its incorporation and organization on or about March 27, 1931, has been, engaged in the business of providing market information and purchasing services for approximately 46 wholesale grocery concerns located in the several States of the United States, 6 of whom are specifically named and described herein as respondent buyers. Each respondent buyer owns 5 shares of stock in United Buyers Corporation, which shares are debited upon the corporate books pursuant to the understanding and agreement that such shares will be paid for out of accrued benefits and thereafter become the property of the member stockholder and listed as an added asset to its business. Five of the above-mentioned 6 respondent buyers are directly represented on the board of directors of United Buyers Corporation.

In the course and conduct of its business aforesaid, said respondent receives orders to purchase commodities, particularly groceries and foodstuffs, from its various member stockholders or shareholders, consisting of the wholesale grocery houses and jobbers aforesaid, and transmits such orders to and executes the same with the aforesaid respondent sellers located in States of the United States other than the State in which such respondent buyers are located. As a result of the transmission of said orders by such buyers to respondent United Buyers Corporation, the execution of same by said respondent at the instance and request of said buyers, and the acceptance of said orders by said sellers, or one or more of them, goods, wares, and merchandise, particularly foodstuffs, are in the case of each order and in a continuous succession of such orders, sold or delivered by one or more of the said sellers to one or more of the said buyers. By such means and in the manner aforesaid, respondent United Buyers Corporation, acting for and in behalf of the said buyer respondents, and each of the other respondents, acting individually

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and in their respective capacities as set forth in the caption hereof, cause the above named seller respondents to ship the said commodities, foodstuffs, groceries, and allied products from the State in which such merchandise was located at the time of sale into and through various other States of the United States directly to the said buyer respondents in the States of their respective locations as aforesaid. In the operations and activities referred to, respondents and each of them, are engaged in interstate commerce, in practices which contemplate and result in the transportation of commodities in interstate commerce, and in making purchases which directly affect and bring about such commerce.

The estimated volume of purchases for the year 1936 for the United Buyers Corporation was approximately \$4,250,000, said purchases being made from the seller respondents. The estimated operating expense for the said year of the United Buyers Corporation was \$90,000. In all of said transactions, respondent, United Buyers Corporation, and the other respondents herein named as officers and members of the board of directors of said United Buyers Corporation, and each of them, were in fact acting in behalf of and for the said respondent buyers.

In connection with its aforesaid purchasing service for its various share-holding members, United Buyers Corporation has caused to be organized various local groups of independent retail grocery stores who become affiliated, and cooperate with said respondent, and in many instances use respondent's name on their stores in approximately fourteen States of the United States, in the sale and distribution of foodstuffs and other commodities purchased from the respondent sellers herein named, and said United Buyers Corporation pursues a practice and policy of serving the various wholesale grocery concerns constituting its membership and shareholders through a trained staff of field men who attempt to, and do, increase the sales of such wholesalers to such retailers by instructing and assisting the said retailers in the use of combined advertising, uniform display posters, suggested store rearrangements, and various and sundry centralized sales plans, and in various other ways.

Prior to an amendment to its charter about July 24, 1936, United Buyers Corporation issued to each of its share-holding members aforesaid, a "Participating Certificate" reading as follows:

No. -----	UNITED BUYERS CORPORATION	\$100.00
	Participating Certificate	
	Nontransferable	

This is to certify that -----, hereinafter designated "Member," has paid \$100.00 to the United Buyers Corporation (U. B. C.), and

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in consideration therefor is entitled to the services of such corporation upon the following conditions:

The U. B. C. agrees:

First: To act as purchasing agent for the Member and for others holding like participating certificates (all of such holders being designated as Members), and to combine the Members' requirements so as to secure the largest possible brokerage or commissions.

Second: To remit monthly as participating profits to Members an amount equal to all brokerages or commissions in excess of 1% (one percent) which it receives on (and of) their individual purchasers, except where the brokerage or commission is less than 2% (two percent)—then $\frac{1}{2}$ (one-half) of such brokerage or commission.

Third: To keep as strictly confidential all purchases for each Member—such records including brokerages or commissions will be available to the accredited representative of the Member at the offices of the U. B. C. at any time.

The MEMBER agrees:

A. To cooperate to the fullest possible extent by submitting to the U. B. C. specifications covering its requirements when so requested, in order that all the benefits of volume purchases may be obtained, it being understood that at no time will any purchases be made without the authority of Member.

B. To assist U. B. C. in increasing volume purchases when requested to do so by placing orders through U. B. C., even though prices are the same.

C. To keep and treat as strictly confidential any and all quotations, prices, brokerage or commissions secured by the U. B. C., and to refrain from stating or intimating that lower prices can be obtained through the U. B. C. as any such statement or intimation might cause cancellation of special allowances secured by the U. B. C.

It is mutually agreed that either the MEMBER or the U. B. C. shall have the right to cancel this agreement upon 30 days written notice. If cancelled by either party within 1 year, the U. B. C. agrees to pay back to the holder of this certificate \$100.00 upon the surrender of same to the U. B. C.

Issued at Chicago, Ill., this _____ day of _____, 19_____.

UNITED BUYERS CORPORATION

Secretary

President

Subsequent to such reorganization, respondent, United Buyers Corporation, pursued the practice of issuing to its said member shareholders, in lieu of the above "Participating Certificate," a "Stock Certificate" providing for the payment of dividends, as follows:

The interest of shareholder represented by this certificate is subordinate and subject to any and all indebtednesses of the stockholder of the corporation and shall not be transferable until such indebtedness shall be paid and is expressly subject to bylaw No. 55 of said corporation which bylaw provides the terms under which stock of the corporation may be called in and cancelled.

The directors shall have power to declare and pay dividends on the shares of the capital stock of the corporation out of the new assets in excess of

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capital or out of the net profits as permitted by law, but no dividend shall be paid on the shares of the capital stock of the corporation in any year in excess of six dollars (\$6.00) per share. Reasonable reserves as determined by the board of directors may be set aside from year to year. After setting aside such reserves and paying any such dividends as may be declared by the board of directors in any year, the remainder of the net assets in excess of capital or the net profits, available for dividends, shall be distributed by the board of directors to the members of the corporation on a patronage basis in proportion to their purchases, sales or services from, to or through this corporation.

PAR. 7. In the course and conduct of the commerce hereinabove described, the respondent sellers herein named pay or grant, and have paid or granted, to respondent, United Buyers Corporation, and respondent, United Buyers Corporation and the individual respondents herein named in their individual capacities, and as corporate officers and members of the board of directors of the United Buyers Corporation, and each of them, while acting in fact as intermediary for and on behalf of the respondent buyers in the transmittal and execution of the aforesaid buying orders, does receive and has received and accepted commissions, brokerage fees and other compensations and allowances or discounts in lieu thereof, varying from 1 to 10 percent of the quoted sale price agreed upon between buyer and seller, on the foodstuffs, groceries, and allied products so purchased, depending upon the nature of the products involved. Under the circumstances as hereinabove set out, no services connected with the transactions of sale and purchase of the merchandise sold to the said respondent buyers on which such brokerage fees, commissions, compensations, or discounts, or allowances in lieu thereof, were and are being paid to the said United Buyers Corporation, either have been or are being rendered to the sellers by respondent, United Buyers Corporation. Furthermore, such fees, commissions, and allowances or discounts so paid and received are passed on to the respondent buyers in the form of dividends upon the aforesaid shares of stock and in the form of patronage dividends, in accordance with the provisions of the aforesaid stock certificate agreement, in the form of services rendered by United Buyers Corporation to the retail customers of said respondent buyers as aforesaid, and in the operating maintenance and overhead expenses of the United Buyers Corporation.

PAR. 8. The payment by respondent sellers of commissions, brokerage fees, and other compensations or allowances and discounts in lieu thereof to the United Buyers Corporation, and the acts and practices of the individual respondents, acting in their individual capacities and as officers and members of the board of directors, and as representatives of the member stockholders and shareholders in the

United Buyers Corporation in promoting such receipt, and the receipt and the ultimate acceptance of the ensuing benefits therefrom by the respondent buyers, all in the manner and form hereinabove set forth, are in violation of the provisions of section 2, subsection (c) of the act described in the preamble hereof. The receipt and acceptances of said brokerage fees, commissions, and other compensations in lieu thereof by the United Buyers Corporation, and the transmission and payment of same by said respondent to its member shareholders or stockholders constituting the group or class of respondent buyers, in the manner and form hereinabove set forth, are likewise in violation of the terms of said statute.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Clayton Act, approved October 15, 1914 (38 Stat. 730), as amended by the Robinson-Patman Act, approved June 19, 1936 (49 Stat. 1526; 15th U. S. C., sec. 13), the Federal Trade Commission, on August 31, 1937, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violation of the provisions of section 2 (c) of the Clayton Act, as amended. After the issuance and service of the complaint, and the filing of respondents' answers, testimony and other evidence was introduced in support of the allegations of the complaint by the attorneys of the Commission, and in opposition thereto by the 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 was duly recorded and filed in the office of the Commission.

Thereafter, stipulations were entered into, signed and executed by or on behalf of each of the respondents, and by counsel for the Commission, whereby it was stipulated and agreed, subject to the approval of the Commission, that this matter be submitted to the Commission for final decision, upon the pleadings, testimony and other evidence, and that upon such pleadings, testimony and other evidence the Commission, without intervening procedure, might proceed to make, enter and serve its findings as to the facts, conclusion and order—further hearings as to the facts, report of the trial examiners, briefs and argument of counsel being expressly waived. This stipulation was approved by the Commission, and this proceeding thereafter regularly came on for final hearing before the Commission on the complaint, the answers thereto, the testimony and other evidence; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the in-

terest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, United Buyers Corporation, hereinafter referred to as "UBC," is a Delaware corporation having its principal office and place of business at 1129 Merchandise Mart, Chicago, Ill. Said respondent also maintains a branch office at San Francisco, Calif.

PAR. 2. Respondents, W. Wendell Caldwell, of 2310 Asbury Street, Evanston, Ill., and Stella E. Nordlund, of 6326 North Talman Avenue, Chicago, Ill., are, respectively, vice president and secretary-treasurer of UBC. Respondent Arthur E. Koeniger, deceased, was president of the UBC from the date of its organization, March 27, 1931, until his death on or about March 18, 1938. Respondents, Eli P. Gale, of 127 North Madison Avenue, LaGrange, Ill., and Helen M. Driscoll, of 9616 South Exchange Avenue, Chicago, Ill., were, respectively, vice president and secretary of UBC for several years, but in March 1938, respondent Gale, and in May 1938, respondent Driscoll, resigned from UBC and were thereafter no longer employed by or associated with it. James H. Black succeeded respondent Koeniger as president of the UBC, and respondent Nordlund succeeded respondent Driscoll as secretary, having been elected on or about March 24, 1938, and January 21, 1939, respectively. The office of vice president resigned by respondent Gale was not filled after his resignation.

PAR. 3. Respondents Paul E. Painter, of the Bluffton Grocery Co., Bluffton, Ind.; Milton Rolfmeyer, of H. P. Lau Co., Lincoln, Nebr.; Alfred M. Copps, of the Copps Company, Stevens Point, Wis.; Eldon B. Smith, of the Lima-Kenton Grocery Co., Lima, Ohio; Oliver J. Lecklider, of the S. Zollinger Co., Piqua, Ohio; Arthur E. Koeniger and Eli P. Gale, at one time or another during the period from June 19, 1936, to August 31, 1937, served as members of the board of directors of UBC.

PAR. 4. Respondent, H. P. Lau Co., is a Nebraska corporation, having its principal office and place of business at 245 North Eighth Street, Lincoln, Nebr. Respondent, Bluffton Grocery Co., is an Indiana corporation, having its principal office and place of business at 724 West Cherry Street, Bluffton, Ind. Respondent, Lima-Kenton Grocery Co., is an Ohio corporation, having its principal office and place of business at 311 East Market Street, Lima, Ohio. Respondent, S. Zollinger Co., is an Ohio corporation, having its principal office and place of business at 101 South Wayne Street, Piqua, Ohio. Respondent, Copps Co., is a Wisconsin corporation, having its principal office and place of business at Stevens Point, Wis. Respondent, William

Edwards Co., is an Ohio corporation, having its principal office and place of business at 1300 West Ninth Street, Cleveland, Ohio. These respondents are hereinafter referred to as buyer respondents.

Since June 19, 1936, and for some time prior thereto, each buyer respondent has been engaged in the wholesale grocery business, in competition with other wholesale grocery concerns, and has purchased in interstate commerce, and caused to be shipped to it across State lines for resale by it to its customers, substantial quantities of grocery and allied products.

Until on or about May 21, 1941, each of the buyer respondents had been a stockholder in UBC for more than 6 years, with the exception of respondent William Edwards Co., whose stock in UBC was issued on or about May 9, 1934, and surrendered, redeemed and canceled on or about April 8, 1939. On or about May 21, 1941, each of the remaining buyer respondents sold and disposed of its stock in UBC, and none of them now owns any interest whatever in UBC.

The buyer respondents named herein are typical and fairly representative of the approximately 51 wholesale grocery concerns which, at one time or another between June 19, 1936, and May 21, 1941, owned stock in UBC.

PAR. 5. Respondent, Allison-Bedford Co., is an Illinois corporation, having its principal office and place of business at 2309 South Keeler Avenue, Chicago, Ill. Respondent, Angelus Campfire Co., is a Delaware corporation, having its principal office and place of business at 4800 West Sixty-Sixth Street, Chicago, Ill. Respondent, Blue Seal Products Co., is an Illinois corporation, having its principal office and place of business at 3400 West Forty-eighth Place, Chicago, Ill. Respondent, Bordo Products Co., is an Illinois corporation, having its principal office and place of business at 412 North Orleans, Chicago, Ill. Respondent, Champion Chemical Works, is a New York corporation, having its principal office and place of business at 3884 Fourth Avenue, New York, N. Y. Respondent, Cupples Co., is a Missouri corporation, having its principal office and place of business at St. Louis, Mo. Respondent, Dean Milk Co., is an Illinois corporation, having its principal office and place of business at 20 North Wacker Drive, Chicago, Ill. Respondent, J. B. Inderrieden Co., is an Illinois corporation, having its principal office and place of business at 514 West Erie Street, Chicago, Ill. These respondents are hereinafter referred to as seller respondents.

Since June 19, 1936, and for some time prior thereto, each seller respondent, in competition with other manufacturers and sellers, has been engaged in the business of manufacturing and selling grocery and

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allied products to various wholesale grocers, including stockholders of UBC, and in the course and conduct of their business, each seller respondent has sold and shipped commodities in interstate commerce to various stockholders of UBC, and to competitors of such stockholders.

The seller respondents named herein are fairly typical and representative of a group of more than 300 manufacturers and sellers who, since June 19, 1936, have sold and shipped in interstate commerce to the stockholders of UBC and to competitors of such stockholders substantial quantities of grocery and allied products.

PAR. 6. UBC was incorporated on March 27, 1931, with an authorized capital stock of 1,000 shares, without par value, of which a minimum of approximately 235 shares had been issued and were outstanding during the period between the period June 19, 1936, and May 21, 1941. UBC's charter of incorporation, as amended July 24, 1936, contained among other provisions the following:

The nature of the business, or objects or purposes to be transacted, promoted or carried on, are:

(a) To function on a cooperative basis for the mutual benefit of its stockholders and to promote the general welfare of its members and to provide better and more economical methods of handling and buying merchandise for its stockholders.

(b) To register, require (sic) and use trade-marks and other emblems to distinguish its merchandise, and to act cooperatively and collectively in handling the products and problems of its stockholders and members.

(c) To act as agents for persons, firms and corporations in the buying of all kinds of merchandise, and especially in the buying of food and agricultural products, groceries, paper products, woodenware and hardware.

The charter as amended, also provides:

The directors shall have power to declare any pay dividends on the shares of the capital stock of the corporation * * * but no dividend shall be paid * * * in any year in excess of Six Dollars (\$6.00) per share. * * * After setting aside such reserves and paying any such dividends as may be declared by the board of directors in any year, the remainder of the net assets in excess of capital, or the net profits available for dividends, shall be distributed by the board of directors to the members of the corporation on a patronage basis in proportion to their purchases or sales or services from, to or through this corporation.

This last quoted provision is incorporated in the stock certificates issued by UBC.

Each stockholder is entitled to one vote for each share of stock held by him, with the right to cumulate his votes in the election of directors. The bylaws of UBC vest the power of managing its property and business in its board of directors, elected by the stockholders. UBC's officers are elected and employed, and may be removed and discharged at will, by its board of directors, which has at all times

actively exercised the power to direct and control the affairs of the corporation.

Prior to May 21, 1941, each stockholder in UBC owned five shares of UBC stock, purchased from the corporation at an agreed valuation of \$100 per share. This stock was not paid for in cash, the account of each stockholder being debited for the cost of the stock, and all dividends declared and payable thereon being credited to the stockholders' accounts, rather than paid in cash, until the stock had been paid for in full. Dividends thereafter declared were paid to the stockholders in cash.

Between June 19, 1936, and May 21, 1941, UBC had from 40 to 51 active stockholders, located in 18 States of the United States. Each of said stockholders during such time was engaged in the wholesale grocery business in competition with other wholesale grocery concerns, and each purchased in interstate commerce and caused to be shipped to it across State lines, for resale by it to its customers, substantial quantities of grocery and allied products. In no city did UBC have more than 1 stockholder. In general, UBC's stockholders were located in different and noncompeting territories and, with few exceptions, were not engaged in competition with each other.

PAR. 7. From the date of its organization until May 21, 1941, UBC functioned as a cooperative buying organization, owned, controlled, and operated by and for the benefit of its stockholders. Its purposes and objectives have been to purchase commodities for its stockholders, as their purchasing agent, at the best prices obtainable, and to promote the interests and improve the competitive position of its stockholders by rendering to them numerous other services.

The participating certificates of membership originally issued by UBC provided, among other things, that UBC agreed "to act as purchasing agent for the member * * * and to combine the member's requirements so as to secure the largest possible brokerage or commissions." These certificates were canceled in February, 1934, and stock certificates then and thereafter were issued in lieu thereof; but UBC continued to operate and function as the purchasing agent of the stockholders.

In soliciting prospective stockholders for UBC, both before and after June 19, 1936, UBC representatives told them that UBC was a cooperative buying organization, owned, controlled and operated by and for the benefit of its stockholders; that by combining the purchasing power of its stockholders UBC acquired tremendous purchasing power, which enabled it to obtain for its stockholders better prices than they alone could obtain, and discounts and allowances which they alone could not obtain. Sellers with whom UBC negotiated arrange-

ments under which it received brokerage on its stockholders' purchases were told that UBC was a buying organization for a group of well established wholesale grocers of enormous buying power, who preferred to purchase commodities from sellers who paid brokerage to UBC on their purchases, and that if the sellers would agree to pay UBC brokerage on its stockholders' purchases, UBC could and would favor the sellers with a substantial amount of attractive business.

Both before, and for a considerable time after, June 19, 1936, UBC's most widely used label, the "U BE SEE" label, bore the legend, "United Buyers Expert Service Effects Economies," the initial letters of which spell the name of the label. This label also carried the statement that "The U BE SEE label brings to you through your independent grocer tasty foods at a minimum price. This is made possible through the United Buyers Corporation's enormous group purchasing power, which covers the United States from coast to coast." Some UBC letterheads used after June 19, 1936, referred to UBC as "A Cooperative Association," and in its annual audits for 1936 and 1937, prepared in January of 1937 and 1938, respectively, UBC is referred to as the "agent in the buying of merchandise, especially foods and groceries" for its stockholders. In its 1936, 1937 and 1938 Federal income tax returns, UBC's occupation is described as "wholesale grocers' agent."

PAR. 8. Pursuant to the purposes and objectives of UBC, as stated in the preceding paragraph, from the time of its organization until May 21, 1941, UBC:

1. Acted for and in behalf of its stockholders, as their agent and subject to their direct control, in locating and purchasing commodities for them.
2. Bargained with sellers to secure commodities for its stockholders at the lowest possible prices.
3. Secured quantity discounts and advertising allowances from sellers for its stockholders.
4. Furnished its stockholders with regular and frequent market reports and advice.
5. Supplied its stockholders with information, plans, and suggestions, and, from time to time, with the services of trained field men, to increase their sales, better the appearance of their retail customers' stores, prepare advertising copy and otherwise improve its stockholders' merchandising methods.
6. Devised, developed and promoted labels owned by UBC, under which, in preference to manufacturers' and sellers' own labels, stock-

holders were encouraged to, and many did, purchase and resell commodities.

7. Encouraged and assisted stockholders to organize and operate voluntary chains of affiliated and cooperating, but independently owned, retail stores which favored their sponsoring stockholder, in purchasing the commodities sold by such stores at retail most of such stores being known as "U BE SEE Food Stores," and having a uniform store front appearance.

8. Arranged for sellers to pay it brokerage or commissions upon its stockholders' purchases, which said brokerage or commissions were expended and disbursed by UBC for the benefit of its stockholders in paying its operating expenses, furnishing its stockholders with various services, and making to them cash payments in substantial amounts.

All stockholders of UBC were entitled to all available UBC services without charge. The extent to which stockholders were furnished with the services of field men, however, and the amount of cash payments made by UBC to its stockholders, were directly related to and determined by the amount of UBC's income upon each respective stockholder's purchases through UBC. Prior to June 19, 1936, cash payments made by UBC to its stockholders were paid as patronage dividends declared by UBC's board of directors. No patronage dividends have been declared or paid by UBC from brokerage or commissions received by it upon purchases made by its stockholders since June 19, 1936, but cash payments to its stockholders have been made by it, though not as patronage dividends, from brokerage and commissions received upon purchases made by its stockholders in interstate commerce between June 19, 1936, and May 21, 1941.

PAR. 9. The quantity of business done by UBC on behalf of its stockholders was substantial, its purchases of commodities for them during its 1936 fiscal year amounting to more than \$4,250,000; during 1937 to more than \$4,900,000; and during 1938 to more than \$3,895,000. UBC's gross income from brokerage and commissions during these three years was approximately \$121,000, \$123,000, and \$104,000, respectively. A substantial amount of UBC's income was derived from brokerage paid to it upon purchases made by it for its stockholders in interstate commerce, and requiring the shipment of goods to be made by sellers to its stockholders across State lines.

Daily, UBC receives and executes a large number of orders on behalf of its stockholders, a typical transaction being handled as follows:

Having received from UBC a market letter, bulletin, or other quotation, respecting the availability of commodities, a stockholder will transmit to UBC for execution, an order therefor. This may be done by mail, or by telephone or telegram, the stockholder being privileged to reverse telephone and telegraph charges on his communications to UBC. UBC then places the stockholder's order with a seller, endeavoring to purchase the designated commodities for the stockholder, as his agent, at the lowest price obtainable. If the price offered by UBC is acceptable to the seller, the latter confirms the sale to UBC by notifying it of his acceptance of the order, and UBC in turn notifies the stockholder. The seller then ships and bills the commodities to the stockholder, from whom he receives payment therefor, and in due course pays UBC a brokerage or commission upon the sale. Occasionally such commodities, although shipped to the stockholder, are billed to and paid by UBC, which is reimbursed by the stockholder. Stockholders frequently request UBC to search the market in an effort to obtain and purchase commodities for them at stated prices, and UBC endeavors to comply with such requests. Pursuant to directions given by UBC to its stockholders, in an effort to increase its brokerage income, such stockholders frequently give or transmit orders to sellers direct, or, less frequently but in many instances, purchase commodities from sellers' brokers and insist that brokerage be paid to UBC by the sellers on such orders. In many cases sellers have complied with this insistence, and in some cases they have paid brokerage to UBC as well as to their own brokers on sales made through the latter to UBC stockholders. UBC records all purchases made by its stockholders through it, or upon which it is paid brokerage, and sends to its stockholders monthly an itemized statement of such purchases. This statement does not show UBC's earnings on its stockholders' purchases, but a record of such earnings with respect to each stockholder is made and kept by UBC.

PAR. 10. During the period between June 19, 1936, and May 21, 1941, in all transactions of purchase and sale to which a UBC stockholder was a party and in which UBC participated, UBC was the purchasing agent and representative of the stockholder, and acted in fact for and in behalf of, and under the direct control of such stockholder. UBC was not, in any such transactions, the agent or representative of any sellers from whom UBC stockholders purchased commodities, nor did it represent or act for or in behalf of, or under the control of any such sellers. All services rendered by UBC in such transactions were intended to be, and in fact were, rendered

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to its stockholders, and UBC neither rendered nor intended to render to sellers any selling services, or any other services of any kind whatever; such benefits as sellers received from UBC's activities were merely incidental to the services rendered by UBC to its stockholders.

PAR. 11. With the exception of respondent Angelus Campfire Co., which has paid no brokerage or commissions to UBC, each seller respondent, and approximately 300 other sellers and manufacturers, transmitted and paid to UBC within the period from June 19, 1936, to May 21, 1941, and UBC accepted and received from them, brokerage fees and commissions in substantial amounts upon the sale within that period of commodities purchased in interstate commerce by UBC stockholders.

PAR. 12. Within the period from June 19, 1936, to May 21, 1941, each buyer respondent and every other stockholder of UBC made substantial purchases, through UBC, of commodities in interstate commerce upon which brokerage fees and commissions were paid to UBC by the sellers of such commodities, and in services or in money, UBC, within said period, transmitted or paid to each buyer respondent and UBC stockholder, and each buyer respondent and UBC stockholder accepted and received from UBC substantial amounts of such brokerage fees and commissions.

PAR. 13. On May 21, 1941, all the issued and outstanding capital stock in UBC then owned by the buyer respondents and other UBC stockholders was sold by them to James H. Black, W. W. Caldwell, S. E. Nordlund, H. W. Jones and T. N. Fulton, employees of UBC, who had not theretofore owned any of its capital stock. These employees now own absolutely and unconditionally all the issued and outstanding capital stock of UBC, and constitute its board of directors. Its officers are J. H. Black, president; W. W. Caldwell, vice president, and S. E. Nordlund, secretary-treasurer. No stockholder in UBC prior to May 21, 1941, and no person or firm engaged in the wholesale grocery business, now owns any stock or interest in UBC, or is an officer or member of the board of directors of UBC.

CONCLUSION •

The Commission concludes that UBC in the transactions set out was acting for and in behalf of its buyer-stockholders, and that:

(1) The payment of brokerage by the seller-respondent and other sellers to UBC upon its stockholders' purchases of commodities in interstate commerce subsequent to June, 1936.

(2) The receipt of such brokerage by UBC and the transmission thereof to its stockholders in services and in money.

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(3) The receipt of such brokerage by the buyer-respondent and other UBC stockholders. constitute violations by the respondents of the provisions of section 2 (c) of the Clayton Act, approved October 15, 1914 (38 Stat., 730), as amended by the Robinson-Patman Act, approved June 19, 1936 (49 Stat. 1526; 15 U. S. C. sec. 13).

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 in support of and in opposition to the allegations of the complaint, and the Commission having made its findings as to the facts and its conclusion that the respondents, with the exception of Angelus Campfire Co., have violated the provisions of section 2 (c) of the Clayton Act, approved October 15, 1914 (38 Stat. 730), as amended by the Robinson-Patman Act, approved June 19, 1936 (49 Stat. 1526; 15 U. S. C. sec. 13).

It is ordered, That respondent United Buyers Corporation, its officers, directors, agents, representatives and employees, do forthwith cease and desist from :

1. Directly or indirectly, in any manner or form whatever, accepting from sellers any brokerage or commission, or any allowance, discount or thing of value in lieu thereof, upon the purchase of commodities in interstate commerce, by itself, by any of its stockholders, or by any buyer for whom in fact, on whose behalf, or under whose direct or indirect control it acts.

2. Directly or indirectly, in any manner or form whatever, transmitting, passing or granting to buyers of commodities, any brokerage or commission, and any allowance, discount or thing of value, in lieu thereof, received on such buyers' purchases of commodities in interstate commerce.

It is further ordered, That respondents, H. P. Lau Co., Bluffton Grocery Co., Lima-Kenton Grocery Co., S. Zollinger Co., William Edwards Co., and Copps Co., and all other stockholders in United Buyers Corporation prior to May 21, 1941, their officers, directors, agents, representatives, and employees, do forthwith cease and desist from accepting from United Buyers Corporation, directly or indirectly, in any manner or form whatever, any brokerage or commission, and any allowance, discount or thing of value in lieu thereof, upon their purchases of commodities in interstate commerce.

It is further ordered, That respondents, Allison-Bedford Co., Blue Seal Products Co., Bordo Products Co., Champion Chemical Works,

Cupples Co., Dean Milk Co., and J. B. Inderrieden Co., their officers, directors, agents, representatives and employees, do forthwith cease and desist from paying or granting to United Buyers Corporation any brokerage or commission, and any allowance, discount or thing of value in lieu thereof, upon their sales of commodities in interstate commerce, except in transactions in which United Buyers Corporation renders to them a bona fide selling service as their selling agent or broker, and does not act for or on behalf of, or, under the direct or indirect control of, the purchasers in such transactions.

It is further ordered, That the complaint herein be, and hereby is, dismissed as to:

1. Respondent Arthur E. Koeniger.
2. Respondent Eli P. Gale.
3. Respondent Helen M. Driscoll.
4. Respondent Angelus Campfire Co.

Respondent, Arthur E. Koeniger, is deceased; respondents, Eli P. Gale and Helen M. Driscoll, have resigned their offices and positions with the United Buyers Corporation, and there is no indication that they are likely to resume their previous employment with it; and the record does not show that respondent, Angelus Campfire Co., a seller-respondent, has paid any brokerage or commissions to United Buyers Corporation.

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

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IN THE MATTER OF

FERD T. HOPKINS, TRADING AS D. WATSON & COMPANY
AND AS COLONNADE ADVERTISING AGENCY.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4527. Complaint, June 30, 1941—Decision, Nov. 13, 1941*

Where an individual engaged in the interstate sale and distribution of "Dr. J. Lariviere's Vegetable Compound," by means of advertisements in newspapers and other advertising literature, directly and by implication—
Represented that his said product constituted a treatment for painful and irregular menstruation; use of which would strengthen the system and organs and build up physical resistance to restlessness, nervousness, cramps, headaches, fainting spells, and other distressing symptoms or ailments accompanying the menstruation period or which might be due to female "functional disorders"; and that restlessness, nervousness, and moody spells in young women are indicative of or symptoms of "dangerous periods" imperiling health;

The facts being that it did not constitute such a treatment and use thereof would not accomplish results as above claimed, and restlessness, nervousness, and moody spells in young women are not indicative of, nor symptoms of "dangerous periods" imperiling "health";

With the 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 his said preparation:
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. William L. Taggart for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Ferd T. Hopkins, an individual, trading as D. Watson & Co. and as Colonnade Advertising Agency, 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, Ferd T. Hopkins, is an individual trading as D. Watson & Company and as Colonnade Advertising Agency, with his office and principal place of business at 430 Lafay-

ette 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 one year last past, has been, engaged in the sale and distribution of a certain medicinal preparation advertised as DR. J. LARIVIERE'S VEGETABLE COMPOUND.

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

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

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; 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 and other advertising literature are the following:

Danger Periods

Your mother knew the secret when she was a girl because her mother told her what great relief could be obtained from the use of *Dr. J. Lariviere's Vegetable Compound* at certain periods of womanhood. It is not intended that women should suffer every month. For over half a century *Dr. J. Lariviere's Vegetable Compound* has been the women's remedy as an aid in preventing restless, nervous and moody periods, cramps, headaches and embarrassing fainting spells, due to female functional irregularities. Start today—take *Dr. J. Lariviere's Vegetable Compound* and be convinced that you can be a normal woman. It strengthens and builds up your system so you do not have to take time-out periods. At your druggist.

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Caution

Every woman needs a special tonic at certain periods to relieve the distress from female functional disorders—that is why over half a century ago Dr. J. Lariviere, a female specialist, perfected his famous formula, *Dr. J. Lariviere's Vegetable Compound*, to aid women to go through their periods of distress with the least possible discomfort. Dr. J. Lariviere's Vegetable Compound helps nature build up physical resistance so women can enjoy life the way it was intended—free from jittery nerves and disturbing symptoms that women are subjected to at certain intervals. They find Dr. J. Lariviere's Vegetable Compound builds up their systems and strengthens their organs so they feel good and full of pep. For sale at your drug store.

D. WATSON & COMPANY, New York.

Women

You and your daughters are in need of a good, effective tonic at certain monthly periods. For over half a century *Dr. J. Lariviere's Vegetable Compound* has helped women during these run-down periods when bothered by cramps, nervousness and fainting spells due to female functional conditions. Take Dr. J. Lariviere's Vegetable Compound faithfully, according to directions, the same as your mothers did before you, and note the effective results. You will find it will build up and strengthen your organs. Take it regularly and be convinced there is relief in Dr. J. Lariviere's Vegetable Comp. At druggists.

D. WATSON & COMPANY, New York.

Your Daughter's Health

When she is entering womanhood watch carefully for symptoms of restless, nervous and moody spells. Have her take *Dr. J. Lariviere's Vegetable Compound* that has been serving women so faithfully for over half a century as an aid in relieving those embarrassing and dangerous periods. Dr. J. Lariviere's Vegetable Compound was originally prepared by Dr. J. Lariviere, a prominent New England physician, who made a life study of female complaints. He prescribed this medicine to his female patients with such successful results that today the sale is universal. With Dr. J. Lariviere's Vegetable Compound it is not necessary for your daughter to beg to be excused from school and dates—no laying around the house for three or four days every month. At drug stores.

D. WATSON & COMPANY, New York.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set forth herein, the respondent represents and has represented, directly and by implication, that his medicinal preparation, designated as Dr. J. Lariviere's Vegetable Compound, constitutes, within itself, a treatment for painful and irregular menstruation; that its use will strengthen the system and organs and build up physical resistance to restlessness, nervousness, cramps, headaches, fainting spells, and other distressing symptoms or ailments accompanying the menstruation period or such symptoms or ailments which may be due to female disorders or so-called "functional disorders"; and that restlessness, nervousness, and

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moody spells in young women are indicative of or symptoms of "dangerous periods" imperiling health.

PAR. 5. The foregoing advertisements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation does not constitute, within itself, a treatment for painful and irregular menstruation. The use of said preparation will not strengthen the system or organs and will not build up physical resistance to restlessness, nervousness, cramps, headaches, fainting spells, or other distressing symptoms or ailments accompanying the menstruation periods or such symptoms or ailments which may be due to female disorders or "functional disorders." Restlessness, nervousness, and moody spells in young women are not indicative of, nor symptoms of "dangerous periods" imperiling "health." Furthermore, on the basis of established scientific facts and generally held scientific opinion, said preparation is not a competent treatment for any of the ailments, symptoms or conditions set forth in respondent's advertisements.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading advertising 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 medicinal preparation.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 30, 1941, issued and on July 1, 1941, served its complaint in this proceeding upon respondent Ferd T. Hopkins, an individual, trading as D. Watson & Co. and as Colonnade Advertising Agency, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance and service of said complaint, the respondent filed an answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearings as to said facts, which answer was duly

filed in the office of the Commission on October 3, 1941. Thereafter, this 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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Ferd T. Hopkins, is an individual trading as D. Watson & Co. and as Colonnade Advertising Agency, with his office and principal place of business at 430 Lafayette 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 one year last past has been, engaged in the sale and distribution of a certain medicinal preparation advertised as Dr. J. LARIVIERE'S VEGETABLE COMPOUND.

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

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

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; 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 and other advertising literature are the following:

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Danger Periods

Your mother knew the secret when she was a girl because her mother told her what great relief could be obtained from the use of *Dr. J. Lariviere's Vegetable Compound* at certain periods of womanhood. It is not intended that women should suffer every month. For over half a century *Dr. J. Lariviere's Vegetable Compound* has been the women's remedy as an aid in preventing restless, nervous and moody periods, cramps, headaches and embarrassing fainting spells, due to female functional irregularities. Start today—take *Dr. J. Lariviere's Vegetable Compound* and be convinced that you can be a normal woman. It strengthens and builds up your system so you do not have to take time-out periods. At your druggist.

D. WATSON & COMPANY, New York.

Caution

Every woman needs a special tonic at certain periods to relieve the distress from female functional disorders—that is why over half a century ago *Dr. J. Lariviere*, a female specialist, perfected his famous formula, *Dr. J. Lariviere's Vegetable Compound*, to aid women to go through their periods of distress with the least possible discomfort. *Dr. J. Lariviere's Vegetable Compound* helps nature build up physical resistance so women can enjoy life the way it was intended—free from jittery nerves and disturbing symptoms that women are subjected to at certain intervals. They find *Dr. J. Lariviere's Vegetable Compound* builds up their systems and strengthens their organs so they feel good and full of pep. For sale at your drug store.

D. WATSON & COMPANY, New York.

Women

You and your daughters are in need of a good, effective tonic at certain monthly periods. For over half a century *Dr. J. Lariviere's Vegetable Compound* has helped women during these run-down periods when bothered by cramps, nervousness and fainting spells due to female functional conditions. Take *Dr. J. Lariviere's Vegetable Compound* faithfully, according to directions, the same as your mothers did before you, and note the effective results. You will find it will build up and strengthen your organs. Take it regularly and be convinced there is relief in *Dr. J. Lariviere's Vegetable Comp.* At druggists.

D. WATSON & COMPANY, New York.

Your Daughter's Health

When she is entering womanhood watch carefully for symptoms of restless, nervous and moody spells. Have her take *Dr. J. Lariviere's Vegetable Compound* that has been serving women so faithfully for over half a century as an aid in relieving those embarrassing and dangerous periods. *Dr. J. Lariviere's Vegetable Compound* was originally prepared by *Dr. J. Lariviere*, a prominent New England physician, who made a life study of female complaints. He prescribed this medicine to his female patients with such successful results that today the sale is universal. With *Dr. J. Lariviere's Vegetable Compound* it is not necessary for your daughter to beg to be excused from school and dates—no laying around the house for three or four days every month. At drug stores.

D. WATSON & COMPANY, New York.

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PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set forth herein, the respondent represents and has represented, directly and by implication, that his medicinal preparation, designated as Dr. J. Lariviere's Vegetable Compound, constitutes, within itself, a treatment for painful and irregular menstruation; that its use will strengthen the system and organs and build up physical resistance to restlessness, nervousness, cramps, headaches, fainting spells, and other distressing symptoms or ailments accompanying the menstruation period or such symptoms or ailments which may be due to female disorders or so-called "functional disorders"; and that restlessness, nervousness and moody spells in young women are indicative of or symptoms of "dangerous periods" imperiling health.

PAR. 5. The foregoing advertisements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation does not constitute, within itself, a treatment for painful and irregular menstruation. The use of said preparation will not strengthen the system or organs and will not build up physical resistance to restlessness, nervousness, cramps, headaches, fainting spells, or other distressing symptoms or ailments accompanying the menstruation periods or such symptoms or ailments which may be due to female disorders or "functional disorders." Restlessness, nervousness, and moody spells in young women are not indicative of, nor symptoms of "dangerous periods" imperiling "health." Furthermore, said preparation is not a competent treatment for any of the ailments, symptoms, or conditions set forth in respondent's advertisements.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading advertising statements and representations with respect to his preparation, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparation.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public, and constitutes unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade 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 the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Ferd T. Hopkins, an individual, trading as D. Watson & Co., and as Colonnade Advertising Agency, or trading under any other name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his medicinal preparation known as Dr. J. Lariviere's Vegetable Compound, 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 constitutes a competent or effective treatment for painful or irregular menstruation; that its use will strengthen the system or organs, or build up physical resistance to restlessness, nervousness, cramps, headaches, or fainting spells, or to other symptoms which may be due to female disorders; or that restlessness, nervousness, or moody spells in young women are indicative of or symptoms of dangerous periods imperiling health;

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparation, 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 him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Complaint

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IN THE MATTER OF
JOHN SHAPIRO, TRADING AS FEDERAL 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 4270. Complaint, Aug. 27, 1940—Decision, Nov. 14, 1941

Where an individual engaged in competitive interstate sale and distribution of candy as a middleman representing manufacturers on a commission basis, soliciting orders personally and through a number of employee salesmen, selling certain assortments of candy and other 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 consuming public; a typical assortment consisting of 150 individually wrapped penny caramels of uniform size and shape, together with 12 lead pencils and 8 pencil sets, for sale and distribution under a plan by which purchasers securing by chance the 12 chocolate caramels received such lead pencils, without charge, the 7 purchasers obtaining the red caramels similarly received the pencil sets, and purchaser of last caramel also received one of said sets—

Sold such assortments to wholesalers and jobbers, retail purchasers from whom exposed and sold them to the purchasing public in accordance with sales plan above described, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of his products, contrary to an established public policy of the United States Government, and in competition with many who, unwilling to use any such plan, refrain therefrom;

With tendency and capacity unfairly to divert substantial trade in commerce to him from his said competitors;

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice 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. 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 John Shapiro, individually and trading as Federal Sales 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, John Shapiro, is an individual trading as Federal Sales Co., with its principal office and place of business located at 150-35 Thirty-fourth Avenue, Flushing, Long Island, N. Y. Respondent is now and for more than one year last past has been engaged in the sale and distribution of candy and confectionery products to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused said products, when sold, to be shipped from manufacturers in the State of New York to purchasers thereof at their respective points of location in the various States of the United States other than New York and in the District of Columbia. There is now and has been for more than one 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 individuals and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

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

This assortment consists of 150 pieces of caramel candy of uniform size and shape, together with 12 common lead pencils and 8 pencil sets. The said pencil sets contain a ruler, a pencil, and a pen holder. Seven of said caramels are red, 12 are chocolate and the remainder, 131, are vanilla. The said caramels are individually wrapped and the color of each is effectively concealed from purchasers and prospective purchasers until a purchase had been made and the wrapper removed therefrom. All of the caramels retail at the price of 1 cent each. Purchasers procuring 1 of the said chocolate caramels are entitled to and receive, without additional cost, 1 of the said pencils. Purchasers procuring one of the said red caramels are entitled to and receive, without additional cost, one of the said pencil sets. The purchaser of the last caramel in said assortment is entitled to and receives, without additional cost, 1 of the said pencil sets. The said pencils and pencil sets are thus distributed to the purchasing and consuming public wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of candy and other articles of merchandise involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said candy and other articles of merchandise expose and sell the same to the purchasing public in accordance with the sales plan 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 products and the sale of said products by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candy and other articles of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute candy and other articles of merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his candy and other articles of merchandise and the element of chance involved therein and are thereby induced to buy and sell respondent's said products in preference to products offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent because of said game of chance has a tendency and a capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his 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 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 27, 1940, issued and thereafter served its complaint in this proceeding upon the respondent, John Shapiro, individually and trading as Federal Sales Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint (no answer thereto being filed by respondent), testimony and other evidence in support of the allegations of the complaint were introduced by J. V. Mishou, attorney for the Commission, before Andrew B. Duvall, a trial examiner of the Commission theretofore duly designated by it (no testimony or other evidence being offered by respondent), 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. The respondent John Shapiro, is an individual trading as Federal Sales Co., with his office and place of business located at 150-35 Thirty-fourth Avenue, Flushing, Long Island, N. Y. Respondent is now, and for more than 3 years last past, has been, engaged in the sale and distribution of candy to wholesale dealers and jobbers.

PAR. 2. Respondent causes and has caused his products, when sold, to be shipped from manufacturers in the State of New York and in other States to purchasers thereof located in various States of the United States other than the States in which such shipments originate. Respondent maintains, and for more than 3 years last past, has maintained, a course of trade in his candy in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his business respondent is, and at all times mentioned herein has been, in substantial competition with other individuals and with corporations and firms engaged in the

sale and distribution of candy in commerce among and between the various States of the United States.

PAR. 4. Respondent is not a manufacturer and does not manufacture any of the candy which he sells. He is a middleman, representing certain manufacturers of candy and selling the products of such manufacturers to wholesalers and jobbers on a commission basis. Upon obtaining an order for candy respondent transmits such order to the particular manufacturer whose product is desired and the manufacturer ships the candy to the purchaser. Respondent receives for his services in procuring the order a designated percentage of the purchase price of the candy. Not only does respondent personally solicit orders, but he has a number of salesmen employed who assist him in soliciting orders. While most of the respondent's sales are made to purchasers located in the New England States and other States in the eastern portion of the United States, some of his sales have been made to purchasers located in the State of California and in various other States throughout the United States.

PAR. 5. In the course and conduct of his business respondent has sold certain assortments of candy and other merchandise so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when such candy and other merchandise was sold and distributed to the consuming public. One of these assortments was made up as follows:

This assortment consisted of 150 pieces of caramel candy of uniform size and shape, together with 12 lead pencils and 8 pencil sets. The pencil sets contained a ruler, a pencil, and a pen-holder. Seven of the pieces of candy were red, 12 were chocolate, and the remaining 131 pieces were vanilla or white in color. The pieces of candy were individually or separately wrapped, and the color of the various pieces was effectively concealed from purchasers and prospective purchasers until a purchase had been made and the wrapper removed from the candy. All of the pieces of candy sold at retail for 1 cent each. Purchasers who happened to obtain one of the chocolate caramels were entitled to and received without additional cost one of the lead pencils. Purchasers who happened to obtain 1 of the red caramels were entitled to and received without additional cost 1 of the pencil sets. The purchaser of the last caramel or piece of candy in the assortment was entitled to and received without additional cost 1 of the pencil sets. The pencils and pencil sets were thus distributed to the purchasing public wholly by lot or chance.

The sale of this particular assortment was discontinued by respondent sometime during the year 1939. Prior to that time respondent sold and distributed certain other assortments of candy which involved

lot or chance features similar in all material respects to the plan described above.

PAR. 6. Retail dealers who purchased respondent's assortments of candy and other merchandise from wholesalers and jobbers exposed and sold such candy and other merchandise to the purchasing public in accordance with the sales plan herein described. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of his products. The use by respondent of such sales plan or method and the sale of respondent's products to the purchasing public by and through the use of such 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. 7. Many of the persons, firms, and corporations who sell and distribute candy in competition with respondent are and have been unwilling to adopt and use the sales plan or method used by respondent in the sale and distribution of his candy, or any other sales plan or method involving the use of a game of chance, gift enterprise, or lottery scheme, and such competitors refrain therefrom. The use by respondent of such game of chance or lottery scheme has the tendency and capacity to divert unfairly to respondent from his said competitors substantial trade in commerce among and between the various States of the United States.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public and of respondent's competitors, and constitute *unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal 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 Andrew B. Duvall, trial examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint (no testimony or other evidence being offered in opposition thereto), report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); and the Commission having 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 Shapiro, individually and trading as Federal Sales Co., or trading under any other name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy or any other merchandise so packed and assembled that sales of 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 for ultimate sale to the public, assortments of candy composed of individually wrapped pieces of candy of uniform size and shape but of different colors, such colors being effectively concealed, together with articles of merchandise which are to be or may be given as prizes to purchasers procuring pieces of said candy of a particular color.

3. Supplying to or placing in the hands of others any device which is to be used or may be used in the sale or distribution of respondent's candy or other merchandise to the public 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 respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Complaint

IN THE MATTER OF

A. KRASNE, 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 4280. Complaint, Aug. 28, 1940—Decision, Nov. 14, 1941

Where a corporation engaged in purchasing, selling, and distributing food products at wholesale, buying 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, 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 to their respective brokers for effecting such sales:

Held, That in receiving and accepting allowances and discounts in lieu of brokerage fees or commissions from sellers upon such purchases, it violated the provisions of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John T. Haslett for the Commission.

Poses, Katcher & Driesen, of New York City, for respondent.

COMPLAINT¹

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. 14), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, A. Krasne, 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 845 East One Hundred and Thirty-sixth Street, New York, N. Y. Respondent is engaged in the business of purchasing, selling, and distributing 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

¹ By a stipulation between respondent and the Commission, approved October 15, 1940, the complaint was amended, nunc pro tunc, by correcting respondent's name to "A. Krasne, Inc."

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 A. Krasne, 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, A. Krasne, 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 845 East One Hundred and Thirty-sixth Street, New York, N. Y. Respondent is engaged in the business of purchasing, selling, and distributing 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 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 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) :

It is ordered, That in the course of commerce, as "commerce" is defined in the aforesaid Clayton Act, the respondent A. Krasne, 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.

Syllabus

IN THE MATTER OF

EWEN CAMERON, TRADING AS MERCHANDISE SALES
SYNDICATE

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

Docket 4417. Complaint, Dec. 14, 1940—Decision, Nov. 14, 1941

Where an individual engaged in competitive interstate sale and distribution of billfolds, cameras, cosmetics, fountain pens, jewelry, smoking pipes, wearing apparel, and other articles, including assortments thereof which consisted of a large carton enclosing 80 or 81 small boxes, each holding an article of merchandise costing said individual from less than 1 to 6 cents each, and customarily retailing for from 2 to 25 cents each; with front of said carton constituting a pull card for use in sale and distribution of said small boxes under a plan by which the ultimate purchaser, for the 10 cents paid, secured that box, number of which corresponded to that secured by chance from card, and depicting thereon articles usually retailing at more than 10 cents each, purportedly contained therein,—

Sold such assortments, through brokers, to distributors or wholesalers, retail purchasers from whom exposed and sold them to the purchasing public in accordance with aforesaid sales plan, involving a game of chance, in that the facts as to which of a number of different articles purchaser would receive and whether or not the article secured was of less or greater value than the purchase price, were determined wholly by lot or chance, notwithstanding legend "Box may be opened and contents examined before purchasing," printed at the bottom of one side of the large carton in type so small and inconspicuously placed as to be visible and legible only upon the most minute examination, and which, it was evident, was not intended to, and did not, come to the attention of the purchasing public; said dealer thereby supplying to and placing in the hands of others the means of conducting lotteries in the sale of merchandise in accordance with aforesaid plan or method, in competition with others who, unwilling to adopt and use such or other sales method contrary to public policy, refrain therefrom;

With the result that many dealers in and ultimate consumers of such merchandise were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy his said 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 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. D. C. Daniel for the Commission.

Mr. Abram Z. Zietlein, of Chicago, Ill., for respondent

Complaint

34 F. T. C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Ewen Cameron, individually, and trading as Merchandise Sales Syndicate, 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, Ewen Cameron, is an individual trading under the name of Merchandise Sales Syndicate, with his principal office and place of business located at 2738 North Sheffield Avenue, Chicago, Ill. Respondent is now and for more than three years last past has been engaged in the sale and distribution of smoking pipes, jewelry, fountain pens, billfolds, knives, cosmetics, cameras, wearing apparel, and other articles of merchandise to dealers. Respondent causes, and has caused, said merchandise when sold to be transported from his aforesaid place of business in the State of Illinois to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now and for more than three 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 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 dealers certain assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the consumers thereof. One of said assortments is, 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. Such pull card contains a number of partially per-

forated 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 his 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 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 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 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.

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 14, 1940, issued and subsequently served its complaint in this proceeding upon respondent Ewen Cameron, individually and trading as Merchandise Sales Syndicate, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by an attorney for the Commission and in opposition to the allegations of the complaint by attorneys 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 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. Respondent, Ewen Cameron, is an individual trading under the name Merchandise Sales Syndicate, with his principal office and place of business located at 2738 North Sheffield Avenue, Chicago, Ill. Respondent is now and has been since about 1936, engaged in the sale and distribution of billfolds, cameras, cosmetics, fountain pens, jewelry, smoking pipes, wearing apparel, and other articles of merchandise.

PAR. 2. In the course and conduct of his business as aforesaid respondent causes, and has caused, said merchandise, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. There is now, and for several 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.

PAR. 3. Respondent sells and distributes assortments of merchandise consisting of novelties and notions such as those mentioned in paragraph 1 hereof. He sells his assortments of merchandise through brokers to distributors or wholesale dealers who resell to retail dealers who, in turn, sell to consumers. During the approximately 4 years in which he has been engaged in his present business his volume of sales has increased from about \$20,000 the first year to about \$70,000 in the last year. The contents of the assortments of merchandise sold vary somewhat from time to time, but the method of sale of all such assortments is substantially the same and is as follows: The assortment consists of a large carton containing a number of small boxes in each of which is packed an article of merchandise. The front of the large carton is so constructed as to constitute a device commonly known as a pull card. This pull card has a number of partially perforated pull tabs and on the back of each such tab a number appears which corresponds to a number appearing on one of the smaller boxes contained in the large carton. Sales are 10 cents each, and a purchaser detaches one of the partially perforated tabs from the pull card and receives the small box bearing the number corresponding to the number appearing on the reverse side of the tab pulled by such purchaser. This number on the reverse side

of the tab is effectively concealed from view until the tab is separated and removed from the pull card.

Each assortment of merchandise usually consists of 80 or 81 articles, and in case the assortments have 81 articles the purchaser who pulls the last of the 80 tabs on the pull card receives, in addition to the article of merchandise called for by the number on the reverse side of that tab, one additional article of merchandise without further charge. Respondent occasionally purchases job lots of merchandise and the individual items packed in assortments vary according to the merchandise he has available at any given time. The cost to respondent of the individual articles in said assortments also varies from time to time. As of July 1940 the cost of the individual items in one such assortment ranged from slightly less than 1 cent each to 6 cents each. The usual and customary retail prices of the articles included in assortments sold by the respondent range from 2 or 3 cents each to approximately 25 cents each.

PAR. 4. Retail dealers who purchase respondent's assortments of merchandise expose for sale and sell the same to the purchasing public in accordance with the aforesaid sales plan or method.

Respondent testified that any purchaser is free to examine the merchandise drawn and decline to accept and pay for it if he so desires, and that the retail dealer is informed that unsold merchandise may be returned. However, the only notice to the purchasing public is the legend "Box may be opened and contents examined before purchasing" printed at the bottom of one side of the large carton in type so small and so inconspicuously placed as to be visible and legible only upon the most careful and minute examination. The conclusion is drawn from the size and placing of this notice that it is not intended to, and does not, come to the attention of the purchasing public.

The large carton has on its front beside the pull card pictures of articles of merchandise which usually and customarily retail at more than 10 cents each and which are purportedly contained in the assortment. Among the articles so pictured are a pipe, a necktie, a billfold, a razor, and a cigarette lighter. These pictorial representations have the capacity and tendency, when taken in connection with the method of sale used, to create in the minds of members of the purchasing public the belief that among the articles of merchandise in the assortment there are some of a value greater than 10 cents.

The sale of merchandise to the purchasing public in the aforesaid manner involves a game of chance in that the fact as to which of a number of different articles of merchandise the purchaser will

Order

receive, and whether or not he receives an article of merchandise of less or greater value than the purchase price, is determined wholly by lot or chance. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of merchandise in accordance with the aforesaid plan or method.

PAR. 5. In the conduct of his business respondent is in competition with other sellers of like articles of merchandise who do not use, and are unwilling to adopt and use, any sales plan or method involving a game of chance or any other sales plan or method contrary to public policy, and such competitors refrain therefrom. Many dealers in and ultimate consumers of such merchandise are attracted by the 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 respondent's merchandise in preference to merchandise offered for sale 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 a tendency and capacity to, and does, unfairly divert trade to respondent from competitors who do not use the same or equivalent methods of sale, and as a result thereof substantial injury is being done, and has been done, by respondent to competition in commerce between and among the various States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent 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, 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 respondent has violated the provisions of the Federal Trade Commission Act:

Order

34 F. T. C.

It is ordered, That the respondent Ewen Cameron, an individual, trading as Merchandise Sales Syndicate, 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, and distribution of novelties and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

1. Selling or distributing novelties, or any merchandise, so packed or assembled that sales of such novelties 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 novelties 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 novelties or other merchandise to the public.

3. Selling or otherwise disposing of any novelties 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 him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF

MINERAL WELLS CRYSTAL PRODUCERS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4512. Complaint, May 29, 1941—Decision, Nov. 14, 1941

Where a corporation engaged in the processing and in the competitive interstate sale and distribution of mineral crystals for the treatment of certain ailments; in statements and legends on leaflets, letterheads, billheads, sales invoices, display cards and other advertising material, and on the labels and outer wrappings of the product's containers, directly or by implication—

(a) Represented through inclusion of words "Mineral Wells" as a part of its corporate name and through such use of them in aforesaid statements as "Mineral Wells Crystals," "Made in Mineral Wells, Tex.," and "Made from Texas mineral water," that its mineral crystals were produced exclusively from mineral water obtained in its natural state from the earth at or in the vicinity of Mineral Wells, Tex.;

The facts being its said product was not processed from mineral water thus obtained at or in the vicinity of said city,—which for a long period had been well and favorably known for its mineral water containing certain constituents, and name of which had long been associated by a substantial portion of the purchasing public with the wells located in its vicinity—and was not made directly from any natural mineral water, but was prepared through mixing ordinary water from the mains of aforesaid city with commercial chemicals purchased by said corporation from chemical companies obtaining their raw materials hundreds of miles distant, and thereafter heating and processing the solution; and

(b) Represented that its said product had been endorsed or tested as to quality and fitness by some governmental, scientific or other recognized agency empowered and qualified to certify as to the attributes thereof, through use of such words and legends as "CERTIFIED Mineral Wells Crystals," "Use Certified Mineral Crystals," and "Certified Mineral Crystals";

The facts being its said product was not properly described as "Certified" inasmuch as it had never been endorsed or tested as to quality or fitness by any recognized agency whatever;

With effect of misleading and deceiving a substantial portion of the purchasing public as to its product and the place of origin thereof, and of thereby inducing it to purchase substantial quantities of said product whereby trade was diverted unfairly to it from its competitors, including many who do not misrepresent their products or the places of origin thereof; to the substantial injury of competition in commerce:

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

Mr. J. V. Buffington for the Commission.

Mr. A. E. Brooks, of Fort Worth, Tex., for respondent.

Complaint

34 F. T. C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Mineral Wells Crystal Producers, 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, Mineral Wells Crystal Producers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located in Mineral Wells, Tex.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the processing and in the sale and distribution of certain mineral crystals intended for use in the treatment of certain ailments of the human body. Respondent causes and has caused said mineral crystals, when sold, to be transported from its place of business in the State of Texas to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with individuals, firms, and partnerships also engaged in the processing and in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of mineral crystals and other medicinal preparations intended for the same or substantially the same uses as those for which respondent's product is intended.

PAR. 4. In the course and conduct of its aforesaid business, respondent has made and is now making false and misleading representations with respect to its said product and the source and origin thereof. Such representations have taken the form of statements and legends imprinted on leaflets, letterheads, billheads, sales invoices, display cards, and other advertising material, which respondent has caused and is causing to be distributed among purchasers and prospective purchasers, and on the labels and outer wrappings of the containers in which respondent's product is packed, displayed and sold. Among

Complaint

and typical of, the false, misleading, and deceptive statements and representations so made and distributed are the following:

MINERAL WELLS CRYSTAL PRODUCERS, INC.
Manufacturers
CERTIFIED
Mineral Wells
Crystals

Made in Mineral Wells, Tex.

Made from Texas mineral water.

Here's to Health
Use Certified Mineral Crystals

Certified Mineral Crystals
Processed and distributed by
Mineral Wells Crystal Producers, Inc.
Mineral Wells, Texas.

PAR. 5. Through the use of the aforesaid representations, and others of similar import not specifically set out herein, the respondent represents and has represented, directly or through inference that its mineral crystals are produced exclusively from mineral water obtained in its natural state from the earth at or in the vicinity of Mineral Wells, Tex., and that said product has been endorsed or attested as to quality and fitness by some governmental, scientific or other recognized agency empowered and qualified to certify as to the attributes of said product.

PAR. 6. Such representations on the part of the respondent are false and misleading. In truth and in fact, respondent's product is not and has not been processed from mineral water obtained in its natural state from the earth at or in the vicinity of Mineral Wells, Tex., nor is it or has it been made directly from Texas mineral water or from any other natural mineral water as it is taken from the earth. The preparation of said product, on the contrary, consists of mixing ordinary water from the city water mains of Mineral Wells, Tex., with commercial chemicals purchased by respondent from one or more chemical companies operating and obtaining their raw materials hundreds of miles from the city of Mineral Wells, Tex., heating the solution thus obtained until it reaches a proper gravity, and then cooling the concentrate in refrigerated compartments. Respondent's product is not properly described as "Certified," inasmuch as said product has never been endorsed or attested as to quality or fitness by any governmental, scientific, or any other recognized agency whatever.

PAR. 7. The city of Mineral Wells, Tex., has over a long period of time become well and favorably known for its mineral water containing certain constituents. The words "Mineral Wells," when used in connection with mineral water or a derivative thereof, have been for many years last past, and are now, associated in the minds of a substantial portion of the purchasing public with the wells located at or in the vicinity of the city of Mineral Wells, Tex. The use by the respondent of the words "Mineral Wells" in connection with its product constitutes a representation to the public that said product is processed from water obtained from such wells.

PAR. 8. The use by the respondent of the words "Mineral Wells" as a part of its corporate name constitutes within itself a false and misleading representation that respondent's product is produced from mineral water obtained from wells at Mineral Wells, Tex.

PAR. 9. Among the competitors of respondent referred to in paragraph Three hereof are many who do not misrepresent their said products or the places of origin thereof.

PAR. 10. 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 as to respondent's product and the place of origin thereof, and to induce such portion of the public to purchase substantial quantities of said product as the result of such erroneous and mistaken belief. In consequence, trade has been diverted unfairly to respondent from its competitors, with the result that substantial injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 11. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission 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 29, 1941, issued, and on June 2, 1941, served its complaint in this proceeding upon respondent, Mineral Wells Crystal Producers, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the

filing of respondent's answer, 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, Mineral Wells Crystal Producers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located in Mineral Wells, Tex.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the processing and in the sale and distribution of certain mineral crystals intended for use in the treatment of certain ailments of the human body. Respondent causes and has caused said mineral crystals, when sold, to be transported from its place of business in the State of Texas to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with individuals, firms, and partnerships also engaged in the processing and in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of mineral crystals and other medicinal preparations intended for the same or substantially the same uses as those for which respondent's product is intended.

PAR. 4. In the course and conduct of its aforesaid business, respondent has made and is now making false and misleading representations with respect to its said product and the source and origin thereof. Such representations have taken the form of statements and legends imprinted on leaflets, letterheads, billheads, sales in-

voices, display cards and other advertising material which respondent has caused and is causing to be distributed among purchasers and prospective purchasers, and on the labels and outer wrappings of the containers in which respondent's product is packed, displayed and sold. Among, and typical of, the false, misleading and deceptive statements and representations so made and distributed are the following:

MINERAL WELLS CRYSTAL PRODUCERS, INC.,
Manufacturers
CERTIFIED
Mineral Wells
Crystals

Made in Mineral Wells, Tex.

Made from Texas mineral water.

Here's to Health
Use Certified Mineral Crystals

Certified Mineral Crystals
Processed and distributed by
Mineral Wells Crystal Producers, Inc.
Mineral Wells, Tex.

PAR. 5. Through the use of the aforesaid representations, and others of similar import not specifically set out herein, the respondent represents and has represented, directly or through inference that its mineral crystals are produced exclusively from mineral water obtained in its natural state from the earth at or in the vicinity of Mineral Wells, Tex., and that said product has been endorsed or attested as to quality and fitness by some governmental, scientific or other recognized agency empowered and qualified to certify as to the attributes of said product.

PAR. 6. Such representations on the part of the respondent are false and misleading. In truth and in fact, respondent's product is not and has not been processed from mineral water obtained in its natural state from the earth at or in the vicinity of Mineral Wells, Tex., nor is it or has it been made directly from Texas mineral water or from any other natural mineral water as it is taken from the earth. The preparation of said product, on the contrary, consists of mixing ordinary water from the city water mains of Mineral Wells, Tex., with commercial chemicals purchased by respondent from one or more chemical companies operating and obtaining their raw materials hundreds of miles from the city of Mineral Wells, Tex., heating the solution thus obtained until it reaches a proper gravity, and then cooling the concentrate in refrigerated compartments. Respondent's

product is not properly described as "Certified," inasmuch as said product has never been endorsed or attested as to quality or fitness by any governmental, scientific, or any other recognized agency whatever.

PAR. 7. The city of Mineral Wells, Tex., has over a long period of time become well and favorably known for its mineral water containing certain constituents. The words "Mineral Wells," when used in connection with mineral water or a derivative thereof, have been for many years last past, and are now, associated in the minds of a substantial portion of the purchasing public with the wells located at or in the vicinity of the city of Mineral Wells, Tex. The use by the respondent of the words "Mineral Wells" in connection with its product constitutes a representation to the public that said product is processed from water obtained from such wells.

PAR. 8. The use by the respondent of the words "Mineral Wells" as a part of its corporate name constitutes within itself a false and misleading representation that respondent's product is produced from mineral water obtained from wells at Mineral Wells, Tex.

PAR. 9. Among the competitors of respondent referred to in paragraph 3 hereof are many who do not misrepresent their said products or the places of origin thereof.

PAR. 10. 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 as to respondent's product and the place of origin thereof, and to induce such portion of the public to purchase substantial quantities of said product as the result of such erroneous and mistaken belief. In consequence, trade has been diverted unfairly to respondent from its competitors, with the result that substantial injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, 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

ent, 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, Mineral Wells Crystal Producers, 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 mineral crystals in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the statement or legend, "Made in Mineral Wells, Tex.," or any statement or legend of similar import or meaning, on its leaflets, billheads, sales invoices, display cards, or other advertising material, in connection with the sale or the offering for sale of any mineral crystals not produced exclusively from mineral water obtained in its natural state from the earth within the city of Mineral Wells, Tex., or from the vicinity thereof.

2. Using the statement or legend, "Made from Texas Mineral Water," or any other statement or legend of similar import or meaning, on its leaflets, billheads, sales invoices, display cards, or other advertising material in connection with the sale or the offering for sale of any mineral crystals not produced exclusively from mineral water obtained in its natural state from the earth within the State of Texas.

3. Using the words "Mineral Wells," or any simulation thereof, in its corporate or trade name, or in any manner to designate, describe, or refer to its business in connection with the sale or the offering for sale of any mineral crystals not produced exclusively from mineral water obtained in its natural state from the earth within the city of Mineral Wells, Tex., or from the vicinity thereof.

4. Using the word "Certified," or any other word or words of similar import or meaning, on its advertising material, or otherwise, to represent or to imply that respondent's product has been endorsed or attested as to quality or fitness by some governmental, scientific, or other recognized agency empowered and qualified to certify to such facts, when such an endorsement or attestation has not been obtained.

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

Complaint

IN THE MATTER OF

CHARLES CAMPBELL BUTTENFIELD, SR., TRADING AS
DEAN CABOT

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

Docket 4494. Complaint, Apr. 26, 1941—Decision, Nov. 17, 1941

Where an individual engaged in interstate sale and distribution of its "Caboteks" medicinal preparation for women; in advertisements disseminated through the mails, newspapers and other advertising literature—

- (a) Represented, directly and by implication, that its said "Caboteks" was a cure or remedy for delayed menstruation and a competent and effective treatment therefor, and was safe for use, the facts being that it was not such a cure or treatment; it contained certain drugs in sufficient quantity to cause serious and irreparable injury to health if used under prescribed or usual conditions; might result in serious gastrointestinal disturbances and, where used to interfere with the normal course of pregnancy, in infection of the uterus and blood poisoning, and might also produce a severe circulatory condition tending to produce abortion; and severe toxic effects and even a gangrenous condition in the limbs, or other serious or irreparable injury to health; and
- (b) Failed to reveal facts material in the light of the aforesaid representations and that the use of said preparation under prescribed or usual conditions, might have aforesaid dangerous results;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby to induce purchase thereof by it:

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

Mr. William L. Taggart for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Charles Campbell Buttenfield, Sr., an individual, trading as Dean Cabot, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Charles Campbell Buttenfield, Sr., is an individual trading as Dean Cabot, with his office and principal place

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of business at 227 North Homewood Avenue, Pittsburgh, Pa., from which address he transacts business under the above trade name.

PAR. 2. The respondent is now, and for more than one year last past has been, engaged in the sale and distribution of a certain medicinal preparation designated as Caboteks.

In the course and conduct of his business, the respondent causes said medicinal preparation when sold to be transported from his place of business in the State of Pennsylvania to purchasers thereof located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails and by advertisements in newspapers and other advertising literature, are the following:

Women—Use my medicine containing that exclusive, necessary, additional ingredient, making it the most reliable. Churchill 2219. Dean Cabot, Homewood, Pittsburgh.

Women—Prove to yourselves which medicine is reliable by trying other medicines first, then trying Caboteks. Dean Cabot, Churchill 2219.

Medicine for Women, Dean Cabot, Churchill 2219.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set forth herein, the respondent represents and has represented, directly and by implication, that his medicinal preparation, designated as Caboteks, is a cure or remedy for delayed menstruation and is a competent and effective treatment therefor, and that said preparation is safe for use.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the medicinal preparation sold and distributed by the respondent as aforesaid, designated as Caboteks, is not a cure or remedy for delayed menstruation and is not a competent or effective treatment therefor. Moreover, said preparation is not safe for use, as it contains the drugs ergotin, apiol green, oil savin, and quinine sulphate.

The aforesaid drugs are present in the said medicinal preparation 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 medicinal preparation may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting, with pelvic congestion, inflammation and congestion of the uterus leading to excessive uterine hemorrhage, and in those cases where this 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 to the bloodstream, causing a condition known as septicemia or blood poisoning.

The use of said preparation as aforesaid may also produce a severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, tending to produce abortion in some instances, often with violent poisonous effects upon the human system. Such use as aforesaid may also produce severe toxic conditions such as hemorrhagic diarrhea, and in some instances producing a gangrenous condition in the lower limbs or other serious or irreparable injury to health.

PAR. 6. The advertisements disseminated by the respondent as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may cause gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy, may cause uterine infection and blood poisoning.

PAR. 7. The use by the 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 to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal 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 April 26, 1941, issued, and on April 28, 1941, served, its complaint in this proceeding upon respondent Charles Campbell Battenfield, Sr., an individual trading as Dean Cabot, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance and service of said complaint and filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its finding as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Charles Campbell Battenfield, Sr., is an individual trading as Dean Cabot, with his office and principal place of business at 227 North Homewood Avenue, Pittsburgh, Pa., from which address he transacts business under the above trade name.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain medicinal preparation designated as Caboteks, which is intended for use in the treatment of disease in women and intended to affect a function of the female body, and thus constitutes a "drug" as that term is defined in the Federal Trade Commission Act.

In the course and conduct of his business, the respondent causes said medicinal preparation when sold to be transported from his place of business in the State of Pennsylvania to purchasers thereof located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails and by advertisements in newspapers and other advertising literature, are the following:

Women—Use my medicine containing that exclusive, necessary, additional ingredient, making it the most reliable. Churchill 2219. Dean Cabot, Homewood, Pittsburgh.

Women—Prove to yourselves which medicine is reliable by trying other medicines first, then trying Caboteks. Dean Cabot, Churchill 2219. Medicine for Women, Dean Cabot, Churchill 2219.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set forth herein, the respondent represents and has represented, directly and by implication, that his medicinal preparation, designated as Caboteks, is a cure or remedy for delayed menstruation and is a competent and effective treatment therefor, and that said preparation is safe for use.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, the medicinal preparation sold and distributed by the respondent as aforesaid, designated as Caboteks, is not a cure or remedy for delayed menstruation and is not a competent or effective treatment therefor. Moreover, said prepara-

tion is not safe for use, as it contains the drugs ergotin, apiol green, oil savin, and quinine sulphate.

The aforesaid drugs are present in the said medicinal preparation 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 medicinal preparation may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting, with pelvic congestion, inflammation and congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where this 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 to the bloodstream, causing a condition known as septicemia or blood poisoning.

The use of said preparation as aforesaid may also produce a severe circulatory condition by the constriction of the blood vessels and the contraction of the involuntary muscles, tending to produce abortion in some instances, often with violent poisonous effects upon the human system. Such use as aforesaid may also produce severe toxic conditions such as hemorrhagic diarrhea, and in some instances producing a gangrenous condition in the lower limbs or other serious or irreparable injury to health.

PAR. 6. The advertisements disseminated by the respondent as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may cause gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy, may cause uterine infection and blood poisoning.

PAR. 7. The use by the 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 to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent Charles Campbell Buttenfield, Sr., an individual trading as Dean Cabot, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his medicinal preparation known as "Caboteks," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or in any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement (a) by means of the United States mail, or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said preparation constitutes a competent or effective treatment, cure, or remedy for delayed menstruation, or is a competent or effective treatment therefor, or that said preparation is safe for use; or which advertisement fails to reveal that the use of such preparation may cause gastrointestinal disturbances and congestion and hemorrhage of the pelvic organs, and in a case of pregnancy may cause uterine infection and blood poisoning, and other dangerous effects.

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 representa-

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tions prohibited in paragraph 1 hereof, or which advertisement fails to reveal the dangerous consequences which may result from the use of said preparation as required in said paragraph 1 hereof.

It is further ordered, That the respondent shall, within ten 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 sixty days after service upon him of this order, 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.

Complaint

IN THE MATTER OF

TITUS BLATTER & COMPANY

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

Docket 4306. Complaint, Sept. 6, 1940—Decision, Nov. 18, 1941

Wherein a corporation engaged in the competitive interstate sale and distribution of various textile fabrics trade named and marked "Pearlglow,"—

Falsely represented, through use of word "sunfast" in advertisements and on labels and otherwise, that its said fabrics would not change color, lose color, or otherwise deviate from the original color, when exposed to the light of the sun;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said claim was true, with result that a number thereof bought a substantial volume of its said "Pearlglow" fabrics:

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.

Mr. Solomon Silverstein, 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 Titus Blatter & 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, Titus Blatter & Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 164 Fifth Avenue, 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 the business of selling and distributing various grades and types of textile fabrics trade named and marked "Pearlglow." 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

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transported from its place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce 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 the offering for sale, sale and distribution of its products in commerce as herein described, and for the purpose of inducing the purchase thereof by the public, respondent has stated in advertisements, on labels, and otherwise that its fabrics designed by the name "Pearlglow" are "sunfast."

PAR. 4 By the use in advertisements, on labels, and otherwise, of the statement that its fabrics designated "Pearlglow" 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.

PAR. 5. In truth and in fact respondent's fabrics, above referred to, and designated by it "Pearlglow," are not "sunfast," for the reason that said fabrics will change color, lose color, or otherwise deviate from their original color when exposed to the light of the sun.

PAR. 6. The use by the respondent of the aforesaid false and misleading statement that its fabrics designated by the name "Pearlglow" are "sunfast" 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 said statement is 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 designated "Pearlglow."

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 6, 1940, issued and subsequently served its complaint in this proceeding upon respondent Titus Blatter & Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the

filing of respondent's answer, the Commission by order entered herein granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on 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, Titus Blatter & Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 164 Fifth Avenue, 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 the business of selling and distributing various grades and types of textile fabrics trade named and marked "Pearl-glow." 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 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 the offering for sale, sale and distribution of its products in commerce as herein described, and for the purpose of inducing the purchase thereof by the public, respondent has stated in advertisements, on labels, and otherwise that its fabrics designated by the name "Pearl-glow" are "sunfast."

PAR. 4. By the use in advertisements, on labels, and otherwise, of the statement that its fabrics designated "Pearl-glow" 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.

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PAR. 5. In truth and in fact respondent's fabrics, above referred to, and designated by it "Pearlglow," are not "sunfast," for the reason that said fabrics will change color, lose color, or otherwise deviate from their original color when exposed to the light of the sun.

PAR. 6. The use by the respondent of the aforesaid false and misleading statement that its fabrics designated by the name "Pearlglow" are "sunfast" 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 statement is 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 designated "Pearlglow."

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 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 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, Titus Blatter & 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 or distribution of its textile fabric products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist:

Using the word "sunfast" or any other word or words of similar import and meaning to designate and describe or refer to fabrics which change or lose color or otherwise deviate from their original color when exposed to the light of the sun.

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

Complaint

IN THE MATTER OF

CLARA STANTON, TRADING AS CLARA STANTON,
DRUGGIST TO WOMEN

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

Docket 4327. Complaint, Oct. 2, 1940—Decision, Nov. 18, 1941

Where an individual engaged in interstate sale and distribution of her "Anti-Fat Tablets"; by advertisements in newspapers and periodicals, circulars, pamphlets and other advertising literature and through use of the aforesaid name; directly and by implication—

Represented that her said preparation constituted a cure or remedy for obesity and a competent and effective treatment therefor, and that use thereof would reduce excess fat gradually and safely and prevent obesity;

The facts being that it had no qualities effective in reducing excess fat and its use was of no value in preventing obesity, the various drugs contained therein being present in such minute quantities as to render them practically inert under conditions of use;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations and implications were true, and of thereby causing it to purchase her product:

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. William C. Reeves*, trial examiner.

Mr. Maurice C. Pearce and *Mr. Carrel F. Rhodes* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Clara Stanton, an individual, trading as Clara Stanton, Druggist to Women, 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, Clara Stanton, is an individual trading under the name of Clara Stanton, Druggist to Women, and has her principal place of business at 313 Fourteenth Street, Denver, Colo. She is now, and for some time last past has been, engaged in the business of preparing and offering for sale and selling a preparation, containing drugs as defined in the Federal Trade Commission Act, designated "Anti-Fat Tablets." Respondent causes said product,

when sold by her, to be transported from her place of business in the State of Colorado to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of her aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said product by the United States mails and by various other means in commerce as commerce is defined in the Federal Trade Commission Act, and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her said product in commerce as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by advertisements in newspapers and periodicals, and by circulars, pamphlets and other advertising literature, are the following:

Anti-Fat Tablets—

If you would accentuate your charm and loveliness, stay slim. Clara Stanton's Anti-Fat Tablets have been sold 14 years. No thyroid and no laxatives are used in the formula.

They contain no laxatives, and no harmful ingredients for the normal woman.

I again repeat to the women whose excess weight is caused by usual factors and not unfortunate abnormalities, these Tablets are safe and harmless.

The rate of reduction varies with each individual. How long you may be required to continue the treatment depends upon the amount of weight you wish to reduce; your individual reaction to the treatment; the cooperation which you extend in the way of diet and exercise. In general I can only state that you should continue the treatment until your individual needs have been satisfied. You may continue the treatment for 90 days and if your needs have not entirely been filled, you may again commence the use of Clara Stanton's Anti-Fat Tablets for a similar period after an interval of ten days.

Continued, reasonable use, according to the directions, will ordinarily secure the desired results within 90 days.

Laziness and gluttony will cause obesity in themselves. If indulged in they may offset the losses of weight which are induced by use of Clara Stanton's Anti-Fat Tablets or any other reducing treatment.

Eat reasonably and exercise reasonably while taking Clara Stanton's Anti-Fat Tablets, and let your scales testify to the efficiency of the remedy.

PAR. 3. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein and through the use of the name "Anti-Fat Tablets," the respondent represents directly and by implication that her said preparation, "Anti-Fat Tablets," is a cure or remedy for obesity and constitutes a competent and effective treatment therefor, and that the use of said preparation will reduce excess fat gradually and safely and will prevent obesity.

PAR. 4. The aforesaid representations and things, used and disseminated by the respondent as hereinabove described, are grossly exaggerated, misleading and untrue. In truth and in fact "Anti-Fat Tablets" are not a cure or remedy for obesity and have no therapeutic value in the treatment of such condition. Said preparation has no properties which would be effective in reducing excess fat and its use would be of no value in preventing obesity.

Furthermore, said preparation is not safe and harmless by reason of the existence of potassium iodide as an ingredient in said preparation. The use of said preparation containing potassium iodide would be definitely harmful in the event those consuming said preparation had pulmonary tuberculosis in either the active or quiescent state. The indiscriminate use of said preparation by a person suffering from goiter might induce or aggravate toxic manifestations.

PAR. 5. Furthermore, the advertisements disseminated by the respondent as aforesaid constitute false advertisements for the reason that they fail to reveal facts material in the light of representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health in that said advertisements do not contain any cautionary statement to the effect that said preparation should not be used by persons suffering from goiter of pulmonary tuberculosis in either the active or quiescent state.

PAR. 6. The use by the respondent of the name "Anti-Fat Tablets" and the use of the foregoing false and misleading representations respecting her 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 mistaken and erroneous belief that such representations and implications are true, and cause a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 2, A. D., 1940, issued and subsequently served its complaint on the respondent, Clara Stanton, an individual, trading as Clara Stanton, Druggist to Women, charging her 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 Carrel F. Rhodes, attorney for the Commission, and in opposition to the allegations of the complaint by Joseph A. Myers, attorney for the respondent, before William C. Reeves, 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, and letter of the respondent of October 14, 1941, which has been filed and considered as a brief 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, Clara Stanton, is an individual trading under the name of Clara Stanton, Druggist to Women, and has her principal place of business at 313 Fourteenth Street, Denver, Colo. Respondent is now, and for several years last past has been, engaged in the sale and distribution of a preparation, containing drugs, designated "Anti-Fat Tablets." Respondent causes said preparation, when sold by her, to be transported from her place of business in the State of Colorado 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 preparation in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of her aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said preparation, by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act, and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said preparation by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by advertisements in newspapers and periodicals, and by circulars, pamphlets and other advertising literature, are the following:

Anti-Fat Tablets—

If you would accentuate your charm and loveliness, stay slim. Clara Stanton's Anti-Fat Tablets have been sold 14 years. No thyroid and no laxatives are used in the formula.

They contain no laxatives, and no harmful ingredients for the normal woman.

I again repeat to the women whose excess weight is caused by usual factors and not unfortunate abnormalities, these Tablets are safe and harmless.

The rate of reduction varies with each individual. How long you may be required to continue the treatment depends upon the amount of weight you wish to reduce; your individual reaction to the treatment; the cooperation which you extend in the way of diet and exercise. In general I can only state that you should continue the treatment until your individual needs have been satisfied. You may continue the treatment for 90 days and if your needs have not entirely been filled, you may again commence the use of Clara Stanton's Anti-Fat Tablets for a similar period after an interval of ten days.

Continued, reasonable use, according to the directions, will ordinarily secure the desired results within 90 days.

Laziness and gluttony will cause obesity in themselves. If indulged in they may offset the losses of weight which are induced by use of Clara Stanton's Anti-Fat Tablets or any other reducing treatment.

Eat reasonably and exercise reasonably while taking Clara Stanton's Anti-Fat Tablets, and let your scales testify to the efficiency of the remedy.

PAR. 3. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein and through the use of the name "Anti-Fat Tablets," the respondent represents, directly and by implication, that her said preparation, "Anti-Fat Tablets," is a cure or remedy for obesity and constitutes a competent and effective treatment therefor, and that the use of said preparation will reduce excess fat gradually and safely and will prevent obesity.

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PAR. 4. Respondent's preparation, "Anti-Fat Tablets," is made in accordance with the following formula:

Po. Ext. Pokeberries,	1/8 gr.
Fl. Ext. Bladder Wrack,	1/2 min.
Potassium Iodide,	1/8 gr.
Rochelle Salt,	1/2 gr.
Iodine (Keysall),	1/24 min.
Carbonated Vegetable,	3/8 gr.
Calcium Carbonate,	1/8 gr.
Sugar Milk, qs.	3 gr.

In her directions for use of her "Anti-Fat Tablets," the following appears:

Take one tablet after each meal, three times a day.

Continue treatment 60 to 90 days unless your weight has approached normal before that time.

NOTE.—Do not take more than 3 tablets a day. Discontinue treatment at end of 90 days. Wait 10 days; then resume as before.

PAR. 5. Respondent's preparation, "Anti-Fat Tablets," is not a cure or remedy for obesity and has no therapeutic value in the treatment of such condition. This preparation has no properties which are effective in reducing excess fat, and its use is of no value in preventing obesity. The various drugs contained in respondent's preparation are present in such minute quantities as to render these drugs practically inert under the conditions of use.

PAR. 6. The use by the respondent of the name "Anti-Fat Tablets" to designate and describe her preparation, and the use of the foregoing false and misleading representations regarding her said preparation have had, and now have, the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations and implications are true, and cause a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase said preparation.

CONCLUSION

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

Order

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, 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 has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Clara Stanton, an individual, trading as Clara Stanton, Druggist to Women, or trading under any other name, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of her medicinal preparation known as "Anti-Fat Tablets," 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 preparation is a cure or remedy for obesity, or that it has any therapeutic value in the treatment of obesity, or that said preparation has any properties which are effective in reducing excess fat, or that its use is of value in preventing obesity; or which advertisement uses the name "Anti-Fat Tablets," or any other name of similar import or meaning, to designate or describe respondent's 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 respondent's 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 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
**THRIFT SALES CORPORATION, TRADING AS FINANCE
SERVICE SYSTEM, AND AS CHURCH EXTENSION
BUREAU, AND GUSTAVE HEISS, INDIVIDUALLY AND
AS AN OFFICER OF THE THRIFT 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 4489. Complaint, Apr. 19, 1941—Decision, Nov. 18, 1941

Where a corporation and its officer-director who formulated, controlled and directed its policies, acts and practices; engaged in the competitive interstate sale and distribution of sales promotion plans and articles of merchandise used in their operation, including watches, clocks, luggage, cutlery, pens, lamps, and tableware—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises or lottery schemes in the sale and distribution thereof to the ultimate consumer, a typical scheme involving use of a pushcard with 100 perforated disks concealing numbers and bearing names and pictures of motion picture actors and actresses, under a plan pursuant to which the person selecting the picture concealing the number corresponding with that under the card's master seal, received choice of several articles of merchandise illustrated in the advertising folder, of which the pushcard formed a part, certain numbers and the last punch entitled customers to choice of "Junior Gifts," and the amount paid for chance or the obtaining of a free chance was dependent upon the number secured; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with such plan, under which fact as to whether a purchaser received an article or nothing, and the amount, if any, to be paid for any merchandise received, were determined solely by lot or chance; contrary to an established public policy of the United States Government and in competition with many who, unwilling to use method involving chance or 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 such products in preference to those of said competitors; and with tendency and capacity unfairly to divert therefrom to themselves substantial trade 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. J. W. Brookfield, Jr. for the Commission.

Mr. Raymond M. Grossman, of Chicago, Ill., for respondents.

Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Thrift Sales Corporation, a corporation trading as Finance Service System and as Church Extension Bureau, and Gustave Heiss, individually and as an officer of Thrift Sales 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, Thrift Sales Corporation, 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 192 North Clark Street, Chicago, Ill. Said corporation also does business under the trade names Finance Service System and Church Extension Bureau. Respondent, Gustave Heiss, is an officer and director of the corporate respondent and has his office and principal place of business located at 192 North Clark Street, Chicago, Ill. Said individual respondent formulates, controls and directs the policies, acts, and practices of the corporate respondent. The respondents act in conjunction and cooperation each with the other in carrying out the acts and practices herein described.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of sales promotion plans and various articles of merchandise used in the operation of such plans, including, among other things, watches, clocks, luggage, cutlery, pens, lamps, and tableware. 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 at their respective points of location in the various States of the United States, other than the State of Illinois, and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their business respondents are and have been in competition with other individuals and corporations and with partnerships engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 3. In the course and conduct of their business as described hereinabove, respondents in soliciting the sale of and in selling and distributing their merchandise, in accordance with their promotional sales plan, 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 consumers thereof. One of the methods or sales plans adopted and used by respondents is substantially as follows:

Respondents contact religious, charitable and fraternal organizations located at various points throughout the United States, and offer to conduct bazaars for such organizations, the proceeds from which are to be divided on a basis theretofore agreed upon between the respondents and the organization. Thereafter respondents place in the hands of members of such organization devices commonly known as push cards to be used and which are used in the sale of respondents' merchandise to the general public. One of the push cards furnished by respondents in connection with their merchandising plan is described as follows:

Said push card bears the names and pictures of 100 moving-picture actors and actresses, each picture covering a partially perforated disk. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The advertising booklet or brochure of which the push card is a part, contains blank spaces numbered from 1 to 100 for the purpose of filling in the names of purchasers of the disks or "pushes." Purchasers of pushes from said card pay the number of cents represented by the number pushed from the card, except that those pushing numbers in excess of 20 pay only 20 cents, and 5 of the pushes on the card are free. The push card also bears a large "Master Seal" within which is concealed 1 of the numbers appearing under the small disks. The person selecting the moving picture actor or actress whose number corresponds with the number under the master seal receives his choice of several articles of respondents' merchandise, illustrated in the advertising folder or brochure.

The push card also bears on its face the following legend or instruction:

PICK A STAR
HELP OUR BAZAAR

Donations only
1¢ to 20¢

5 punches are
Free!

Nos. 22-44 and Last Punch receives Choice of Junior Gift.

Complaint

Person selecting number under seal receives Choice of Major Seal Gift.

SELECT YOUR FAVORITE MOVIE STARS

Donors Participate in Grand Prize Drawing	Every Star you Push in- creases reward in Grand Prize Drawing
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Sale of respondents' merchandise by means of said push cards are made in accordance with the above described legend or instruction. Said "prizes" or premiums are allotted to customers or purchasers in accordance with said legend or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and the amount to be paid for any merchandise received, are thus determined wholly by lot or chance.

Respondents, in connection with their sales promotion schemes have furnished various other push cards for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise or lottery scheme. The sales plans or methods involved in the sale of all of said merchandise by means of other push cards are essentially the same as that hereinabove described, varying only in detail.

PAR. 4. The persons to whom respondents furnish and have furnished their said push cards use the same in purchasing, selling and distributing respondents' merchandise in accordance with the aforesaid sales plans. 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 plans or methods 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 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. 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 one of the said articles of merchandise without cost or at a price much less than the normal retail price thereof. Many persons, firms and corporations who sell or distribute merchandise in competition with respondents, as above alleged, are unwilling to adopt and use said 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 by the element of chance involved therein, and there-

by are induced to buy and sell respondents' 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 respondents, because of said game of chance, has a tendency and capacity to 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 an equivalent method.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 19, 1941, issued and thereafter served its complaint in this proceeding upon respondents Thrift Sales Corporation, a corporation, trading as Finance Service System, and as Church Extension Bureau, and Gustave Heiss, individually and as an officer of the Thrift Sales Corporation, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint, testimony and other evidence in support thereof were introduced by attorneys for the Commission before a duly appointed trial examiner of the Commission designated by it to serve 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 counsel for the respondents on behalf of the respondents and W. T. Kelley, chief counsel for the 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 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, and enter its order disposing of the proceeding as to them without the presentation of further testimony, argument, filing of briefs or other intervening procedure. Counsel for the respondents also expressly waived the filing of a report upon the evidence by the trial examiner.

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Thereafter this proceeding regularly came on for final hearing the interest of the public and makes this its findings as to the facts 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, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Thrift Sales Corporation, 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 192 North Clark Street, Chicago, Ill. Said corporation also does business under the trade names Finance Service System and Church Extension Bureau. Respondent, Gustave Heiss, is an officer and director of the corporate respondent and has his office and principal place of business located at 192 North Clark Street, Chicago, Ill. Said individual respondent formulates, controls and directs the policies, acts and practices of the corporate respondent. The respondents act in conjunction and cooperation each with the other in carrying out the acts and practices herein described.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of sales promotion plans and various articles of merchandise used in the operation of such plans, including, among other things, watches, clocks, luggage, cutlery, pens, lamps, and tableware. 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 at their respective points of location in the various States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their business respondents are and have been in competition with other corporations, 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. 3. In the course and conduct of their said business, respondents in soliciting the sale of and in selling and distributing their merchandise, in accordance with their promotional sales plan, 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

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the ultimate consumers thereof. One of the methods or sales plans adopted and used by respondents is substantially as follows:

Respondents contact religious, charitable, and fraternal organizations located at various points throughout the United States, and offer to conduct bazaars for such organizations, the proceeds from which are to be divided on a basis theretofore agreed upon between the respondents and the organization. Thereafter respondents place in the hands of members of such organization devices commonly known as push cards to be used and which are used in the sale of respondents' merchandise to the general public. One of the push cards furnished by respondents in connection with their merchandising plan bears the names and pictures of 100 moving-picture actors and actresses, each picture covering a partially perforated disk. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The advertising booklet or brochure of which the push card is a part, contains blank spaces numbered from 1 to 100 for the purpose of filling in the names of purchasers of the disks or "pushes." Purchasers of pushes from said card pay the number of cents represented by the number pushed from the card, except that those pushing numbers in excess of 20 pay only 20 cents, and 5 of the pushes on the card are free. The push card also bears a large "Master Seal" within which is concealed 1 of the numbers appearing under the small disks. The person selecting the moving picture actor or actress whose number corresponds with the number under the master seal receives his choice of several articles of respondents' merchandise, illustrated in the advertising folder or brochure.

The push card also bears on its face the following legend or instruction:

PICK A STAR**HELP OUR BAZAAR**

Donations only
1¢ to 20¢

5 punches are
Free!

Nos. 22-44 and Last Punch receives Choice of Junior Gift.

Person selecting number under seal receives Choice of Major Seal Gift.

SELECT YOUR FAVORITE MOVIE STARS

Donors Participate in
Grand Prize Drawing

Every Star you Push
increases reward in
Grand Prize Drawing

Sales of respondents' merchandise by means of said push cards are made in accordance with the above described legend or instruction.

Said "prizes" or premiums are allotted to customers or purchasers in accordance with said legend or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and the amount to be paid for any merchandise received, are thus determined wholly by lot or chance.

Respondents, in connection with their sales promotion schemes have furnished various other push cards for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods involved in the sale of all of said merchandise by means of other push cards are essentially the same as that hereinabove described, varying only in detail.

PAR. 4. The persons to whom respondents furnish and have furnished their said push cards use the same in selling and distributing respondents' merchandise in accordance with the aforesaid sales plans. 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 plans or methods 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 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.

PAR. 5. 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 without cost or at a price much less than the normal retail price thereof. Many persons, firms and corporations who sell or distribute merchandise in competition with respondents, as above found, are unwilling to adopt and use said 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 by the element of chance involved therein, and thereby are induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents, because of said game of chance, has a tendency and capacity to 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 an equivalent method.

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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 a stipulation as to the facts entered into by counsel for the respondents in behalf of the respondents and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents 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 Thrift Sales Corporation, a corporation, its officers, directors, representatives, agents, and employees, and Gustave Heiss, an individual and as an officer of the Thrift Sales Corporation, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

1. Selling or distributing merchandise so packed and assembled that sales of such merchandise to the general public are to be made and 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 or other lottery devices either with assortments of merchandise or separately, which said push or pull cards or other lottery devices are to be used or may be used in selling or distributing said merchandise to the public.
3. Selling or otherwise disposing of any merchandise by 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.

Complaint

IN THE MATTER OF
CONCORD DISTRIBUTING 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 4508. Complaint, May 27, 1941—Decision, Nov. 18, 1941

Where a corporation engaged in the competitive interstate sale and distribution of cameras, souvenir thermometers, clocks, tableware sets, dressing table sets, electric lamps, and other articles of merchandise—

Furnished various devices and plans by which such merchandise was sold and distributed to the ultimate consumer wholly by lot or chance, distributing to the purchasing public pushcards, circulars explaining its plan of selling said merchandise, and allotting it as premiums or prizes to operators of push-cards and to the purchasing public; a typical scheme involving a plan, pursuant to which a person selecting the one of 32 feminine names corresponding with that under the card's master seal received a camera, the person selecting the name concealing a designated number received a souvenir thermometer, and the amount paid by a customer for chance was dependent upon the particular number secured; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with such sales plan, under which the fact as to whether a purchaser received an article or nothing for the amount of money paid, and which article, if any, was determined wholly by lot or chance, and 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 competition with many who, unwilling to use such or other method contrary to public policy, refrain therefrom;

With the effect 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 as above set forth constituted unfair methods of competition in commerce and unfair 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 Concord Distributing 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Concord Distributing 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 603 Sixth Avenue, New York, N. Y. Respondent is now, and for more than 1 year last past, has been engaged in the sale and distribution of cameras, souvenir thermometers, clocks, tableware sets, dressing table sets, electric lamps, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be transported from its aforesaid place of business in the State of New York to purchasers thereof, at their respective points of location, in various States of the United States other than the State of New York, and in the District of Columbia. There is now, and for more than 1 year last past has been a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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

Respondent distributes, and has distributed, to the purchasing public certain literature and instructions, including among other things push cards, order blanks, illustrations of its said merchandise, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing public. One of respondent's push cards bears 32 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 32 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 name under the master seal

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receives a camera. The person selecting a certain designated number set out in the legend at the top of said card also receives a souvenir thermometer. The push card bears a legend or instructions as follows:

Name Under Seal Receives a
MASTER PHOTO FLASH

—————
CANDID CAMERA

Or Any Other Premium Shown on Circular

Do not
remove seal
until entire
card is sold

receives a souvenir of
No. 10 NEW YORK WORLD'S FAIR -- --
KEY WITH THERMOMETER

1¢ to 15¢—NO HIGHER
Nos. 1 to 15 pay what you draw
Nos. over 15 pay only 15¢
TOTAL—\$3.95

Sales of respondent's merchandise by means of said push card are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

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

PAR. 3. The persons to whom respondent furnishes the said push-cards use the same in purchasing, selling and distributing respondent's merchandise, in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its merchandise and the sale of said

merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell and distribute merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy and such competitors refrain therefrom. 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 May 27, 1941, issued and thereafter served its complaint in this proceeding upon respondent, Concord Distributing 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. Respondent in its answer admits all the material allegations of fact contained in the complaint and waives all intervening procedure and further hearing as to the facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on complaint and answer, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusions drawn therefrom.

Findings

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Concord Distributing 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 603 Sixth Avenue, New York, N. Y. Respondent is now and for more than 1 year last past, has been engaged in the sale and distribution of cameras, souvenir thermometers, clocks, tableware sets, dressing table sets, electric lamps, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be transported from its aforesaid place of business in the State of New York to purchasers thereof, at their respective points of location, in various States of the United States and in the District of Columbia. There is now, and for more than 1 year last past has been a course of trade by respondent in 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 articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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

Respondent distributes, and has distributed, to the purchasing public certain literature and instructions, including among other things, push cards, order blanks, illustrations of its said merchandise, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing public. One of respondent's push cards bears 32 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 32 small partially perforated discs on the face of which is printed the word "Push." Concealed within each disc is a number which is not disclosed until the disc

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is pushed or separated from the card. The push card also has a large master seal, concealed within which is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the name under the master seal receives a camera. The person selecting a certain designated number set out in the legend at the top of said card also receives a souvenir thermometer. The push card bears a legend or instructions as follows:

Name Under Seal Receives a
MASTER PHOTO FLASH

CANDID CAMERA
or Any Other Premium Shown on Circular

Do not
remove seal
until entire
card is sold

receives a souvenir of
No. 10 NEW YORK WORLD'S FAIR
KEY WITH THERMOMETER

1¢ to 15¢—NO HIGHER
1¢ to 15¢—No HIGHER
Nos. 1 to 15 pay what you draw
Nos. over 15 pay only 15¢
TOTAL—\$3.95

Sales of respondent's merchandise by means of said push card are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid 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 said order blanks, instructions, and other printed matter for use in the sale and distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in selling and distributing respondent's merchandise, in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conduct-

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ing lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the government of the United States of America.

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 corporations, individuals and partnerships, who sell and distribute merchandise in competition with the respondent, as above found, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy and such competitors refrain therefrom. 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 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 and respondent's answer admitting all the material allegations of fact contained in the complaint and waiving all intervening procedure and further hearing as to the facts, 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 respondent, Concord Distributing Co., Inc., a corporation, its officers, directors, representatives, agents and employees, directly or through any corporate or other device, in connec-

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tion with the offering for sale, sale and distribution of cameras, souvenir thermometers, clocks, tableware sets, dressing table sets, electric lamps 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 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, punch boards or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, punch boards or other lottery devices are to be used, or may be used, in selling or distributing 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

THE WHOLESALE DRY GOODS INSTITUTE, INC., ITS OFFICERS, DIRECTORS AND MEMBERS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 8751. Complaint, Mar. 31, 1939—Decision, Nov. 24, 1941

Where a corporate association of dry goods wholesalers representing 80 to 85 percent of the total volume of said business in the United States; most important activity of which had to do with the sales policies and practices of manufacturers as they affected the competitive position of its members, and "differential committee" of which, in its 1930 report referring to the "universal dissatisfaction of wholesalers with prevalent mill selling practices," recommended the adoption by any manufacturer of a selling policy which would not discriminate in favor of one type of retail outlet, to the detriment of another, and that where some of a manufacturer's retail outlets were supplied direct from his own warehouse and others were supplied indirectly through wholesalers, a system of wholesaler's price differentials be established so as to enable recognized distributors to sell the manufacturer's product on a parity with the price charged by him when dealing with retailers direct, and that each wholesaler, before placing an order, ascertain the selling policy of the manufacturer;

Emphasizing the advantage of acting together and the need for full support by every wholesaler and as a means of bringing about the desired changes in the sales policies of manufacturers—

- (a) Compiled and issued to its members its "Mill Selling Policy Reports," which rated each manufacturer upon the basis of his sales policy as it affected wholesalers, classifying as "A" a concern selling only through wholesalers as defined by it, as "A—" a concern selling regular products and/or patterns through wholesalers only, though making contract goods under buyers' specifications and labels for national chains and mail order houses, and so on down through "K,"—"X," and "No"; and, as a practice, advised each manufacturer of his assigned rating and that it would be assumed to be correct unless the Institute was advised to the contrary; and

Where, following the suspension of said selling policy reports during the life of the wholesale dry goods trade code under the National Industrial Recovery Act, and resumption thereof following abolishment of such code, said Institute and its members—

- (b) Supplemented said selling policy reports by the preparation and distribution to its members and to rated manufacturers of a directory entitled "Wholesalers of Dry Goods and Kindred Lines," in which it excluded from its definition of a wholesaler buying offices or syndicates representing retailers, their stock-carrying affiliates, chain store central offices or warehouses, drop shippers, brokers, commission merchants, selling agents, job lot dealers, and second-hand dealers;
- (c) Advised the reader in the introductory matter that "A" rating indicated that the manufacturer confined his distribution exclusively to wholesalers

"and therefore gives complete cooperation, while rating 'K' indicates that the manufacturer gives no cooperation to wholesalers at all," and quoted the Joint Committee for the Advancement of Manufacturer-Wholesaler Relations' suggestion to manufacturers that they confine their branded merchandise or patterns to regular distributors and protect their customers by keeping it out of chains, mail order houses, premium houses and syndicate buying groups, and use utmost care in selection of distributors;

- (d) Listed wholesaler-members in heavy type, followed by names of officials and full statement of lines of merchandise distributed, all enclosed in a box, while listing wholesalers but nonmembers by firm name only in ordinary type, with abbreviations indicating the lines of merchandise handled; thus clearly distinguishing members from others and supplying more detailed information with respect to the former;

With intent and effect of creating a preferred class of buyers of those listed in said directory and of informing manufacturers of buyers to whom they might sell without incurring the disfavor of the Institute and its members and, conversely, that sales to any wholesaler not thus listed might result in their being given an unfavorable classification by the Institute, so preventing or tending to prevent their making sales to Institute members;

- (e) Made its own definition of a wholesaler—gauged by which there were many concerns in the United States in active competition with wholesalers listed in said directory which were not eligible for membership or listing, though selling to retailers buying for resale—the measure for determining whether concerns applying for membership or for listing in such directory should have their applications granted; and
- (f) Made it a practice, upon application for membership or listing, to secure information as to applicant's operations from commercial agencies and from Institute members or others listed in aforesaid directory who were in competition with the applicant, and in numerous instances refused membership or listing to concerns listed as wholesalers by commercial agencies such as Dun & Bradstreet, but operations of which did not conform to its said definition; and

Where said Institute, recognizing that the coercive effect of said mill selling policy reports in determining manufacturers' sales policies would be increased in proportion as the members refused to purchase from those classified as non-cooperative—and its officers, committees and membership—

- (g) Exerted collective pressure upon members to buy only from manufacturers classified as having satisfactory sales policies, through urging, at meetings, that such ratings be regularly used for the intended purpose, among other things, advocating that manufacturers be made "rating conscious," that instances where ratings failed correctly to describe a manufacturer's sales method be promptly reported to the Institute, that all orders be checked against ratings to insure most advantageous placing of business, and that "an occasional pat on the back" be given to earnestly cooperating and favored manufacturers, and through exercising pressure upon individual members; and, as respects most of the members, did confine their purchases, so far as practicable, to manufacturers rated as having favorable sales policies; and

Where said Institute—

- (h) Made it a practice and policy to encourage its members to report to it any instance where a manufacturer made a sale which appeared to be contrary

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to his assigned rating, and in such instance communicated with the manufacturer, making no change in his rating if it appeared that questioned sales were inadvertent and would be discontinued, but, in event no satisfactory adjustment was reached, changing the rating to conform to the new information and advising its members thereof;

Effect of which plan was to coerce manufacturers in the selection of their customers, both in individual instances and as a matter of general sales policy, as evidenced by revision upward in most cases of manufacturer ratings and refusal of manufacturers to accept or continue as customers concerns buying for resale to retailers but not listed in said directory, and, where sales were not actually prevented, as was frequent, that manufacturer's price was increased above that granted by the manufacturer to concerns listed in the directory, through refusal to grant customary wholesaler's discount:

Capacity, tendency, and effect of which understandings, acts, and practices were to coerce and restrict manufacturers of dry goods, notions, and allied lines in the selection of customers; to prevent dealers including competitors of Institute members from purchasing their supplies of such goods from manufacturers; to prevent dealers competitive with said members and dealers selling at retail from buying at prices as favorable as those granted to members and others listed in said directory thereby increasing the prices to them and to the consuming public; to place in the hands of the Institute, its officers and members, control over the business practices of manufacturers and distributors of such products and the power so to harass and restrain the operations of those not conforming to their wishes as substantially to exclude them from the industry; and to hinder and prevent competition in the sale and distribution of dry goods, notions and allied lines of merchandise:

Held, That aforesaid understandings, agreements, combination and conspiracy, and the acts and practices performed thereunder or in connection therewith, under the conditions and circumstances set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition in commerce.

Before *Mr. Charles F. Diggs* and *Mr. John L. Hornor*, trial examiners.

Mr. Reuben J. Martin for the Commission.

Mr. Karl Michelet and *Mr. Simon Michelet*, of Washington, D. C., and *Mr. Leland K. Neeves*, of Chicago, Ill., for The Wholesale Dry Goods Institute, Inc., its officers, directors and various members.

COMPLAINT

Pursuant to the provisions of the Federal 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 Wholesale Dry Goods Institute, Inc., its officers, directors and members, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in

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

PARAGRAPH 1. Respondent, The Wholesale Dry Goods Institute, Inc., is an association of members, organized and existing as a corporation under the laws of the State of New York, with its principal office and place of business located at 40 Worth Street, in the city of New York in said State. The membership of said respondent, The Wholesale Dry Goods Institute, Inc., is composed of approximately 135 individuals, partners, and corporations, who are located in the various States of the United States, but principally in the eastern part thereof, and who are engaged in the wholesale distribution of dry goods, notions and kindred lines of merchandise in interstate commerce.

Said respondent, The Wholesale Dry Goods Institute, Inc., was organized for the ostensible purpose of improving trade practices within the wholesale field, furthering better trade relations between wholesalers and other elements of the textile industry, studying and adapting wholesale merchandising methods to new economic conditions, developing practical aid for retail customers and analyzing operating costs and proper allocation of sales effort.

The names and addresses of the officers of said respondent, The Wholesale Dry Goods Institute, Inc., who individually and as such officers of said respondent, are named as respondents herein, are: Henry S. Sommers, president, c/o G. Sommers & Co., St. Paul, Minn.; Henry Matter, executive secretary, 40 Worth Street, New York, N. Y.; and Jarrett H. Buys, treasurer, 40 Worth Street, New York, N. Y.

The names and addresses of the directors of said respondent, The Wholesale Dry Goods Institute, Inc., who, individually, and as such directors of said respondent, are named as respondents herein, are: Henry S. Sommers, representing G. Sommers & Co., St. Paul, Minn.; Fred M. Morris, representing Guthrie-Morris-Campbell Co., Charleston, W. Va.; Robert M. Adair, representing The Jones Witter & Co., Columbus, Ohio; Frederick Quellmalz, representing Butler Brothers, Chicago, Ill.; E. B. Sydnor, representing Richmond Dry Goods Co., Inc., Richmond, Va.; Charles S. Hyde, representing Neal & Hyde, Inc., Syracuse, N. Y.; J. Geo. Kahl, representing Arbuthnot-Stephenson Co., Pittsburgh, Pa.; C. C. Reed, representing William & Reed, Inc., Richmond, Va.; L. C. Wilson, representing Goodall-Brown Dry Goods Co., Birmingham, Ala.; Reagan Houston, representing A. B. Frank & Co., San Antonio, Tex.; J. Russell Fitts, representing Fitts-Smith Dry Goods Co., Kansas City, Mo.; Charles Schneider, representing Schneider-Battinus & Simon, Chicago, Ill.; Earl Partridge,

representing Earl Partridge Co., Minneapolis, Minn.; W. W. Grether, representing Grether & Grether, Inc., Los Angeles, Calif.; Archie Goldsmith, representing Archie Goldsmith & Brother, Portland, Oreg.; Marx D. Slonim, representing S. Blechman & Sons, Inc., 520 Broadway, New York, N. Y.; and Henry Matter, 40 Worth Street, New York, N. Y.

The membership of said respondent, The Wholesale Dry Goods Institute, Inc., constitutes a class so numerous and changing as to make it impracticable to specifically name them all as parties respondent herein. The following concerns, among others, are members of said respondent, The Wholesale Dry Goods Institute, Inc., are fairly representative of the whole membership, and are named as respondents herein in their individual capacities, in their capacities as members of said respondent, The Wholesale Dry Goods Institute, Inc., and as representatives of all members of said respondent, The Wholesale Dry Goods Institute, Inc., as a class, including those not herein specifically named who are also made respondents herein: W. W. Couch Co., Inc., Lynchburg, Va.; Harris, Davis & Co., Inc., Nashville, Tenn.; E & M Hirschler Co., Inc., Norfolk, Va.; Neal & Hyde, Inc., Syracuse, N. Y.; Reed Bros., Inc., Tupelo, Miss.; J. S. Reeves & Co., Inc., Nashville, Tenn.; Schwartz Brothers & Co., Inc., New Orleans, La.; Smith, Gormly Co., Inc., Rochester, N. Y.; Smith, Taylor Co., Inc., Richmond, Va.; F. B. Thomas & Co., Inc., Roanoke, Va.; N. J. Thompson & Co., Inc., Elmira, N. Y.; Whichard Bros. Co., Inc., Norfolk, Va.; and Williams & Reed, Inc., Richmond, Va.

PAR. 2. The aforesaid members of said respondent, The Wholesale Dry Goods Institute, Inc., consisting of approximately 135 individuals, copartnerships, and corporations, are located in various States of the United States. Most of said members are engaged in the business of selling and distributing at wholesale, dry goods, notions and kindred lines of merchandise to retail dealers located in States other than the State in which said respective members are located, causing said products when so sold to be transported from their respective places of business to the purchasers thereof, and there has been, and now is, a course of interstate trade and commerce in said products between the members of said respondents, The Wholesale Dry Goods Institute, Inc., and retail dealers in said products located throughout the several States of the United States.

Said respondent members of said respondent, The Wholesale Dry Goods Institute, Inc., are now, and have been during all of the times mentioned herein, in free, active and substantial competition with other members of the industry in making, and seeking to make, sales of their said products in said commerce, and prior to the adoption of the

practices hereinafter alleged these respondent members were in free, active, and substantial competition with each other in making, and seeking to make, sales of their said products in said commerce, and but for the facts hereinafter alleged such free, active, and substantial competition would have continued and said respondent members would now be in free, active and substantial competition with each other.

PAR. 3. Respondent members of said respondent, The Wholesale Dry Goods Institute, Inc., acting in cooperation with each other and through and in cooperation with said respondent, The Wholesale Dry Goods Institute, Inc., and its officers and directors, and each of them, during the period of time, to wit, from April 1928, to the date of this complaint, have entered into an understanding, agreement, combination, and conspiracy among themselves and with and through said respondent, The Wholesale Dry Goods Institute, Inc., its officers and directors, to hinder and suppress competition in the interstate sale and distribution of dry goods, notions and kindred lines of merchandise to retailers; to restrain interstate trade in said dry goods, notions and kindred lines of merchandise; to hinder and suppress competition between and among manufacturers of said dry goods, notions, and kindred lines of merchandise in the interstate sale and distribution of their said products to retailers; and to create a monopoly in the interstate sale and distribution of said dry goods, notions, and kindred lines of merchandise in the said members of said respondent, The Wholesale Dry Goods Institute, Inc. Pursuant to said understanding, agreement, combination, and conspiracy and in furtherance thereof, the respondents have acted in concert and in cooperation with each other in doing the following acts and things:

(a) The respondent, The Wholesale Dry Goods Institute, Inc., has prepared and distributed a directory containing the names of approximately 1,400 individuals, copartners, and corporations, which said respondent considers meet with the definition of a wholesaler as defined by said respondent, The Wholesale Dry Goods Institute, Inc. Members of said respondent, The Wholesale Dry Goods Institute, Inc., listed therein are designated by a star opposite their respective names.

(b) Said respondent, The Wholesale Dry Goods Institute, Inc., from time to time has compiled, and compiles, a list of manufacturers of dry goods, notions, and kindred lines of merchandise in which said list or compilation all of the manufacturers are classified or graded according to their respective sales policies. The highest grade or classification is grade A, and in this classification are placed those manufacturers who confine their sales to wholesalers. The lowest classification is group K, and in this classification are placed those

manufacturers who sell not only to wholesalers but chain stores, syndicates, and retail stores without maintaining any differential in price. Said list of manufacturers is distributed by said respondent, The Wholesale Dry Goods Institute, Inc., among its said members. Said list is from time to time revised and the manufacturers listed therein reclassified according to their current selling policies, and the members of said respondent, The Wholesale Dry Goods Institute, Inc., are so notified.

(c) Said respondent, The Wholesale Dry Goods Institute, Inc., has coerced and compelled, and now coerces and compels, manufacturers of dry goods, notions, and kindred lines of merchandise to confine sales of their respective products to those persons, copartners, and corporations who are members of said respondent, The Wholesale Dry Goods Institute, Inc., or who conform to the definition of "wholesalers" as defined by said respondent. The Wholesale Dry Goods Institute, Inc., under penalty (for failure so to do) of reclassifying such manufacturers and placing them in a lower classification in its list of manufacturers and of notifying its members of said reclassification.

(d) Said respondent, The Wholesale Dry Goods Institute, Inc., has coerced and compelled, and now coerces and compels, its said members to refrain from purchasing their respective requirements of dry goods, notions, and kindred lines of merchandise from those manufacturers who do not so confine their sales to wholesalers as defined by said respondent, The Wholesale Dry Goods Institute, Inc.

PAR. 4. The results of said understanding, agreement, combination, and conspiracy, and the acts and things done thereunder and pursuant thereto by said respondents, as hereinbefore set forth, have been and now are: (a) To prevent and hinder manufacturers of dry goods, notions and kindred lines of merchandise from selling their products in interstate commerce to dealers therein who, but for the existence of said understanding, agreement, combination, and conspiracy would purchase said products; (b) to prevent retail dealers in dry goods, notions, and kindred lines of merchandise from purchasing their requirements of said products in interstate commerce from the manufacturers thereof; (c) to force many dealers to discontinue the sale of said products because of their inability to maintain a supply thereof at reasonable prices; (d) to substantially increase the price of dry goods, notions, and kindred lines of merchandise to the manufacturers, retail dealers, and to the consuming public; and (e) to place in the hands of the respondent, The Wholesale Dry Goods Institute, Inc., control over the business practices of the manufacturers and distributors of dry goods, notions, and kindred lines of merchandise and the

power to exclude from the industry those manufacturers and distributors who do not conform to the rules, regulations, and definitions established by said respondent, The Wholesale Dry Goods Institute, Inc., and thus tend to create a monopoly in the said respondent members of The Wholesale Dry Goods Institute, Inc.

PAR. 5. The acts and practices of the said respondents, as herein alleged, are all to the prejudice of competitors of said respondents and of the public; have a dangerous tendency to and have actually hindered and prevented competition in the sale of dry goods, notions and kindred lines of merchandise in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in dry goods, notions, and kindred lines of merchandise, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 31, 1939, issued and subsequently served its complaint upon respondent The Wholesale Dry Goods Institute, Inc., a corporation; upon its officers and directors, individually and as such officers and directors of said Institute; and upon certain members of said Institute, individually and as representatives of all members of the Institute, as a class, 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 answers by certain of the 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 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 answers thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, renewed motion to reverse the rulings of the trial examiners on evidence and supplement to said motion, 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, The Wholesale Dry Goods Institute, Inc., was organized in 1928 as a merger of the Southern Wholesale Association and the National Wholesale Association. It is a membership corporation, incorporated and existing under and by virtue of the laws of the State of New York, having its principal place of business at 40 Worth Street, New York, N. Y. Respondent members of The Wholesale Dry Goods Institute, Inc., are individuals, partnerships, and corporations located in various States of the United States and engaged in the sale and distribution at wholesale of dry goods, notions, and allied lines of merchandise.

Respondent officers of The Wholesale Dry Goods Institute, Inc., are Robert M. Adair, of Jones, Witter & Co., Columbus, Ohio, president, successor to Henry S. Sommers, alleged in the complaint in this proceeding to be president of said Institute; Henry Matter, executive secretary, 40 Worth Street, New York, N. Y.; and Jarrett H. Buys, treasurer, 40 Worth Street, New York, N. Y.

Respondent directors of The Wholesale Dry Goods Institute, Inc., are Henry S. Sommers, representing G. Sommers & Co., St. Paul, Minn.; Robert M. Adair, representing Jones, Witter & Co., Columbus, Ohio; Frederick Quellmalz, representing Butler Brothers, Chicago, Ill.; Charles S. Hyde, representing Neal & Hyle, Inc., Syracuse, N. Y.; J. George Kahl, representing Arbuthnot-Stephenson Co., Pittsburgh, Pa.; L. C. Wilson, representing Goodall-Brown Dry Goods Co., Birmingham, Ala.; Charles Schneider, representing Schneider-Battinus & Simon, Chicago, Ill.; Earl Partridge, representing Earl Partridge Co., Minneapolis, Minn.; W. W. Grether, representing Grether & Grether, Inc., Los Angeles, Calif.; Archie Goldsmith, representing Archie Goldsmith & Brother, Portland, Oreg.; Marx D. Slonim, representing S. Blechman & Sons, Inc., 520 Broadway, New York, N. Y.; Sam K. Harwell, Jr., representing Neely, Harwell & Co., Nashville, Tenn.; R. M. Woodson, representing Quinn-Marshall Co., Lynchburg, Va.; Robert K. Howse, representing The Johnston & Larimer Dry Goods Co., Wichita, Kans.; C. W. Dwight, representing Schramm & Schmieg, Burlington, Iowa; Sydney J. Markovitz, representing Markovitz Brothers, Philadelphia, Pa.; and Henry Matter, 40 Worth Street, New York, N. Y. Respondents Fred M. Morris, E. B. Sydnor, C. C. Reed, Reagan Houston, and J. Russell Fitts, named in the complaint as directors, were not directors at the time the complaint was issued.

Respondent members of The Wholesale Dry Goods Institute, Inc., are: Ades-Lexington Dry Goods Co., 249 East Main Street, Lexing-

ton, Ky.; Alms & Doepke Co., Central Parkway, Cincinnati, Ohio; S. W. Anderson Co., Inc., 122 East Main Street, Owensboro, Ky.; Arbuthnot-Stephenson Co., 801 Penn Avenue, Pittsburgh, Pa.; Arkansas Dry Goods Co., 137 West Main Street, Batesville, Ark.; Askin Brothers Co., 13 South Hanover Street, Baltimore, Md.; Aycock, Robinson, Purcell Co., 149 Pryor Street, South West, Atlanta, Ga.; Baker, Hanna & Blake Co., 212 W. Second Street, Oklahoma City, Okla.; The J. T. Barlow Co., 543 East Third Street, Dayton, Ohio; Adam H. Bartel Co., 911 North East Street, Richmond, Ind.; The Bentley Gray Dry Goods Co., 916 Twiggs Street, Tampa, Fla.; Berry Dry Goods Co., 218 Garrison Avenue, Fort Smith, Ark.; Bittner-Hunsicker Co., 23 North Seventh Street, Allentown, Pa.; Black & Grant Co., South Fifth Street, Zanesville, Ohio; S. Blechman & Sons, Inc., 549-555 Broadway, New York, N. Y.; Boise Wholesale Dry Goods Co., 711 Idaho Street, Boise, Idaho; W. H. Bosserman & Son, 124 East Picadilly Street, Winchester, Va.; Butler Brothers, 426 West Randolph Street, Chicago, Ill.; Carson Pirie Scott & Co., 366 West Adams Street, Chicago, Ill.; Carter Dry Goods Co., 727 West Main Street, Louisville, Ky.; Cash Wholesale Co., 304 Rock Street, Little Rock, Ark.; Central Alabama Dry Goods Co., 1006 Alabama Avenue, Selma, Ala.; J. H. Churchwell Co., 301 East Bay Street, Jacksonville, Fla.; Chapman Hosiery Co., Forsyth, Ga.

Deaver Dry Goods Co., 200 Commerce Street, Knoxville, Tenn.; James H. Dunham & Co., 345 Broadway, New York, N. Y.; Durham Notion Co., 1131½ East Parrish Street, Durham, N. C.; Gus Edelstein Bro. & Co., 284 Fifth Avenue, New York, N. Y.; Edson, Moore & Co., 1702 West Fort Street, Detroit, Mich.; W. S. Emerson Co., Inc., 192 Exchange Street, Bangor, Maine; Farley Harvey Co., 115 Kingston Street, Boston, Mass.; Fear & Sons, 412 Jackson Street, Fairmont, W. Va.; S. Fein Brothers Co., 428 North Water Street, Milwaukee, Wis.; Archie Goldsmith & Bro., 20 North West Fifth Avenue, Portland, Oreg.; Goodall-Brown Dry Goods Co., 2200 First Avenue, Birmingham, Ala.; Grether & Grether, Inc., 728 South Los Angeles Street, Los Angeles, Calif.; H. J. Grossman, 143 North Oaks Street, Mt. Carmel, Pa.; Guthrie-Morris-Campbell Co., 812 Virginia Street, Charleston, W. Va.; Guy, Curran & Co., Inc., 313 Ninth Street, N. W., Washington, D. C.; Hannah Bros., Inc., 112 Tipton Street, Johnson City, Tenn.; Helena Wholesale Dry Goods Co., 210 Walnut Street, Helena, Ark.; Hess-Mallory Co., Third and Wall Avenue, Sioux City, Iowa; John H. Hibben Dry Goods Co., Seventh and Walnut Streets, Cincinnati, Ohio; Hibben Hollweg & Co., 110 South Meridian Street, Indianapolis, Ind.; Higginbotham-Bailey-Logan Co., Jackson and Lamar Streets, Dallas, Tex.; Hile & Thompson, Inc.,

216 West Fourth Street, Clearfield, Pa.; Horn & Co., 209 North Sixth Street, Allentown, Pa.; Isbell-Kent-Oakes Dry Goods Co., 18-8 Lawrence Street, Denver, Colo.; Janney Dry Goods & Notion Co., Fredericksburg, Va.; Jaubert Brothers, Inc., 200 Magazine Street, New Orleans, La.; The Johnston & Larimer Dry Goods Co., 619 East Douglas Street, Wichita, Kans.; The Jones, Witter & Co., 45 West Spring Street, Columbus, Ohio; Ketchum & Bush, South 152 Lincoln Street, Spokane, Wash.; E. W. King Co., Shelby and Seventh Streets, Bristol, Tenn.; Wm. B. Kohlman, 204 Decatur Street, New Orleans, La.

Leff Brothers Dry Goods & Notions Co., 1711 Preston Avenue, Houston, Tex.; Long, Libby & Hanson Co., 161 Middle Street, Portland, Maine; Markovitz Brothers, 321 Market Street, Philadelphia, Pa.; McConnell-Kerr Co., 350 East Jefferson Avenue, Detroit, Mich.; H. Mendel Co., Inc., 185 Pryor Street, Southwest, Atlanta, Ga.; Miller Brothers Co., 115 Fourth Avenue, Southwest, Portland, Oreg.; Miller Brothers Co., Seventh and Market Streets, Chattanooga, Tenn.; Daniel Miller Co., 30 Hopkins Place, Baltimore, Md.; Myers Dry Goods Co., 100 West Main Street, Morristown, Tenn.; John S. Naylor Co., 1401 West Main Street, Wheeling, W. Va.; Neal & Hyde, Inc., 320 South Clinton Street, Syracuse, N. Y.; Neely, Harwell & Co., 324 Public Square, Nashville, Tenn.; Earl Partridge Co., 400 First Avenue North, Minneapolis, Minn.; Patrick-Lawson Hunter Co., 163 West Second South Street, Salt Lake City, Utah; Perkins Dry Goods Co., 708 Jackson Street, Dallas, Tex.; Pincus & Jarett Dry Goods Co., 213 Milam Street, Houston, Tex.; Puget Sound Mdse. Co., 1001 Lenora Street, Seattle, Wash.; Quinn-Marshall Co., 910 Commerce Street, Lynchburg, Va.; Rice Stix Dry Goods Co., 1000 Washington Avenue, St. Louis, Mo.; Richmond Dry Goods Co., 11 South Seventh Street, Richmond, Va.; W. S. Riddle Notion Co., 338 Public Square, Nashville, Tenn.; The J. C. Ridnour Co., 809 P Street, Lincoln, Nebr.; The Root & McBride Co., 1250 West Sixth Street, Cleveland, Ohio; Rubel Dry Goods Co., Third Avenue and Jefferson St., Paducah, Ky.; J. Rubin & Son Co., Inc., 1004 Gervais Street, Columbia, S. C.; M. R. Sanders & Sons, Inc., 133 West Fourth Street, Cincinnati, Ohio; Sawyer Barker Co., 120 Centre Street, Portland, Maine.

Schenectady Knit Goods House, 138 State Street, Schenectady, N. Y.; Schneider-Battinus & Simon Co., 323 West Adams Street, Chicago, Ill.; Schramm & Schmieg Co., 201 North Third Street, Burlington, Iowa; J. W. Scott & Co., 113 West Washington Street, Greensboro, N. C.; J. H. Semel & Co., 514 Broadway, New York, N. Y.; Nathan Sinkin, 210 West Commerce Street, San Antonio, Tex.; Sam Shainberg Dry Goods Co., 285 Union Avenue, Memphis,

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Tenn.; W. L. Smith Co., Inc., 915 Virginia Street, Charleston, W. Va.; Smith Gormly Co., Inc., 180 St. Paul Street, Rochester, N. Y.; Solomon Brothers Co., Inc., 135 Commerce Street, Montgomery, Ala.; S. & B. Solomon Co., 102 Market Street, Wilmington, N. C.; G. Sommers & Co., Sixth and Wacouta Streets, St. Paul, Minn.; Stein Wholesale Dry Goods Co., 418 Garrison Avenue, Fort Smith, Ark.; M. Steinberg & Son, Inc., 163 Mercer Street, New York, N. Y.; Steiner-Lobman Dry Goods Co., 136 Commerce Street, Montgomery, Ala.; Strauss Brothers, Inc., 109 Hopkins Place, Baltimore, Md.; Levi Strauss & Co., 98 Battery Street, San Francisco, Calif.; Suskin & Berry, Inc., 188 West Main Street, Washington, N. C.; Taylor Symonds Co., 18 Pine Street, Providence, R. I.; Thomas Field & Co., 902 Virginia Street, Charleston, W. Va.; N. J. Thompson & Co., 176 State Street, Elmira, N. Y.; Tinkham Bros., Inc., 201 Cherry Street, Jamestown, N. Y.; Titlow-Schuler Co., 125 South Fifth Street, Reading, Pa.; Triple Quality Hosiery Co., 200 Madison Avenue, New York, N. Y.; W. E. Truesdell, 33 Lyman Street, Springfield, Mass.; Turner Furnishing Goods Co., 201 East Water Street, Springfield, Mo.; Wichard Brothers Co., Inc., 108 Randolph Street, Norfolk, Va.; Whittington Dry Goods Co., 209 Fulton Street, Greenwood, Miss.; Williams & Reed, Inc., 1413 East Franklin Street, Richmond, Va.; Williams-Richardson Co., Ltd., 202 Magazine Street, New Orleans, La.; Williams & Shelton Co., 420 South Tryon Street, Charlotte, N. C.; Zion's Cooperative Mercantile Institution, 13-31 South Main Street, Salt Lake City, Utah; and H. Zussman & Son Co., 314 West Third Street, Cincinnati, Ohio.

Respondents Reed Brothers, Inc., A. B. Frank Co., and Fitts-Smith Dry Goods Co., although not now members of The Wholesale Dry Goods Institute, Inc., were members of and active in such Institute during much of the time mentioned in the complaint herein.

Respondents W. W. Couch Co., Inc., Harris, Davis & Co., Inc., Schwartz Brothers & Co., Inc., and F. B. Thomas & Co., Inc., were not members of The Wholesale Dry Goods Institute, Inc., in 1939 or in 1935. E. & M. Hirschler Co., Inc., and Smith, Taylor Co., Inc., named as respondents, have been out of business for a number of years. Respondent J. S. Reeves & Co., Inc., has not been a member of said Institute since 1932.

The volume of business done by respondent members of The Wholesale Dry Goods Institute, Inc., represents 80 to 85 percent of the total volume of wholesaling done by general dry goods wholesalers and such membership constitutes a substantial, important, and influential

part of the entire business of distributing dry goods, notions, and allied lines of merchandise to retailers in the United States.

PAR. 2. Most of the respondent members of said Institute are engaged in the sale and shipment of merchandise from their places of business to customers located in States of the United States other than the State in which their own business is located. In addition, many of the respondent members cause shipments to be made directly from manufacturers from whom they purchase to their customers located in States of the United States other than the State of origin of such shipments. There has been, and is now, a course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act, in said merchandise between respondent members and retail dealers.

PAR. 3. The most important activity of The Wholesale Dry Goods Institute, Inc., and its members from the time of its organization to the present has to do with the sales policies and practices of manufacturers as they affect the competitive position of members of the Institute. This was manifested in the creation by the Institute of a "differential committee" which reported to the Institute in January 1930. In its report this committee referred to the "universal dissatisfaction of wholesalers with prevalent mill selling practices" and the "imperative need for clearing up the reasons for this discontent," and stated that the acuteness of the situation is reflected by correspondence with wholesale houses much of which shows a bitterness "which for the welfare of the industry should be eliminated." It stated in part:-

For example, one of the leading southwestern distributors writes:

The matter of mill selling policies and differentials for wholesalers must be settled in a definite way very soon. The manufacturer should finally, for all time, decide to sell his product either direct or through the wholesaler—one or the other. I cannot conceive how any factory can expect to get a full distribution of its product unless it uses the great distributing avenue, which is the wholesaler. Manufacturers must sooner or later realize that their best friend and greatest source of profit can be made through the wholesaler better than any other way, and it does seem to me that there is every reason why these two great branches of distribution should get together and cooperate in what is best for both.

A wholesaler in the Middle West expresses himself in this vein:

It is certainly both murder and suicide—murder to the wholesaler and suicide for the mills, to continue the present practice of filling up the legitimate, well-functioning wholesalers, and then supplying, willy nilly, merchandise bootleggers all over America.

We have no quarrel at all with the mill or manufacturer who chooses to set up his own distributing machinery, but we are firmly of the opinion that wholesale dry goods distributors should give positive preference to the mills who announce an intention to work with wholesalers as long as wholesalers work with them.

Another distributor, whose operations are more general, writes thus:

Labor agitators talk a lot about "class consciousness." That's what we wholesalers should learn.

Our worst competition is not from other wholesalers. It is coming direct from the mills.

We wholesalers are fools if we keep on buying from mills that expect us to distribute their products—then turn right around and attempt to sell the same goods to our customers.

I, for one, am ready to stand on one side or the other of the line and ask or dare the mills to do the same thing. We people have got to choose sides, and I am ready to choose my side right now.

The differential committee recommended as a means of eliminating the practices which were considered harmful to the membership of the Institute:

1. That each manufacturer, having the legal right to "choose his customers," do so, and after having chosen the outlets through which he hopes to effect the distribution of his product, then shape his selling policy so as to place these outlets on a parity in their competition with each other.

2. That any manufacturer who chooses to distribute through more than one type of retail outlet, clearly define the types of outlets through which he proposes to work for his distribution, and then adopt a selling policy which will not discriminate in favor of one type and to the detriment of another type.

3. That where some of a manufacturer's retail outlets are supplied direct from his own warehouse, and others are supplied indirectly through wholesalers, that a system of wholesalers' price differentials be established based on the known costs of selling and distribution, which will enable recognized distributors to sell the manufacturer's product on a parity with the price charged by the manufacturer when dealing with retailers direct.

4. That each manufacturer set up the conditions under which his differentials will be allowed and that these conditions be made publicly known to his industry.

5. That in order to avoid confusion in the minds of retailers, manufacturers publish list prices instead of net prices to wholesalers, and that wholesalers' differentials be allowed from said list prices.

6. That in order to aid each individual retailer in the preservation of his individuality, through individualizing the products he distributes, each wholesaler, in handling branded goods, endeavor to avoid selling to his independent retail customers the identical brands sold in his trade territory by chain or syndicate stores.

7. That each wholesaler, before placing an order for any product, ascertain the selling policy of the manufacturer in order to predetermine whether or not such policy discriminates against any type of retail outlet through which that manufacturer proposes to distribute his product.

The intent and plan of the institute and its members are further indicated by the following extracts from statements published and distributed from time to time setting forth such purposes and the benefits to be derived therefrom by members:

It is widely recognized that nowhere in business is there a greater need for the solution of distribution difficulties than in the textile field. It is recog-

nized also that, essentially, this need arises out of a far-reaching maladjustment of production and consumption.

Production consistently outstrips consumption. Distribution, standing between and serving both producers and consumers, has been seriously disturbed, and we are confronted by a huge distributive problem which seems too complex to be solved by any single group, certainly too complex to be solved permanently by any single producer or distributor.

For some years, this chronic lack of adjustment between production and consumption has affected wholesalers. Undoubtedly, it is one of the most pervasive forces underlying the spontaneous and almost inevitable movement to organize the wholesale dry goods trade on a national scale. New stresses imposed upon distributors, particularly in the past decade, have created new problems. These have become universal and they are now to receive the constructive attention of an inclusive national organization.

* * * * *

At the beginning of its program, the Wholesale Dry Goods Institute has for its immediate objects:

Improvement of trade practices within the wholesale field.

Better trade relations between wholesalers and other elements of the textile industry.

Study of wholesale merchandising methods and adaptation to new economic conditions.

Development of practical aid for retail customers.

Analysis of operating costs and proper allocation of sales effort.

This is a bare statement of the activities, all or each of which may involve fairly long programs. In every instance, the goal is a stabilization of wholesale trade conditions generally and the creation of more profitable business for each wholesaler who is a member of the institute.

In another publication, respondent The Wholesale Dry Goods Institute, Inc., explained its advantages to its members in part, as follows:

The program of the institute warrants the full support of every wholesaler of dry goods and kindred lines. To obtain the best results, the cooperation of every wholesaler is essential. This means specialty as well as general wholesalers. Whether a wholesaler deals in a general line, or specializes in a few, is unimportant. What is important is that the trade be banded together solidly in a single organization for a common purpose.

In addition to a few of the benefits described, membership in the institute offers:

1. For a nominal membership fee, a wholesaler enjoys the benefit of an organization costing thousands of dollars a year to operate.

2. As a member, a wholesaler has the benefit of the judgment and counsel, of the board of directors—comprised of outstanding men in the wholesale trade—serving without compensation of any kind but, in fact, paying dues on the same basis as all members.

3. An individual member of the institute has the support of all members, as a group. It must be recognized that a stand taken, or a principle established by the institute (representing the trade) carries weight; whereas a position taken by an individual house may be disregarded.

4. Each member receives the benefit of the services of the special committees, comprised of the best men in the trade, who donate their time and efforts to the interest of wholesaling.

PAR. 4. As a means of bringing about the changes in the sales policies of manufacturers desired by The Wholesale Dry Goods Institute, Inc., and its members in order to improve their competitive position, the institute began in 1930 to compile and issue to its members reports on the selling policies of manufacturers of dry goods, notions, and allied lines who sell in whole or in part to wholesalers. These reports are frequently referred to as "Mill Selling Policy Reports" and classify or rate each manufacturer listed upon the basis of his sales policy as it affects wholesalers. The information upon which such classification or rating is made is ordinarily secured through a questionnaire sent to manufacturers. It is stated in these questionnaires that "The information here requested regarding your selling policy will not be published, but will be held in strict confidence and will be used only as a basis for the institute's reports to members on mill selling policies." The questionnaire includes the following questions:

1. Are your goods offered or sold to wholesalers? (If answer is "No," it will not be necessary to reply to subsequent questions.)

2. *Chain Stores.*

Are your goods offered to chain stores?

If so, are sales limited to national chains?

If sales to chain stores are not limited to "national chains," on what basis are they sold, in comparison to prices charged to wholesalers?

Are sales to chains confined to special contract goods, made under the buyer's specifications and labels, or do you sell them your regular standard products the same as are sold to wholesalers?

Do you have any objection to supplying to the Wholesale Dry Goods Institute the names of the chain stores to whom you propose to sell?

3. *Retail Stores.*

Will your goods be offered to retail stores?

Are they limited to stores of the metropolitan type?

If so, will there be any limitation upon the list of retail stores you will sell?

If your list of retail stores is to be limited, approximately how many retail stores will be included in your list?

Do you have any objection to supplying to the Wholesale Dry Goods Institute the names of the retail stores to whom you propose to sell direct?

On what basis will such retail stores be sold?

At prices approximately the same as to wholesalers?

On a higher basis than wholesalers?

If sold on a higher basis, what will be the approximate amount of the wholesaler's price differential?

4. *Resident Buying Offices.*

Will your goods be offered to resident buying offices representing *retail* stores, or to the stock-carrying affiliates of resident buying offices?

If so, will there be any limitation upon the list of resident buying offices you will sell?

If your list of resident buying offices is to be limited, approximately how many resident buying offices will be included in your list?

Do you have any objection to supplying to the Wholesale Dry Goods Institute the names of the resident buying offices to whom you propose to sell direct?

On what basis will such resident buying offices be sold?

At prices approximately the same as to wholesalers?

On a higher basis than to wholesalers?

If sold on a higher basis, what will be the approximate amount of the wholesaler's price differential?

5. *Method of Selling.*

State whether sales are made through your own selling organization or through mill agents, commission merchants, or otherwise.

If you sell to or through agents or commission merchants please list names and addresses of such agents.

In addition to such information as may be secured by the questionnaire method, information as to manufacturers' sales policies is solicited and received by the Institute from its members. Such information is sought concerning the sales and pricing policies of all manufacturers who sell all or any part of their output to dry goods wholesalers.

PAR. 5. When the information secured by the means stated concerning the sales policy of a manufacturer has been considered by a committee of The Wholesale Dry Goods Institute, Inc., a rating is assigned to such manufacture. A manufacturer of a number of different products may be given the same or a different rating on each of his products, depending upon his sales practices in the distribution of each product. The rating or ratings so assigned are designated by one or more of the following symbols: A, A minus, B, C, D, K, X, and No. The meaning of these symbols is as follows:

A sells to or distributes only through wholesalers. (The term wholesaler has the meaning given to it by the Institute in its definition as subsequently quoted.

A minus sells regular products and/or patterns through wholesalers only, but manufacturers special contract goods, under buyer's specifications and labels, for national chains and mail order houses.

B sells regular products and/or patterns only to wholesalers and large metropolitan department stores, but allows a reasonable differential to wholesalers. Also may manufacture special contract goods, under buyer's specifications and labels, for national chains and mail order houses.

C sells regular products and/or patterns through channels (which may include any of all of the following: Independent stores, large and small; buying offices or syndicates representing retailers, their stock carrying affiliates; chain store central offices or warehouses; drop shippers; brokers; commission merchants, selling agents; job lot dealers and second hand dealers) other than

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wholesalers, but allows a reasonable differential to wholesalers. Also may manufacture special contract goods, under buyer's specifications and labels, for National chains and mail order houses.

D sells regular products and/or patterns to wholesalers, and/or large metropolitan stores, National chains and mail order houses, and allows no differential to wholesalers.

K sells regular products and/or patterns through channels other than wholesalers, at substantially the same price as to wholesalers.

X this rating describes the manufacturer who, after announcing one policy, has been found to practice another.

"No" has declined to give any information concerning selling policy.

After a rating has been determined upon for a manufacturer, it is the practice of the Institute to advise the manufacturer concerned by letter, the usual form of which is:

This is to advise you that our-----committee has assigned rating -----to your good concern, as indicative of your selling policy. (See card enclosed.)

Unless we hear from you to the contrary by-----we shall assume this rating to be correct.

PAR. 6. The preparation and use of the mill selling policy reports referred to above were suspended during the life of the code promulgated for the "Wholesale Dry Goods Trade" under the National Industrial Recovery Act, apparently because of certain provisions contained in this code. However, after that code was struck down, the preparation and use of the mill selling policy reports were resumed by The Wholesale Dry Goods Institute, Inc., and its members and supplemented by the preparation and use of a directory of wholesalers in the form of a volume entitled "Wholesale of Dry Goods and Kindred Lines." Copies of this directory are distributed by the Institute to its members and to manufacturers rated by the Institute. The number of wholesalers so listed varies from time to time the most recent issue containing the names of approximately 1,150 concerns. The list is described in part as:

A list of firms whose operations, after careful investigation and a consideration of the facts available, are believed to conform to the definition of a wholesaler employed by the Wholesale Dry Goods Institute for its several and individual purposes.

While every effort has been made to insure the correctness of this list, it is realized that some inaccuracies are unavoidable—(some names may have been omitted which should be included, others included which should be omitted)—but such errors will be corrected in later revisions of this list.

The definition of a "wholesaler," referred to in the directory and regularly used by the Institute in determining who is entitled to be listed in the directory, is as follows:

A "wholesaler" is a person, firm or corporation—

(1) That is organized primarily to sell goods to and render service to retailers generally, and is not primarily interested in securing for a single re-

tailer, or a limited group of retailers, price advantages which are not to be made available to other retailers.

(2) That transacts business in sufficient volume to handle goods in wholesale quantities and sells through salesmen, advertising and/or sales promotion devices;

(3) That carries at all times at its principal place of business a representative stock of the goods it sells, and from which it can fill the orders of its customers;

(4) That extends credit to its customers and carries its own accounts.

This definition excludes (a) buying offices or syndicates representing retailers; (b) their stock carrying affiliates; (c) chain store central offices or warehouses; (d) drop shippers; (e) brokers; (f) commission merchants; (g) selling agents; (h) job lot dealers; (i) second hand dealers.

The introductory statements appearing in this directory of wholesalers include the following:

The ratings run from A to K; A indicating that the manufacturer confines his distribution exclusively to wholesalers, and therefore gives complete cooperation, while rating K indicates that the manufacturer gives no cooperation to wholesalers at all.

This is an interesting experiment in the establishment of a means for voluntary cooperative action. If the experiment is completely successful, it will clarify what has been a confused and complicated marketing situation which in the past has resulted in grave injustices and discriminations against certain types of retail buyers and, likewise, has caused much dissatisfaction to both sellers and buyers in the textile field. From the results so far observed, it seems clearly indicated that a high degree of success will be attained.

Among other recommendations quoted in the directory of wholesalers is one in which the Joint Committee for the Advancement of Manufacturer-Wholesaler Relations suggests to manufacturers that they:

Adopt a selling policy that will give protection to wholesale distributors, and enable them to meet competition at a reasonable profit to themselves and their customers.

Confine their branded merchandise and/or patterns to regular distributors and protect their customers by keeping it out of chains, mail order houses, Premium houses and syndicate buying groups.

Use utmost care in the selection of distributors, avoiding those whose practices tend to disrupt the ordinary distributive process. (Note definition of wholesaler employed by the Wholesale Dry Goods Institute for its several and individual purposes.)

In the directory of wholesalers members of the Institute are listed by firm name appearing in heavy type, followed by the names of officials of the member and a full statement of the lines of merchandise distributed by such member, all enclosed in a box. Other concerns listed as wholesalers but who are not members of the Institute are listed by firm name only, which name appears in ordinary type with abbreviations indicating the lines of merchandise han-

dled. Members of the Institute are thus clearly distinguished from others listed and more detailed information supplied with respect to them.

PAR. 7. When a concern applies for membership in The Wholesale Dry Goods Institute, Inc., or for listing in its directory of wholesalers, the measure used for determining whether it should be admitted to membership or to listing is the previously quoted definition of a "wholesaler" established by the Institute. There are many concerns in the United States who are actively engaged in competition with members of the Institute and with wholesalers listed in the Institute's directory of wholesalers in the sale and distribution of like goods, but which do not conform to the definition of a "wholesaler" as fixed by the Institute and, therefore, are not eligible for membership in the Institute or listing in its directory of wholesalers. Such concerns are, nevertheless, engaged in whole or in part in selling dry goods, notions, and kindred products to retailers buying for resale to the consuming public.

When a concern applies for membership in the Institute or for listing in its directory of wholesalers, it is the practice of the Institute to secure information as to its operations from commercial agencies such as Dun & Bradstreet and by addressing inquiries to members of the Institute or others listed in its directory of wholesalers who are competitively located with respect to the applicant. An instance of this procedure is shown by an application by one Louis Cohen of Ladysmith, Wis., for membership. The Institute wrote a number of competitors of Cohen stating:

We have a request from Louis Cohen, Ladysmith, Wis., asking that his name be included in the list of dry goods wholesalers published by the Wholesale Dry Goods Institute.

Will you please advise us, if in your judgment, the operations of this concern conform to the definition of a wholesaler employed by the Wholesale Dry Goods Institute in its reports to its members.

An instance of a reply to the above inquiry appears in a letter of February 21, 1936, from Lebeis Hosiery Co.:

Replying to your letter requesting advice on Louis Cohen, Ladysmith, Wis.

We have known Mr. Cohen for quite some time, and we never regarded his store as a wholesale establishment. In our judgment, he is a long jump from being any kind of a wholesaler.

Another of the replies received was from Butler Brothers of Chicago, Ill., which on February 22, 1936, advised the Institute:

Referring to your letter of February 19, we do not consider Louis Cohen, of Ladysmith, Wisconsin, a wholesaler although the agency report shows him as wholesaler and retailer, and he himself claims that the wholesale end of his business represents about 60 percent of his total volume.

In a statement he made he showed total employees for both wholesale and retail, seven, and stated that he had one salesman selling direct from the truck on the road. This statement showed accounts receivable of \$15,231, and he claimed that \$8,197 were wholesale accounts, and \$7,034 retail. His inventory was only \$64,000, with only 2 turns for the year, which included merchandise in another retail store at Rhinelander, which is considered a branch of Ladysmith. He gave his sales as \$143,000, for the year.

I don't think he should be added to our list.

Cohen was not admitted to membership or listing as a wholesaler.

In numerous other instances concerns which are listed as wholesalers by commercial agencies such as Dun & Bradstreet have been refused membership in the Institute or listing in its directory of wholesalers on the ground that their operations did not conform to the Institute's definition of a wholesaler.

The purpose and effort of the publication of this directory of wholesalers and its circulation among manufacturers by the Institute is to create a preferred class of buyers consisting of those concerns listed in the directory and to inform manufacturers of the identity of buyers to whom they might sell without incurring the disfavor of the Institute and its members, and, conversely, to inform such manufacturers that sales to any wholesaler not so listed might result in their being given an unfavorable classification by the Institute, the effect of which might be to prevent or tend to prevent their making sales to members of the Institute.

PAR. 8. The preparation and distribution by The Wholesale Dry Goods Institute, Inc., to its members of the "Mill Selling Policy Reports" classifying and rating manufacturers in the manner stated in and of itself has a coercive effect upon manufacturers in determining their sales policies. The Institute recognized that this coercive effect would be increased in proportion as its members refused to purchase from manufacturers classified as noncooperative by the institute, and concentrated their purchases among those manufacturers having a rating or classification considered satisfactory by the institute. The institute, its officers, committees, and membership took joint action from time to time to increase the coercive effect of the ratings made of manufacturers by exerting collective pressure upon members to consistently use the reports for the purpose intended; that is, to buy only from those classified, as having sales policies satisfactory to the institute. For example, at a meeting of the board of directors of the institute in May 1935 it was voted, among other things:

To suggest to members of the Institute that before placing orders they enquire of manufacturers as to the rating they enjoy with the Institute.

An instance of collective consideration and action by the membership appears in connection with a report to the 1935 convention of The Wholesale Dry Goods Institute by its then director general, who stated in part:

What your attitude is, what your recommendations or instructions to your buyers may be, will largely influence the effectiveness of this entire Institute campaign. And when I conclude this report, I would like to get from you an indication of what you think about this thing. I would like to have all who believe that you should instruct your buyers to watch these reports and give preference to those manufacturers who have adopted what it appears to you to be a fair selling policy, I would like all of you who favor that and think it proper, to raise your hands. (All hands were raised.)

Officials of the institute from time to time urged upon members that the list of manufacturers' ratings be regularly used for the purpose intended, and exerted the pressure of the Institute and collective pressure of its membership upon members to that end. An instance of this continuing policy appears in an address at the annual convention of the Institute in January 1939 by the executive secretary of the Institute in the course of which he stated in part:

For the benefit of manufacturers, I reiterate that the reports are merely the means of reflecting to members of the Institute the selling policies practiced by those manufacturers to whom they look for their merchandise requirements. No action of the Institute should be construed as intending to influence a manufacturer's selling policy.

* * * * *

Unquestionably, the value and effectiveness of these reports will be greatly enhanced if wholesalers will increase their support to the program, which they can do:

(a) By helping to make manufacturers "rating conscious." Frequent reference to the rating reports when conferring with manufacturers, or their representatives, will impress them with the importance of their rating with the Institute, and the importance of giving protection to wholesalers if their business is to be enjoyed.

(b) By reporting to the Institute promptly any instance detected where the rating assigned fails to correctly describe a manufacturer's method of selling. The ratings must be correct to be of value.

(c) By carefully checking all orders against ratings, to insure the placing of business most advantageously.

(d) By giving an occasional "pat on the back," to manufacturers making an earnest effort to cooperate with wholesalers. Do not hesitate to tell a manufacturer that you are placing your business with him because of his policy of protecting wholesalers, as reflected by his rating with the Institute.

An instance of pressure by the Institute upon an individual member is indicated in an exchange of correspondence between the executive secretary of the Institute and the Richmond Dry Goods Co. On May 16, 1938, in a letter from the executive secretary of the in-

stitute to a member of the executive committee of the Institute representing the Richmond Dry Goods Co. reference was made to a conversation had with a representative of a manufacturer, as follows:

During the conversation Mr. Tansill stated frankly that it was his intention to thoroughly review their selling policy, and felt that such review would indicate that no other course was open to him than to return to selling the retail trade. He asked me to tell him how he could do otherwise, when wholesalers failed to support manufacturers cooperating with wholesalers, and cited the specific instance of Richmond Dry Goods Co. forsaking the Pepperell line, not for the line of another manufacturer giving wholesale protection, but for the line of a manufacturer selling promiscuously to the retail trade—without protecting the wholesaler—and rated "K" by the Institute.

Of course, it is not within the province of the institute to dictate either how a manufacturer is to sell, or how its members are to buy. However, it is reasonable to assume that, in their own interests, wholesalers will favor those manufacturers giving them the greatest degree of protection. I realize that these are abnormal times, but wholesalers will defeat their own ends if they accept temporary advantages to the detriment of the long term program.

In replying to the above letter the Richmond Dry Goods Co., Inc., stated in part:

I am still highly appreciative of the mill selling policies and I will greatly appreciate it if you will let me know the concern that Mr. Tansill referred to, as I did not know that any of our departments were dealing with a concern rated K by the institute. If you have not the name, please drop by and see Mr. Tansill on your way up or down and tell him that I am interested in knowing the name of the manufacturer that he refers to. You can also tell him that I need it for a constructive purpose and I will look into the situation completely.

The executive secretary of the institute secured the information desired from Mr. Tansill and furnished it to the Richmond Dry Goods Co., which thereafter made a full report to the executive secretary of the institute, after which the executive secretary wrote under date of May 31, 1938, to the Richmond Dry Goods Co. in part as follows:

While I can thoroughly appreciate your position in handling Chatham blankets, the fact that you are doing so does have an adverse effect on better rated manufacturers, and on the program of the institute. As you know, a manufacturer's rating is based on his national policy, and the admitted policy of Chatham leaves no doubt as to the K rating assigned. I am sure there are numerous other instances where a manufacturer would be entitled to a better rating in certain territories, but the general policy does not warrant it. No doubt there are manufacturers, selling promiscuously in your territory, whose merchandise you would refuse to handle for this reason, but who are, in other territories, protecting the wholesaler to a degree equal to that accorded you by Chatham.

* * * * *

This subject is one difficult to discuss by letter, and so I shall defer further comment until I may have the pleasure of discussing it personally with you. Any discussion, however, whether by letter or verbally, necessarily must be of

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an informal and unofficial nature. As you already know, the institute would be in violation of the law if it attempted to dictate either the selling policies of manufacturers, or the buying policies of its members.

Most of the members of the institute do, in fact, confine their purchases so far as practicable to manufacturers rated by the institute as having sales policies favorable to wholesalers as that term is defined by the institute. Instances of this policy on the part of members of the institute and the limitations upon it are indicated by testimony in the record.

An official of Goodall-Brown Dry Goods Co., a member of the institute, was questioned concerning the purpose and use made of the rating book furnished by the institute to its members showing the selling policies of manufacturers, and testified in part:

Q. What is the purpose of that?

A. Based on the first law of nature, of self-defense. It is an organization of members to give them the information on the selling policies of the manufacturers. If we bought goods from a manufacturer, who sold our customers, we would be committing suicide, more or less. In other words, the information given as to the sales policies of the manufacturers, which is voluntary on their part, it puts us in position, as a member of The Dry Goods Institute, to protect our customers and to buy from people who are trying to work with the wholesaler as a medium of distribution.

* * * * *

Q. Do you limit your purchases to those manufacturers who have an A rating, or to those manufacturers who, if they do sell the department stores, charge a differential which will protect you?

A. No, we don't limit them. There might be cases when you would have to buy from the other fellow.

An official of Williams-Richardson Co., Ltd., a member of the institute, testified that he was familiar with the system of rating manufacturers in use by the institute, and said:

Q. In your business, the conduct of your business, what type of manufacturer do you do business with? Do you buy from the manufacturer with the high ratings?

A. We always buy from the manufacturer with the best rating.

An official of Leff Brothers Dry Goods & Notion Co., a member of the institute, testified in part:

Q. In buying the merchandise which you offer for sale do you make use of that booklet which is "Commission's Exhibit No. 53" to inform yourself of the ratings of manufacturers?

A. At times I do; yes. It all depends. Occasionally I try to govern myself by it, because it is to my interest to.

Q. Do you try, wherever possible, to buy from the manufacturer who has an A rating in preference to the others?

A. Most of the times I do. Now, getting back to the same question that you asked me a while ago with the Spool Cotton Co. and the American Thread Co., at

times I have to buy hosiery listed there. They are out of the A class but I am forced to buy it to complete my lines.

An official of John H. Hibbin Dry Goods Co., a member of the institute was questioned concerning the use of the information furnished by the institute showing ratings of manufacturers and what instructions the buyers of that company were given concerning the use of such information, and said:

A. My recollection is that the only information—or the only instructions that I have ever given any of them was that—to be careful in their purchases and to try and buy from people who had not, by their selling policies,—who would not be, by their selling policies, direct competitors of ours.

PAR. 9. The Wholesale Dry Goods Institute, Inc., made it a practice and policy to encourage its members to report to it any instance where a manufacturer made a sale or sales which appeared to be contrary to the rating assigned to such manufacturer by the institute, as for example, a sale by a manufacturer listed as A or A— to a concern not listed in the institute's directory of wholesalers. When any instance is reported to the institute of a manufacturer making a sale or sales not within the scope of the rating assigned him, a letter is sent to such manufacturer, usually in the following form:

In its reports on mill selling policies, our _____ committee has assigned rating A— to your good concern, as representing your selling policy. This rating indicates that your product is being sold to wholesalers only with special contract goods, made under buyer's specifications and labels, for national chains and mail order houses.

It has been reported to us that this rating is incorrect for the reason that your product is being offered to the _____ department store, of _____

According to the best information available to us, the operations of this concern do not conform to the definition of a wholesaler as employed by the Wholesale Dry Goods Institute for its various purposes.

We would be pleased to have your comment on the above.

Upon receipt of such inquiry from the institute, if the manufacturer replied that the sales questioned were inadvertent or without knowledge as to the business of the purchaser and would be discontinued, the institute advised the manufacturer in the following form:

We are very glad to have your letter of _____ in which you state that you have found, upon investigation, that the operations of _____, of _____, do not conform to the definition of a wholesaler as employed by the Wholesale Dry Goods Institute.

In view of your statement to the effect that sales to this concern will be discontinued, no change will be made in your A— rating.

Thanking you for the promptness with which you have handled this matter, and appreciating your interest in distribution through the wholesaler, we are, * * *

In the event no satisfactory adjustment is reached with a manufacturer reported to have made sales outside the scope of his institute rating, the rating of such manufacturer is changed to conform to the new information and the institute advises its members of such change in rating.

PAR. 10. The aforesaid plan of The Wholesale Dry Goods Institute, Inc., as carried out, did in fact have the effects planned, and did, and does, coerce manufacturers in the selection of their customers in individual instances and as a matter of general sales policy. This coercive effect on general sales policy is indicated by the fact that most revisions of manufacturers' ratings have been upward on the rating scale established by the institute; that is, a change from a previous rating to one indicating more favorable treatment of wholesalers as defined by the institute. Testimony in the record is indicative of the active desire on the part of manufacturers concerned to secure and retain ratings considered satisfactory by the institute. For example:

A representative of a manufacturer in testifying concerning the policy of his company of refusing to sell to concerns not listed by the institute as wholesalers, said in part:

Q. Is the reason that you cooperate with the Wholesale Dry Goods Institute the fact that you do not wish your rating changed?

A. Quite naturally we would like to protect our rating.

A representative of another manufacturer, in testifying concerning the relations of his company with the institute and its members, said:

Q. Do you think that if the institute were to give you a rating lower than an A rating, and such a rating as would indicate that you didn't confine your sales to jobbers, that the result would be you would lose business among the jobbers, and among the members of the Wholesale Dry Goods Institute?

A. Yes.

In the course of his testimony the sales manager of one of the largest manufacturers of knitted goods, in connection with the discontinuance of sales to certain purchasers and the relation of his company to the institute, said:

Q. Did Mr. Garrison tell you, or intimate to you, that if you continued to make sales to Wayne Leeson & Sons, the Wholesale Dry Goods Institute would change your rating?

A. I don't recall. Our attitude with the Wholesale Dry Goods Institute was one—it was this way: where we were selling eighty percent of our production to wholesalers, we were naturally eager to keep in the status of having a high rating.

Q. In other words, would it affect your business with the wholesalers if the Wholesale Dry Goods Institute lowered your rating?

A. I don't know.

The coercive effect upon manufacturers in the selection of individual customers and their refusal to accept or continue as customers concerns buying for resale to retail dealers, but not listed in the Institute's directory of wholesalers, is indicated by the following examples:

On October 27, 1939, the Perry Knitting Co. wrote to Louis Cohen, of Ladysmith, Wis.:

We have before us your recent letter requesting samples of our line.

As previously advised from time to time, we are not in a position to quote you or submit samples to you until such time as we have advice through the Wholesale Dry Goods Institute that your operations are such that they can be classified as that of a wholesaler.

If you have been advised by the Wholesale Dry Goods Institute that your operations have now been classified as a jobber or wholesaler, please advise.

On January 31, 1939, George E. Ready of Greensboro, N. C., wrote to the Chicopee Sales Corporation for a price quotation on tobacco muslin, to which inquiry the Chicopee Sales Corporation replied on February 1, 1939:

Thank you for your letter of January 31 asking for prices on tobacco muslin.

Sometime ago our mill set up a program of cooperation with the established wholesale dry goods trade, through the Wholesale Dry Goods Institute at 40 Worth Street, New York. We sell only to wholesalers on these goods who are on their approved list.

As we do not find you listed with them, and if you are doing a regular wholesaling business, we suggest you write them at New York for approval. At that time, we shall be very glad to get in touch with you further.

Mr. Ready replied to this letter under date of February 6, 1939, stating that he could not understand why he should be required to join an organization to make it possible for him to carry on business; that he was established in his line, recognized by other manufacturers, and listed in Dun & Bradstreet. He concluded by saying, "I do not anticipate joining the Wholesale Dry Goods Institute but I will thank you to quote me prices on tobacco muslin, and as the season is on for the sale of this I will appreciate your reply by return mail." On the same date Chicopee Sales Corporation replied to Mr. Ready as follows:

Thank you for your letter of February 6, from which it appears that we did not make ourselves entirely clear in writing you on the first.

In setting up our program of cooperating with the Wholesale Dry Goods Institute, we do not attempt to get anyone to join the Institute as a requirement for selling. We feel that they are much better posted than we are on the type of firms doing a legitimate wholesaling business and use their information as a guide, though many of the people we sell in the jobbing field are not members of the Institute while approved by them.

We feel sure you will have no objection to writing them on the matter if you are doing a legitimate wholesaling business, and as soon as they let us know that they have approved your name, we shall be glad to quote you.

In 1937 several competitors of William J. Dykstra of Grand Rapids, Mich., raised with manufacturers from which that concern purchased; and with The Wholesale Dry Goods Institute, a question as to the right of Dykstra to buy on the basis of being a wholesaler. The Institute wrote a number of manufacturers in the manner indicated by the following letter of October 29, 1939, to the Standard Textile Products Co.:

In its Reports on Mill Selling Policies, our Committee has assigned rating A— to your good concern, as indicative of your selling policy.

Some question has arisen regarding the accuracy of this rating, as our attention has been called to the fact that your products are being sold to William J. Dykstra Co., Grand Rapids, Mich.

From the information available to us, the operations of this concern do not conform to the definition of a wholesaler as that term is employed by the Wholesale Dry Goods Institute for its various purposes.

Will you kindly let us hear from you concerning this, so that we may keep our ratings as accurate as possible.

The Standard Textile Products Co. replied to this letter under date of November 3, 1937, stating in part:

We have been selling the William J. Dykstra Co. of Grand Rapids, Michigan during the past several months. The reports from our representative and other information which we have been able to obtain on this concern specify that they are wholesale distributors of dry goods and notions. The Dun & Bradstreet reference book also lists this company as "wholesale dry goods."

Naturally, we are not familiar with the details of the operations of their business and if you can give us any information as to what way they do not conform with the definition of a wholesaler, term employed by Dry Goods Institute, we shall be glad to have our representative go to Grand Rapids and adjust the matter for us.

We, of course, would not want to do anything that might affect our present rating with your institute.

Another concern, Standard Coated Products Corporation, questioned with regard to its sales to William J. Dykstra Co., on April 7, 1938, wrote to Dykstra as follows:

We delayed acknowledging your letter of March 24 until we could communicate with our representative, Mr. Wright. As we understand him, he has gone thoroughly into the distribution question with you. It is unfortunate that this had to come up and we wish to assure you that we were not at all anxious to discontinue soliciting your business.

We sincerely hope that this may be rectified in the near future, and we will again enjoy the privilege of executing orders for you.

At the time a preliminary investigation was being made by the Commission in the present matter Standard Coated Products Cor-

poration called upon its sales representative, Mr. James R. Wright, for full information as to what statements he had made to Dykstra as to why sales to him were discontinued. To this inquiry Mr. Wright replied on July 11, 1938:

In reply to your letter of July 7, the only reason why I told Dr. Dykstra we could not sell him was the fact that I was advised by your office that the Wholesale Dry Goods Institute threatened to take our "A" rating away from us if we continued to sell him. I think Mr. Dykstra will bear me out. Personally, I like Mr. Dykstra very much and it really was not easy to tell a swell fellow like he is, that he could not buy from us any more. As far as I am concerned, if you give me the word, I will be glad to open his account up again if you feel that it is not going to hurt us with the Wholesale Dry Goods Institute.

After all, I do not pay very much attention to the yips made by other customers. If you listen to them very much, they would not want you to sell to anybody except themselves.

Under date of November 8, 1937, in response to an inquiry concerning William J. Dykstra Co., of Grand Rapids, Mich., The Wholesale Dry Goods Institutes wrote the J. V. Pilcher Manufacturing Co., of Louisville, Ky., advising in part:

From the above you will see that the method of operation of this concern does not conform with the definition of a "wholesaler" employed by the Wholesale Dry Goods Institute for its various purposes.

The J. V. Pilcher Manufacturing Co. replied to this letter under date of November 11, 1937, stating to the Institute:

We thank you for your letter of November 8 in regard to Dykstra Dry Goods Co.

We will look further into this matter with an idea of discontinuing selling them direct.

A number of manufacturers did in fact discontinue selling to Dykstra.

In 1936 The Wholesale Dry Goods Institute wrote to a number of competitors of Abe Rubel & Co., of Corinth, Miss., a typical instance being a letter of July 2, 1936, to William R. Moore Dry Goods Co., of Memphis, Tenn., which inquiry reads:

A question has been raised regarding the status of A. Rubel & Co., Corinth, Miss.

Will you please advise me, if, in your opinion, their operations conform to the definition of a wholesaler as that term is employed by the Wholesale Dry Goods Institute.

Under date of July 7 the William R. Moore Dry Goods Co. replied to the Institute:

With further reference to your letter of July 2, regarding A. Rubel & Co., Corinth, Miss. This firm's principal business is that of retailing. They have a small wholesale department and travel two men, one of them is an old man, more or less of a pensioner, and the other is a kinsman. They sell only to

small merchants, and fill orders both from their retail and wholesale departments.

Therefore, the firm should not be classed as a wholesaler as this term is employed by your institute.

In May 1939 Abe Rubel & Co. sought unsuccessfully to buy tobacco cloth from a number of manufacturers or their agents, and on June 5, 1939, wrote to The Wholesale Dry Goods Institute, Inc., in part:

This firm is not now or never has been in a position so that they would have to beg for anything, but we feel that you should know that we have been in the wholesale game of dry goods and its kindred lines since 1868; that we have 15,000 square feet of floor space devoted entirely to wholesale; that since the time of our organization our men have been on the road traveling twelve months a year.

This was followed by another letter to the institute under date of June 12th reading as follows:

As long as we were with the Old Southern Dry Goods Institute and the time while we were a member of your institution, we were never questioned by anyone on any subject, and now since we are no longer a member of your institution, through some pressure on your part we have been denied purchasing canvas and tobacco cloth from several of the commission houses, which is nothing more than a slap by you in our face.

We are just as much in the jobbing game in proportion to Carson Pirie & Co., of Chicago, Marshall Field of Chicago, or any other jobbing concern with retail outlet.

The writer, knowing most of you in person and having been in the market for the past 40 years, cannot understand any such action on your part against us. We feel that we are certainly due some explanation and when next in your city are going to demand one.

On June 15, 1939, the executive secretary of The Wholesale Dry Goods Institute, Inc., replied to Abe Rubel & Company:

This will acknowledge your letter of June 12.

Please be assured that the Institute has no disposition to do you an injustice. If it has erred in its decision—with respect to recognizing your good concern as operating in conformance of its definition of a wholesaler—then we most certainly want to correct the mistake.

Please do call at the office when you are again in New York, so that we may frankly discuss this matter.

Abe Rubel & Co. on June 17, 1939, replied to the institute:

Referring to your kind letter of the fifteenth, will state that on account of the action of your institution we have been able to purchase from Kendall, Southeastern, and others, tobacco cloth. We have purchased this material for over 50 years.

I trust that you will communicate with Stevens, Woodward, Baldwin, and Kendall, also Southeastern and have this matter straightened out.

The executive secretary of the institute on June 19, 1939, replied to Abe Rubel & Co. in part:

Acknowledging your letter of June 17, I wish it were as easy as you suggest to "have this matter straightened out."

Let me remind you that the institute does not attempt to dictate, or even influence the selling policy of any manufacturer. Its program provides merely for supplying its membership with information concerning the selling practices employed by those manufacturers to whom they look for their merchandise requirements.

Your inability to purchase tobacco cloth from Kendall Mills, Southeastern Cottons, Woodward, Baldwin, and others, is due to the individual action of each, and not because of the institute.

It is true, of course, that if a manufacturer sells to concerns other than those considered to be operating in accordance with the institute's definition of a wholesaler, then a different rating is applicable than when sales are confined to concerns meeting the definition.

Under date of March 21, 1939, Davis & Catterall, manufacturers of textile products, wrote the U. R. M. Wholesale Dry Goods, Inc., of Spokane, Wash., in part as follows:

The writer has just returned from the offices of the Wholesale Dry Goods Institute where he has spent a good part of the day discussing your organization with them, but unfortunately could not change them from their original opinion that you do not conform to their ideas as a wholesaler.

* * * * *

Just so long as the institute do not list you, we must decline to offer you our line due to the reason that they in turn rate us on the accounts that we sell and as we today have an A rating with the institute and jobbing trade, we, naturally, cannot take any chances in jeopardizing our position. We feel certain that you will understand this.

We realize that you will have no difficulty in procuring another source of prints, but it is the writer's suggestion you make your peace with the institute as I believe you will find more and more of the better producers of merchandise affiliating themselves with that organization, and it is very possible that you may have this annoyance with your other sources of supply.

We, of course, do not like to lose you as a customer and hope that you will understand why we must take the position that we do. It is our sincere wish that you will not be prejudiced against our organization. We again offer our services in any way to straighten out this matter with the institution. We most certainly would like to see you get a square deal.

In numerous other instances various concerns were prevented from buying and manufacturers prevented from selling to them, by reason of the aforesaid practices of The Wholesale Dry Goods Institute, Inc. In some instances where sales to such concerns were not actually prevented, the price to such concerns was increased above that granted by manufacturers to concerns listed in the Institute's directory of wholesalers. Such increases represented the

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refusal of manufacturers to grant their customary wholesaler's discount to buyers not recognized by the Institute as wholesalers, thus forcing such buyers to pay higher prices if they continued their purchases.

PAR. 11. The capacity, tendency, and effect of the understandings, agreements, combination, and conspiracy, and the acts and practices performed thereunder and in connection therewith by respondents, has been, and is, to coerce, restrain, and restrict manufacturers of dry goods, notion, and allied lines in the selection of customers to whom they will sell; to prevent dealers in dry goods, notions, and allied lines, including competitors of respondent members of The Wholesale Dry Goods Institute, Inc., from purchasing their supplies of such goods from manufacturers thereof; to prevent dealers competitive with respondent members of The Wholesale Dry Goods Institute, Inc., and dealers selling at retail, from buying at prices as favorable as those granted to members and others listed in said institute's directory of wholesalers, thereby increasing the prices to such purchasers and to the consuming public; to place in the hands of respondents control over the business practices of manufacturers and distributors of dry goods, notions, and allied lines of merchandise and the power to so hinder, harass, and restrain the operations of manufacturers and distributors who do not conform to respondents' wishes as to exclude, or substantially exclude, them from the industry; and to hinder and prevent competition in the sale and distribution of dry goods, notions, and allied lines of merchandise.

CONCLUSION

The aforesaid mutual understandings, agreements, combination, and conspiracy, and the acts and practices performed thereunder or in connection therewith by said respondents under the conditions and circumstances set forth 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 certain 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, renewed motion to reverse the rulings of the trial examiners on evidence and supplement to said motion, 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 respondent The Wholesale Dry Goods Institute, Inc., a membership corporation, its officers and directors, individually and as such officers or directors, its members individually and as such members, or any group of such respondents, their agents, representatives, 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, directly, or indirectly, of establishing or seeking to establish respondents, or any of them, as a preferred class of buyers, or of inducing, coercing, or restraining manufacturers or their agents in the determination of their sales and pricing policies or the selection of their customers, or otherwise hindering, restraining, or lessening competition in the sale and distribution of dry goods, notions, or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act:

1. By preparing, maintaining, and circulating any list of buyers considered or recognized by respondents as "wholesalers," or any similar list of preferred buyers.

2. By preparing, maintaining, and circulating any list of manufacturers or their agents classified or rated in a manner which designates those whose sales policies are considered satisfactory to respondents and those whose sales policies are less satisfactory or not satisfactory to respondents.

3. By ceasing or threatening to cease to deal, or dealing or threatening to deal less extensively than otherwise, with any manufacturer or his agents on the ground or for the reason that such manufacturer sells to buyers not considered or recognized by respondents as "wholesalers," or sells to retailers, or does not grant a more favorable price to respondents and others considered or recognized by them as "wholesalers" than to other buyers.

4. By advocating and urging said common course of action outlined in paragraph 3 hereof in publications or letters, at meetings of respondents or groups or committees of respondents, or in any other manner.

5. By making threats, express or implied, to any manufacturer or his agents for the purpose or with the effect of inducing, persuading, constraining, or coercing such manufacturer or his agents to refuse to sell, cease selling, or charge a higher price, to any buyer or prospective buyer.

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 for the reasons set out in paragraph 1 of the findings as to the facts in this proceeding the complaint herein be, and it is, hereby dismissed as to respondents W. W. Couch Co., Inc.; Harris, Davis & Co., Inc.; Schwartz Brothers & Co., Inc.; F. B. Thomas & Co., Inc., E. & M. Hirschler Co., Inc.; Smith, Taylor Co., Inc.; and J. S. Reeves & Co., Inc.

It is further ordered, That respondents' motion to reverse certain rulings of the trial examiners on the evidence, which motion was denied without prejudice to respondents' right to renew same and which was duly renewed, and respondents' motion supplementing said renewed motion be, and the same hereby are, denied.

Syllabus

IN THE MATTER OF
ALFRED W. WILSON, TRADING AS
A. W. WILSON CO.

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

Docket 4131. Complaint, May 8, 1940—Decision, Nov. 26, 1941

Where an individual engaged in interstate sale and distribution of coin-operated vending machines and candy; by letters, circulars and other advertising material, advertisements in newspapers and other periodicals, and by oral statements of his agents and salesmen—

- (a) Represented that purchasers of such machines would be given exclusive rights to operate them within certain designated territories, that locations for the machines had been or would be, obtained by him prior to the time of delivery to the purchaser, that the machines would be personally installed at the designated locations by his salesmen or agents, and that the amount which purchasers would be required to pay for locations would not exceed certain designated amounts or commissions; the facts being he did not grant such rights, but frequently sold his machines to different purchasers for operation within the same territory and, in view of outright sales thereof, could not control or determine the territories in which the machines would be operated in the future, and he did not obtain locations or make installation, while the amounts his purchasers were required to pay for locations frequently exceeded those represented;
- (b) Represented that such machines would be delivered within a specified time, and that a certain quantity of candy to be dispensed by said machines, would be supplied free by him, when in fact he frequently failed to make delivery within time agreed upon and supplied to purchasers without charge the neither designated, nor any other, amount, of candy;
- (c) Represented that his business was nation-wide in scope, when in fact it was confined principally to States in the western portion of the United States; and
- (d) Represented that net profits of not less than \$30 per week were usually and customarily derived by purchasers, and that said machines would be repurchased by him at the original price, less the net earnings, if at the end of 90 days' operation the machines had not earned for the purchaser profits equal to their original price, when in fact purchasers had not been able to earn any amount approximating aforesaid figure, such profits were not possible under usual conditions, and he did not repurchase such machines at the end of 90 days' operation or any other time, even though they might have failed to earn any profit;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and of inducing it because of said belief, to purchase substantial quantities of his products:

Complaint

34 F. T. C.

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

Mr. Morton Nesmith for the Commission.

Mr. Donald Kolts, 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 Alfred W. Wilson, individually, and trading as the A. W. Wilson 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, Alfred W. Wilson, is an individual, trading and doing business as A. W. Wilson Co., with his office and principal place of business at 11015 Blix Street, North Hollywood, Calif. The respondent is now, and for more than one year last past has been, engaged in the sale and distribution of coin-operated vending machines and candy in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes such vending machines and candy, when sold, to be transported from his principal 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 such products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, and for the purpose of inducing the purchase of his products, the respondent has made many false and misleading representations with respect to his vending machines and the profits to be derived from the operation thereof, such representations being made by means of letters, circulars, and other advertising material distributed among prospective purchasers, by advertisements inserted in newspapers and other periodicals, and by oral statements and representations made by respondent's agents and salesmen to prospective purchasers. Among and typical of such false and misleading representations are the following:

1. That the purchasers of such machines would be given exclusive rights to operate the machines within certain designated territories.

2. That locations for the machines had been obtained or would be obtained by respondent prior to the time of delivery of the machine to the purchaser.

3. That the machines would be personally installed at the designated locations by respondent's salesmen or agents.

4. That the amount which purchasers of the machines would be required to pay for locations would not exceed certain designated amounts or commission.

5. That said machines would be delivered within a specified time.

6. That a certain quantity of candy, to be dispensed by said machines, would be supplied free by the respondent prior to or at the time of delivery of said machines.

7. That respondent's business is Nation-wide in its scope;

8. That net profits of not less than \$30 per week were usually and the time of delivery of said machines.

9. That said machines would be repurchased by the respondent at the original price, less the net earnings, if at the end of 90 days' operation the machines had not earned for the purchaser profits equal in amount to the original price of the machine.

PAR. 3. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondent does not grant exclusive territorial rights to the purchasers of his machines, but in many instances has sold his machines to different purchasers for operation within the same territory. Respondent does not obtain locations for the operation of his machines, nor does respondent install such machines for operation. The amounts which purchasers of the machines have been required to pay for locations have in many instances exceeded the amounts or commissions represented by the respondent and his agents. In many instances the respondent has failed to make delivery of the machines within the time agreed upon by the purchaser and the respondent or his representatives.

The respondent has not supplied to the purchasers without charge the designated amount of candy or any other amount of candy. Respondent's business is not Nation-wide in its scope, but is confined principally to States in the western portion of the United States. The purchasers of respondent's machines have not been able, through the operation of such machines, to earn \$30 per week or any amount approximating such figure, nor are such profits possible under the usual and normal conditions under which such machines are customarily operated. The respondent does not repurchase such machines from the original purchasers at the end of ninety days' operation or at any other time, even though the machines may have failed to earn any profit for the purchaser.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his products has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's products.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 8, 1940, issued, and on July 27, 1940, served, its complaint in this proceeding upon respondent Alfred W. Wilson, individually and trading as A. W. Wilson Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of 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. The respondent, Alfred W. Wilson, is an individual, trading and doing business as A. W. Wilson Co., with his office and principal place of business at 11015 Blix Street, North Hollywood, Calif. The respondent is now, and for more than one year last past has been, engaged in the sale and distribution of coin-operated vending machines and candy in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes such vending machines and candy, when sold, to

be transported from his principal 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 such products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, and for the purpose of inducing the purchase of his products, the respondent has made many false and misleading representations with respect to his vending machines and the profits to be derived from the operation thereof, such representations being made by means of letters, circulars, and other advertising material distributed among prospective purchasers, by advertisements inserted in newspapers and other periodicals, and by oral statements and representations made by respondent's agents and salesmen to prospective purchasers. Among and typical of such false and misleading representations are the following:

1. That the purchasers of such machines would be given exclusive rights to operate the machines within certain designated territories.
2. That locations for the machines had been obtained, or would be obtained, by respondent prior to the time of delivery of the machine to the purchaser.
3. That the machines would be personally installed at the designated locations by respondent's salesmen or agents.
4. That the amount which purchasers of the machines would be required to pay for locations would not exceed certain designated amounts or commissions.
5. That said machines would be delivered within a specified time.
6. That a certain quantity of candy, to be dispensed by said machines, would be supplied free by the respondent prior to or at the time of delivery of said machines.
7. That respondent's business is Nation-wide in its scope.
8. That net profits of not less than \$30 per week were usually and customarily derived by purchasers.
9. That said machines would be repurchased by the respondent at the original price, less the net earnings, if at the end of 90 days' operation the machines had not earned for the purchaser profits equal in amount to the original price of the machine.

PAR. 3. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondent does not grant exclusive territorial rights to the purchasers of his machines, but in many instances has sold his machines to different purchasers for opera-

tion within the same territory. Inasmuch as respondent has made, and makes, outright sales of the vending machines, the Commission concludes that it is impossible for him to control or determine the territories in which they will be operated in the future. Respondent does not obtain locations for the operation of his machines, nor does respondent install such machines for operation. The amounts which purchasers of the machines have been required to pay for locations have in many instances exceeded the amounts or commissions represented by the respondent and his agents. In many instances the respondent has failed to make delivery of the machines within the time agreed upon by the purchaser and the respondent or his representatives.

The respondent has not supplied to the purchasers without charge the designated amount of candy or any other amount of candy. Respondent's business is not Nation-wide in its scope, but is confined principally to States in the western portion of the United States. The purchasers of respondent's machines have not been able, through the operation of such machines, to earn \$30 per week, or any amount approximating such figure, nor are such profits possible under the usual and normal conditions under which such machines are customarily operated. The respondent does not repurchase such machines from the original purchasers at the end of 90 days' operation, or at any other time, even though the machines may have failed to earn any profit for the purchaser.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his products has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

tions of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent Alfred W. Wilson, individually and trading as A. W. Wilson 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 coin-operated vending machines and candies in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That respondent grants to any purchaser an exclusive territory for the operation of vending machines purchased from him.

2. That locations for said vending machines have been obtained, or will be obtained, by respondent prior to delivery of said vending machines to the purchaser, unless said locations actually are obtained.

3. That said vending machines will be installed at designated locations by respondent's salesmen or agents, unless respondent or his agents actually effect such installation.

4. That the amount purchasers of vending machines will be required to pay for locations for such machines is less than is the fact.

5. That said vending machines will be delivered within a specified time, when such is not the fact.

6. That any candy to be dispensed by vending machines purchased from respondent will be furnished.

7. That respondent's business is Nation-wide, or that it is greater in scope or size than is the fact.

8. That each vending machine usually and customarily provides a net profit of not less than \$30 per week, or provides a net profit of any other amount in excess of the average, usual, and customary sum or amount actually earned under normal conditions in due course of business.

9. That respondent will, under any stated conditions, repurchase vending machines sold by him unless he does actually repurchase such machines in accordance with the representations made.

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

Complaint

34 F. T. C.

IN THE MATTER OF

LUCIAN V. SEGAL, TRADING AS SEGAL OPTICAL
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4181. Complaint, July 11, 1940—Decision, Nov. 26, 1941*

Where an individual engaged in the manufacture or assembly and interstate sale and distribution to wholesalers and large retailers such as chain stores, of "ready-to-wear" reading and sun glasses, which retailed at from 25 cents to \$1 a pair for the former and from 10 to 50 cents for the latter; purchasing the frames or parts from domestic manufacturers and importing from Japan 75 percent of the lenses and substantially all of the glasses, which, on importation, were completed products requiring only certain cutting and fitting operations by him, and original labels on each of which, bearing legend "Japan" or "Made in Japan" or other words showing country of origin, were removed either in processing or in final handling before packaging—

Offered and sold his said glasses with no marking thereon, as associated by a substantial portion of the purchasing public with imported articles, to indicate that lenses or glasses involved were imported from Japan or any foreign country;

With tendency and capacity to mislead and deceive purchasers and members of the purchasing public into the false belief that said glasses and all their parts were of domestic manufacture and origin, preferred by members of the purchasing public over products of Japanese or other foreign source, and into purchase thereof in reliance upon such belief, and with result of thereby placing in hands of resellers of his said products means by which to mislead and deceive members of the purchasing public into such belief:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Merle P. Lyon for the Commission..

Mr. James W. Bevans, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Lucian V. Segal, an individual trading as Segal Optical 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, Lucian V. Segal, is an individual trading under the name and style of Segal Optical Co., with his office and principal place of business located at 56 West Twenty-second Street in the city of New York, State of New York. 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 his place of business in the State of New York to purchasers, including retailers, resellers, and users thereof, located in various States of the United States other than the State of New York, and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as above described, and in connection with the sale and distribution of his 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, he 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 his eyeglasses, including reading glasses and sunglasses, made of lenses having Japanese or foreign origin, without any imprinting, labeling, or marking thereof 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 upon respondent Lucian V. Segal, an

individual trading as Segal Optical Co., charging him with violation of the provisions of section 5 of the Federal Trade Commission 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 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, report of the trial examiner, 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 Lucian V. Segal is an individual trading under the name Segal Optical Co. and having his principal office and place of business at 40 West Twenty-fourth Street, New York, N. Y. He is engaged in the manufacture or assembly of spectacles or reading glasses and sunglasses.

PAR. 2. In the course and conduct of his aforesaid business respondent is now, and for a number of years has been, engaged in the sale and distribution of reading glasses and sunglasses and causes his said products, when sold, to be transported from his place of business in New York to purchasers 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 the various States of the United States.

PAR. 3. Respondent does not manufacture the various parts of the spectacles or reading glasses and sunglasses sold by him. He purchases the frames or parts thereof from domestic manufacturers; he imports from Japan approximately 75 percent of the lenses for use in assembling reading glasses, and purchases the remainder from domestic manufacturers, and this ratio of imports has continued since 1938; and he has, since 1938, imported from Japan substantially all the glasses used in the sunglasses produced by him. At the time of importation into this country the lenses and glasses of Japanese man-

ufacture are completed products insofar as their optical or protective qualities are concerned. They require only cutting to fit the size of the frames in which they are to be inserted and beveling the edges to secure them in place when they are so fitted, and these cutting and fitting operations are performed by respondent. The only exceptions are the lenses or glasses intended for use in rimless frames, and these are imported in fully finished condition except for boring holes in said lenses or glasses for the attachment of frames, which operation is performed by respondent.

PAR. 4. At the time of entry into this country the lenses and glasses imported by respondent have a label glued or otherwise attached to each lens or glass, which label bears the legend "Japan" or "Made in Japan," or other words showing the country of origin. In the process of cutting, edging, boring, and fitting into frames the lenses and glasses are subjected to handling, wetting, wiping, and cleaning with the result that the labels bearing the name of the country of origin becomes detached or are removed, and in the final handling before packaging any such labels which have not been detached or removed in the process heretofore described are then removed. Thus, when the reading glasses or sunglasses are delivered to purchasers, they bear no marking indicating that the lenses or glasses were imported from Japan or any other foreign country. Respondent's products, customarily referred to in the trade as "ready-to-wear" glasses, are sold to wholesalers and large retailers such as chain stores. The reading glasses are ordinarily sold at retail to members of the purchasing public at from 25 cents to \$1 per pair, and the sunglasses are usually retailed to the public at from 10 to 50 cents per pair.

Respondent testified that he does not make any representations to purchasers with respect to the domestic or foreign origin of his products, but if asked about such origin advises the purchaser or prospective purchaser that some of his lenses and glasses are imported from Japan. Until a few months before the issuance of the complaint in this proceeding respondent sold his sunglasses mounted upon cards bearing the legend "Scientifically made by American workmen." Respondent also testified that although he is able to, and does, purchase Japanese lenses and glasses at a lower price than he can purchase similar products of American manufacture, he would prefer to use American products but is unable to do so because he cannot purchase sufficient quantities thereof from domestic manufacturers.

PAR. 5. A substantial portion of the purchasing public has become familiar with the fact that imported articles customarily bear a

mark indicating the country of origin and is accustomed, when purchasing, to look for such marks of foreign origin. When no such marking appears upon an article offered for sale, members of the purchasing public assume that it is produced in whole or in major part by domestic manufacturers. There exists among members of the purchasing public, including purchasers of reading glasses and sunglasses, a substantial preference for products of domestic manufacture or origin as compared with those of Japanese or other foreign origin.

The practice of respondent in offering for sale, selling, and distributing reading glasses and sunglasses having lenses or glasses of Japanese origin, without any labeling or marking thereon to indicate to purchasers that said lenses or glasses are of Japanese origin, has the tendency and capacity to mislead and deceive purchasers and members of the purchasing public into the false and erroneous belief that the said reading glasses and sunglasses and all the parts thereof are of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief. Respondent thus places in the hands of retailers and resellers of his products a means by which to mislead and deceive members of the purchasing public into the said false and erroneous belief.

CONCLUSION

The aforesaid acts and practices of respondent 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.

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, 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 Lucian V. Segal, an individual trading as Segal Optical Co., or trading under any other name, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale,

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sale, and distribution of reading glasses and sunglasses, or other similar products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling, separately or as a part of completed reading or sunglasses, lenses, or glasses which are imported from any foreign country without affirmatively disclosing thereon or in immediate connection therewith such foreign origin.

2. Representing in any manner that lenses or glasses of foreign manufacture, whether or not they are mounted in frames, are of domestic manufacture.

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.

Complaint

IN THE MATTER OF
 CHARLES SHRADER, TRADING AS QUEEN 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 4570. Complaint, Aug. 15, 1941—Decision, Nov. 26, 1941

Where an individual engaged in interstate sale and distribution of his "Shrader's Queen Brand Capsules" and "Queen Brand Capsules"; by advertisements sent through the mails, in newspapers, circulars and other advertising literature—

- (a) Represented, directly and by implication, that his said preparation was a safe, harmless, and effective treatment for delayed, suppressed, irregular, painful, and scanty menstruation, or other derangements of the menstrual function, facts being use of the preparation in question as prescribed in said advertisements as a treatment for delayed menstruation might result in gastrointestinal disturbances and excessive uterine hemorrhages; and use thereof by pregnant women might result in abortion or miscarriage and possible infection, remaining local to pelvic organs, or becoming systemic, as in septicemia or blood poisoning; and
- (b) Failed to reveal facts material in the light of such representations, or with respect to aforesaid consequences which might result from use of preparation in question under usual or prescribed conditions;

With effect of misleading and deceiving a substantial portion of the purchasing public into the false belief that his said preparation possessed certain therapeutic properties and values, and was harmless when such was not the fact, and with further effect of thereby inducing purchasing public to buy substantial quantities thereof:

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

Mr. J. V. Buffington for the Commission.

COMPLAINT

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

PARAGRAPH 1. Respondent, Charles Shrader, is an individual trading under the name Queen Chemical Co., with his principal place of

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business located at 126 Arden Road, Mount Lebanon, in the city of Pittsburgh and State of Pennsylvania. Said respondent is now, and for more than one year last past has been, engaged in the sale and distribution of various medicinal preparations. Among such preparations sold and distributed by the respondent is a drug preparation, known as "Shrader's Queen Brand Capsules" and as "Queen Brand Capsules."

PAR. 2. Respondent causes said preparation, when sold, to be transported from his place of business in the State of Pennsylvania to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his 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 has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and by circulars and other advertising literature, are the following:

LADIES—Use Queen Brand Capsules; best medicine for women; safe, dependable; price \$3. Literature free.

Women whose menstruation is delayed or suppressed or whose periods are irregular, painful or scanty should use Queen Brand Capsules. They are intended especially for the relief of such disturbances of the menstrual function with consequent suffering; their prime recommendation is their safety and certainty.

Queen Brand Capsules are in "soluble capsule" form and act soon after being taken. They act locally and effectually and at the same time safely and promptly on the pelvic organs. In this way they speedily relieve suppressions and restore the menstrual period or normal monthly flow.

* * * It matters not how many disappointments you may have had with other medicines or how long standing the case may be, Queen Brand Capsules

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give relief promptly and safely without interfering with the daily routine of life.

In Queen Brand Capsules we offer a remedy which is safe under all conditions and one that is effective and reliable in the most stubborn cases of prolonged suppression, painful menstruation and other derangements of the menstrual function.

GUARANTEED SAFE Queen Brand Capsules contain nothing that will injure health. Their use produces no unpleasant after effects. They may be employed with perfect safety by nursing mothers without injury to herself and child.

OUR GUARANTEE. We guarantee our remedy to be exactly as we represent it and warrant same to be absolutely harmless if taken in accordance with our directions.

Ladies! Do as other women do! Take Queen Brand Capsules when troubled with over-due (**DELAYED**) painful or suppressed menstruations arising from the usual abnormal causes.

Guaranteed SAFE—QUEEN BRAND CAPSULES contain nothing that will injure the health.

PAR. 4. Through the use of the foregoing statements and representations, and others similar thereto not specifically set out herein, the respondent represents and has represented, directly and by implication, that his said preparation is a safe, harmless, and effective treatment for delayed, suppressed, irregular, painful, and scanty menstruation, or other derangement of the menstrual function.

PAR. 5. The foregoing statements, representations and advertisements are grossly exaggerated, false, and misleading. In truth and in fact, respondent's said preparation is not a safe, harmless, or effective treatment for delayed, suppressed, irregular, painful, and scanty menstruation, or other derangements of the menstrual function.

PAR. 6. The aforesaid representations and advertisements of respondent's said preparation constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the preparation to which the advertisement relates under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

Said preparation is not a safe, harmless preparation because it contains the drugs apiol, ergot, oil of savin, aloin and oil of pennyroyal 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 the aforesaid preparation by nonpregnant women as a treatment for delayed menstruation, as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may result in gastrointestinal disturbances such as catharsis,

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enteritis, nausea, and vomiting, with pelvic congestion, and may lead to excessive uterine hemorrhages.

The use of the aforesaid preparation by pregnant women may result in abortion or miscarriage which may be followed by infection which may remain local to the pelvic organs or become systemic as in septicemia or blood poisoning.

PAR. 7. The use by the respondent of the aforesaid false advertisements with respect to his said preparation, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's preparation possesses therapeutic properties and values which it does not in fact possess, and that said preparation is safe and harmless to take, when such is not the fact, and has the tendency and capacity to, and does, induce the purchasing public to purchase substantial quantities of respondent's said preparation as a result of such mistaken and erroneous belief.

PAR. 8. 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 August 15, 1941, issued and thereafter served its complaint in this proceeding upon respondent, Charles Shrader, individually and trading under the name Queen Chemical Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Respondent in his answer, admits all the material allegations of fact contained in the complaint and waives all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Charles Shrader, is an individual trading under the name Queen Chemical Co., with his principal place of busi-

ness located at 126 Arden Road, Mount Lebanon, in the city of Pittsburgh and State of Pennsylvania. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of various medicinal preparations. Among such preparations sold and distributed by respondent is a drug preparation, known as "Shrader's Queen Brand Capsules" and as "Queen Brand Capsules."

PAR. 2. Respondent causes said preparation, when sold, to be transported from his place of business in the State of Pennsylvania 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 his 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, respondent has disseminated and is now disseminating, and has caused and is now causing 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 is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by means of the United States mails, by advertisements in newspapers and by circulars and other advertising literature, are the following:

LADIES—Use Queen Brand Capsules; best medicine for women; safe, dependable; price \$3. Literature free.

Women whose menstruation is delayed or suppressed or whose periods are irregular, painful or scanty should use Queen Brand Capsules. They are intended especially for the relief of such disturbances of the menstrual function with consequent suffering; their prime recommendation is their safety and certainty.

Queen Brand Capsules are in "soluble capsule" form and act soon after being taken. They act locally and effectually and at the same time safely and promptly on the pelvic organs. In this way they speedily relieve suppressions and restore the menstrual period or normal monthly flow.

* * * It matters not how many disappointments you may have had with other medicines or how long standing the case may be, Queen Brand Capsules give relief promptly and safely without interfering with the daily routine of life.

In Queen Brand Capsules we offer a remedy which is safe under all conditions and one that is effective and reliable in the most stubborn cases of prolonged

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suppression, painful menstruation and other derangements of the menstrual function.

GUARANTEED SAFE—Queen Brand Capsules contain nothing that will injure health. Their use produces no unpleasant after effects. They may be employed with perfect safety by nursing mothers without injury to herself and child.

OUR GUARANTEE. We guarantee our remedy to be exactly as we represent it and warrant same to be absolutely harmless if taken in accordance with our directions.

Ladies! Do as other women do! Take Queen Brand Capsules when troubled with overdue (**DELAYED**) painful or suppressed menstruations arising from the usual abnormal causes.

Guaranteed SAFE—**QUEEN BRAND CAPSULES** contain nothing that will injure the health.

PAR. 4. Through the use of the foregoing statements and representations, and others similar thereto not specifically set out herein, the respondent represents and has represented, directly and by implication, that his said preparation is a safe, harmless, and effective treatment for delayed, suppressed, irregular, painful, and scanty menstruation, or other derangements of the menstrual function.

PAR. 5. The foregoing statements, representations, and advertisements are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a safe, harmless, or effective treatment for delayed, suppressed, irregular, painful, and scanty menstruation, or other derangements of the menstrual function.

PAR. 6. The aforesaid representations and advertisements of respondent's preparation constitute false advertisements for the further reason, that they fail to reveal facts material in the light of such representations, or, material with respect to consequences which may result from the use of the preparation to which the advertisement relates under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

Respondent's preparation is not a safe, harmless preparation because it contains the drugs apiol, ergot, oil of savin, aloin and oil of pennyroyal 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 respondent's preparation by non-pregnant women as a treatment for delayed menstruation, as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may result in gastrointestinal disturbances, such as catharsis, enteritis, nausea, and vomiting, with pelvic congestion, and may lead to excessive uterine hemorrhages.

The use of the aforesaid preparation by pregnant women may result in abortion or miscarriage which may be followed by infection which

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may remain local to the pelvic organs or become systemic as in septicemia or blood poisoning.

PAR. 7. The use by the respondent of the aforesaid false advertisements with respect to his said preparation, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's preparation possesses therapeutic properties and values which it does not in fact possess, and that said preparation is safe and harmless to take, when such is not the fact, and has the tendency and capacity to, and does, induce the purchasing public to purchase substantial quantities of respondent's said preparation as a result of such mistaken and erroneous belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and respondent's answer thereto, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Charles Shrader, individually and trading under the name Queen Chemical Co., or trading under any other name or names, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his medicinal preparation known as Shratler's Queen Brand Capsules and as Queen Brand Capsules, or of any other medicinal preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or by implication, that said preparation is a safe, harmless, and effective treatment for delayed, suppressed, irregular, painful, or scanty menstruation, or other derange-

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ments of the menstrual function; or which advertisement fails to reveal that the use of said preparation may cause gastrointestinal disturbances, pelvic congestion, and excessive uterine hemorrhages, and in cases of pregnancy may cause infection of the pelvic organs 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 the dangerous consequences which may result from the use of said preparation, as required in paragraph 1 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, respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF

CHICAGO MEDICAL BOOK COMPANY, W. B. SAUNDERS
COMPANY, J. B. LIPPINCOTT COMPANY, C. V. MOSBY
COMPANY, AND VAN ANTWERP LEA AND CHRISTIAN
FEBIGER, TRADING AS LEA & FEBIGERCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3557. Complaint, Aug. 26, 1938—Decision, Nov. 28, 1941*

Where a corporation dealing exclusively in medical books at wholesale and retail in Chicago and throughout the United States, together with the four publishers from whom it purchased about 60 percent of such books; having in mind the price cutting or allowance of discounts by one W. & F. Co., a Chicago jobbing concern dealing in books of all types and doing a Nation-wide business;

- (a) Entered into agreements and conspiracies among themselves which were intended to and did prevent said W. & F. Co., competitor of aforesaid distributor, from securing medical books at the regular dealer's discount; and
- (b) Refused, pursuant to such agreements, etc., to sell the medical books of the publishers in question at the regular dealer's discount; with purpose and effect of cutting off the supply of such books to said company, and with result that said company, which had received requisitions from the Government for medical books for more than 30 years, was unable to submit bids in response to such requisitions because of its inability to secure most of the books thus called for at the regular dealer's discount; and

Where aforesaid distributor and two of aforesaid publishers of medical books—

- (c) Entered into separate agreements and conspiracies to prevent, and which did prevent a concern which sold new and slightly used medical books in Chicago and throughout the United States, and which was becoming a strong competitive factor in the new book business, from obtaining the medical books of said publishers at the regular dealer's discount; and
- (d) Refused, pursuant to said agreement, etc., to sell such medical books to such concern at the regular dealer's discount, with intent and effect of cutting off said concern's supply thereof, and with result that it was deprived of a substantial portion of its business of selling to hospitals, medical libraries, and government institutions requiring a 10 percent discount:

Tendency and effect of which acts and practices were to lessen competition in the sale and distribution of medical books, published by said publishers, in Chicago and in interstate commerce; to restrain the normal trade in and place a direct burden upon, such commerce from aforesaid publishers' places of business in other States to said concerns in Illinois; to create a monopoly in aforesaid distributor in sale and distribution of such books

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in said commerce, to injure said concerns, competitors of aforesaid distributor, and unfairly divert business from them to said distributor:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, had a dangerous tendency to prevent competition and to create a monopoly in the sale and distribution of medical books in interstate commerce, to unduly restrict and restrain the sale and distribution of such books in said commerce, and constituted unfair methods of competition.

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

Mr. Fletcher G. Cohn for the Commission.

Mr. Carlton L. Fischer and *Mr. J. Milton Guy, Jr.* of Campbell, Clithero & Fischer, of Chicago, Ill., for Chicago Medical Book Co.

Mr. Carroll Wetzel of Dechert, Smith & Clark, of Philadelphia, Pa., for W. B. Saunders Co.

Evans, Bayard & Frick, of Philadelphia, Pa., for J. B. Lippincott Co.

Mr. William Kohn, of St. Louis, Mo., for C. V. Mosby Co.

Mr. Boyd L. Spahr, Jr. of Ballard, Spahr, Andrews & Ingersoll, of Philadelphia, Pa., for Lea & Febiger.

COMPLAINT

Pursuant to the provisions of the Federal 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 above named respondents, and each of them, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Chicago Medical Book Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with principal office and place of business at Congress and Honore Streets, Chicago, Ill.

Respondent, W. B. Saunders Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with principal office and place of business at West Washington Square, Philadelphia, Pa.

Respondent, J. B. Lippincott Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with principal office and place of business at East Washington Square, Philadelphia, Pa.

Respondent, C. V. Mosby Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of

Missouri, with principal office and place of business at 3523 Pine Boulevard, St. Louis, Mo.

Respondents, Van Antwerp Lea and Christian Febiger, are co-partners doing business under the firm name and style of Lea & Febiger, with principal office and place of business at 600 South Washington Square, Philadelphia, Pa.

PAR. 2. Respondents, W. B. Saunders Co., J. B. Lippincott Co., C. V. Mosby Co., and Lea & Febiger, are publishers and sellers of medical and other scientific books. A large proportion of the books and treatises on medical and allied subjects (hereinafter referred to as medical books) sold annually and in current use in the United States are published by one or the other of said publishers. Respondent Chicago Medical Book Co. is engaged in the business of selling and dealing in such books, both at wholesale and retail, and purchases or receives on consignment, sells and deals in books published by all of said respondent publishers. Said Chicago Medical Book Co. is engaged in substantial competition with other wholesalers and retailers of such books, in the sale and resale of books published by said publisher respondents and other publishers.

PAR. 3. In the course and conduct of their respective businesses each of said respondents transports books, or causes the same to be transported, from their respective places of business to their customers, purchasers or consignees in other States of the United States; and there is and has been at all times herein mentioned a current of trade and commerce in such books between the States wherein these several respondents are located and various other States of the United States.

PAR. 4. Wilcox & Follett Co. is an Illinois corporation engaged in the business of selling and dealing in books at wholesale and retail, with principal office and place of business in Chicago, Ill., and stores in other cities. Several years ago said Wilcox & Follett Co. commenced to sell and deal in medical books, and in that field became a competitor of respondent Chicago Medical Book Co. In and prior to the year 1936 said Wilcox & Follett Co. purchased medical books in varying quantities from each of the respondents herein. During said year the respondents herein agreed and conspired together, and each with the others, and each of said respondent publishers separately agreed and conspired with respondent Chicago Medical Book Co., thereafter to refuse to sell to said Wilcox & Follett Co. medical books published, respectively, by said respondent publishers. Respondent Chicago Medical Book Co. notified each of said respondent publishers and other publishers of medical books that it would

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no longer sell to said Wilcox & Follett Co., and warned said publishers that as a result they might receive orders direct from Wilcox & Follett Co. In furtherance of said conspiracies, all of said respondents thereafter have refused to sell medical books to said Wilcox & Follett Co., and said respondent publishers have in many instances referred Wilcox & Follett Co. orders to Chicago Medical Book Co. The purpose and effect of said agreements and conspiracies was and is to cut off from said Wilcox & Follett Co. its supply of medical books published by said respondent publishers, to injure and prevent competition with respondent Chicago Medical Book Co. and to tend to give a monopoly to said respondent in the sale of medical books in Chicago and surrounding territory.

PAR. 5. Samuel Login and William Login are engaged in the business of selling and dealing in medical books as a partnership under the firm name and style of Login Brothers, with principal place of business in Chicago, Ill., and are competitors in such business with respondent Chicago Medical Book Co. During the year 1937 respondent Chicago Medical Book Co. agreed and conspired with respondent J. B. Lippincott Co., and separately, with respondent C. V. Mosby Co., thereafter to refuse to sell medical books to said Login Brothers. During 1937, previous to such agreements and conspiracies, Login Brothers had purchased medical books from time to time from each of said three named respondents. Thereafter, in furtherance of said conspiracies, said three respondents, respectively, refused to make further sales of medical books to said Login Brothers, and said two named publisher respondents notified Login Brothers that orders received were being referred to respondent Chicago Medical Book Co. The purpose and effect of said agreements and conspiracies was and is to cut off from said Login Brothers their supply of medical books published by said two respondent publishers, to injure and prevent competition with respondent Chicago Medical Book Co. and to tend to give a monopoly to said respondent in the sale of such medical books in Chicago and surrounding territory.

PAR. 6. During and subsequent to the year 1936, respondent Chicago Medical Book Co. has from time to time made false representations and complaints to said respondent publishers and other publishers of medical books regarding certain competitors of said Chicago Medical Book Co. in Chicago and the Middle West, including said Login Brothers and said Wilcox & Follett Co. Thereby, and by virtue of its dominant position in the medical book field in Chicago, said respondent has attempted to persuade and induce, and has persuaded and induced, said respondent publishers and other

publishers to refuse to sell medical books to its said competitors or to refuse to sell to said competitors at wholesale or dealers' discount. Said competitors are engaged in the sale and transportation of medical books in interstate commerce. Respondent Chicago Medical Book Co. has by this means attempted to monopolize and has conspired with others to monopolize, commence in the purchase and sale of medical books flowing to and from Chicago, Ill., and vicinity.

PAR. 7. The tendency and effect of the acts and practices above complained of is and has been to hinder and lessen competition in the distribution and sale of medical books in the city of Chicago and throughout the United States; to obstruct, restrain and interfere with the normal and natural flow of trade and commerce in such books; and to injure those competitors of respondent Chicago Medical Book Co. against whom said acts and practices are directed by unfairly diverting business and trade from them and depriving them thereof. The aforesaid acts and practices of respondents, and each of them, are all to the prejudice of the public, 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 26, 1938, 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 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 respondents' answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Fletcher G. Cohn, attorney for the Commission, and in opposition to the allegations of the complaint by Carlton L. Fischer and J. Milton Guy, Jr., of the firm of Campbell, Clithero & Fischer, Carroll Wetzell, Benjamin O. Frick, William Kohn, and Boyd L. Spahr, attorneys for respondents, before W. W. Sheppard, 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 and exceptions to said report, 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, Chicago Medical Book Co., is a corporation organized in the year 1897, under the laws of the State of Illinois, with its principal place of business and office in Chicago, Ill.

Respondent, W. B. Saunders Co., is a corporation organized under the laws of the State of Pennsylvania, with its principal office and place of business in Philadelphia, Pa.

Respondent, J. B. Lippincott Co., is a corporation organized under the laws of the State of Pennsylvania, with its principal office and place of business in Philadelphia, Pa.

Respondent, C. V. Mosby Co., is a corporation organized under the laws of the State of Missouri, with its principal office and place of business in St. Louis, Mo.

Respondents, Van Antwerp Lea and Christian Febiger, are co-partners doing business under the firm name Lea & Febiger, with their principal place of business in Philadelphia, Pa. For brevity they will be hereinafter referred to as Lea & Febiger.

PAR. 2. All of the respondents named in paragraph 1 hereof, except Chicago Medical Book Co., are engaged in the business of publishing, offering for sale, and selling medical and other scientific books. The term "medical books" as herein used, refers to books relating to curative or remedial agents in the treatment of ailments and diseases. There are but few publishers of medical books in the United States other than the respondents herein, who publish the majority of all medical books published in the United States.

PAR. 3. Respondent Chicago Medical Book Co. publishes no medical books, but since 1924 has exclusively been engaged in the business of buying, selling, and dealing in such books, both at wholesale and at retail, in Chicago, Ill., and throughout the United States. It publishes a bulletin listing the various medical books it has for sale, which it distributes throughout the United States. Respondent transports, or causes to be transported, such books, when sold by it, to purchasers thereof located in various States of the United States and in the District of Columbia. Said respondent is probably the oldest and largest dealer in medical books in the United States.

Said respondent purchases or receives on consignment from respondent publishers, medical books published by them and shipped to it from their respective places of business located in States other than the State of Illinois. During the years 1935, 1936, and 1937, said respondent purchased from each of said respondent publishers medical books to an amount in excess of \$10,000 annually, its purchases from respondent W. B. Saunders Co. being substantially greater than those from the other respondent publishers. Approximately 60 percent of the books sold by said respondent are published by respondent publishers. Edward T. Speakman is president and Chester D. Speakman is secretary and treasurer of said respondent company. Said respondent operates a retail store in Chicago, under the name "Speakman Book Store," which is the retail outlet of said respondent.

Said respondent is engaged in substantial competition with wholesale and retail dealers in the sale, resale, and distribution in Chicago, Ill., and in commerce between and among the several States of the United States and in the District of Columbia, of medical books published by the respondent medical book publishers and other publishers of such books.

PAR. 4. In the course and conduct of their respective businesses, each of respondent publishers transports or causes to be transported medical books from their respective places of business to their customers, purchasers or consignees located in other States of the United States and in the District of Columbia, and there is, and has been at all times herein mentioned, a current of trade and commerce in such books between the States wherein the several respondent publishers are located and various States of the United States.

PAR. 5. The respondent publishers, in the course and conduct of their respective businesses, have been and are in competition with each other, and with other corporations, partnerships, and individuals in publishing and distributing medical books in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. The J. W. Wilcox & Follett Co., hereinafter referred to as Wilcox & Follett, is a corporation organized in 1872, under the laws of the State of Illinois. Its principal place of business has ever since been, and now is, in Chicago, Ill. It is a jobbing concern and deals in books of all types issued by various publishers, and it does a nation wide business. C. W. Follett is its president. There are several divisions of this company—(1) the Follett Book Co.,

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which handles library books and material; (2) the Follett Publishing Co., which publishes text books, and (3) the Clarkson Publishing Co., which handles direct distribution to consumers. It also has two retail outlets in Chicago, Ill., and one each in Minneapolis, Minn.; Ann Arbor, Mich.; and Champaign, Ill. The two Chicago stores obtain their medical books direct from Wilcox & Follett and others.

Among the books dealt in by said Wilcox & Follett are medical books, which it has handled since about 1926. The total sales of this company, including all its divisions, for the year 1936 amounted to approximately \$2,000,000—\$500,000 of which was in its jobbing line of business. Its sales of medical books during said year did not exceed \$10,000. From 1926 until September 1936 its sales of medical books had gradually increased, but in September 1936 its supply of such books was materially curtailed, in the manner hereinafter set forth.

This company has approximately 20 traveling salesmen who call upon dealers, educational institutions, and libraries, in about 30 States of the United States, and sell its books, including medical books, and when sales are made, the books so sold are transported or caused to be transported by said company to the purchasers thereof located in various States of the United States and the District of Columbia.

PAR. 7. Prior to September 1936, the Wilcox & Follett Co. secured its medical books, in the main, from respondent Chicago Medical Book Co.; it also purchased books direct from the respondent medical book publishers, as hereinafter set forth. When Wilcox & Follett made such purchases directly from respondent medical book publishers, as an incident to such purchase and as a part thereof, said respondent medical book publishers would ship or cause to be shipped such medical books so purchased, from their respective places of business in States of the United States other than the State of Illinois, to the said Wilcox & Follett Co. in the State of Illinois.

Wilcox & Follett is in competition with respondent Chicago Medical Book Co. in selling and attempting to sell to the same types of customers in the medical field, in Chicago, Ill., and throughout the United States:

PAR. 8. In 1935, the Wilcox & Follett Co. purchased for its wholesale branch and its two retail stores in Chicago, medical books from Chicago Medical Book Co. in the net amount of \$2,586.89. Of this sum \$850.22 was for medical books published by respondent publishers in the following amounts: W. B. Saunders Co., \$624.36; C. V. Mosby Co., \$43.79; J. B. Lippincott Co., \$19.98; Lea & Febiger, \$162.09.

In 1936, up to September of that year, Wilcox & Follett Co. purchased from respondent Chicago Medical Book Co., medical books of the net value of \$1,630.69, of which a total of \$891.59 was for books published by respondent medical book publishers in the amounts stated, respectively:

Respondent W. B. Saunders Co.....	\$758. 48
Respondent C. V. Mosby Co.....	48. 46
Respondent J. B. Lippincott Co.....	17. 57
Respondents Lea & Febiger.....	67. 08

Thereafter, respondent Chicago Medical Book Co. refused to sell Wilcox & Follett Co. at the regular dealer's discount.

All figures herein representing purchases by Wilcox & Follett Co. and by Login Brothers, unless otherwise indicated are net amounts after discounts have been deducted.

PAR. 9. During the convention of the American National Medical Association held at Kansas City, Mo., in May, 1936, J. LeRoy Smith, a representative of respondent W. B. Saunders Co., met in his hotel room with Edward T. Speakman, president of the respondent Chicago Medical Book Co., John Mosby, of respondent C. V. Mosby Co., and W. D. Wilcox and Harold J. Cowell, representing respondents Lea & Febiger, and three dealers in medical books from New York, Dallas, and New Orleans, respectively. At this meeting the Wilcox & Follett Co. was discussed at length. John Mosby told of his experience with the company in buying a book at a discount and stated that C. V. Mosby Co. was not going to sell it any more books. LeRoy Smith told the meeting that his company was going to allow Chicago Medical Book Co. to handle, as it saw fit, the business of W. B. Saunders Co. with the Wilcox & Follett Co. Edward T. Speakman promised to look into the situation when he returned to Chicago.

PAR. 10. On July 3, 1936, respondent Chicago Medical Book Co. wrote a letter signed by E. T. Speakman and addressed to Charles C. Thomas, a medical book publisher, in which it is stated:

We hope you will pardon our tardy reply to your letter of June 25 regarding the Wilcox & Follett Co. of Chicago. ***

The medical book business for the last 20 or 25 years has been exceptionally clean, with reference to maintenance of publishers' list prices, but about 2 years ago they decided that they would invade the medical book field and extend this pernicious influence. Right away we began to hear of medical books being offered at cut prices, and as distributors for all of the publishers and representing their interests, we called up the Sr. Mr. Follett on the telephone, whom the writer has known for some 30 or 40 years. The promise was made that there would be no cutting of prices of medical books, but from time to time we hear about certain books being sold at a discount, some of it probably fiction, but nevertheless,

these reports continue from time to time. Just last fall we had an epidemic of price-cutting on an \$8.50 publication of the C. V. Mosby Company of St. Louis, and it became so serious that Mr. John Mosby came up here to Chicago and not being known to them went into their place and ordered a copy of this book, which they said they would get for him, and actually gave him a receipt for a copy less 10 percent.

There is a book room in each of the medical schools in this city and the only reason that a student would go 3 or 4 miles for a book is to get a lower price. The publishers have determined to nip this thing in the bud, as this firm was the subject of considerable conversation at a meeting in Kansas City in May, which the writer attended. These people do not carry or have invested any money in a medical book store, nor could they be classed in any way as medical booksellers. Any firm whose business is predicated on the selling of books at a lower price than his competitor, has no place in the business world, much less in the medical book field. McKenna, Majors and ourselves, including other medical book dealers, are subject to the restrictions made by the medical publishers, relating to the maintenance of list prices, discounts to libraries, State institutions and those legitimately entitled to a discount, while these unregulated dealers, a majority of them, do not carry a penny's worth of stock, are hard to regulate, and there are sufficient outlets now, here and elsewhere, to take care of this business.

To make matters worse, they have recently entered into the Government bidding. Mind you, without carrying stock or even being listed as "regular dealers," State institutions and medical libraries. The only possible way they could get any business from these sources would be by offering a better price, and you know what this means--demoralization and the flight of the profits, as small as they are.

An attempt was made by these people to start a store in Evanston, Ann Arbor, Madison, and Minneapolis. We learned that the dealers in Evanston are so wrought up that they practically ran them out of town and we think that the one in Ann Arbor was finally given up. We are surprised to learn from your letter that they have a Wisconsin office (Madison?). The one in Minneapolis is run under the name of The Minnesota Book Co. and we do not know how active they are. Of course it might be possible that they could buy through these different branches and this brings up quite a complication in the matter because there are some high school and collegiate books published by medical publishers which they are probably entitled to buy. This has been the case with us, as they buy certain physical education and elementary textbooks from us published by Saunders, Blackiston, and other medical publishers.

We really do believe that they should be shut out, and shut out properly, from the medical book business, for even if they charge full price on medical books--yours for instance--they allow a cash discount which none of the medical book sellers allow, and this in itself is quoting a lower price than the regular medical book distributors quote. In other words, if we quote net on your books, as we have been doing, and they come along and quote 2 percent off for cash, the orders ordinarily will go to them, while we, who are legitimately entitled to that business, have exceptionally large investments in stock, get nothing. Most of the publishers will back this situation up, but there are a few of them who will sell anybody, and no doubt the books that cannot be purchased at a discount can be obtained through other sources. The situation is a serious one and the writer has given it considerable thought, with a view to a way out.

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Any suggestions you may have regarding this would be very much appreciated, as we would like to get something settled before the next school term. * * *

This firm has such a wide spread and national field that we have practically everything to lose and nothing to gain through agreements as to territories and discounts. With this in view, there is a constant pressure being applied to shut us out here and there, and consequently this is not looked upon with favor by the writer. We occupy rather a peculiar position in view of the fact that we have such a widespread business and efforts are being constantly made to chisel in by various means.

On July 9, 1936, said Charles C. Thomas replied to this letter as follows:

Thank you very much for your letter of the 3d of July about Follett. Fortunately his very, very small purchases from us have been for biological books, and we have no record of supplying him with medical items. Our prospective difficulties with him have been avoided by our reading of your letter. Our actual difficulties will be avoided by an intention not to sell the Follett Chicago organization our titles. We have done a small business with—I should have correctly stated—their Minnesota Book Co. Our opinion is that the closer the medical publishers and medical booksellers cooperate in such matters, the better off we shall all be. Any orders for medical titles from Follett will be refused by us, but we shall refer them to you. Certainly we expect no one and would not knowingly permit any one to quote our books at our regular discount and, in addition, allow 2 percent for cash. Let's keep the business where it legitimately belongs.

Respondent Chicago Medical Book Co., on February 6, 1936, wrote respondent C. V. Mosby Co. as follows:

Just as your telegram came in we were about to wire you about the same situation here in Chicago about MacLeod's "Physiology." We have had three or four reports that somebody is selling this for \$7.50, as mentioned in the telegram—could it be your Chicago salesman? You will remember last fall we had the same situation, and at that time somebody was cutting prices on your books and your salesman's name was mentioned. We are wondering if he is trying to dabble in the student business. Perhaps you can tell from your records to whom you have been sending any copies of MacLeod's "Physiology."

We hope you are not selling any books to the Wilcox & Follett Co., as they are notorious price-cutters, advertising that they cut the price of every book and have gotten the medical students running down to their place on the South side to get these cut prices. If they ever get into the medical book business, you will see the most demoralized condition that has ever been seen in the medical book business. They have practically ruined the high school and grammar school business in this city for all the other dealers.

This letter is signed, "Chicago Medical Book Co., E. T. Speakman," and the following is added in script:

P. S.—Has Powell of the Professional Book Co. bought any. He's a price cutter!

On September 19, 1936, respondent Chicago Medical Book Co. wrote the following letter to the respondent publishers and four other medical book publishers:

You may receive orders in the future from Wilcox & Follett Co., 1255 South Wabash, Chicago, by reason of the fact that we have decided not to do any business with them and have notified them that we will not supply them with any further merchandise.

The reason for this decision is that their continued wholesale price cutting, in repeated violation of their promises, to the contrary, has tended to result in the demoralization of retail business in Chicago, and, perhaps, in the entire Middle West.

We are writing you thus so that you will understand any application for books direct to you from Wilcox & Follett Co.

PAR. 11. Between May and August of 1936, respondent Edward T. Speakman, of respondent Chicago Medical Book Co., told C. W. Follett, president of Wilcox & Follett Co., that the medical book publishers and himself had had a meeting and had agreed not to sell his company any more medical books, and that his company could no longer obtain medical books from respondent Chicago Medical Book Co. A few days after this conversation, said Speakman conferred with Follett, and at this and other conferences which took place in the fall of 1936, Speakman stated that if respondent Chicago Medical Book Co. did not want Wilcox & Follett Co. to have medical books they could not obtain them.

The last sale at a discount which respondent Chicago Medical Book Co. made to Wilcox & Follett Co. was on September 18, 1936. On September 19, 1936, respondent Chicago Medical Book Co. wrote the attorney of J. W. Wilcox & Follett Co., returning several orders from that company and stating that respondent Chicago Medical Book Co. would not accept any orders from Wilcox & Follett Co. in the future, and would likewise return any orders from said company forwarded to it by respondent W. B. Saunders Co. and other publishers.

Wilcox & Follett Co. have attempted on several occasions since September, 1936, to purchase medical books from respondent Chicago Medical Book Co. at the usual discounts allowed dealers in such books, and have been unable to do so, and can only purchase same by paying respondent Chicago Medical Book Co. the full retail price of such books.

PAR. 12. In 1935, and through June 1936, Wilcox & Follett bought medical books directly from respondent W. B. Saunders Co. at the regular dealer's discount. The last direct purchase so made was in June, 1936. The first refusal by respondent W. B. Saunders Co. to sell directly to Wilcox & Follett Co. was on August 10, 1936, when

it referred a number of said company's orders to respondent Chicago Medical Book Co. and wrote Wilcox & Follett Co. that the interests of W. B. Saunders Co. in Chicago were looked after by Chicago Medical Book Co.

On August 18, 1936, Wilcox & Follett Co. wired respondent W. B. Saunders Co. as follows:

On orders you returned to us to be sent to South Bend, Ind., Turlock, Calif., Syracuse, N. Y. and one book to us, you referred us to the Chicago Medical Book Co. They refused to ship these items. Must we abide by their decisions? I would like to notify our customers that we are unable to supply. Would you kindly wire me, so that I can telegraph our customers to secure their books elsewhere. Thanks for your courtesy. Wire, our expense.

To this wire, on the same date, respondent W. B. Saunders Co. wired Wilcox & Follett Co.:

Must abide by decision Chicago distributors.

On September 12, 1936, respondent W. B. Saunders Co. referred another order from Wilcox & Follett Co. to respondent Chicago Medical Book Co. On September 14, 1936, Wilcox & Follett Co. wrote Lawrence Saunders of respondent W. B. Saunders Co., enclosing copy of an earlier letter in which Wilcox & Follett Co. had complained that all the orders which respondent W. B. Saunders Co. had referred to respondent Chicago Medical Book Co. had been ignored by said company.

On February 13, 1937, respondent W. B. Saunders Co. wired Wilcox & Follett Co. that all of its orders were referred to Chicago Medical Book Co. On February 3, 1938, respondent W. B. Saunders Co. refused to sell the Michigan Book Store, which is owned by Wilcox & Follett Co., and which fact was indicated on the order.

The orders from Wilcox & Follett Co. which respondent W. B. Saunders Co., on August 10, 1936, referred to respondent Chicago Medical Book Co., were for the same type of books as those which respondent W. B. Saunders Co. had previously sold directly to Wilcox & Follett Co. at the usual discounts allowed by said respondent to dealers. On August 10, 1936, respondent W. B. Saunders Co. decided for the first time that its oral contract with respondent Chicago Medical Book Co. required it to refer to said Chicago Medical Book Co. all orders from Chicago, regardless of the type of books ordered or where they were to be shipped.

PAR. 13. In 1935 and 1936, respondent J. B. Lippincott Co. sold medical books directly to Wilcox & Follett Co. at the discount usually allowed dealers in such books. On September 26, 1936, Wilcox & Follett Co. wired said respondent to ship 10 medical books. On Sep-

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tember 29, 1936, which was 10 days after respondent Chicago Medical Book Co. had written said respondent that it would no longer sell Wilcox & Follett, respondent J. B. Lippincott Co. wrote Wilcox & Follett Co. acknowledging its wire of September 26, 1936, and referring the order to respondent Chicago Medical Book Co., stating that said company had the agency for their nursing books in Chicago.

On October 7, 1936, respondent J. B. Lippincott Co. referred another order of Wilcox & Follett Co. to respondent Chicago Medical Book Co., stating to Wilcox & Follett Co.:

We respectfully return herewith your order of October 2 for one Barboka, with the information that this book is carried in Chicago by the Chicago Medical Book Co., which has our exclusive agency, and to whom we must refer you.

Respondent Chicago Medical Book Co., acting in accordance with its letter of September 17, 1936, to respondent J. B. Lippincott Co., refused to fill the orders from Wilcox & Follett Co. which had been referred to it by respondent J. B. Lippincott Co.

Respondent Chicago Medical Book Co. was not the exclusive agent of respondent J. B. Lippincott Co. in Chicago.

Some time between October 7, 1936, and January, 1937, C. W. Follett, of Wilcox & Follett Co., contacted J. B. Lippincott, president of respondent J. B. Lippincott Co., who invited this company to buy all the medical books it could possibly use from his company, and since January, 1937, respondent J. B. Lippincott Co. has regularly sold books directly to Wilcox & Follett Co.

PAR. 14. Respondent, C. V. Mosby Co., from October 8, 1934, to September 11, 1936, sold directly, at the regular dealer's discount, to Wilcox & Follett Co., \$113.59 worth of medical books. The last direct sale made was on September 11, 1936. There was a sale of \$1.95 made by said respondent to Clarkson Publishing Co., a subsidiary of Wilcox & Follett Co., for a book to be shipped to Texas on July 25, 1938, which sale was the result of an agreement between an employee of Wilcox & Follett Co. and respondent C. V. Mosby Co., to the effect that this book would not be shipped to Wilcox & Follett Co. in Chicago.

On September 22, 1936, respondent C. V. Mosby Co. wrote respondent Chicago Medical Book Co. as follows:

Relative to your letter of September 19, we wish to advise you that any order we might receive from Wilcox & Follett will be referred to you.

I realize only too well that this firm has been unscrupulous in the merchandising of books. As nearly as I can determine, they have paid absolutely no attention to the publisher's wishes. We would much rather have them buy our books through you, and in this way you will be in a better position to control the price situation in the vicinity of Chicago.

Once again let me assure you of our cooperation in this matter.

Respondent, C. V. Mosby Co.'s first refusal to fill an order from Wilcox & Follett Co. was an order of September 24, 1936, 5 days after respondent Chicago Medical Book Co. had written respondent C. V. Mosby Co. its letter of September 19, 1936, set forth in paragraph 10 hereof. Thereafter, respondent C. V. Mosby Co. rejected orders from Wilcox & Follett Co. on September 29, October 1, 2, 6, 7, and November 19, 1936, and on January 1, 1937; and respondent C. V. Mosby Co. still refuses to sell Wilcox & Follett Co.

PAR. 15. From May 6, 1935, to August 1, 1936, respondents Lea & Febiger sold medical books amounting to approximately \$175, directly to Wilcox & Follett Co. at a discount of 20 percent. On September 11, 1936, these respondents changed their discount from 20 percent to 10 percent. On November 7, 1936, Wilcox & Follett Co. sent said respondents a copy of a letter it had written to another publisher, explaining that it was not cutting prices, and that respondent Chicago Medical Book Co. was making this charge from an ulterior motive. To this letter respondents Lea and Febiger replied on November 9, as follows:

Replying to your letter of November 7, we will allow you a 10 percent discount f. o. b. Philadelphia, on any publication you may order.

On January 25, 1937, respondents Lea & Febiger gave their last discount of 10 percent on orders from Wilcox & Follett Co., and on February 1, 1937, they returned orders from this company and referred them to Chicago Medical Book Co. and to A. C. McClurg & Co., of Chicago. After February 1, 1937, respondents Lea & Febiger never accepted any orders from Wilcox & Follett Co., nor did they refer them to any other dealer. Such failure to fill orders or to refer them to a dealer, was, in fact, pursuant to the understanding reached at the meeting in Kansas City referred to in paragraph 9 hereof, and the understanding and arrangement entered into between respondents Lea and Febiger and respondent Chicago Medical Book Co. pursuant to the letters set out in paragraph 10 hereof.

PAR. 16. Wilcox & Follett Co., as a competitor of respondent Chicago Medical Book Co. in the sale of medical books both at wholesale and at retail, must purchase books from the publishers thereof, or from respondent Chicago Medical Book Co., in order to obtain the regular dealer's discount; and as a direct consequence of and pursuant to the agreement, understanding, combination and conspiracy existing, as hereinafter stated, between respondent Chicago Medical Book Co. and the respondent medical publishers, Wilcox & Follett Co. has been unable to compete with respondent Chicago Medical Book Co. in the sale of such books published by respondent

medical book publishers, due to its inability to purchase such books at a discount.

PAR. 17. Wilcox & Follett Co. has solicited Government bids for books for more than 30 years and has received requisitions from the Government for medical books since respondent Chicago Medical Book Co. and the respondent publishers, pursuant to the understandings, agreements, combinations and conspiracies between and among them, as hereinafter stated, have refused to supply to Wilcox & Follett Co., at the regular dealer's discount, medical books published by respondent medical book publishers. Said company has, however, been unable to submit bids on such requisitions because of its inability to secure most of the medical books so requisitioned at the regular dealer's discount.

PAR. 18. Samuel Login is the sole owner of the business known as Login Bros., which is located in the medical center of Chicago, Ill., about a block from Speakman's book store, the retail outlet of respondent Chicago Medical Book Co. The Login concern has been in business for over 27 years and handles medical books only, and surgical instruments. It sells new and slightly used medical books in Chicago, and in commerce among and between the several States of the United States and in the District of Columbia. It sells such books to doctors and students throughout the United States, receiving at least 10 mail orders for from 10 to 20 books each, per day, the number of orders increasing in each September to about 25 per day. The books sold in filling these orders are shipped by mail and express from the place of business of Login Bros. in Chicago, Ill., to the purchasers of said books located in the several States of the United States and in the District of Columbia. Most of Login Bros.' business is retail, but they do some wholesale business. Their retail business primarily consists in selling to students attending medical schools. In money volume their business is about equally divided between the sale of new and second-hand books. They formerly purchased medical books directly from respondents J. B. Lippincott Co. and C. V. Mosby Co., which books were shipped to them in Illinois from other States of the United States where the places of business of these publishers were located.

PAR. 19. From June 1933 to January 1, 1938, Login Bros., purchased at the regular dealer's discount a total of \$10,620.98 worth of medical books from respondent Chicago Medical Book Co., of which approximately \$38,600 represented books published by respondent W. B. Saunders Co., the balance being for books published by other publishers in the United States and England.

In the summer of 1937, Edward T. Speakman, president of respondent Chicago Medical Book Co., told Samuel Login that Login Bros. were selling too many books; that he could sell them himself and did not need anybody to do that for him. He was objecting to the competition of Login Bros. Respondent Chicago Medical Book Co. made its last sale to Login Bros. on December 26, 1937.

Chester Speakman, secretary-treasurer of respondent Chicago Medical Book Co., some time in December, 1937, after the 25th, told William Login, when asked why respondent Chicago Medical Book Co. had cut off Login Bros.' supplies, "Well, I don't like the looks of your hair. That's as good an excuse as any." He then informed said Login that the reason was that Login Bros. were doing too much business in new books, and he would see to it that Login Bros. did not get the books. On June 1, 1938, Chester Speakman told William Login that respondent Chicago Medical Book Co. would not supply Login Bros. with books. Login Bros. have tried to secure books from respondent, Chicago Medical Book Co., but since December 1937, have been unable to do so.

PAR. 20. From July 1937, to October, 1937, Login Bros. purchased directly, at the regular dealer's discount, from respondent J. B. Lippincott Co., a total of \$440.40 worth of medical books. The last sale made by said respondent to Login Bros. was on October 1, 1937. On January 3, 1938, respondent J. B. Lippincott Company wrote Login Bros. that it was referring their orders to respondent Chicago Medical Book Co. Respondent Chicago Medical Book Co. did not fill these orders.

The methods used by respondent in preventing Login Bros. from securing their supplies were essentially the same as in the case of Wilcox & Follett Co.

PAR. 21. From 1934 to September 1937, Login Bros. purchased directly from respondent C. V. Mosby Co. at the regular dealer's discount, medical books of the total amount of \$7,159.87. The last direct sale by said respondent to Login Bros. was on September 3, 1937. Between September and December, 1937, Dr. C. V. Mosby, chairman of the board of directors of respondent C. V. Mosby Co., requested a conference with William Login of Login Bros., at the Drake Hotel, in Chicago, Ill. At this conference William Login asked why respondent C. V. Mosby Co. had refused to sell Login Bros. books and Dr. Mosby told Login that he had discussed the matter with Chester Speakman, secretary-treasurer of respondent Chicago Medical Book Co. for half a day, and that said Speakman had promised to push respondent C. V. Mosby Co.'s books and also

to supply Login Bros. with books. However, respondent Chicago Medical Book Co. refused to furnish Login Bros. with any books.

Early in 1938, William Login called upon John Mosby, vice president of respondent C. V. Mosby Co., in an effort to secure books from this company and was referred to respondent Chicago Medical Book Co. After being told by Login that they would be unable to secure books from this source, Mosby discussed the matter with Chester Speakman, of respondent Chicago Medical Book Co. by long distance telephone, but Login Bros. have never since been able to obtain books from either of these respondents.

PAR. 22. A substantial portion of the business of Login Bros., has been the sale of medical books to hospitals, medical libraries and State and Government institutions, all of which require a 10 percent discount, and due to the acts and practices hereinbefore set forth of respondents Chicago Medical Book Co., C. V. Mosby & Co. and J. B. Lippincott Co., Login Bros. have been compelled to pay the full list prices for such books, and as a result, have been deprived of the business of such institutions.

PAR. 23. During the year 1936, respondent medical book publishers entered into, and thereafter carried out, agreements, understandings, arrangements, combinations, and conspiracies between and among themselves and with respondent Chicago Medical Book Co., to prevent, and which did prevent, the securing at the regular dealer's discount of medical books by Wilcox & Follett Co., a competitor of respondent Chicago Medical Book Co. in the sale and distribution of medical books in Chicago, Ill., and in commerce between and among the several States of the United States and in the District of Columbia; and pursuant to said agreements, understandings, arrangements, combinations and conspiracies, all of respondent medical book publishers and respondent Chicago Medical Book Co. have refused to sell, at the regular dealer's discount, medical books of said respondent publishers to Wilcox & Follett Co., with the common and concerted purpose and effect of cutting off the supply of such books to said company.

PAR. 24. The tendency of the acts and practices of the respondents and the effect of same, as hereinbefore set forth are, and have been to lessen competition in the sale and distribution of medical books in the city of Chicago, Ill., and in commerce between and among the several States of the United States and in the District of Columbia; to obstruct, restrain and interfere with the normal and natural flow of trade in commerce, of medical books between and among the several States of the United States and in the District of Columbia; to place a direct burden upon the normal and natural flow of trade

in commerce of such books published by respondent medical publishers which are transported from the respective places of business of respondent publishers located in States of the United States other than the State of Illinois, to Wilcox & Follett Co., in the State of Illinois; to create a monopoly in respondent Chicago Medical Book Co. in the sale and distribution of such books in commerce; to injure Wilcox & Follett Co., a competitor of respondent Chicago Medical Book Co., in the sale and distribution of such books in said commerce, and to unfairly divert business and trade from said Wilcox & Follett Co. to respondent Chicago Medical Book Co.

PAR. 25. During the year 1937, respondent, J. B. Lippincott Co. and respondent C. V. Mosby Co., each entered into separate agreements, understandings, arrangements, combinations, and conspiracies with respondent Chicago Medical Book Co., to prevent, and which resulted in the prevention of the obtaining of medical books published by respondents J. B. Lippincott Co. and C. V. Mosby Co., at the regular dealer's discount, by Login Brothers, a competitor of respondent Chicago Medical Book Co. in the sale and distribution of such books in Chicago, Ill. and in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 26. Pursuant to the said agreements, understandings, arrangements, combinations and conspiracies, and in furtherance thereof, the respondents refusal to sell Logan Bros. at the regular dealer's discount medical books published by respondents J. B. Lippincott Co. and C. V. Mosby Co., with the purpose, intent and effect of cutting off Login Bros.' supply of such books.

PAR. 27. The tendency and effect of the acts and practices of respondents Chicago Medical Book Co., J. B. Lippincott Co. and C. V. Mosby Co., as herein set out, are and have been to lessen competition in the sale and distribution of medical books published by said respondent publishers in the city of Chicago, Ill., and in commerce between and among the several States of the United States and in the District of Columbia; to obstruct, restrain and interfere with the normal trade in commerce of medical books between and among the several States of the United States and in the District of Columbia; to place a direct burden upon such commerce in medical books published by said J. B. Lippincott Co. and C. V. Mosby Co. which are transported from the respective places of business of said respondent publishers located in States of the United States other than the State of Illinois to Login Bros. in the State of Illinois; to create a monopoly in respondent Chicago Medical Book Co. in the sale and distribution of such books in said commerce; to injure

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Login Bros., a competitor of respondent Chicago Medical Book Co. in the sale and distribution in said commerce of such books; and to unfairly divert business and trade from said Login Bros. to respondent Chicago Medical Book Co.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public, have a dangerous tendency to unduly hinder and prevent competition, and to create a monopoly in the sale and distribution of medical books in commerce as "commerce" is defined in the Federal Trade Commission Act; to unduly restrict and restrain the sale and distribution of medical books 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, the testimony and evidence introduced in support of the complaint and in opposition thereto before W. W. Sheppard, a duly appointed trial examiner of the Commission theretofore designated by it to serve in this proceeding, the report of the trial examiner thereon and the exceptions to said report, the briefs filed on behalf of the Commission and of the respondents, and the Commission having made its findings as to the facts and its conclusion that all of the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Chicago Medical Book Co., a corporation, W. B. Saunders Co., a corporation, J. B. Lippincott Co., a corporation, C. V. Mosby Co., a corporation—and their respective officers, directors, representatives, agents, and employees, and the successors of each of said corporate respondents, and respondents Van Antwerp Lea and Christian Febiger, individually and as co-partners doing business under the firm name and style of Lea & Febiger, or under any other trade name or style, or through any corporate or other device, together with their representatives, agents, and employees—directly or indirectly, in connection with the offering for sale, sale and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act, of books relating to curative or remedial agents in the treatment of ailments and diseases, commonly known as "medical books," or of any other scientific, educational or other books, shall forthwith cease and desist from:

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Entering into or carrying out any agreement, understanding, arrangement, combination, or conspiracy, among themselves, or between and among any two or more of them, or between any one or more of them and any other competitor, for the purpose or with the effect of restraining, restricting, hindering, obstructing or eliminating competition in the sale of any such book or books, and as a part or consequence of such agreement, understanding, arrangement, combination or conspiracy, from doing any of the following acts or things:

- (a) Boycotting or attempting to boycott any dealer in such books;
- (b) Refusing to sell books to any such dealer;
- (c) Preventing or attempting to prevent any dealer from purchasing such books at the regular price, trade discount, terms and other usual conditions of sale;
- (d) Discriminating against any dealer in such books as to price, terms, delivery, discounts or other conditions of sale,

It is further ordered, That the respondents, Chicago Medical Book Co., a corporation; W. B. Saunders Co., a corporation; J. B. Lippincott Co., a corporation; C. V. Mosby Co., a corporation; and Van Antwerp Lea and Christian Febiger, copartners doing business under the firm name and style of Lea & Febiger, 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

AR. WINARICK, INC., UNION BEAUTY & BARBER SUPPLY, INC., LOUIS SAUL AND ANTHONY NICASTRI, TRADING AS A. B. C. BARBER & BEAUTY SUPPLY COMPANY, VASILIS THALIS, TRADING AS AMERICAN BEAUTY & BARBER SUPPLY COMPANY, JOSEPH A. GALLAGHER, GEORGE MILLER, E. D. CHAPMAN, FRANK WATERS, AND GLADYS WELCH

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

Docket 4470. Complaint, Feb. 28, 1941—Decision, Nov. 28, 1941

Where a corporation and the four officers who formulated and directed its policies, two partners, and an individual, engaged in Washington, D. C., in competitive sale of beauty and barber supplies and shipment of such merchandise to purchasers in the District of Columbia and nearby points in Maryland and Virginia,—constituting a group so large and influential as to be able to control and influence the flow of trade and commerce in products in question within, to and from such areas, with aforesaid corporate jobber alone having exclusive contracts covering the sale of 80 percent of the items concerned in the territory in question—and, but for acts and practices below set forth, in free and active competition with one another;

Acting upon the suggestion of an individual, vice president and general sales manager of a corporate manufacturer of beauty and barber supplies, who, following complaints of chaotic conditions in the industry concerned, due to sale by some jobbers at less than manufacturer's list prices and the granting of discounts of more than 20 percent, and including particularly the price cutting activities of one "S"; and who, acting in his own behalf and that of his corporation, arranged a dinner and meeting attended, with the exception of two corporate officers, by jobbers above referred to and also by several others—

- (a) Agreed to sell their merchandise at the prices suggested by the manufacturers' price lists and not to give discounts in excess of 10 percent, and concertedly abided by said agreements; and, in order to effectuate them,
- (b) Attempted to coerce said competitor "S" to refrain from cutting prices of his merchandise and to prevent him from giving discounts in excess of aforesaid percentage, and threatened to prevent him from securing merchandise in event of his continuing in disregard of such course; and in order to carry out their said threats,
- (c) Sought to coerce manufacturers into refusing to sell to "S," with result that a number thereof did so refuse;

With effect that operators of beauty parlors and barber shops, and other purchasers of beauty and barber supplies in said District and nearby points were deprived of the benefits of normal competition theretofore existing, and the consuming public was deprived of the benefits which would flow from normal competition in sale of such products by beauty parlors, bar-

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ber shops and other retailers; with result of unlawfully restraining trade in such products in said area, and of creating a monopoly in aforesaid jobbers in the sale and distribution thereof; and with capacity and tendency to substantially enhance the prices of such products to beauty parlors and barber shops and, through them, to the consuming public in said area, and to maintain them at artificial levels and otherwise to deprive said beauty parlors, barbers and consuming public of the benefit of normal competition between and among aforesaid jobbers, and with jobbers, in such products:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Wm. T. Chantland for the Commission.

Mr. Lewis C. Bernstein, of New York City, for AR. Winarick, Inc. and Joseph A. Gallagher.

Schlesinger & Schlesinger, of New York City, and *Mr. Robert Ash*, of Washington, D. C., for Union Beauty & Barber Supply, Inc., its officers, A. B. C. Barber & Beauty Supply Co., and American Beauty & Barber Supply Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the corporations, partnerships, firms and individuals named in the caption hereof, hereinafter more particularly described and referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, AR. Winarick, 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 805 East One Hundred and Fortieth Street in New York City, N. Y., with branches in Canada and Mexico. Said respondent now is, and for several years last past has been, engaged in the manufacture, sale, and distribution in commerce of beauty parlor and barbers' supplies some of which are put out under the name of "Jeris Products."

Respondent, Union Beauty & Barber Supply, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business at 516 Twelfth Street NW., in Washington, D. C. Said respondent now is, and for the last several years has been, engaged in the business of jobbing or selling, shipping, and distributing at wholesale,

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beauty parlor and barbers' supplies in the District of Columbia and nearby points in Maryland and Virginia.

Respondents, Louis Saul and Anthony Nicastri, are partners trading as A. B. C. Barber & Beauty Supply Company, with their principal office and place of business at 1414 Fourteenth Street NW., Washington, D. C. For the last several years said respondents have been engaged in the business of jobbing or selling, shipping, and distributing at wholesale beauty parlor and barbers' supplies in the District of Columbia and nearby Maryland and Virginia points.

Respondent, Vasili Thalís, is an individual trading as American Beauty & Barber Supply Co., with his principal office and place of business at 733 Seventh Street NW., Washington, D. C. For the last several years said respondent has been engaged in the business of jobbing or selling, shipping, and distributing at wholesale beauty parlor and barbers' supplies in the District of Columbia, and nearby points in Maryland and Virginia.

Respondent, Joseph A. Gallagher, now is, and for the last several years has been, a vice president and the general sales manager of Respondent AR. Winarick, Inc., and as general sales manager thereof has had the direct, active control, and effectuation of its selling and sales policies. His office is with respondent AR. Winarick, Inc., at 805 East One hundred and Fortieth Street in New York City, N. Y.

Respondent, George Miller, E. D. Chapman, Frank Waters, and Gladys Welch, are, respectively, the president, a vice president, a vice president, and secretary and treasurer of respondent Union Beauty & Barber Supply, Inc., and have been such officers for the said respondent corporation for the last several years and as such officers have had a part in formulating and directing the policies of said respondent, and all have their offices with said respondent at 516 Twelfth Street NW., Washington, D. C.

PAR. 2. In the course and conduct of their said businesses, the respondent manufacturer and wholesalers and jobbers have shipped or caused to be shipped their said beauty parlor and barbers' supplies into the District of Columbia, and have shipped or caused to be shipped their said products into the nearby States of Maryland and Virginia. There is now, and during the past several years has been, a current of trade and commerce into the District of Columbia and between the District of Columbia and the nearby States of Maryland and Virginia and elsewhere in said beauty parlor and barbers' supplies.

PAR. 3. The respondent jobbers or wholesalers, to wit, Union Beauty & Barber Supply, Inc., A. B. C. Barber & Beauty Supply Co., and American Beauty & Barber Supply Co., constitute, and for the last

several years have constituted, a group in the beauty parlor and barbers' supply jobbing or wholesale business within the District of Columbia and nearby areas in the States of Virginia and Maryland so large and influential as to be able to control and influence the flow of trade and commerce in said beauty parlor and barbers' supplies within, and to and from said area. Said respondents were, and would now be, in free and active competition with one another and with other jobbers or wholesalers in such beauty parlor and barbers' supplies in said trade area, but for the unlawful agreement, combination and conspiracy entered into, and the unlawful acts and practices done thereunder and pursuant thereto by them and the respondent, AR. Winarick, Inc., and its respondent officers, as hereinafter set out.

PAR. 4. On or about February 13, 1939, respondents entered into an agreement, combination, and conspiracy to suppress, restrain, stifle, and eliminate competition and to create a monopoly in the sale of beauty parlor and barbers' supplies within the District of Columbia and the aforesaid described area and elsewhere within the United States, and all of said respondents have since continued to be and still are members of said combination and conspiracy.

PAR. 5. Pursuant to and in furtherance of said agreement, combination, and conspiracy and in order to effectuate the same, the said respondents acting in cooperation with each other have committed and performed and now perform and do among other things, the following acts and practices:

(a) At a meeting attended by said respondents, agreed upon the wholesale and retail prices at which beauty parlor and barbers' supplies are to be sold in the District of Columbia and said area.

(b) Thereafter all of said respondents sold said products in said area at the uniform prices set forth in price lists circulated among them which were agreed upon as aforesaid.

(c) Respondent jobbers and wholesalers ceased to compete among themselves or with others in the sale of the afore-described products in the District of Columbia and the said area,

(d) Respondents threatened to cut off the supplies of said products from those jobbers or wholesalers and retailers who refused or failed to sell said products at the prices set out in said price lists.

(e) Respondents did cut off and cause to be cut off the supplies of such products from those jobbers and wholesalers and others who refused or failed to sell the afore-described products at said prices.

PAR. 6. Each of the respondents herein has acted at times separately and at times in concert with one or more of the other respondents in doing and performing the acts alleged in furtherance and effectua-

tion of the agreement, combination, and conspiracy hereinbefore set out.

PAR. 7. As a result of the agreement, combination, conspiracy, and acts performed thereunder and pursuant thereto set forth in the foregoing paragraphs, the operators of beauty parlors and barber shops and other purchasers of beauty parlor and barbers' supplies in the District of Columbia and in said area have been deprived of the benefits of normal competition that theretofore existed as to their purchases of said products from respondent jobbers and wholesalers, and the purchasing and using public has been deprived of the benefits that would flow from the normal competition in the sale of said products at retail by beauty parlors and barber shops and other retailers of said products in said District and area.

PAR. 8. The agreement, combination, and conspiracy, and the acts and things done thereunder and pursuant thereto and in furtherance thereof as hereinbefore alleged have had and now have the capacity and tendency and effect of unlawfully restricting, hindering, lessening, and restraining the trade in the District of Columbia and in commerce between the District of Columbia and the nearby States of said beauty parlor and barbers' supplies, and of monopolizing in the respondent jobbers and wholesalers named in paragraph 1 hereof the sale and distribution of said products in the trade area of the District of Columbia and nearby States of Maryland and Virginia, and has the capacity and tendency of substantially enhancing the prices of such products to the beauty parlors and barbers and through them to the consuming public in said area, and of maintaining said prices at artificial levels and otherwise of depriving said beauty parlors and barbers and through them the consuming public in said area of the benefit of normal competition between and among the said respondent jobbers and wholesalers.

PAR. 9. The acts and practices of the respondents as herein alleged are all to the prejudice of the public and have a dangerous tendency to hinder and have actually hindered and prevented price competition between and among respondents in the sale of beauty parlor and barbers' supplies in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices of said products in the District of Columbia and surrounding area in the States of Maryland and Virginia; have increased the prices of said products paid by the purchasers thereof and consequently the prices paid by the public; have created in said respondents a monopoly in the sale of said products, in such commerce in the District of Columbia and said area; have unreasonably restrained such commerce in beauty parlor and

barbers' supplies, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER .

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 28 A. D. 1941, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, 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' answers thereto, testimony and other evidence were introduced in support of the complaint by the attorneys for the Commission, and in opposition thereto by the attorneys for respondents, before 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 the complaint, the answer thereto, the testimony and other evidence, report of the trial examiner thereon, briefs in support of the complaint and in opposition thereto, 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. AR. Winarick, Inc., is a corporation organized under the laws of the State of New York. Its principal place of business is located at 805 East One Hundred and Fortieth Street, in the city and State of New York.

Respondent Joseph A. Gallagher is vice president and general sales manager of respondent AR. Winarick, Inc., and controls the selling and sales policy of said corporation. His office is with the corporation.

Respondent Union Beauty & Barber Supply, Inc., is a corporation organized under the laws of the District of Columbia. Its principal place of business is located at 516 Twelfth Street, in the city of Washington, D. C.

Respondents George Miller, E. D. Chapman, Frank Waters, and Gladys Welch are, respectively the president, a vice president, a vice president, and secretary and treasurer of respondent Union Barber

& Supply Inc., and have been such officers for the last several years, and as such officers they have formulated and directed the policies of said corporation. All their offices are with said corporation.

Respondents Louis Saul and Anthony Nicastrì are copartners trading as A. B. C. Barber & Beauty Supply Co. Their principal place of business is located at 1414 Fourteenth Street NW., in the city of Washington, D. C.

Vasili Thalìs is an individual trading as American Beauty & Barber Supply Co. His principal place of business is located at 733 Seventh Street, NW., in the city of Washington, D. C.

PAR. 2. Respondent AR. Winarick, Inc., is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of beauty and barber supplies, and has caused said products, when sold, to be shipped from its principal place of business to purchasers thereof located in various States of the United States and in the District of Columbia.

Respondent Union Beauty & Barber Supply, Inc., Louis Saul and Anthony Nicastrì, and Vasili Thalìs, are jobbers engaged in the business of selling and distributing beauty and barber supplies, and for the last several years have been and are now engaged in shipping said merchandise, when sold, to purchasers thereof located in the District of Columbia and nearby points in Maryland and Virginia.

The respondent jobbers are in competition with others similarly engaged in the sale of beauty and barber supplies in the territory in which said respondents sell their merchandise.

PAR. 3. The total business done by jobbers of beauty and barber supplies located in the District of Columbia, for several years last past has been approximately \$420,000 a year, and more than \$400,000 of this amount has been done by the respondent jobbers. Respondent Union Beauty & Barber Supply, Inc., has exclusive contracts covering the sale of 80 percent of the items sold in the beauty and barber supply lines in said territory.

Respondent jobbers constitute a group in the beauty and barber supply jobbing business within the District of Columbia and nearby areas in Maryland and Virginia, so large and influential as to be able to control and influence the flow of trade and commerce in such beauty and barber supplies within, to and from said areas. Said respondents were, and, but for their unlawful acts and practices hereinafter set forth, would now be, in free and active competition with one another.

PAR. 4. In 1918 there were but one or two beauty and barber supply jobbers doing business in the District of Columbia, but by 1938 the number had increased to eight. The respondents were com-

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plaining, in 1938, about the chaotic condition of the industry, due to some jobbers selling at less than the manufacturers' list prices and giving discounts of more than 20 percent.

Respondent Joseph A. Gallagher, acting on behalf of himself and of respondent AR. Winarick, Inc., sent invitations to all the jobbers in the District of Columbia to attend a dinner to be given by him at the Harrington Hotel, on February 13, 1939. Representatives of respondent Union Beauty & Barber Supply, Inc., and all respondents except E. D. Chapman and Gladys Welch were present at the dinner. There were also several other jobbers present.

Gallagher testified that the dinner was not given for the purpose of fixing prices, but was one of a series of dinners given by his company throughout the United States in order to advance its sales and to promote good will in the trade. He denies having discussed prices at the dinner, and states that, to the contrary, he warned those present that an attempt to fix prices would be a violation of law. He is corroborated in this by three other respondents.

There is testimony to the effect that respondents discussed the chaotic conditions of the industry, due to price-cutting, and complained about the "chislers" present at the dinner, who were engaged in the practice; that Gallagher urged that the jobbers sell at one price, that no discounts be given in excess of 10 percent, and that gradually all discounts be eliminated; but warned them not to allow their salesmen to inform barbers concerning these matters, and added, "If Uncle Sam would find out, God help all of us."

After these discussions, all the jobbers agreed to sell their products at the suggested list prices of the manufacturers; that for the present they would not allow discounts in excess of 10 percent, and that ultimately they would refuse to allow any discount. Respondent Chapman was designated as the one to prepare and circulate the price list agreed upon.

There appears in the evidence a price list which Louis Sciscent, a jobber, testified was delivered at his place of business by respondent Chapman about a week after the dinner. Chapman admits that this list was prepared by his company for use by his salesmen, but denied having given same to Sciscent. Since the dinner all the jobber respondents have carried out the understanding and agreement concerning prices entered into during the dinner, and have sold their products at the prices suggested in the manufacturers' price lists, and have not given discounts in excess of 10 percent.

PAR. 5. Sciscent, who was primarily responsible for the price-cutting complained about by the respondents, was present at the dinner and agreed to discontinue the practice, but failed to keep his

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agreement. He was later visited by respondents Chapman and Saul, who inquired why he was cutting prices on Noxzema, and upon being told that he was satisfied with quick sales and quick profits, they threatened to see that he would not be able to buy any merchandise unless he stopped the practice.

Subsequent to the dinner, representatives of four or more manufacturers visited Sciscent and complained of his continuing to cut prices, warning him that unless he discontinued this practice they would refuse to sell him. Sciscent later received letters from two of these manufacturers, advising him that because of a change in their distribution policies they would be unable to fill his orders.

Respondent Saul admits writing the manufacturer of Noxzema complaining about Sciscent cutting prices and indicating his intention to discontinue the sale of their product if this practice was continued.

Respondent Thalís telephoned the manufacturer of Noxzema complaining about Sciscent cutting prices, and October 27, 1939, this manufacturer wrote Thalís to the effect that it had taken the matter up with the Sciscent organization and hoped that its efforts would be successful; that they would do all in their power to protect Thalís' interests.

Respondent Miller admits that he has written manufacturers requesting them to discontinue selling to price-cutters.

PAR. 6. The Commission finds that the hereinbefore described meeting held on February 13, 1939, was called by respondent AR. Winarick, Inc. and Joseph A. Gallagher, for the purpose of preventing price-cutting by the beauty and barber supply jobbers in the District of Columbia, and the giving of discounts in excess of 10 percent, and that all the respondent jobbers present at the meeting, acting upon the suggestion of respondent Gallagher, agreed to sell their merchandise at the prices suggested by the manufacturers' price lists, and further agreed not to give discounts in excess of 10 percent; and that said respondents, acting in accord one with another, have since said meeting carried out said agreement and have at all times sold their merchandise at the prices suggested by the manufacturers and have at all times refused to give discounts exceeding 10 percent; that said respondents, in order to effectuate the said agreement and understanding, have attempted to coerce their competitor Sciscent to refrain from cutting the price of his merchandise and to prevent him from giving discounts in excess of 10 percent; and that said respondents have threatened Sciscent that, if he continued to cut prices and to allow discounts in excess of 10 percent, they would prevent him

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from securing any merchandise. That in order to carry out their threats in this regard, they have sought to coerce manufacturers into refusing to sell said competitor, and, as a result of said coercion, a number of manufacturers have refused to sell him their products.

PAR. 7. As a result of the agreements, understanding, combinations, and conspiracies, and the acts performed thereunder and pursuant thereto, set forth in the foregoing paragraphs, the operators of beauty parlors and barber shops, and other purchasers of beauty and barber supplies in the District of Columbia and nearby points in Maryland and Virginia have been deprived of the benefits of the normal competition which theretofore existed in their purchase of said products from respondent jobbers; and the purchasing and consuming public have been deprived of the benefits which would flow from normal competition in the sale of said products at retail by the beauty operators and barber shops and other retailers in said area.

PAR. 8. The agreements, understandings, combinations, and conspiracies, and the acts and things done thereunder and pursuant thereto, in furtherance thereof, as hereinbefore set forth, have had, and now have, the capacity, tendency, and effect of unlawfully restricting, hindering, lessening, and restraining the trade in beauty and barber supplies in the District of Columbia and nearby States, and of creating a monopoly in the respondent jobbers in the sale and distribution of said merchandise in said area, and have the capacity and tendency to substantially enhance the prices of such products to the beauty parlors and barber shops and through them, to the consuming public in said area, and of maintaining the prices of said products at artificial levels and otherwise depriving said beauty parlors, barbers, and through them the consuming public in said area, of the benefit of normal competition between and among the said respondent jobbers, and with jobbers, in such products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, the testimony and other evidence taken before a duly appointed trial examiner of the Commission theretofore duly designated by

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it to serve in this proceeding, the report of the trial examiner thereon, briefs in support of the complaint and in opposition thereto, and oral arguments; 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 Union Beauty & Barber Supply, Inc., a corporation, its officers, directors, agents, representatives, and employees; Louis Saul and Anthony Nicastri, copartners trading as A. B. C. Barber & Beauty Supply Co., or under any other name or designation; Vasili Thalís, an individual trading as American Beauty & Barber Supply Co., or under any other name or designation; Joseph A. Gallagher, individually or as general sales manager of AR. Winarick, Inc.; George Miller, individually and as president of Union Beauty & Barber Supply, Inc.; E. D. Chapman, individually and as vice president of Union Beauty & Barber Supply, Inc.; Frank Waters, individually and as vice president of Union Beauty & Barber Supply, Inc.; and Gladys Welch, individually and as secretary and treasurer of Union Beauty & Barber Supply, Inc.; jointly and severally, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of beauty and barber supplies 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 person, partnership, or corporation, for the purpose or with the effect of restricting, restraining, monopolizing, or eliminating competition in the purchase or sale in said commerce of such products, and from doing or 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 any other person, partnership, or corporation, the following acts and things:

(a) Fixing, establishing, quoting, or maintaining prices, or agreeing to fix and maintain the prices at which said products shall be sold by them.

(b) Fixing and maintaining, or agreeing to fix and maintain, the amount of discount to be allowed purchasers of said products.

(c) Agreeing not to sell their products at prices less than the suggested price lists circulated by the manufacturers of such products, or at discounts in excess of 10 percent, or at any other agreed discount.

(d) Coercing, threatening, or intimidating any jobber of beauty and barber supplies, for the purpose or with the intent or effect of com-

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selling such jobber to sell his products at the manufacturers' list prices, or at an agreed discount therefrom, or to refuse to allow discounts in excess of 10 percent or any other agreed amount.

It is further ordered, That respondent AR. Winarick, Inc., a corporation, its officers, directors, agents, representatives, and employees, and respondent Joseph A. Gallagher, individually and as general sales manager of said respondent corporation, jointly or severally, directly or through any corporate or other device, forthwith cease and desist from directly or indirectly, jointly or severally, cooperating with; assisting, or in any manner aiding or abetting the hereinbefore named respondents in doing any of the things prohibited in subparagraphs (a), (b), (c), and (d) 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

WHITEWATER BREWING COMPANY, AND ALEX WEINGART, INDIVIDUALLY AND AS MANAGER THEREOF

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

Docket 4188. Complaint, July 13, 1940—Decision, Dec. 3, 1941

Where a corporation with principal place of business in Whitewater, Wis., and the manager of its Chicago warehouse and branch office, who directed and controlled its acts, policies and practices; engaged in the brewing and competitive interstate sales and distribution of its "Cream Top" beer and also in bottling, labelling and selling half gallon bottles of its "Badger" beer, brewed by a Chicago concern which delivered it in barrels to said corporation at its Chicago branch, and itself bottled and labelled all other cans and bottles of such "Badger" beer—

Made use of depiction of a badger holding a plaque on which appeared an outline of the State of Wisconsin and the word "Wisconsin" and in large type the words "Badger Beer" and "The Pride of Wisconsin", on placards distributed by them for use in the sale of their "Badger" beer, and employed similar depictions on labels on bottles and containers, and on which also appeared name and Wisconsin address of said corporation but not the words "The Pride of Wisconsin"; and subsequently made use on placards, window streamers, cards and labels of depictions of a badger, words "Badger Beer" in large type, and corporate name and Wisconsin address, along with, in the most recent labels, in much smaller and less conspicuous type, "Bottled by Chicago Branch", etc., and in very small type, the words "Brewed by Manhattan Brewing Co., Chicago, Ill."; and upon letterheads employed by it for a time displayed aforesaid depiction of the badger together with its name and Wisconsin address, while failing, in invoices of "Badger beer, containing its said name and address, to make any reference to such Chicago brewing company or the fact that said beer was not brewed by them;

When in fact, as above indicated, the beer in question was not brewed in the State of Wisconsin, law of which imposes certain requirements with respect to brewing not found in other States and beer of which State is markedly preferred by a substantial portion of the purchasing public as superior, in their belief, to beer brewed elsewhere;

With effect of causing a substantial portion of the purchasing public to believe that such beer was brewed in Wisconsin, with result that substantial quantities thereof were purchased by it and trade was unfairly diverted to them from competitors who do not misrepresent the place of origin of their product; 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. Charles A. Vilas*, trial examiner.
Mr. DeWitt T. Puckett for the Commission.

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Mr. Herbert J. Patrick of McHale, Arthur & Myers, of Indianapolis, 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 Whitewater Brewing Co., a corporation, and Alex Weingart, individually and as manager of Whitewater Brewing Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Whitewater Brewing Co., a corporation organized under the laws of the State of Wisconsin, is now and for more than 3 years last past has been engaged in the brewing and in the sale and distribution of beer, with its brewery and principal office located at 200 North Jefferson Street, Whitewater, Wis. Respondent also maintains a warehouse and branch office at 2150 South Western Avenue, Chicago, Ill.

Respondent, Alex Weingart, an individual, likewise is now and for more than 3 years last past has been engaged in the sale and distribution of beer, with his principal office and place of business located at 2150 South Western Avenue, Chicago, Ill. Said respondent is associated with the respondent Whitewater Brewing Company in the sale and distribution of beer, and is manager of the Chicago office and warehouse of said Whitewater Brewing Co. The said Alex Weingart directs, controls, and dominates the acts, policies, and practices of the corporate respondent with respect to that phase of the business of the corporate respondent herein referred to.

The respondents have acted in conjunction and cooperation with each other in carrying out the practices and methods hereinafter set forth.

In the course and conduct of their business as aforesaid respondents cause and for more than 3 years last past have caused their said product, when sold, to be transported from their respective places of business in the States of Wisconsin and 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 product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The 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 of beer in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Among the various brands of beer sold and distributed by the respondents as aforesaid, is a brand known as the "Badger" brand. The respondents cause and have caused to be attached to the containers in which said beer is displayed and sold to the public labels bearing the picture of a badger and the legend: "Badger Beer, Whitewater Brewing Co., Whitewater, Wis." Representations of a similar nature have also been made by the respondents by means of window displays and by leaflets distributed among prospective purchasers.

Other advertising material which has been used by the respondents featured a picture of a badger holding a plaque on which appeared an outline of the State of Wisconsin with the word Wisconsin written across the outline. The respondents have also used on certain of their advertising material the legend "The Pride of Wisconsin." The badger is one of the emblems of the State of Wisconsin and the State is generally known and frequently referred to as the "Badger State."

PAR. 4. The use by the respondents of the aforesaid words, legends and pictures in connection with their said product, without any accompanying words sufficiently disclosing the correct origin of said product, has the tendency and capacity to cause the purchasing public to believe that said beer is brewed in the State of Wisconsin. In truth and in fact said beer is not brewed in Wisconsin but is brewed in the city of Chicago, Ill., by a brewing concern located in that city and is purchased by the respondents from such concern.

PAR. 5. There is a marked preference on the part of a substantial portion of the purchasing public for beer brewed in the State of Wisconsin, such preference being due in part to a belief on the part of the public that such beer is superior in quality to beer brewed elsewhere. Contributing to such belief is the fact that there exist in the State of Wisconsin certain statutory requirements with respect to the brewing of beer which do not obtain in other States.

PAR. 6. Among the competitors of respondents referred to in paragraph 2 hereof are many who do not misrepresent the place of origin of their products.

PAR. 7. The use by the respondents 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 into an erroneous and mistaken belief as to the place of origin of respondents' product and into the purchase of substantial quantities of said product because of

such erroneous and mistaken belief. In consequence trade has been diverted unfairly to the respondents from their competitors, with the result that 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.

PAR. 8. 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 July 13, 1940, issued and thereafter served its complaint in this proceeding upon the respondents, Whitewater Brewing Co., a corporation, and Alex Weingart, individually and as Manager of respondent corporation, 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 the complaint and the filing of respondents' answer, evidence in support of the allegations of the complaint was introduced by DeWitt T. Puckett, attorney for the Commission, and testimony in opposition to the complaint was introduced by Herbert J. Patrick, attorney for respondents, and a stipulation as to the facts was entered into between said attorneys, before Charles A. Vilas, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding. The testimony and other 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 upon the complaint, the answer thereto, the testimony and other evidence, the stipulation as to the facts, the report of the trial examiner and exceptions thereto, briefs filed by the attorney for the Commission and the attorney for respondents, 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

PARAGRAPHS 1. Respondent, Whitewater Brewing Co., is a corporation, organized under the laws of the State of Wisconsin, with its

principal place of business located in Whitewater, Wis. Respondent also maintains a warehouse and branch office in Chicago, Ill.

PAR. 2. Respondent, Alex Weingart, is an individual, having his principal office and place of business in Chicago, Ill., and is manager of the Chicago office and warehouse of the corporate respondent; he directs, controls, and dominates the acts, policies, and practices of the corporate respondent with respect to the business affairs of the corporation as hereinafter set out.

PAR. 3. Respondent, Whitewater Brewing Co., since 1934, has been engaged in the brewing and in the sale and distribution of beer known as "Cream Top" beer, and in the sale and distribution of a beer known as "Badger" beer. In the course and conduct of their business as herein described, respondents cause and for more than 3 years last past have caused their said products, when sold, to be transported from their places of business in the States of Wisconsin and Illinois to the purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said products in commerce between and among various States of the United States.

PAR. 4. Respondents are now, and at all times mentioned herein have been, in substantial competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution of beer in commerce between and among various States of the United States.

PAR. 5. The beer sold and distributed by respondents known as "Badger" is not brewed by respondents, or either of them, but is and at all times has been brewed by the Manhattan Brewing Co., at its brewery located in the city of Chicago, State of Illinois, and is purchased by respondents from said concern. The beer sold by respondent under the brand "Badger" is sometimes delivered in barrels at the Chicago place of business of respondent corporation, and in case of the half gallon bottles it is bottled and labeled by the respondents in their Chicago place of business. All other cans and bottles of "Badger" beer are bottled and labeled by the Manhattan Brewing Co., at Chicago, Ill.

The respondents have acted in conjunction and cooperation with each other in carrying out the practices and methods hereinafter set forth.

PAR. 6. Prior to December 16, 1937, but not after that date, respondents, in connection with the sale of "Badger" beer distributed placards to be used in connection with its sale, on which placard is

depicted a badger holding a plaque on which appears an outline of the State of Wisconsin and the word "Wisconsin," and in large type the words "Badger Beer" and "The Pride of Wisconsin."

During the year 1938, respondents, in the manner aforesaid, distributed placards upon which appeared the picture of a badger and, in large type, "Badger Beer" and "Whitewater Brewing Co., Whitewater, Wis."

Respondents also distribute, in the manner aforesaid, window streamers advertising their product. On said streamer is depicted a badger and in large type the words "Badger Beer." These streamers are now in current use.

On a carton currently used by respondents in shipping their "Badger Beer" appears in large type, "Badger Beer, Whitewater Brewing Co., Whitewater, Wis."

On one of the placards in current use by respondents is depicted a badger, and in very large type are the words, "Badger Beer."

Prior to December 16, 1937, but not since said date, the labels used by respondents on the bottles and containers depicted a badger holding a plaque on which appeared an outline of the State of Wisconsin and the word "Wisconsin," and in large letters, "Badger Beer" and "Whitewater Brewing Co., Whitewater, Wis."

On the label used by respondents subsequent to December 16, 1937, and up to about June 1939, is depicted a badger, and in large type, "Badger Beer" and "Whitewater Brewing Co., Whitewater, Wis."

On the labels used by respondent since about June 1939, and in current use by them on the half-gallon bottles, is depicted a badger, and in large type, "Badger Beer, Whitewater Brewing Co., Whitewater, Wis.," while near the bottom of the label, in much smaller and less conspicuous type, are the words, "Bottled by Chicago Branch, 2150 Southwestern Avenue, Chicago, Ill.," and on the extreme right-hand margin, so indistinct as to be hardly discernible, are the words, "Brewed by Manhattan Brewing Co., Chicago, Ill."

On another label used by respondents since about June 1939, is depicted a badger and in large type are the words "Badger Beer, Whitewater Brewing Co., Whitewater, Wis.," and in very small type, "Brewed and bottled by Manhattan Brewing Co., Chicago, Ill."

On another label in current use by respondents on the half-gallon bottles where the beer is bottled by the Manhattan Brewing Co. is depicted a badger, and in large type, "Badger Beer, Whitewater Brewing Co., Whitewater, Wis.," and in small type and hardly discernible, on the extreme right-hand margin of the label are the words, "Brewed and bottled by Manhattan Brewing Co., Chicago, Ill."

Another label now used by respondent depicts a badger, and in large type appear the words, "Badger Beer," and in heavy and fairly large type the words, "Whitewater Brewing Co., Whitewater, Wis.," and in much smaller and lighter type are the words, "Brewed and bottled by Manhattan Brewing Co., Chicago, Ill."

The invoices used by respondents in connection with their sale of "Badger Beer" contain the corporate respondent's name and address, but do not contain any reference to the Manhattan Brewing Co., nor do they indicate that this beer is not brewed by the respondents.

A typewritten communication addressed to the Commission, under date of May 6, 1938, is on a letterhead of the corporate respondent, upon which is depicted a badger holding a plaque on which appears an outline of the State of Wisconsin and the word "Wisconsin," and the word "Badger" and respondent's name and address. It was stipulated that this letter was inadvertently used and that this style of letterhead has not been in use by respondents since December 16, 1937, except as scratch paper.

PAR. 7. The use by respondents of the phrase or designation, "The Pride of Wisconsin" and the plaque containing an outline of the State of Wisconsin with the word "Wisconsin," as set forth in paragraph 6 hereof, has the tendency and capacity to cause the purchasing public to believe that respondents' beer known as "Badger Beer" is brewed in the State of Wisconsin, when in fact it is not so brewed, but is brewed in the city of Chicago, State of Illinois, by the Manhattan Brewing Co., from whom it is purchased by respondents. The Commission finds that it is not feasible to select qualifying words for use with these representations which will be effective to eliminate the deception caused by such representations.

PAR. 8. The badger is an emblem of the State of Wisconsin and that State is generally known and referred to as "the Badger State." The use by respondents, as set forth in paragraph 6 hereof, of the word "Badger," and the depiction of a badger without accompanying words sufficiently disclosing the character and origin of their product known as "Badger Beer," or where any such explanatory words are so inconspicuously placed and so indistinct as to be almost imperceptible, has the tendency and capacity to cause the purchasing public to believe that respondents' "Badger Beer" was brewed in the State of Wisconsin, when in fact said beer is not so brewed; but is brewed in the city of Chicago, Ill.

PAR. 9. There is a marked preference on the part of a substantial portion of the purchasing public for beer brewed in the State of Wisconsin, such preference being due in part to the belief on the part of

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the public that such beer is superior in quality to beer brewed elsewhere. Contributing to such belief is the fact that there exists in the State of Wisconsin certain statutory requirements with respect to the brewing of beer which do not exist in other States.

PAR. 10. Among the competitors of respondents referred to in paragraph 4 hereof are many who do not misrepresent the place or origin of their products.

PAR. 11. The acts and practices of respondents 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 respondents' "Badger" brand beer is brewed in Wisconsin, and because of such erroneous and mistaken belief, substantial quantities of said product have been purchased by the public, and trade has been thereby unfairly diverted to respondents from competitors who do not misrepresent the place of origin of their product, with the result that substantial injury has been and is being done by respondents to competition in commerce between and among various States of the United States.

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 answer of respondents, the testimony and other evidence, the stipulation as to the facts, the report of the trial examiner and exceptions thereto, briefs filed by the attorney for the Commission and by the attorney for respondents, and oral arguments, 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 Whitewater Brewing Co., a corporation, its officers, directors, representatives, agents, and employees, and respondent Alex Weingart, individually and as manager of respondent corporation Whitewater Brewing Co., jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of their "Badger" beer, or any other

beer not brewed in Wisconsin, in commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from—

1. The use of the term "Pride of Wisconsin," or of an outline of the State of Wisconsin, or any other term, symbol, or representation indicating or implying that said beer is brewed in Wisconsin;

2. The use of the word "Badger," or any depiction of a badger, to designate or describe said beer when or if accompanied by any word, picture, or designation which indicates or implies that the beer so designated is brewed in Wisconsin, provided, however, that this provision shall not apply to the use of the word "Wisconsin" to designate or describe an address of the respondents in the State of Wisconsin if qualified as provided in paragraph 3 hereof;

3. The use of the word "Wisconsin" in any way to refer to, designate, or describe said beer, or the use of such word in connection with any such designation or description unless such word is used only as part of respondents' address in the State of Wisconsin and there is stated in immediate conjunction with respondents' name and address, in letters of equal size and conspicuousness, the locality wherein said beer is brewed or that said beer is not brewed in the State of Wisconsin;

4. Representing in any manner that beer which is not brewed in Wisconsin is brewed in Wisconsin.

It is further ordered, That the respondents shall, within 60 days after 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.

Syllabus

IN THE MATTER OF
 CHOCOLATE 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 4371. Complaint, Nov. 8, 1940—Decision, Dec. 4, 1941

Where a corporation engaged in the manufacture, and in the interstate sale and distribution of a chocolate syrup product, formerly called "Stillicious Vitamin A, B, D" and thereafter "Stillicious Vitamin," allegedly containing vitamins A, B, D, and G, to wholesalers and retailers in small cans or containers for resale to public, and in large quantities to dairies which made use thereof in making bottled chocolate drinks sold to the public under the trade name "Stillicious," pursuant to agreements with said corporation; directly or by implication—

Represented that said chocolate drinks made by dairies, were made with milk, and that its product, because of its vitamin A content, helped to build resistance to colds and infection, through such advertising as "MY Goodness [picture of cow head] MORE Vitamin B. STILLICIOUS Vitamin B. Chocolate Contains Dextrose and Levulose [picture of milk bottle and glass, both with 'Stillicious' thereon]," "And now, with Stillicious Vitamin A, B, D Chocolate Syrup, we offer today's big Vitamin bargain. A 20-oz. tin * * * contains an extra supply of Vitamin A to help build resistance to colds and infection";

The facts being the chocolate beverage in question did not contain milk as understood by the purchasing public, i. e., milk from which no part of the cream had been removed, but contained skim milk or a mixture of whole and skim milk, and its said products did not help build resistance to colds or infection, even in exceptional cases involving a recognizable deficiency of vitamin A, quantity of which in its product was insufficient to overcome such deficiencies or afford any substantial assistance in building resistance to colds or infection;

With effect of misleading and deceiving a substantial portion of the purchasing public with respect to the properties of said product and the content of beverages made therewith, and thereby inducing it to purchase substantial quantities of said product and beverages made therefrom, and with further effect of placing in the hands of uninformed or unscrupulous dealers and dairies means and instrumentalities whereby they were enabled to mislead and deceive the public;

Held, That such acts 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. Andrew B. Duvall*, trial examiner.

Mr. Maurice C. Pearce and *Mr. John M. Russell* for the Commission.

Mr. John B. Hosty, of Chicago, Ill., for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Chocolate Products 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, Chocolate Products Co., 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 415 West Scott Street, in the city of Chicago, in the State of Illinois.

PAR. 2. Respondent, Chocolate Products Co., is now and has been for more than 2 years last past, engaged in the business of manufacturing, selling, and distributing a certain chocolate syrup product formerly called "Stillicious Vitamin A, B, D," now designated "Stillicious Vitamix," alleged to contain vitamins A, B, D, and G.

Respondent sells its product in small cans or containers to wholesale and retail dealers, and such retail dealers resell said product to the public. Respondent also sells its product in large quantities to dairies, which use said product in making bottled chocolate drinks or beverages which, pursuant to agreement with respondents, are sold to the public under the trade name "Stillicious."

Respondent causes its said product when sold to be transported from its place of business in the State of Illinois to the purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing the dissemination of, false advertisements, concerning its said product by the United States mails, and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said product in commerce,

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as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by radio continuities and by counter display cards, circulars, and other advertising literature are the following:

My goodness (Picture of and MORE Vitamin B
cow's head)

STILLICIOUS

Vitamin B. Chocolate Contains (Picture of milk bottle and glass,
Dextrose and Levulose. both with "Stillicious" thereon.)

And now, with Stillicious Vitamin A, B, D, Chocolate Syrup, we offer today's big vitamin bargain. A 20-oz. tin, costing only 35¢, contains an extra supply of Vitamin A to help build resistance to colds and infection.

PAR. 4. Through the use of the aforesaid representations and others of similar import not specifically set out herein, the respondent represents, directly or by implication, that the said chocolate drinks or beverages made by said dairies with respondent's product and sold by said dairies under the name "Stillicious" are made with milk; that respondent's product, by reason of its Vitamin A content, helps to build resistance to colds and infection.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the drinks made and sold by said dairies as aforesaid do not contain milk. The term "milk" denotes whole milk, that is, milk from which no part of the cream or butterfat content has been removed, and such term is so understood by the purchasing public. The further understanding of the public is that the milk content of a chocolate beverage purporting to be made with milk is entirely whole milk. In truth and in fact, the milk content of the beverages made by said dairies with the respondent's product is not in any case whole milk, but is skimmed milk or a mixture of whole milk and skimmed milk.

Respondent's product does not help to build resistance to colds or infection. Even in the exceptional cases where members of the public are suffering from a recognizable deficiency of vitamin A, the quantity thereof in respondent's product is insufficient to overcome such deficiency or afford any substantial assistance in building resistance to colds or infection.

PAR. 6. The acts and practices of the respondent have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public with respect to the properties of respondent's product and with respect to the content of the beverages made with

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such product. As a result, the purchasing public has been induced to purchase, and has purchased, substantial quantities of said product and beverages. The respondent's acts and practices serve also to place in the hands of uninformed or unscrupulous dealers and dairies means and instrumentalities whereby such dealers and dairies are enabled to mislead and deceive the purchasing public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 8, A. D. 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Chocolate Products Co., 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 Maurice C. Pearce, attorney for the Commission, before Andrew B. Duvall, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding; and John B. Hosty, attorney for the respondent, in a stipulation entered on the record, admitted on behalf of respondent all the material facts alleged in the complaint. The evidence and the stipulated 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 and stipulated facts, the report of the trial examiner thereon, and brief filed on behalf of the Commission. And the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Chocolate Products Co., is a corporation duly organized under the laws of the State of Illinois, having its principal place of business at 415 West Scott Street, in the city of Chicago, in the State of Illinois.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the business of manufacturing, selling, and distributing a chocolate syrup product formerly called "Stillicious

Vitamin A, B, D," and now designated "Stillicious Vitamix," alleged to contain vitamins A, B, D, and G. Respondent sells its product in small cans or containers to wholesale and retail dealers, and such retail dealers resell said product to the public. Respondent also sells its product in large quantities to dairies, which use the same in making bottled chocolate drinks or beverages, which, pursuant to agreements with respondent, are sold to the public under the trade name "Stillicious." Respondent causes its said product, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof at their respective points of location in various States of the United States 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 between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business, has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its product, 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 advertisements, concerning its product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its product in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as herein set forth, by means of the United States mail, by radio continuities, and by counter display cards, circulars, and other advertising literature, are the following:

My Goodness (picture of cow head) MORE vitamin B

STILLICIOUS

Vitamin B. Chocolate. Contains (Picture of milk bottle and glass, both Dextrose and Levulose. with "Stillicious" thereon).

And now, with Stillicious Vitamin A, B, D Chocolate syrup, we offer today's big vitamin bargain. A 20-oz. tin, costing only 35¢ contains an extra supply of Vitamin A to help build resistance to colds and infection.

PAR. 4. Respondent, through use of the aforesaid representations, and others of similar import, represents directly or by implication that the chocolate drinks or beverages made by said dairies or dealers with respondent's product, and sold by them under the name "Stillicious," are made with milk, and that respondent's product, by

means of its vitamin A content, helps to build resistance to colds and infection.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the drinks made and sold by said dairies as aforesaid do not contain milk. The term "milk" denotes whole milk, that is, milk from which no part of the cream or butterfat content has been removed, and such term is so understood by the purchasing public. The public further understands that the milk content of a chocolate beverage purporting to be made of milk is of entirely whole milk. In truth and in fact, the milk content of the beverages made by said dairies with respondent's product is not in any case whole milk, but is skim milk or a mixture of whole milk and skim milk.

Respondent's products do not help to build resistance to colds or infection even in the exceptional cases where members of the public are suffering from a recognizable deficiency of vitamin A; the quantity of said vitamin in respondent's product is insufficient to overcome such deficiencies, or afford any substantial assistance in building resistance to colds or infection.

PAR. 6. 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 with respect to the properties of respondent's product and with respect to the content of the beverages made with said product. As a result, the purchasing public has been induced to purchase and has purchased substantial quantities of respondent's product and of said beverages. The respondent's said acts and practices serve also to place in the hands of uninformed or unscrupulous dealers and dairies means and instrumentalities whereby such dealers and dairies are enabled to mislead and deceive the public.

CONCLUSION

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

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, evidence introduced before a duly appointed trial examiner of the Commission designated by it to serve in this proceeding and the

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stipulation as to the facts entered into by the attorney for the Commission and the attorney for the respondent, 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, Chocolate Products Co., a corporation, has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Chocolate Products Co., a corporation, its officers, directors, agents, representatives, and employees, jointly and severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its chocolate syrup product, or any similar or like product sold under the name "Stillicious Vitamin A, B, D," or "Stillicious Vitamin," or under any other name or designation, do forthwith cease and desist from directly or indirectly—

1. Disseminating or causing to be disseminated any advertisement by means of the United States mail, or by any means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, by means of pictorial representations, or in any other manner, that chocolate drinks or beverages made by dairies or other producers with respondent's product are made with whole milk or milk, when such drinks or beverages are made with skim milk or skim and whole milk, or which advertisement represents that the vitamin content of respondent's product helps to build resistance to colds and infection: *Provided, however,* That this order shall not prohibit respondent from using the term "milk" to describe the aforesaid drinks or beverages when such term is properly and accurately qualified.

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 product, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondent shall, within 60 days after the service upon it of this order, 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
MARION ALLEN, TRADING AS TRIANGLE SALES COM-
PANY, AND ALFRED J. LANDAY

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

Docket 4576. Complaint, Aug. 25, 1941—Decision, Dec. 4, 1941

Where an individual engaged in the competitive interstate sale and distribution of radios, bedspreads, cameras, fountain pens, and other articles, by means of lottery devices, and one "A. L.," engaged in distributing for her sales literature, etc., as below set forth, to pushcard operators and the purchasing public—

Furnished, among other things, pushcards and circulars explaining her plan of selling such merchandise and allotting it as premiums or prizes to the operators of the cards and the purchasing public, a typical pushcard being printed with 16 feminine names for use under a plan providing that the person selecting the name corresponding to that concealed under card's master seal received a camera, the three persons securing, by chance, certain numbers concealed by discs bearing feminine names, received "a genuine LEATHER BILLFOLD," and the amount paid by different customers was dependent upon numbers secured; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries or 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 competition with many who, unwilling to use any method involving chance or 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 said merchandise in preference to that of aforesaid competitors who do not use such methods, and with tendency and capacity to unfairly divert substantial trade in commerce to them from their said competitors:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair 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 Marion Allen, an individual trading as Triangle Sales Co., and Alfred J. Landay, an individual, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by and in respect thereof would be in the public interest,

hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Marion Allen, is an individual, trading and doing business as Triangle Sales Co., with her principal office and place of business located at 530 West Adams Street, Phoenix, Ariz. Respondent, Alfred J. Landay, is an individual, with his office and principal place of business located at 2129 Campbell Street, Chicago, Ill., and is engaged in the mailing of pushcards and literature for the respondent, Marion Allen. Both respondents have acted in concert and in cooperation with each other in performing the practices hereinafter alleged.

Respondent, Marion Allen, is now, and more than 6 months last past has been, engaged in the sale and distribution of radios, bedspreads, cameras, fountain pens, and other articles of merchandise, and has caused said merchandise when sold to be transported from her place of business in Phoenix, Ariz., to purchasers thereof at their respective points of location in the various States of the United States, other than Arizona and in the District of Columbia.

There is now, and has been, for several years last past, a course of trade by respondent, Marion Allen, 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 her business respondent, Marion Allen, is and has been in substantial competition with other individuals and with firms 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 her business as described in paragraph 1 hereof, respondent, Marion Allen, in soliciting and in selling her merchandise, furnishes, and has furnished various devices and plans of merchandising which involve the operation of game of chance, gift enterprises, or lottery schemes, when such merchandise is sold and distributed to the ultimate consumers thereof. The method or sales plan adopted and used by respondent Marion Allen, is substantially as follows:

Respondent, Marion Allen, furnishes and has furnished respondent, Alfred J. Landay, with certain literature and instructions, including, among other things, pushcards, order blanks, illustrations of said merchandise, and circulars explaining respondent Allen's sales plan or method of selling said merchandise and of allotting it as premiums or prizes to the operators of said pushcards and to the purchasing public, and respondent Landay causes and has caused the said literature and pushcards above described to be distributed

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through the United States mails and otherwise to operators and the purchasing public located in the various States of the United States and in the District of Columbia.

One of said pushcards bears 16 feminine names with ruled columns opposite each for writing in the name of the customer opposite the feminine name selected. Said pushcard has 16 partially perforated disks, on the face of each of which is printed one of the feminine names corresponding to those printed opposite the ruled columns above referred to. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The pushcard also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives a camera. The pushcard bears a legend as follows:

4 PRIZES
CLEANER!
FASTER!
BETTER!

(Picture of camera)

NAME UNDER SEAL RECEIVES A PICKWICK
CANDID CAMERA AND CARRYING CASE
WITH SHOULDER STRAP

16 PICTURES for the price of 8.

Quality Features New High-Speed
Ground Lens; fast shutter. Fixed
Focus, eliminating focusing operat-
ing. Standard Film used. Kodak
127 or Agfa A8 Level View Finder.
Just look and snap shutter. Fully
Guaranteed. Finely built with gen-
uine TENITE case.

Nos. 1, 9 and 19 each receive a genuine
LEATHER BILLFOLD

No. 1 pays 1¢	Push
No. 9 pays 9¢	out
No. 18 pays 18¢	with
No. 19 pays 19¢	pencil

All others pay only 29¢. None higher.

Write your name on reverse side opposite name you select

Sales of said merchandise by means of said pushcards are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above-described legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid is thus determined wholly by lot or chance.

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

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

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 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 said merchandise and the element of chance involved therein, and thereby are induced to buy and sell said 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 substantial trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from their said competitors who do not use the same or an equivalent method.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 25, 1941, issued and thereafter served its complaint in this proceeding upon respondents Marion Allen, an individual, trading as Triangle Sales Co., and Alfred

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J. Landay, an individual, charging them with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of said act. On November 10, 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. Respondent, Marion Allen, is an individual, trading and doing business as Triangle Sales Co., with her principal office and place of business located at 530 West Adams Street, Phoenix, Ariz. Respondent, Alfred J. Landay, is an individual, with his office and principal place of business located at 2129 Campbell Street, Chicago, Ill., and is engaged in the mailing of pushcards and literature for the respondent, Marion Allen. Both respondents have acted in concert and in cooperation with each other in performing the practices hereinafter found.

Respondent, Marian Allen, is now, and for more than 6 months last past, has been engaged in the sale and distribution of radios, bed spreads, cameras, fountain pens, and other articles of merchandise, and has caused said merchandise when sold to be transported from her place of business in Phoenix, Ariz., to purchasers thereof at their respective points of location in the various States of the United States, other than Arizona, and in the District of Columbia.

There is now, and has been for several years past, a course of trade by respondent, Marion Allen, 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 her business respondent, Marion Allen, is and has been in substantial competition with other individuals and with firms 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 her business as described in paragraph 1 hereof, respondent, Marion Allen, in soliciting and in selling her merchandise, furnishes and has furnished various devices and plans of merchandising which involve the operation of games of

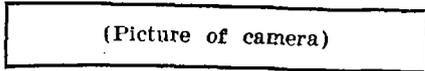
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chance, gift enterprises, or lottery schemes, when such merchandise is sold and distributed to the ultimate consumers thereof. The method or sales plan adopted and used by respondent, Marion Allen, is substantially as follows:

Respondent, Marion Allen, furnishes and has furnished respondent, Alfred J. Landay, with certain literature and instructions, including, among other things, pushcards, order blanks, illustrations of said merchandise, and circulars explaining respondent Allen's sales plan or method of selling said merchandise and of allotting it as premiums or prizes to the operators of said pushcards and to the purchasing public, and respondent Landay causes and has caused the said literature and pushcards above described to be distributed through the United States mails and otherwise to operators and the purchasing public located in the various States of the United States and in the District of Columbia.

One of the said pushcards bears 16 feminine names with ruled columns opposite each for writing in the name of the customer opposite the feminine name selected. Said pushcard has 16 partially perforated disks, on the face of each of which is printed one of the feminine names corresponding to those printed opposite the ruled columns above referred to. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The pushcard also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives a camera. The pushcard bears a legend as follows:

4 PRIZES
CLEANER!
FASTER!
BETTER!



NAME UNDER SEAL RECEIVES A PICKWICK
CANDID CAMERA CARRYING CASE WITH
SHOULDER STRAP.

Nos. 1, 9 and 19 each receive a genuine
LEATHER BILLFOLD

16 PICTURES for the price of 8.

Quality Features

New High-Speed Ground Lens; fast shutter. Fixed Focus, eliminating focusing operating. Standard Film used. Kodak 127 or Agfa A8 Level View Finder. Just look and snap shutter. Fully Guaranteed. Finely built with genuine TENITE case.

No. 1 pays 1¢	Push
No. 9 pays 9¢	out
No. 18 pays 18¢	with
No. 19 pays 19¢	pencil
All others pay only 20c. None higher.	
Write your name on reverse side opposite name you select	

Sales of said merchandise by means of said pushcards are made in accordance with the above-described legend or instructions. Said

prizes or premiums are allotted to the customers or purchasers in accordance with the above-described legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid is thus determined wholly by lot or chance.

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

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

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 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 said merchandise and the element of chance involved therein, and thereby are induced to buy and sell said 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 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 an equivalent method.

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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 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, Marion Allen, individually and trading as Triangle Sales Co. or trading under any other name, and Alfred J. Landay, an individual, 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 radios, bed spreads, cameras, fountain pens, 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 punch boards, 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.

IN THE MATTER OF

RALPH KALNER, REA DRATH, FREDA ROSTEN, AND
ALVIN B. WOLF, TRADING AS DELUXE PRODUCTS
COMPANY AND DELCO 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 3634. Complaint, Oct. 22, 1938—Decision, Dec. 9, 1941

Where four individuals engaged at different times as partners in the interstate sale and distribution of bed spreads, pillows, wrist watches, china ware, and a general line of novelty goods in competition with others who were unwilling to and did not use any sales plan involving chance or a lottery in periodicals—

- (a) Sold and distributed their said merchandise by means of a game of chance, gift enterprise, or lottery scheme, through sending to those replying to their advertisements offering "free" handkerchiefs and beautifying kits, catalogs and circulars describing their various articles and explaining plan under which the particular item of twenty listed, and the price paid therefor, were determined by the legend under the tab of the pull card selected by customer, and the card operator or distributor was compensated for the sale of chances by the premium selected by him, or, at his option, by the right to retain part of the amount he collected from said sales;

Whereby purchasers were induced to pull the tabs in the hope of receiving articles of merchandise, some of which ordinarily sold at higher prices and were of greater value than the price designated to be paid therefor, determined wholly by lot or chance, as was fact as to which of the twenty articles purchaser might receive;

With effect of placing in the hands of others devices by use of which their merchandise was distributed to the ultimate consumer wholly by lot or chance, contrary to the established public policy of the United States; and notwithstanding "Notice to Purchasers" in small print above the pull tab, purporting to advise the reader of his privilege of buying any article at the price shown therefor on the back of each slip, which was inconsistent with the working of the scheme as planned;

- (b) Represented that the price charged for their merchandise was less than the usual retail price through statements in their catalog purporting to offer "BONUS COUPON—worth 40¢, 50¢ value—Kurl-Kwik Curler for only 10¢" and "BONUS COUPON—worth 65¢, \$1.00 value—Knife, fork and pie server set for only 35¢";

The facts being said curlers ordinarily sold at retail for 10 cents and the sets for 45 cents, their fair values; and

- (c) Described in their catalog one of their premiums or awards given to their salesmen as "Rogers 26 Piece Silver Set," whereby distributors and prospective purchasers were caused to believe that such merchandise was of solid silver when in fact it was only plated ware;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, as a

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result whereof substantial quantities of their said products were purchased by the public and a number of persons were induced to act as distributors of its products and trade was unfairly diverted from competitors who do not thus misrepresent their said products:

Held, That such acts and practices were all to the injury and prejudice of the public, and competitors, and 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, Mr. Randolph Preston, Mr. W. W. Sheppard, Mr. William C. Reeves* and *Mr. John W. Addison*, trial examiners.

Mr. D. C. Daniel for the Commission.

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Ralph Kalner, Rea Drath, Freda Rosten, and Alvin B. Wolf, individually and trading as DeLuxe Products Co. and Delco Novelty 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, Ralph Kalner, Rea Drath, Freda Rosten, and Alvin B. Wolf, are individuals trading under the names of DeLuxe Products Co. and Delco Novelty Co., with their principal office and place of business located at 637 West Roosevelt Road, Chicago, Ill. Respondents are now, and for some time last past have been, engaged in the sale and distribution of watches, rifles, enamelware, bedspreads, blankets, dinner sets, overnight cases, suede jackets, clocks, salt and pepper sets, pen and pencil sets, hot water bottles, tableware, kitchenware, razor blades, cosmetics, leather wallets, dolls, handkerchiefs, curlers, 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 aforesaid place of business in Illinois to purchasers thereof in the various other States of the United States, and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States, and in the District of Columbia. In

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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 dealers and prospective dealers 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 and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or dealer 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 dealer the merchandise designated on said card, together with a premium for the dealer as compensation for operating the pull card and selling the said merchandise. Said dealer 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 above described plan or method is illustrative of the principle involved.

PAR. 3. The dealers 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 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 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. In the course and conduct of their business, as hereinabove related, respondents cause, and have caused, various false, deceptive, and misleading statements or representations to appear in their advertising matter as aforesaid, of which the following are examples but are not all inclusive:

3 initial handkerchiefs FREE TO YOU. Send name, address with 6¢ in stamps to help pay postage, packing.

FREE TO YOU. 4-piece beautifying kit sent free to get acquainted. Send name, address with 10¢ to help pay postage, packing.

Another of said statements or representations appearing in respondents' said advertising matter is as follows:

Rogers 26-piece silver set.

In truth and in fact the said handkerchiefs and beautifying kit are not given away "free" but the purchasers of said articles are required to pay for said handkerchiefs and beautifying kit 6¢ and 10¢ respectively, as postage and packing charges, when in fact said amounts are greatly in excess of the actual cost of said postage and packing.

When the word "silver" is used to describe a product, the public understands it to mean that the product is made of solid silver. The use of the word "silver" by respondents in describing their tableware causes, and has caused, the 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, said tableware is made of an inferior base metal lightly plated with silver.

PAR. 6. In the course and conduct of the respondents' business, as hereinabove set out, the respondents cause, and have caused, coupons to be issued with each purchase of their merchandise made by means of the "pull tab." A number of the said items or articles of merchandise described on the aforesaid coupons have values attached to them greatly in excess of their true and actual values.

Representative of such statements and representations made by the respondents on the coupons regarding the selling price and value of the commodities they thus offer are the following:

BONUS COUPON. WORTH 40¢ 50¢ value—Kurl Kwick Curler—for only 10¢.

BONUS COUPON. WORTH 65¢. \$1 value—Knife, fork and pie service set—for only 35¢.

BONUS COUPON. WORTH 65¢ \$1 value—6 fine initial handkerchiefs—for only 35¢.

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In truth and in fact the curler is not a 50¢ value but is purchased by the respondents for 5¢ each and is sold to the retail trade for 10¢ each. The knife, fork and pie server set does not in fact have a dollar retail value. The initialed handkerchiefs do not have a dollar retail value but, on the contrary, cost the respondents from 30¢ to 70¢ per dozen. Said coupons are not worth the amounts indicated thereon.

The prices so represented as aforesaid upon respondents' coupons are greatly in excess of the actual selling prices of said items or articles of merchandise by the retailer to the consuming public and are in excess of their true and actual values. The retail prices so represented as aforesaid are false and fictitious and in no sense represent either the true retail value or the true retail selling price of the articles so represented.

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 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 22, 1938, issued and thereafter served its complaint in this proceeding upon the respondents, Ralph Kalner, Rea Drath, Freda Rosten, and Alvin B. Wolf, indi-

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viduals trading as DeLuxe Products Co. and Delco Novelty Co., charging them with unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. After the issuance of the complaint testimony and evidence in support of the allegations of the complaint were introduced by attorneys for the Commission, and testimony in opposition to the complaint was introduced by attorneys for respondents, before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, and the testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceedings regularly came on for final hearing before the Commission on the complaint, the testimony and other evidence, the report of the trial examiners and exceptions thereto, and briefs filed 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. Respondents, Ralph Kalner, Rea Drath, Freda Rosten, and Alvin B. Wolf, from the summer of 1936 to about August 1937, were copartners trading as DeLuxe Products Co. and Delco Novelty Co., with their principal place of business located at 843 Northwestern Avenue, Chicago, Ill., until May 1937, when it was removed to 637 West Roosevelt Road, in said city. About August 1937 respondent Alvin B. Wolf and one Max Schwartz purchased the interests of respondents Kalner, Drath, and Rosten in said business, and since that date respondent Wolf and said Schwartz have, as copartners, operated said business at the last named address under the aforesaid trade names and also under the trade name "National Business Builders."

PAR. 2. All the respondents, during the existence of the partnership, were engaged, and respondent Wolf and Schwartz have since been and now are engaged, in the sale and distribution of bed spreads, pillows, wrist watches, chinaware, rifles, overnight cases, dolls, kitchen ware, blankets, suede jackets, clocks, tableware, hot water bottles, fountain pen and pencil sets, salt and pepper sets and a general line of novelty goods, and during said periods have caused their merchandise, when sold, to be shipped from their principal place of business to purchasers thereof located in the various States of the United States at their respective points of location.

PAR. 3. Respondents in the course and conduct of their business were, and respondent Wolf and Schwartz now are, in competition with other partnerships and with individuals and corporations likewise engaged in selling and distributing similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 4. Respondents, in order to secure distributors for their merchandise, placed advertisements in magazines of general circulation, of which the following are typical:

THREE INITIAL HANDKERCHIEFS FREE TO YOU. Send name and address with 6¢ in stamps to help pay postage, packing.

FREE TO YOU, 4-piece Beautifying Kit free to get acquainted. Send name and address with 10¢ to help pay postage, packing.

After securing the names and addresses of the persons answering these advertisements, respondents mailed such persons catalogues and circulars describing the articles of merchandise sold by them and the plan or method to be used in their sale. The catalogues contained pictorial representations and descriptive matter with reference to merchandise offered as premiums, rewards, or compensation to the distributor for his services in selling 20 articles of merchandise, 5 of which are also illustrated in the catalogue, beneath which illustrations is a list of the 20 articles of merchandise to be offered for sale, with the price of each article, and a blank space opposite each item for insertion of the name of the purchaser. At the right of this list is pasted a device commonly known as a "pull card," containing 20 tabs, on the under side of each of which is concealed the name of 1 of the 20 articles of merchandise and the price thereof, neither of which is revealed until after the tab is separated or removed from the pull-card device.

After the purchaser has detached one of the tabs and has ascertained the article of merchandise he is to purchase, and has paid the price indicated on the tab, his name is written by the distributor in the blank space opposite the name and price of the article listed. When the distributor has by this means sold all of the 20 articles and collected the price thereof, he remits to the respondent the amount collected and receives from them the merchandise which is delivered by him to the purchasers. Respondents also ship to the distributor the premium or reward selected by him as compensation for his services in the sale of respondents' merchandise; or, if he so elects, the distributor may retain, in lieu of such premium, a specified sum from the amount he has collected from such sales.

PAR. 5. Respondents during the existence of the copartnership sold and distributed, and respondent Wolf since August 1937 has sold and

distributed and now sells and distributes, merchandise by means of a game of chance, gift enterprise, or lottery scheme, as described in paragraph 4 hereof.

PAR. 6. Immediately above the pull-tab device the following appears in small print:

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 the slip. If you do not want the article you need not buy it.

Distributors of respondents' merchandise sometimes call the attention of prospective purchasers to this "notice" and at other times do not.

The Commission finds that, regardless of said "notice," the respondents have sold and distributed, and respondent Wolf now sells and distributes, merchandise by means of said pull-tab device, in accordance with the sales plan or method hereinbefore described.

The successful operation of said sales plan or method is dependent upon the ability of the distributor to sell all of the 20 articles listed, so as to provide for remittance of the required amount to respondents in order to obtain the merchandise purchased. The operation of the plan or method strictly in accordance with the above "notice" would not net the distributor a return sufficient to warrant completion of the plan or method and would thereby render it inoperative. No instructions are contained in any of the catalogues, circulars, or other literature distributed by the respondent as to what should be done in the event all the articles are not sold, or if a person pulling a tab fails or refuses to complete the purchase; nor is any provision made as to the compensation to be received by the distributor in such cases. On the contrary, as shown by all of respondents' literature, it is contemplated that all of the listed merchandise must be sold. The order blank states:

I have sold my order. Please ship at once all charges prepaid, the 20 articles of merchandise I sold amounting to \$5.98, and one of the valuable premiums.

It is stated in the catalogue:

When articles are sold you will have collected \$5.98. Then fill out the enclosed order blank and mail to us together with your remittance. We will send you big reward premium, extra surprise gift and the 20 articles as soon as we receive your order.

It is stated in one of respondent's circulars:

Simply sell the order as outlined and send us the money within 15 days after receipt of this order and you will get the big reward premium you select * * *.

The "Notice" is a subterfuge, intended to avoid the consequences incident to the operation of a game of chance, gift enterprise, or lottery scheme.

PAR. 7. In the catalogue described in paragraph 4 hereof, it is stated that a "bonus coupon" is given free to each purchaser. The following are examples of these coupons:

	* * *	
Bonus Coupon, worth-----		40¢
50¢ value—Kurl-Kwik Curler for only-----		10¢
Additional Kurl-Kwik Curlers without coupon-----		50¢
Bonus Coupon, worth-----		65¢
\$1.00 value—Knife, fork, and pie server set for only-----		35¢
	* * *	
Additional sets without bonus coupons-----		\$1.00
	* * *	

The values of the curler and the knife, fork, and pie-server set stated in respondents' "bonus coupons" are greatly in excess of the actual retail selling price of said items and in excess of their true and actual values. The curler is ordinarily sold at retail for 10¢, and the knife, fork, and pie server set for 45¢, and these prices represent the fair values of the articles. These two items have not been sold by respondents since 1938.

Respondents, prior to 1938, described in their catalogue one of the premiums or rewards given to their distributors as compensation for services in disposing of respondents' merchandise as "Rogers 26-piece Silver Set." This description caused respondents' distributors and prospective distributors to believe that this merchandise was of solid silver, when in fact it was only plated ware. Respondent Wolf has discontinued the use of the word "silver" in describing such ware.

PAR. 8. Respondents, by such false, deceptive, and misleading statements and representations concerning the value and character of its merchandise have misled and deceived a substantial portion of the public into the erroneous belief that such statements and representations are true, and as a result, substantial quantities of their merchandise have been purchased by the public, and a number of persons have been induced to act as distributors of respondents' merchandise. Among the competitors of respondents mentioned in paragraph 3 hereof are those who do not make such false, deceptive, and misleading statements and representations concerning their merchandise.

Said statements and representations have caused trade to be unfairly diverted from said competitors to the respondents and substantial injury has thereby been done by respondents, and is now being done by

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respondent Wolf, to competition in commerce between and among the various States of the United States.

PAR. 9. Some of the merchandise sold by respondents have greater value and ordinarily sell at higher retail prices than the prices listed by respondents, but are sold and distributed to the consumer at the prices designated on the tabs, and because of this, purchasers are induced to pull the tabs in the hope that they will receive articles of merchandise of greater value than the designated prices to be paid for same. Whether a purchaser receives one of these articles, or which of the 20 articles of merchandise he may receive and the price to be paid therefor, are determined wholly by lot or chance. Many partnerships, persons, and corporations who sell and distribute merchandise in competition with the respondents are unwilling to adopt and use, and do not use in the sale of their merchandise, the sales plan or method used by respondents, or any method involving a game of chance, gift enterprise, or lottery, or any method which is contrary to public policy.

PAR. 10. Respondents, by their sales method hereinbefore described, have placed, and respondent Wolf now places, in the hands of others, devices to be used in the sale and distribution of their merchandise by means of which a game of chance, gift enterprise, or lottery scheme may be used, and by the use of such devices said merchandise was and is sold and distributed to the ultimate consumer wholly by lot or chance. Respondents' said sales method is contrary to the established public policy of the United States.

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and other evidence 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 thereto, and briefs filed in support of the complaint and in opposition to the complaint, and the Commission having made its findings as to the facts and its conclusion that the respondents, Ralph Kalner, Rea Drath, Freda Rosten,

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and Alvin B. Wolk have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents Ralph Kalner, Rea Drath, Freda Rosten, and Alvin B. Wolf, individuals trading as DeLuxe Products Co. and Delco Novelty Co., or under any other trade name or designation, jointly or severally, 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 bed spreads, pillows, wrist watches, chinaware, rifles, overnight cases, dolls, kitchen ware, blankets, suede jackets, clocks, tableware, hot water bottles, fountain pen and pencil sets, salt and pepper sets, and any other articles of merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others pull cards or any other device or devices which are to be used or may be used in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

2. Shipping, mailing, or transporting to agents, or distributors, or to members of the public, pull cards, or any other device, or 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 unqualified term "silver" to designate or describe tableware or other articles of merchandise which are not made entirely of silver.

5. Representing that the price charged for merchandise is less than the usual retail price of such merchandise when such is not the fact.

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 the manner and form in which they have complied with this order.

IN THE MATTER OF
PIONEER MERCHANDISE 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 4012. Complaint, Feb. 2, 1940—Decision, Dec. 9, 1941

Where a corporation engaged in interstate sale and distribution, among other products, of cigarette holders composed of cellulose acetate which were similar in appearance to holders composed of amber, nonburning bakelite and other suitable materials—

- (a) Represented and implied to the purchasing public that its said products were made from amber, nonburning bakelite or other suitable material, and were of superior quality and would give satisfactory service, through mounting them on dealers' display cards containing such statements as "Cigarette Holders for a cool and agreeable smoke" and "Extra Fine Cigarette Holders";

Facts being its said cigarette holders would not give the public the service it was led to expect through such representations and similarity of such holders to those made of amber, nonburning bakelite, etc., but were made from material which disintegrated readily when exposed to heat, conveying an unpleasant taste to smoke coming in contact with the holder, so that user thereof would not obtain an agreeable smoke; and

- (b) Represented and implied that it made the cigarette holders and other domestic-made merchandise sold by it, and owned, operated and controlled a factory in which its holders were made, through such statements in circulars bearing its name and word "Manufacturers" as "When Buying from Us You Buy from the Manufacturer," and through representations on letterheads and invoices to the effect that it was a manufacturer;

Notwithstanding fact it neither owned nor controlled any manufacturing plant in which its products were made, and was not a manufacturer, long preferentially dealt with by a substantial proportion of jobbers, dealers and consumers as, in their belief, eliminating the profits of middlemen and enabling them to obtain lower prices and other advantages;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and with result that said public purchased a substantial quantity of its cigarette holders and other merchandise:

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

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

Mr. S. Brogdyne Teu, II for the Commission.

Mr. J. Jerome Katz and *Mr. George Goodritz*, of Philadelphia, Pa., for respondent.

Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Pioneer Merchandise 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, Pioneer Merchandise Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and place of business located at 928 Broadway, in the city of New York, N. Y.

PAR. 2. Respondent is now, and has been during the year last past, engaged in the sale and distribution of cigarette holders and other products. In the course of its business, respondent causes said commodities to be transported from its principal place of business in the State of New York to purchasers thereof at their respective points of location in various States of the United States, other than the State of New York, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said cigarette holders sold by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has offered for sale and sold as cigarette holders certain products composed of cellulose acetate. These cellulose acetate products are similar in appearance to, and resemble, cigarette holders composed of amber, nonburning bakelite and other materials suitable for, and long used in, the manufacture of cigarette holders. Respondent has caused such cigarette holders, composed of cellulose acetate, to be placed on display cards on some of which appears the following statement: "Cigarette Holders for a cool and agreeable smoke," and upon others the following statement: "Extra Fine Cigarette Holders." These holders, attached to said display cards, containing said statements, are sold to dealers located in the various States of the United States and in the District of Columbia for resale to the purchasing and consuming public, and said cards and holders are displayed by such dealers in offering for sale and selling said holders to the purchasing public.

Through the similarity in appearance of the material from which said holders are made to amber, nonburning bakelite and other mate-

rials suitable for, and long used in, the manufacture of cigarette holders and the display of said holders on said cards containing said statements, respondent represents and implies, and the purchasing and consuming public is led to believe, that the said cellulose acetate cigarette holders are made from amber, nonburning bakelite or some other material suitable for use in cigarette holders, and that said holders are of superior quality and will give the user thereof pleasant and satisfactory service.

In truth and in fact, the cigarette holders so sold and distributed by the respondent are composed of a material which is unfitted by composition to be used in a cigarette holder and such holders will not give the public the service it is led to expect as a result of the similarity in appearance of said material to amber, nonburning bakelite and other materials suitable for use, and long used, in manufacturing cigarette holders. Said cigarette holders are not "Extra Fine," nor of superior quality, and the users thereof will not obtain a cool or agreeable smoke as represented by the respondent, for, in truth and in fact, the material from which said holders are made distintegrates readily when exposed to heat and conveys to smoke coming in contact therewith an unpleasant and unsatisfactory taste or flavor.

PAR. 4. Respondent, further, has distributed among prospective purchasers located in various States of the United States, and in the District of Columbia, circulars bearing the phrases:

"Pioneer Merchandise Co., Inc., manufacturers and importers,"

and containing such statements as "when buying from us you buy from the manufacturer"; and also has represented on its letterheads and invoices, distributed throughout the United States mails and in commerce as aforesaid, that it is a manufacturer.

Through the use of the word "manufacturers," as above set out, respondent has represented, and does now represent and imply, that it is the manufacturer of the cigarette holders and other domestic-made merchandise it sells.

PAR. 5. In truth and in fact, respondent does not make or manufacture the cigarette holders or the other domestic-made products sold and distributed by it. Respondent does not own or control the manufacturing plant in which the said products are manufactured.

PAR. 6. There has long been a preference on the part of a substantial proportion of jobbers, dealers, and consumers to deal directly with the manufacturer, because of a belief that by the elimination of middlemen's profits, superior products at lower prices, and other advantages, can thereby be obtained.

PAR. 7. The use by the respondent of the representations set out in paragraph 3 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 and mistaken belief that such representations are true and that such cigarette holders are manufactured of proper material and are fitted and suitable for the purpose for which they are sold, and into the purchase of said cigarette holders in said erroneous and mistaken belief.

The use by respondent of the representations that it is a manufacturer, as set out in paragraph 4 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 and mistaken belief that such representations are true and that it is the manufacturer of the cigarette holders and other domestic-made products offered for sale and sold by it, and into the purchase of said cigarette holders and other domestic-made products in said 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 February 2, 1940, issued and subsequently served its complaint upon respondent Pioneer Merchandise 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, a statement of facts agreed to by counsel for the Commission, S. Brogdyne Teu, II. and counsel for respondent, J. Jerome Katz and George Goodritz, was read into the record and certain exhibits introduced by counsel for the Commission before John W. Addison, an examiner of the Commission theretofore duly designated by it, and said statement of facts, a supplemental agreement as to certain facts dated August 28, 1941, 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 agreed statement of facts and supplement thereto and other evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); and the Commis-

sion having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Pioneer Merchandise Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, having its office and place of business located at 928 Broadway, New York, N. Y.

PAR. 2. The respondent is now, and has been for some time past, engaged in the offering for sale, sale, and distribution of cigarette holders and other products. In the course of its business the respondent causes its commodities, when sold, to be transported from its place of business in New York, N. Y., to purchasers thereof located in the various States of the United States other than the State of New York and in the District of Columbia. There is now, and has been for some time past, a course of trade in cigarette holders and other products sold by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent has offered for sale, and sold, as cigarette holders certain products composed of cellulose acetate. These cellulose acetate products are similar in appearance to and resemble cigarette holders composed of amber, nonburning bakelite, and other materials suitable for and long used in the manufacture of cigarette holders. Respondent has caused its cigarette holders composed of cellulose acetate to be placed on display cards. On some of such display cards appears the following: "Cigarette Holders for a cool and agreeable smoke," and on other of such cards appears the following: "Extra Fine Cigarette Holders." These holders, attached to the display cards, are sold to dealers located in the various States of the United States and in the District of Columbia who purchase for resale to the purchasing and consuming public, and the display cards and holders are displayed by the dealers in offering for sale and selling to the purchasing public the cigarette holders of the respondent.

Through the similarity in appearance of the material from which the respondent's cigarette holders are made to amber, nonburning bakelite, and other materials suitable for and long used in the manufacture of cigarette holders, and the display of the respondent's holders on display cards containing the representations set out in the immediately preceding paragraph, respondent represents and implies

to the purchasing public and leads members thereof to believe that the cellulose acetate cigarette holders of the respondent are made from amber, nonburning bakelite, or some other material suitable for use in cigarette holders and that respondent's holders are of superior quality and will give the user thereof pleasant and satisfactory service.

The cigarette holders sold and distributed by the respondent are not composed of the finest and best materials used in the manufacture of cigarette holders, and such holders will not give the public the service it is led to expect as a result of respondent's advertising representations as aforesaid and by reason of the similarity in appearance of the material used by the respondent in its holders to amber, nonburning bakelite, and other materials suitable for use and long used in manufacturing cigarette holders. The respondent's cigarette holders are not "Extra Fine" nor of superior quality, and the users of the respondent's cigarette holders will not obtain an agreeable smoke as represented by respondent. The material from which respondent's holders are made disintegrates readily when exposed to heat and conveys to smoke coming in contact with the holders an unpleasant taste or flavor.

PAR. 4. The respondent has distributed among its prospective purchasers located in various States of the United States and in the District of Columbia circulars bearing the phrases:

PIONEER MERCHANDISE CO. INC.

Manufacturers and Importers

BUY DIRECT—SAVE MONEY

Quality Merchandise at Lowest Manufacturer's Prices.

When Buying from Us You Buy from the Manufacturer.

You get the Right Merchandise at the Lowest Obtainable Price.

- AN OPPORTUNITY
1. To Save Money by Buying from Manufacturer.
 2. To Be Assured of Lowest Manufacturers Prices.
 3. To Receive Quality—Put Up the Way You Like It.

It has also represented on its letterheads and invoices distributed by the United States mails and in commerce that it is a manufacturer.

Through the use of the word "Manufacturer" the respondent has represented, and now represents and implies, that it is the manufacturer of cigarette holders and other domestic-made merchandise which it sells, and that it owns, operates, and controls a factory in which said holders are made.

The respondent does not make or manufacture the cigarette holders or other domestic products sold and distributed by it, and the

respondent does not own or control the manufacturing plant in which its said products are manufactured.

PAR. 5. There has long been a preference on the part of a substantial proportion of jobbers, dealers, and consumers to deal directly with the manufacturer because of the belief that by the elimination of middlemen's profits superior products at low prices and other advantages can be, and are, obtained.

PAR. 6. The use by the respondent of the representations set out in paragraphs 3 and 4 above 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, that the respondent manufactures the cigarette holders and other merchandise sold and distributed by it and, further, that such cigarette holders are of proper material for the purpose for which they are sold. As a result of such erroneous and mistaken belief the purchasing public has purchased a substantial quantity of the cigarette holders and other merchandise sold and distributed by the respondent.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, an agreed statement of facts and supplement thereto and other evidence taken before an examiner of the Commission theretofore duly designated by it, 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 Pioneer Merchandise Co., Inc., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cigarette

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holders and other merchandise, do forthwith cease and desist from representing, directly or by implication:

1. That cigarette holders or similar products made of cellulose acetate, or other material which disintegrates readily when exposed to heat or imparts an unpleasant taste or flavor to smoke coming in contact with it, are a superior product, or satisfactory for the purpose intended, or will give the user pleasant and satisfactory service.

2. That respondent is the manufacturer of cigarette holders or other articles of merchandise which are not in fact manufactured in a plant owned and operated or directly and absolutely controlled by respondent.

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

IN THE MATTER OF

J. D. JACOBS AND P. W. SMITH, TRADING AS ASPIRONAL COMPANY

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

Docket 4574. Complaint, Aug. 22, 1941—Decision, Dec. 9, 1941

Where two individuals engaged in the interstate sale and distribution of their "Aspironal" medical preparation; in advertisements disseminated through the mails, newspapers and periodicals, and other advertising literature—

(a) Used the word "Aspironal" as brand name of their product and in their trade name, and represented, directly and by implication, that their said product was a cure or remedy for the common cold and would rid one of the symptoms thereof, and that it contained an effective quantity of aspirin;

Facts being it contained no aspirin and had no therapeutic value in the treatment of the common cold in excess of giving temporary relief from the discomforts arising therefrom, but was a cathartic, use of which by one suffering from nausea, vomiting, abdominal pains or other symptoms of appendicitis was dangerous; and

(b) Failed, in said advertisements, to reveal facts material in the light of such representations and with respect to consequences which might result from use of preparation under usual or prescribed conditions, as above indicated;

With effect, through use of such brand or trade name, and false and deceptive statements and representations, of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that the product in question contained aspirin, generally considered useful by the consuming public in giving relief from the common cold, and that such statements, etc., were true, and of inducing it to purchase their said preparation because of such erroneous beliefs:

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.

Alston, Foster, Moise & Sibley, of Atlanta, Ga., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that J. D. Jacobs and P. W. Smith, trading as Aspironal 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:

Complaint

PARAGRAPH 1. Respondents, J. D. Jacobs, and P. W. Smith, are individuals trading as Aspironal Co., with their principal place of business at 1632 Candler Building, Atlanta, Ga.

PAR. 2. The respondents are now and for more than one year last past have been engaged in the sale and distribution of the medical preparation designated as "Aspironal."

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

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medical 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 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 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 periodicals and by other advertising literature are the following:

ASPIRONAL IS QUICK RELIEF FOR A COLD.

ASPIRONAL ROBS A COLD OF ITS MISERY QUICK.

Banishes that chilly, creepy, achey, mean feeling. Quickly checks the running at nose and eyes, makes you comfortable.

* * * Aspironal moves the bowels gently but thoroughly, helping nature to throw off the cold.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of the aforesaid preparation, the said respondents represent directly and by implication that their said preparation is a cure or remedy for the common cold; that it will rid one of the

symptoms of the common cold; and that it contains an effective quantity of aspirin.

PAR. 5. The foregoing representations and advertisements are grossly exaggerated, false and misleading. In truth and in fact, respondents' preparation "Aspironal" is not a cure or remedy for the common cold and will not rid one of the symptoms thereof. Said preparation does not contain aspirin and it has no therapeutic value in the treatment of the common cold in excess of giving temporary relief from the pains and discomforts arising therefrom.

PAR. 6. The use by the respondents of the brand name "Aspironal" or any other brand name whose phonetics, spelling or other written appearance simulates the word "aspirin" is an unfair and deceptive act or practice in that its use has the capacity and tendency of misleading and deceiving a substantial number of the purchasing public into the erroneous belief that said preparation contains "aspirin" and because of such mistaken belief to purchase said preparation. The preparation "Aspironal" does not contain aspirin. Aspirin is a well known preparation and is favorably received by the consuming public. It is generally considered as a useful preparation in giving relief from the discomforts of the common cold.

PAR. 7. The respondents' advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements under such conditions as are customary or usual.

In truth and in fact, respondents' preparation "Aspironal" is a cathartic and its use, by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis is dangerous.

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

PAR. 9. The aforesaid acts and practices of the said respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 22, 1941, issued and thereafter served its complaint in this proceeding upon the respondents J. D. Jacobs and P. W. Smith, individuals, trading as Aspironal Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 8, 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 their counsel, Alston, Foster, Moise & Sibley, and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its 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. Respondents expressly waived 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, J. D. Jacobs and P. W. Smith, are individuals trading as Aspironal Co., with their principal place of business at 1632 Candler Building, Atlanta, Ga.

PAR. 2. The respondents are now and for more than 1 year last past have been engaged in the sale and distribution of the medical preparation designated as "Aspironal."

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

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medical preparation in commerce be-

tween 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 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 periodicals and by other advertising literature are the following:

ASPIRONAL IS QUICK RELIEF FOR A COLD.

ASPIRONAL ROBS A COLD OF ITS MISERY QUICK.

Banishes that chilly, creepy, achey, mean feeling. Quickly checks the running at nose and eyes, makes you comfortable.

* * * Aspironal moves the bowels gently but thoroughly, helping nature to throw off the cold.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of the aforesaid preparation, the said respondents represent directly and by implication that their said preparation is a cure or remedy for the common cold; that it will rid one of the symptoms of the common cold; and that it contains an effective quantity of aspirin.

PAR. 5. The foregoing representations and advertisements are grossly exaggerated, false and misleading. In truth and in fact, respondents' preparation "Aspironal" is not a cure or remedy for the common cold and will not rid one of the symptoms thereof. Said preparation does not contain aspirin and it has no therapeutic value in the treatment of the common cold in excess of giving temporary relief from the pains and discomforts arising therefrom.

PAR. 6. The use by the respondents of the brand name "Aspironal" or any other brand name whose phonetics, spelling or other written

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appearance simulates the word "aspirin" is an unfair and deceptive act or practice in that its use has the capacity and tendency of misleading and deceiving a substantial number of the purchasing public into the erroneous belief that said preparation contains "aspirin" and because of such mistaken belief to purchase said preparation. The preparation "Aspironal" does not contain aspirin. Aspirin is a well known preparation and is favorably received by the consuming public. It is generally considered as a useful preparation in giving relief from the discomforts of the common cold.

PAR. 7. The respondents' advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

In truth and in fact, respondents' preparation "Aspironal" is a cathartic and its use, by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis is dangerous.

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

CONCLUSION

The Commission finds that the aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents and a stipulation as to the facts entered into by counsel for respondents herein and counsel for the Commission, which provides, among other things, that without further evidence or other interven-

ing procedure the Commission may issue and serve upon the respondents herein 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 said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, J. D. Jacobs, and P. W. Smith, trading as Aspironal Co., or under any other name, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their preparation now named Aspironal or any other preparation containing the same or similar ingredients, under whatever name sold, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that their said preparation is a cure or remedy for the common cold; that it will rid one of the symptoms of the common cold; that it contains an effective quantity of aspirin; or that it has any therapeutic value in the treatment of the common cold in excess of giving temporary relief from the pain and discomfort arising therefrom; or which advertisement fails to reveal that said preparation should not be used by persons suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis; provided, however, that if the directions for use, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain a warning of the potential dangers in the use of said preparation as hereinabove set forth, such advertisement need contain only the cautionary statement: **CAUTION, USE ONLY AS DIRECTED.**

2. 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 includes as a part of respondents' trade name or as a brand name for respondents' preparation the name "Aspironal" or any other name or word whose phonetics, spelling or appearance simulates, implies, or suggests the word "aspirin."

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 or terms prohibited

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in paragraphs 1 and 2 hereof, or which fails to comply with the requirements set forth in paragraph 1 hereof with respect to said cautionary statement.

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

NOMIS CORPORATION, ALSO TRADING AS LINGLE ADVERTISING AGENCY; SIMON LEVY; STOKER CORPORATION OF AMERICA, ALSO TRADING AS APROCS ADVERTISING AGENCY; AND CHARLES B. LEVY

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

Docket 4580. Complaint, Aug. 29, 1941—Decision, Dec. 9, 1941

Where two corporations and the principal stockholder in each, formulating, controlling and directing its acts, practices and policies, engaged in the interstate offer and sale of their prefabricated "Nomis Ready-Cut Homes" to purchasers or so-called "distributors"; in pursuance of a scheme to induce individuals to purchase and execute written contracts for the purchase of their said houses and territorial rights for the sale thereof; and incident to which aforesaid individuals respectively made use of names of two pretended advertising agencies as mediums through which to carry out the deceptive acts and practices below set forth; through blind advertisements which they made a practice of running in the classified sections of newspapers in various States—

- (a) Represented and implied that persons replying thereto would have an opportunity to make an advantageous connection with a well-established and reliable factory engaged in manufacturing and distributing a complete line of prefabricated and ready-cut houses, and that they had a large volume of business, facts being they did not make such houses or own or operate a factory making them, and did not have the large volume of business represented, but had contracts with factories equipped to make such houses, which fact they failed to disclose to prospective distributors and customers, in some instances changing price lists prepared for their distributors, after contracts had been signed and following discontinuance of filling orders by factories with which they had agreements;
- (b) Represented and implied that the sum of \$500, mentioned in their ads as capital required to handle a distributorship, was to establish the business and defray necessary expenses during the beginning period, when in fact it was a partial payment on their houses;
- (c) Represented that their houses were shipped complete and met specifications required for financing by lending agencies operating under the Federal Housing Administration Act, when they did not contain heating equipment and wiring and did not meet such specifications;
- (d) Represented that men in their organization were earning large sums of money and, in one instance, as much as \$10,000 in one month, when in fact such persons did not make the large sums represented; their primary purpose in obtaining the execution of contracts was the sale of houses and so-called distributorship contracts were in reality contracts for the sale of houses to so-called distributors; and they failed, in some instances, to comply with contracts' provision regarding refund of down payment on houses; and

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(e) Made such typical representations in form letters replying to inquiries received in response to aforesaid advertisements, in the name of one or the other of said purported advertising agencies, as "This ad was placed by us for one of our most valued clients, whose houses and buildings are manufactured in a factory covering over 20 acres of ground, and which for over 32 years has enjoyed successful building of quality products," "The distributorship to be opened is expected by our clients to do not less than \$75,000.00 worth of business per year and to earn for the distributor selected not less than \$20,000.00 a year," and "This distributor, through the Federal Housing Plan, will have the benefits of unlimited capital to properly handle all of the business which can be done by the distributor and the many dealers he will control. * * *," and requested that certain questions be answered in confidence with a view to deciding whether or not applicant's past experience would justify supposed advertiser's clients giving him "a ten year contract to control this important distribution," in which event he would "be invited to Indianapolis" with all expenses paid;

When in fact said form letters were written by or under the direction of aforesaid individuals and not by a bona fide advertising agency, as indicated, and supposed signing "president" and "assistant manager" thereof, respectively, were their employees; any advertising done by the supposed agencies was incidental to sale of the houses in question, and persons connected therewith were not advertising specialists but directed their sole efforts to aforesaid deceptive and misleading sales plan; expenses of prospective distributors who were induced to visit their home offices through such statements were paid or refunded only to those who executed contracts and made partial payments on houses; prospective distributors were not given test to determine their particular qualifications nor invited to visit the home offices unless their answers to questionnaires indicated that they had the \$500 mentioned in the blind advertisement, and the chief qualification required was possession of \$250 to \$500 which prospect was willing to pay as a deposit;

With the result that a substantial portion of the public was misled into the mistaken belief that such representations and implications were true, and many prospective distributors throughout many States were induced to visit their offices and execute contracts requiring the purchase of a stated number of houses and make partial payments thereon under the mistaken belief that the contract was an exclusive distributorship and the payment a deposit to secure it:

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

Mr. S. F. Rose 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 Nomis Corporation,

a corporation doing business under its corporate name and also under the name of Lingle Advertising Agency, Simon Levy, an individual, Stoker Corporation of America, a corporation doing business under its corporate name and also under the name of Aprocs Advertising Agency, and Charles B. Levy, an individual, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Nomis Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Indiana, and does business under its corporate name and also under the name of Lingle Advertising Agency, with its principal place of business formerly located at 410-420 Lingle Street, Lafayette, Ind., and now being operated from a so-called branch office at 224 Hildebrandt Building, Jacksonville, Fla.

Respondent, Simon Levy, an individual, is now, and since the date of its incorporation has been, the principal stockholder in and has formulated, controlled and directed the acts, practices and policies of respondent Nomis Corporation. He maintains his principal office and place of business at 224 Hildebrandt Building, Jacksonville, Fla.

Respondent, Stoker Corporation of America, is a corporation organized and existing under the laws of the State of Indiana and does business under its corporate name and also under the name of Aprocs Advertising Agency, with its principal place of business located at 2440 Meridian Street, Indianapolis, Ind.

Respondent, Charles B. Levy, an individual, is now, and has been, the principal stockholder in and has formulated, controlled and directed the acts, practices and policies of respondent Stoker Corporation of America.

All of said respondents are now, and have been for more than two years last past, engaged in the offering for sale and sale of prefabricated and ready-cut houses, advertised as "Nomis Ready-Cut Homes," to purchasers hereinafter referred to as "distributors," located at various points in the several States of the United States and in the District of Columbia. Respondents cause said houses, when sold, to be transported from the place where manufactured to purchasers thereof located in States other than the State where such houses are manufactured and in the District of Columbia.

Respondents, in the course and conduct of the business aforesaid, and in adopting and carrying out the sales plan or scheme hereinafter referred to, and in doing the acts and things hereinafter set forth, have acted together and in cooperation with each other.

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PAR. 2. In the course and conduct of their business aforesaid, for the purpose of inducing individuals to purchase, and to execute written contracts for the purchase of, their said houses, and territorial rights for the sale of same, respondents have devised a fraudulent sales plan and scheme which has the tendency to and does induce the purchase of, and the execution of agreements to purchase, respondents' said houses.

As a part of such fraudulent sales plan or scheme respondents operate and carry on much of their business in the names of fictitious advertising agencies, which are used as mediums for the use of deceptive acts and practices in deceiving prospective distributors and ultimate purchasers into believing that respondent corporations are large, well-established and reliable business establishments engaged in the manufacture of prefabricated and ready-cut houses. In this respect a part of the business of the Nomis Corporation is carried on under the name of Lingle Advertising Agency while the name of Aprocs Advertising Agency is used by the Stoker Corporation of America.

PAR. 3. Respondent corporations, acting by and through the individual respondents and other authorized agents under their direction, in furtherance of said sales plan, adopted the practice of running what are known as "blind advertisements" in the classified advertisement section of various newspapers located in various States of the United States. Among and typical of these advertisements are the following, the one first set out being the advertisement of the respondent Nomis Corporation and the individual respondent Simon Levy, and the one last set out being the advertisement of the respondent Stoker Corporation of America and the individual respondent Charles B. Levy:

BUSINESS OPPORTUNITY

\$20,000 A YEAR OPPORTUNITY

Distributorship available for one of America's greatest opportunities! Hundreds of dealers under your supervision, working for you, making profits for you. Every community in aggressive, home loving America wants and is waiting for sound low cost housing plan—your dealers can offer working people the world's greatest prefabricated houses, unusually low prices on F. H. A. plan where cost is less than rent now paid and get nothing for. Here's opportunity for complete financial independence. Line is most complete, including tourist cabins, summer cottages, refreshment highway stands, good residential houses, any size. Shipped complete, ready for occupancy after few hours work on purchaser's part. Every unit gives you and dealers big profit—your cost only \$90 on good one room house. Factory has facilities, capital, ability to build sectional structure from small brooder houses, farm building to finest residential homes. Factory sold in four months over \$250,000.00 of C. C. C. buildings to U. S. government. \$500 cash capital required to handle distributorship. Get full facts. The most

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wonderful opportunity in business today! Men in our organization making more than they ever earned. One man earned over \$10,000 in one month. Write Dept. E, Box 187, Lafayette, Ind., for details.

* * * * *

\$20,000 A YEAR OPPORTUNITY

Distributorship available for one of America's greatest opportunities! Hundreds of dealers will be under your supervision, working for you, making profits for you. Every community in aggressive, home loving America wants and is waiting for a sound Low Cost Housing Plan—your dealers can offer the masses of working people the World's Greatest Prefabricated houses at unusually low prices on the F. H. A. plan where their cost is less than the rent they now pay and get nothing for. Here is your opportunity for complete financial independence. The line is most complete, including tourist cabins, summer cottages, refreshment highway stands, and good residential houses of any size. Pre-fabricated houses shipped complete and ready for occupancy, after few hours work on part of purchaser. Every unit gives you and your dealers big profit—your cost only \$90 on good one room house. The factory has been in business over 50 years, has the facilities, capital and ability to ship all orders promptly. \$500 cash capital required to handle distributor-ship. Get the full facts, it's the most wonderful opportunity in business today! Men in our organization have made more than they ever earned. One man earned over \$10,000 in one month. Write Box 5005, Station A, Indianapolis, Ind., for details.

In said advertisements the respondents imply and represent that persons responding to same will have an opportunity to make an advantageous connection with a well-established and reliable factory engaged in manufacturing and distributing a complete line of prefabricated and ready-cut houses; that the sum of \$500 is to establish the business and defray necessary expenses during the beginning period; that said houses are shipped complete; that respondents have a large volume of business; and that men in their organizations are earning large sums of money, in one instance as much as \$10,000 in one month.

In truth and in fact respondents are not and were not manufacturers of prefabricated and ready-cut houses. They do not own or operate a factory or plan in which such houses may be made. They do not have, nor have they had, the large volume of business represented, and persons in such organizations do not make or earn and have not made or earned the large sums of money represented. The sum of \$500 represented as the cash capital necessary for handling a distributorship is and was a sum demanded and received by the respondents from prospective distributors as partial payment on a specified number of houses. Said houses were not and are not complete as represented as they do not contain wiring for electricity or heating equipment. So-called distributorship contracts entered into

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with purchasers of said houses are in reality contracts for the sale of houses to so-called distributors and contain provisions permitting a forfeiture of the down payments made on the houses for various and sundry reasons and are so drawn and of such a nature as to make it a practical impossibility for so-called distributors to comply with the terms and conditions thereof, thereby permitting the respondents to declare the contracts violated and the down payments on houses secured from so-called distributors forfeited. These contracts are used to sell houses, not for the purpose of securing distributors. The respondents fail and refuse, in many instances, to comply with the terms of the contracts which provide, under certain conditions, for a return to the so-called distributors of the down payments made to respondent.

PAR. 4. In furtherance of the deceptive acts and practices aforesaid and in carrying out said scheme or plan, respondents cause questionnaires as to the qualifications of distributors to be mailed to persons answering such advertisements under the name of one or the other of the so-called advertising agencies. Letters containing many false and deceptive statements and representations regarding the corporate respondents and their business are also mailed to persons answering such advertisements under the name of one or the other of the so-called advertising agencies.

Among and typical of the false statements and representations disseminated by the so-called advertising agencies are the following:

This ad was placed by us for one of our most valued clients, whose houses and building are manufactured in a factory covering twenty acres of ground, and which for over thirty-two years has enjoyed successful building of quality products.

The distributorship to be opened is expected by our client to do not less than \$75,000 worth of business per year and to earn for the distributor selected not less than \$20,000 a year.

We have handled the advertising of this client for over five years and we know the various types of men who can make a success of the distribution. Before going into the details with you, I will appreciate your answering the questions which I am enclosing you and then returning them to me. Your answers will be absolutely confidential and if, after receiving your answers, I feel that you are a man with past experience that would justify our client's giving you a ten years' contract to control this important distribution, then you will be invited to Indianapolis, all of your expenses paid. * * * If on the other hand your answers indicate that you couldn't do the job successfully, then you will not be asked to come.

This distributor, through the Federal Housing Plan is offered the benefit of unlimited capital to properly handle all of the business which can be done by the distributor and the many dealers he will control.

Furthermore, in pursuance of the sales plan and scheme of respondents, receipt of the questionnaire from prospective distributor is ac-

knowledgeed by a form letter through one of the so-called advertising agencies. Each prospective distributor is advised that he will make an excellent distributor and will soon be enjoying a large monthly income if he accepts the distributorship. Many extravagant statements and false representations, such as, that the expenses of the trip to the home office of respondents will be paid applicants who secure distributorships or to those who, in the opinion of the sales manager, are not suitable, and that only a selected number of applicants will be chosen as distributors, are made to induce the prospects to visit the home office of the respondents for a personal conference with the sales manager.

By the means and in the manner aforesaid respondents represent and imply, and have represented and implied that such letters are and were written by bona fide advertising agencies in the usual course of business, that the respondent corporations own and successfully operate large factories which afford prospective distributors remunerative business opportunities for selling a product for which a great demand exists and which meets the requirements for Federal Housing Administration financing.

In truth and in fact, said plan or scheme was false, deceptive and misleading in all its phases and was designed only for the purpose of extracting money from prospects through down payments made on respondents' houses. The newspaper advertisements and all correspondence had with the prospective distributors are written by the individual respondents, Simon Levy and Charles Levy, or by employees under their direction. The expenses of all prospective distributors who visit the home office of respondents for personal conferences with the sales manager are not paid, but only those prospective distributors who execute contracts requiring the purchase of a stated number of houses and pay to the respondents a partial payment on each of such houses receives a refund of any portion of the expense incurred in journeying to and returning from respondents' office and place of business.

The respondents make no test of, or have any special qualifications for distributors, the only qualification being that the distributor has a sum of money ranging from \$250 to \$500 or more to pay the respondents as a deposit on a specified number of houses.

In truth and in fact, many houses advertised as being complete do not include wiring and a heating system. Such houses do not meet the specifications necessary to obtain loans through lending agencies lending money under the law administered by the Federal Housing Administration.

PAR. 5. Pursuant to said fraudulent sales plan, the individual respondents, acting in the names of the respective advertising agencies, through the false representations set out in the preceding para-

graph, have induced and persuaded many prospective distributors, located throughout many States of the United States, to visit the offices of respondents located in the State of Indiana, for the purpose and with the intent of inducing such prospective distributors to execute contracts requiring the purchase of a stated number of houses and to induce such prospective distributors to make partial payments on such houses.

PAR. 6. The use by the respondents of the aforesaid scheme and plan and said false, misleading and deceptive representations and implications has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that said false representations and implications are true and causes a substantial number of the public, because of such mistaken and erroneous belief, to purchase respondents' said houses and to make partial payments on said houses under contracts which permit the respondents to forfeit unfairly the partial payment made and not deliver to such members of the public, any of the houses purchased.

PAR. 7. The effect of the aforesaid plan and scheme of the respondents and the things done thereunder and pursuant thereto is to secure the execution by members of the public of a contract to purchase a definite number of houses and to pay to the respondents a sum of money as partial payment on each of such houses, under the mistaken belief that the contract is an exclusive distributorship contract and the payment made is not partial payment on a specified number of houses but a deposit made with the respondents in order to secure said exclusive distributorship.

PAR. 8. 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 meaning of the Federal Trade Commission 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, 1941, issued and subsequently served its complaint in this proceeding upon said respondents Nomis Corporation, a corporation, trading under its corporate name and also as Lingle Advertising Agency; Simon Levy, an individual; Stoker Corporation of America, trading under its corporate name and also as Aprocs Advertising Agency; and Charles B. Levy, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On Sep-

tember 17, 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 counsel for 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, state its findings as to the facts and its conclusions based thereon and enter its order disposing of the 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 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 Nomis Corporation is a corporation organized and existing under and by virtue of the laws of the State of Indiana. It does business under its corporate name and also under the name of Lingle Advertising Agency. Its principal place of business was formerly located at 410-420 Lingle Street, La Fayette, Ind. It is now being operated from a so-called branch office at 224 Hildebrandt Building, Jacksonville, Fla.

Respondent Simon Levy, an individual, is now, and since the date of its incorporation has been, the principal stockholder in and has formulated, controlled, and directed the acts, practices, and policies of respondent Nomis Corporation. He maintains his principal office and place of business at 224 Hildebrandt Building, Jacksonville, Fla.

Respondent Stoker Corporation of America is a corporation organized and existing under the laws of the State of Indiana and does business under its corporate name and also under the name of Aprocs Advertising Agency. Its principal place of business is located at 2440 Meridian Street, Indianapolis, Ind.

Respondent Charles B. Levy, an individual, is the principal stockholder in and has formulated, controlled, and directed the acts, practices, and policies of respondent Stoker Corporation of America.

All of said respondents are now, and have been for more than 2 years last past, engaged in the offering for sale and sale of prefabricated and ready-cut houses, advertised as "Nomis Ready-Cut Homes," to purchasers hereinafter referred to as "distributors" located at various points in the several States of the United States and in the District of Columbia. Respondents cause said houses, when sold, to be transported from the place where manufactured to purchasers thereof located in States of the United States other than the State where such houses are manufactured and in the District of Columbia.

Respondents, in the course and conduct of the business aforesaid, and in adopting and carrying out the sales plan or scheme hereinafter referred to, and in doing the acts and things hereinafter set forth, have acted together and in cooperation with each other.

PAR. 2. In the course and conduct of their business aforesaid, for the purpose of inducing individuals to purchase and to execute written contracts for the purchase of their said houses and the territorial rights for the sale of same, respondents, acting by and through the two individual respondents, devised a deceptive and misleading sales plan which has the tendency to, and does, induce the purchase of and the execution of agreements to purchase respondents' said houses.

The plan to deceive prospective distributors and ultimate purchasers consists in part of deception in advertising. The advertising done by the respondents in carrying out such plan, and a part of the business done in connection with same, is in the name of one or the other of the advertising agencies. Respondent Simon Levy uses the name of Lingle Advertising Agency to promote and carry out the sales plan operated in the name of Nomis Corporation, while respondent Charles B. Levy uses the name of Aprocs Advertising Agency to promote and carry out the sales plan operated in the name of Stoker Corporation of America. These advertising agencies are unincorporated and are used as mediums through which to carry out many of the deceptive acts and practices used by the respondents. The result of the use of such advertising agencies in each instance was to deceive prospective distributors into believing that the respondent corporations were large, well-established, and reliable business establishments which were engaged in the manufacture of prefabricated and ready-cut houses. These advertising agencies are not engaged in the general advertising business and any advertising business that might have been done by either of them was incidental only to the sale of respondents' said houses. Persons connected with such agencies were not advertising specialists and their sole efforts were directed to the

advertising conducted by the individual respondents in connection with such deceptive and misleading sales plan.

PAR. 3. Respondent corporations, acting by and through the individual respondents and other authorized agents under their direction, in furtherance of said sales plan adopted the practice of running what are known as "blind advertisements" in the classified advertisement section of various newspapers located in various States of the United States. Among and typical of these advertisements are the following, the one first set out being the advertisement of the respondent Nomis Corporation and the individual respondent Simon Levy and the one last set out being the advertisement of the respondent Stoker Corporation of America and the individual respondent Charles B. Levy:

BUSINESS OPPORTUNITY

\$20,000 A YEAR OPPORTUNITY

Distributorship available for one of America's greatest opportunities! Hundreds of dealers under your supervision, working for you, making profits for you. Every community in aggressive, home loving America wants and is waiting for sound low cost housing plan—your dealers can offer working people the world's greatest prefabricated houses, unusually low prices on F. H. A. plan where cost is less than rent now paid and get nothing for. Here's opportunity for complete financial independence. Line is most complete, including tourist cabins, summer cottages, refreshment highway stands, good residential houses, any size. Shipped complete, ready for occupancy after few hours work on purchaser's part. Every unit gives you and dealers big profit—your cost only \$90 on good one room house. Factory has facilities, capital, ability to build sectional structure from small brooder houses, farm building to finest residential homes. Factory sold in 4 months over \$250,000.00 of C. C. C. buildings to U. S. government. \$500 cash capital required to handle distributorship. Get full facts. The most wonderful opportunity in business today! Men in our organization making more than they ever earned. One man earned over \$10,000.00 in one month. Write Dept. E., Box 187, Lafayette, Ind., for details.

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\$20,000 A YEAR OPPORTUNITY

Distributorship available for one of America's greatest opportunities! Hundreds of dealers will be under your supervision, working for you, making profits for you. Every community in aggressive, home loving America wants and is waiting for a sound Low Cost Housing Plan—your dealers can offer the masses of working people the World's Greatest Prefabricated houses at unusually low prices on the F. H. A. plan where their cost is less than the rent they now pay and get nothing for. Here is your opportunity for complete financial independence. The line is most complete, including tourist cabins, summer cottages, refreshment highway stands, and good residential houses of any size. Prefabricated houses shipped complete and ready for occupancy, after a few

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hours work on part of purchaser. Every unit gives you and your dealers big profit—your cost only \$90.00 on good one room house. The factory has been in business over 50 years, has the facilities, capital, and ability to ship all orders promptly. \$500 cash capital required to handle distributorship. Get the full facts, it's the most wonderful opportunity in business today! Men in our organization have made more than they ever earned. One man earned over \$10,000.00 in one month.

Write Box 5005, Station A, Indianapolis, Ind., for details.

In said advertisements the respondents imply and represent that persons responding to same will have an opportunity to make an advantageous connection with a well-established and reliable factory engaged in manufacturing and distributing a complete line of prefabricated and ready-cut houses; that the sum of \$500 is to establish the business and defray necessary expenses during the beginning period; that said houses are shipped complete; that respondents have a large volume of business; and that men in their organizations are earning large sums of money, in one instance as much as \$10,000 in 1 month.

PAR. 4. Respondents did not, and do not, manufacture prefabricated and ready-cut houses. They did not, and do not, own or operate a factory or plant in which such houses may be made. They do not have, nor have they had, the large volume of business represented. Persons connected with their organizations do not make or earn, and have not made or earned, the large sums of money represented. The sum of \$500 represented as the capital necessary for handling a distributorship is, in fact, the sum of money demanded by the respondents from prospective distributors as partial payment on respondents' houses. Respondents did have contracts with factories which were equipped to manufacture prefabricated and ready-cut houses. This fact was not disclosed to prospective distributors and persons dealing with the respondents. In some instances factories with which respondents had agreements discontinued filling orders for respondents and price lists prepared by respondents for their distributors were changed after contracts had been signed by distributors who had agreed to sell respondents' houses. Such houses as were sold by the respondents were not, as represented, complete in that they did not contain heating equipment and wiring. As a rule these houses do not, as represented by said respondents, meet specifications required for financing by lending agencies operating under the Federal Housing Administration Act. The respondents' primary purpose in obtaining the execution of the contracts was to sell houses. The respondents have in some instances failed to comply with the provisions of the contract regarding the refund of money which had been paid respon-

ents as down payments on houses purchased. A refund was made in one instance, after the matter was placed in the hands of attorneys. These so-called distributorship contracts entered into with purchasers of said houses are in reality contracts for the sale of houses to so-called distributors.

PAR. 5. When a reply to respondents' advertisements is received by one or the other of the advertising agencies, the respondents then mail to the person answering such advertisements a form letter written on the stationery of one or the other of the advertising agencies. The persons whose names are signed to these letters, in one instance as president and in the other instance as assistant manager, are employees of the respondents and do not hold the official positions indicated.

Among and typical of statements made in such letters are the following:

This ad was placed by us for one of our most valued clients, whose Houses and Buildings are manufactured in a factory covering over 20 acres of ground, and which for over 32 years has enjoyed successful building of quality products. * * *

The distributorship to be opened is expected by our clients to do not less than \$75,000.00 worth of business per year and to earn for the distributor selected not less than \$20,000.00 a year. This distributor, through the Federal Housing Plan, will have the benefit of unlimited capital to properly handle all of the business which can be done by the distributor and the many dealers he will control. * * *

We have handled the advertising of this client for over five years and we know the various types of men who can make a success of the distribution. Before going into further details with you, I will appreciate your answering the questions which I am enclosing you and then returning them to me. Your answers will be absolutely confidential and if, after receiving your answers, I feel you are a man with past experience that would justify our clients giving you a ten year contract to control this important distribution, then you will be invited to Indianapolis, all of your expenses paid, * * *.

If, on the other hand, your answers indicate that you couldn't do the job successfully, then you will not be asked to come. * * *

The form letters used by respondents mislead and deceive persons receiving them. These letters and the advertisements referred to are written by or under the direction of the individual respondents and not by a bona fide advertising agency, as indicated. The expenses of all prospective distributors who are induced to visit the home offices of the respondents through the statements set out in said letters, as well as in other letters mailed to persons who have filled out and returned questionnaires mailed them by the respondents, are not paid by the respondents. Expenses incurred in visiting the home offices of respondents at their invitation are paid or refunded only to those persons who have executed respondents' contracts and have made par-

tial payments on houses agreed to be bought by them. Persons are not invited to visit the home offices of the respondents unless their answers to the questionnaires indicate they have the \$500 mentioned in the blind advertisement. The representations concerning refunds of such expenses are misleading and deceptive to many individuals who become interested in respondents' business.

The prospective distributors are not given a test for their particular qualifications. The chief qualification required of a prospective distributor is the possession of a sum of money ranging from \$250 to \$500 which he is willing to pay as a deposit to defray the expenditures incident to securing the distributorship for respondents' said houses.

PAR. 6. Pursuant to said sales plan the individual respondents, acting in the names of the respective advertising agencies, through the false representations set out in the preceding paragraphs have induced and persuaded many prospective distributors located throughout many States of the United States to visit the offices of the respondents located in the State of Indiana and to execute contracts requiring the purchase of a stated number of houses and to make partial payments on such houses.

PAR 7. Prior to the early part of the year 1940 the respondent Simon Levy had promoted and been responsible for the conduct of the business in the manner set out in the preceding paragraphs. About such time arrangements were made between Simon Levy and Charles B. Levy whereby the Stoker Corporation of America would take over the selling of Nomis houses through distributors to be under contract with Stoker Corporation of America. Thereafter Simon Levy agreed to limit his activities in the business to the filling of such orders as might be received from the Nomis distributors. Under this arrangement any houses sold by distributors under contract with the Nomis Corporation were to be furnished by the Stoker Corporation of America at the same prices paid by distributors under the Stoker Corporation of America. No definite agreement was made by the individual respondents with respect to a division of the profits from the undertaking, each relying upon the other to agree to an equitable division of the profits made considering their respective interests. Subsequent to such time, Simon Levy became inactive in the actual management of the business and was succeeded by Charles B. Levy, who continued the same in the manner described in the preceding paragraphs until later in the year 1940. The business of respondents during the last year has been confined mainly to furnishing such houses as their distributors might sell under contracts already existing.

PAR. 8. The acts, practices, and methods set out above have misled and deceived a substantial portion of the public into the mistaken and erroneous belief that the representations and implications above referred to were, and are, true and by reason thereof caused such persons to make partial payments on houses under the contracts which are hereinbefore referred to.

PAR. 9. The effect of the aforesaid plan and scheme of the respondents, and the things done thereunder and pursuant thereto, is to secure the execution by members of the public of a contract to purchase a definite number of houses and to pay to the respondents a sum of money as partial payments on each of such houses, under the mistaken belief that the contract is an exclusive distributorship contract and the payment made is not partial payment on a specified number of houses but a deposit made with the respondents in order to secure said exclusive distributorship.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, and a stipulation as to the facts entered into between the respondents herein and 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, Nomis Corporation, a corporation, trading under its own or any other name; Stoker Corporation of America, a corporation, trading under its own or any other name; Simon Levy, an individual; Charles B. Levy, an individual; and their respective officers and/or representatives, agents, and employees; either jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution

of prefabricated or ready-cut houses or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or by implication:

1. Representing that respondents are the manufacturers of prefabricated houses or other commodities which are not in fact manufactured in a plant owned and operated or directly and absolutely controlled by them.

2. Representing that the size, scope, or volume of respondents' business is greater than is the fact.

3. Representing that respondents will refund to any prospective purchaser or distributor, or prospective purchasers or distributors, the expenses of such prospects in visiting the offices of respondents, when such is not the fact.

4. Representing that the earnings or profits of distributors or other sales representatives of respondents from the sale or resale of respondents' products are, or have been, greater than the average earnings or profits of such persons in the ordinary course of business under normal conditions and circumstances, or that such earnings or profits of any one distributor or sales representative for any given period of time are, or have been, greater than the amount consistently earned or received by such person in the ordinary course of business under normal conditions and circumstances.

5. Representing that the sum of \$500, or any other sum of money, is required as capital to finance a distributorship, or other sales or distribution agreement with respondents, without disclosing the portion of such sum required by respondents as payment for or toward the purchase of respondents' products in connection with such agreement.

6. Representing that houses offered for sale or sold by respondents which do not contain all the essential features usually found in houses of the same type and character are complete.

7. Representing that houses offered for sale or sold by respondents meet the specifications required by lending agencies operated under the Federal Housing Administration Act, when such is not the fact.

8. Representing that prospective purchasers or so-called distributors are given any test to determine their qualifications for a distributorship, or that any particular qualifications are required other than possession of a sum of money sufficient to make a down payment upon the purchase of respondents' houses, when such is not the fact.

9. Using or employing a sales plan or method of selling their products, or territorial or franchise rights for the distribution of same, which includes representations by advertising agencies or other

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instrumentalities which are apparently independent of respondents but which are in fact owned or controlled by respondents, without disclosing the true connection of such advertising agency or other instrumentality with respondents.

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

JAMES R. MIDDLEBROOK, M. D., DOING BUSINESS AS
MIDDLEBROOK HOSPITAL AND CLINIC

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

Docket 4539. Complaint, July 16, 1941—Decision, Dec. 11, 1941

Where a doctor of medicine, with offices, hospital, and clinic in a certain Texas city, engaged in the surgical and medical treatment of diseases and disorders of the prostate gland, and in distributing through the mails, advertising and other literature, which had the capacity and tendency to induce prospective patients to travel to his place of business for treatment; and engaged, further, in the interstate offer, sale, and distribution of certain medicinal preparations in a "Special Prostate Package for Home Treatment," containing (1) "Calomel, Rhubarb, and Colocynth Compound," (2) "Special Formula No. 17831," and (3) "Methenamine (7½ Grains)";

By means of letters, circulars, booklets, and other advertising literature (along with requests, on the reverse side of many of his advertisements, for names and addresses of men believed to have prostate or rectal troubles, together with an offer to award the forwarder a \$10 credit on medical services rendered in aforesaid city following the furnishing of such names); directly or by implication—

- (a) Falsely represented that preparations contained in said "Special Package" would relieve pain and soothe and heal the affected parts involved in kidney, bladder, and rectal diseases and diseases of the prostate gland;
- (b) Falsely represented that said "Methenamine (7½ Grains)" was one of the best urinary antiseptic treatments for cleansing infections and inflammation from the kidneys, bladder, and prostate and urethral canal; facts being said product would be effective only when urine was sufficiently acid to liberate formaldehyde, and contained no ingredient insuring constant acidity of the urine;
- (c) Falsely represented that said "Special Formula No. 17831," when applied through the rectum, "was absorbed through and into" the prostate gland in sufficient quantities to be effective;
- (d) Falsely represented that the price of his said package of preparations was normally \$7.50, but that it was offered at a special introductory price of \$5.00, facts being \$5.00 was the price for which it was generally sold; and
- (e) Failed to reveal that prescribed use of his cathartic "Calomel, Rhubarb, and Colocynth Compound" by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, was dangerous;

With effect of misleading and deceiving a substantial portion of the purchasing public into the belief that such false representations were true, and further effect of causing it because of said mistaken belief, to purchase his said "Special Package":

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.

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Mr. Eldon P. Schrup for the Commission.

Mr. Douglas A. Newton, of Del Rio, Tex., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that James R. Middlebrook, M. D., individually and doing business under the name and style of the Middlebrook Hospital and Clinic, 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, James R. Middlebrook, is a doctor of medicine, doing business under the name and style of the Middlebrook Hospital and Clinic, with offices, hospital, and clinic located in the city of Del Rio, State of Texas.

Respondent allegedly specializes in the surgical and medical treatment of diseases and disorders of the prostate gland, and in furtherance of the introduction of his said medical services to the public has caused, and now causes, to be distributed through the United States mails various letters, circulars, booklets, physical examination and diagnosis blanks, dietary lists, and other advertising literature purportedly descriptive of the conditions allegedly giving rise to the need for such operations or treatments and further designed to induce prospective patients to travel to respondent's places of business for the obtaining of the same.

Respondent is now and for more than 1 year last past has been also engaged in the offering for sale, sale and distribution of certain medicinal preparations distributed in a package designated as "Special Prostate Package for Home Treatment," containing the following preparations:

(a) "Calomel, Rhubarb, and Colocynth Compound," consisting of a box of two capsules, labeled as follows:

Calomel, Rhubarb and
Colocynth Compound—
SHARP & DOHME

Take one each night before
treatment is started.

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Said preparation is compounded of the following drugs:

	<i>Grains</i>
Calomel	2
Pill Rhubarb Compound.....	2
Pill Colocynth Compound.....	2

(b) "Special Formula No. 17831," consisting of a box of 30 suppositories, labeled as follows:

Thirty Suppositories
SPECIAL FORMULA
No. 17831

Keep in a cool place to avoid softening Atropine,
 $\frac{1}{60}$ gr.; Phenacaine Hydrochloride, $\frac{1}{3}$ gr.; Tannin,
1 gr.; Nutgall, 1 gr.; Phenol, $\frac{1}{8}$ gr.; Zinc Oxide,
6 grs.

CAUTION: To be used only by or on the prescrip-
tion of a physician.

Manufactured for
J. R. Middlebrook, M. D.
Del Rio, Texas
by
The Upjohn Company,
Kalamazoo, Mich.

(c) "Methenamine (7 $\frac{1}{2}$ Grains)," consisting of a box of tablets, labeled as follows:

Methenamine (7 $\frac{1}{2}$ Grains)
SHARP & DOHME

Dissolve one in glass of water, and take 2 times
daily, before meals, for 20 days, then one daily
until complete.

The above preparations are described and offered for sale by respondent by means of letters, circulars, booklets, and other advertising literature distributed as aforesaid, to prospective patients or purchasers.

Respondent has caused and now causes said Special Prostate Package for Home Treatment when sold to be transported from his offices, hospital, or clinic in the State of Texas 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 Special Prostate Package for Home Treatment in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 2. Respondent in the course and conduct of his aforesaid business has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said Special Prostate Package for Home Treatment by the United States mails and various other means in commerce, as commerce is defined by the Federal Trade Commission Act which are likely to induce, directly or indirectly, the purchase of said preparations or package; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said package or preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said package or preparations in commerce, as commerce is defined by 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 by respondent, as aforescribed, are the following:

SPECIAL PROSTATE PACKAGE FOR HOME TREATMENT

Recommended by J. R. Middlebrook, M. D.

So many of my prospective patients who suffer from kidney, bladder, rectal, and prostate gland trouble, have written to me saying that either because of lack of funds or other personal reasons, that they are unable to come at this time, and have asked me to recommend some of the medicine which I use for them to take at home until they can make the trip to Del Rio for complete treatment. It may be that you are in a similar condition.

I have prepared what I call the "Prostate Package" which is recommended for the relief of kidney, bladder, rectal, and especially the diseases of the prostate gland. It consists of three kinds of medicine to be taken both internally and applied through the rectum, thereby getting this medicine into the gland direct and also letting the gland tissues absorb medicine through and into the gland, which relieves the pain, soothes and heals the affected parts.

This treatment is designed to help clear the infection and inflammation from the kidneys, bladder, rectum, and prostate and give relief from pain and discomforts of these diseases.

The price of this package complete is \$5.00 postage prepaid. I assure you that the highest quality ingredients only are used because I want you to be a patient who will be satisfied.

THIS PACKAGE SOLD UNDER A MONEY BACK GUARANTEE

Because this treatment has proven so successful, we are able to sell this remedy so that if it does not help you after you have given it a fair trial, and you return the unused portion of the medicine in good condition, we will refund your money on the amount of medicine which is not used.

I believe you will agree that this is a fair way in which to deal. You stand a very small chance to lose anything, and you have everything to gain. Order your package today.

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-----Order Blank-----

The Middlebrook Hospital and Clinic,
Del Rio, Texas.

I enclose \$5.00 for your prostate package containing a forty-day treatment for the prostate gland. (If you send cash, you do so at your own risk. C. O. D. if convenient.)

(Your name)-----
(Your address)

Some of respondent's above advertisements contain the following variations of paragraphs 2 and 4 quoted above:

I have prepared a home treatment which consists of three kinds of medicine to be taken both internally and by application through the rectum. The medicine to be taken internally is one of the best urinary antiseptics, which is designed to help clear the infection and inflammation from the kidneys, bladder, prostate, and urethral canal, while the medicine used by application through the rectum is absorbed through and into the gland relieves the pain and soothes the inflamed parts.

* * *

By buying in quantities of ten thousand lots, I have been able to hold the price of this special package down to \$5.00, postage prepaid. I assure you that the highest quality ingredients only are used, because I want you to be a satisfied patient also.

* * *

The price of this package complete is \$7.50, but as an introductory offer to you, I can send it postpaid for only \$5. I assure you that only the highest quality ingredients are used because I want you to be a satisfied patient of mine.

On the reverse side of many of respondent's said advertisements appear testimonials from persons allegedly recommending the purchase and use of respondent's said Special Prostate Package for Home Treatment, while other of respondent's said advertisements similarly contain requests by respondent for the names and addresses of men believed to have prostate or rectal troubles, and offering the forwarder a \$10 credit on medical services to be rendered in Del Rio upon the furnishing of such names and addresses.

PAR. 3. Through the use of the statements and representations hereinabove set forth and other statements and representations similar thereto, not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of the preparations contained in respondent's "Special Prostate Package for Home Treatment," respondent represents, directly and by implication, that said preparations relieve pain and soothe and heal affected parts involved in kidney, bladder, and rectal diseases, and diseases of the prostate gland; that "Methenamine (7½ Grains)" is one of the best urinary antiseptic treatments for cleansing infections and inflammation from

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the kidneys, bladder, and prostate and urethral canal; that said preparation, "Special Formula No. 17831," when applied through the rectum medicates or "gets into" prostate gland in sufficient quantities by absorption through the tissues to be effective; and that the price of respondent's said package of preparations is normally \$7.50 but that it is offered for sale and sold at a special introductory price of \$5.

PAR. 4. The foregoing statements and advertisements of the respondent are grossly exaggerated, false, and misleading.

In truth and in fact, the preparations contained in respondent's said Special Prostate Package for Home Treatment will not relieve pain and soothe and heal affected parts involved in kidney, bladder, and rectal diseases, and diseases of the prostate gland. Said preparation, "Methenamine (7½ Grains)," is not one of the best urinary antiseptics for cleansing infections and inflammations from the kidneys, bladder, and prostate and urethral canal. Respondent's preparation, "Special Formula No. 17831," when applied through the rectum, will not medicate or "get into" the prostate gland in sufficient quantities by absorption through the tissues to be effective. The usual price of respondent's said "Special Prostate Package for Home Treatment" is not \$7.50 but said package is sold generally by respondent for the price of \$5. The respondent's so-called introductory offer price of \$5 for said "Special Prostate Package for Home Treatment" is not an introductory price.

Respondent's preparation designated as Calomel, Rhubarb, and Colocynth Compound is limited in its therapeutic effect to the temporary evacuation of the bowels and its use would not constitute an effective treatment for infections or inflammations of the rectum and it is of no therapeutic value in the treatment of any infection or inflammation of the kidneys, bladder, or prostate gland, nor will it relieve the pain and discomfort attending such disorders.

Respondent's preparation, "Methenamine (7½ Grains)," although possessing antiseptic qualities, would be effective only when the urine was sufficiently acid to liberate formaldehyde. This product contains no ingredients insuring the constant acidity of the urine and its efficacy in neutral or alkaline urine would be of no significance.

PAR. 5. The respondent's advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondent's preparation "Calomel, Rhubarb, and Colocynth Compound" is a cathartic and its use, by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, is dangerous.

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 mistaken and erroneous belief, to purchase respondent's said "Special Prostate Package for Home Treatment."

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 16, 1941, issued, and on July 19, 1941, served its complaint in this proceeding upon respondent, James R. Middlebrook, M. D., individually and doing business under the name and style of the Middlebrook Hospital and Clinic, 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, James R. Middlebrook, is a doctor of medicine doing business under the name and style of the Middlebrook Hospital and Clinic, with offices, hospital, and clinic located in the city of Del Rio, State of Texas.

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Respondent is engaged in the surgical and medical treatment of diseases and disorders of the prostate gland, and as a method of introducing his said medical services to the public respondent has caused and now causes to be distributed through the United States mails various letters, circulars, booklets, physical examination and diagnosis blanks, dietary lists, and other advertising literature wherein respondent describes conditions stated by respondent to give rise to the need for respondent's operations or treatments and which have had and now have the capacity and tendency to induce prospective patients to travel to respondent's places of business for the obtaining of the same.

Respondent is now and for more than 1 year last past has been further engaged in the offering for sale, sale, and distribution of certain medicinal preparations distributed in a package designated "Special Prostate Package for Home Treatment," containing the following preparations:

(a) "Calomel, Rhubarb and Colocynth Compound," consisting of a box of two capsules, labeled as follows:

Calomel, Rhubarb and
Colocynth Compound—
SHARP & DOHME
Take one each night before
treatment is started.

Said preparation is compounded of the following drugs:

	Grains
Calomel	2
Pill Rhubarb Compound.....	2
Pill Colocynth Compound.....	2

(b) "Special Formula No. 17831," consisting of a box of thirty suppositories, labeled as follows:

Thirty Suppositories
SPECIAL FORMULA
No. 17831

Keep in a cool place to avoid softening Atropine, 1/60 gr.; Phenacaine Hydrochloride, 1/3 gr.; Tannin, 1 gr.; Nutgall, 1 gr.; Phenol, 1/5 gr.; Zinc Oxide 6 grs.

CAUTION: To be used only by or on the prescription of a physician.

Manufactured for
J. R. Middlebrook, M. D.
Del Rio, Texas
by
The Upjohn Company,
Kalamazoo, Mich.

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(c) "Methenamine (7½ Grains)," consisting of a box of tablets, labeled as follows:

Methenamine (7½ Grains)

SHARP & DOHME

Dissolve one in glass of water, and take 2 times daily, before meals, for 20 days, then one daily until complete.

The above preparations are described and offered for sale by respondent by means of letters, circulars, booklets, and other advertising literature distributed as aforesaid by respondent to prospective patients and purchasers.

Respondent has caused and now causes said Special Prostate Package for Home Treatment when sold to be transported from his offices, hospital, or clinic in the State of Texas 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 Special Prostate Package for Home Treatment in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent in the course and conduct of his aforesaid business has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said Special Prostate Package for Home Treatment by the United States mails and various other means in commerce, as commerce is defined by the Federal Trade Commission Act, which are likely to and have induced, directly and indirectly, the purchase of said preparations or package; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said package or preparations by various means for the purpose of inducing and which are likely to and have induced, the purchase of his said package or preparations in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the false statement and representations contained in the said advertisements disseminated and caused to be disseminated by respondent, as aforescribed, are the following:

SPECIAL PROSTATE PACKAGE FOR HOME TREATMENT

Recommended by J. R. Middlebrook, M. D.

So many of my prospective patients who suffer from Kidney, Bladder, rectal and Prostate Gland trouble, have written to me saying that either because of lack of funds or other personal reasons, that they are unable to come at this time,

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and have asked me to recommend some of the medicine which I use for them to take at home until they can make the trip to Del Rio for complete treatment. It may be that you are in similar condition.

I have prepared what I call the "Prostate Package" which is recommended for the relief of Kidney, bladder, rectal and especially the diseases of the prostate gland. It consists of three kinds of medicine to be taken both internally and applied through the rectum, thereby getting this medicine into the gland direct and also letting the gland tissues absorb medicine through and into the gland, which relieves the pain, soothes and heals the affected parts.

This treatment is designed to help clear the infection and inflammation from the kidneys, bladder, rectum and prostate and give relief from pain and discomfort of these diseases.

The price of this package complete is \$5.00 postage prepaid. I assure you that the highest quality ingredients only are used because I want you to be a patient who will be satisfied.

THIS PACKAGE SOLD UNDER A MONEY BACK GUARANTEE

Because this treatment has proven so successful, we are able to sell this remedy so that if it does not help you after you have given it a fair trial, and you return the unused portion of the medicine in good condition, we will refund your money on the amount of medicine which is not used.

I believe you will agree that this is a fair way in which to deal. You stand a very small chance to lose anything, and you have everything to gain. Order your package today.

----- Order Blank -----

The Middlebrook Hospital and Clinic,
Del Rio, Texas.

I enclose \$5.00 for your prostate package containing a forty-day treatment for the prostate gland. (If you send cash, you do so at your own risk. C. O. D. if convenient.)

(Your name)

(Your address)

Some of respondent's above advertisements contain the following variations of paragraphs 2 and 4 quoted above:

I have prepared a home treatment which consists of three kinds of medicine to be taken both internally and by application through the rectum. The medicine to be taken internally is one of the best urinary antiseptics, which is designed to help clear the infection and inflammation from the kidneys, bladder, prostate and urethral canal, while the medicine used by application through the rectum is absorbed through and into the gland relieves the pain and soothes the inflamed parts.

* * *

By buying in quantities of ten thousand lots, I have been able to hold the price of this special package down to \$5.00, postage prepaid. I assure you that the highest quality ingredients only are used, because I want you to be a satisfied patient also.

* * *

The price of this package complete is \$7.50, but as an introductory offer to you, I can send it postpaid for only \$5. I assure you that only the highest quality ingredients are used because I want you to be a satisfied patient of mine.

On the reverse side of many of respondent's said advertisements appear requests by respondent for the names and addresses of men believed to have prostate or rectal troubles, which said requests further contain an offer by the respondent to award the forwarder a \$10 credit on medical services to be rendered in Del Rio, following the furnishing of such names and addresses by said forwarder.

PAR. 3. Respondent through the use of the statements and representations hereinabove set forth ascribes certain therapeutic properties to the preparations contained in respondent's "Special Prostate Package for Home Treatment." Respondent through such statements and representations claims, directly and by implication, that the said preparations will relieve pain and soothe and heal the affected parts involved in kidney, bladder, and rectal diseases, and diseases of the prostate gland; that "Methenamine (7½ Grains)" is one of the best urinary antiseptic treatments for cleansing infections and inflammation from the kidneys, bladder, and prostate and urethral canal; that said preparation, "Special Formula No. 17831," when applied through the rectum medicates or "gets into" the prostate gland in sufficient quantities by absorption through the tissue to be effective; and that the price of respondent's said package of preparations is normally \$7.50 but that it is offered for sale and sold at a special introductory price of \$5.

PAR. 4. The foregoing statements and advertisements of the respondent are grossly exaggerated, false, and misleading.

In truth and in fact, the preparations contained in respondent's said Special Prostate Package for Home Treatment will not relieve pain and soothe and heal affected parts involved in kidney, bladder, and rectal diseases, and diseases of the prostate gland. Said preparation, "Methenamine (7½ Grains)," is not one of the best urinary antiseptics for cleansing infections and inflammations from the kidneys, bladder, and prostate and urethral canal. Respondent's preparation, "Special Formula No. 17831," when applied through the rectum, will not mediate or "get into" the prostate gland in sufficient quantities by absorption through the tissues to be effective. The usual price of respondent's said "Special Prostate Package for Home Treatment" is not \$7.50 but said package is sold generally by respondent for the price of \$5.00. The respondent's so-called introductory offer price of \$5.00 for said "Special Prostate Package for Home Treatment" is not an introductory price.

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Respondent's preparation, "Methenamine (7½ Grains)," although possessing antiseptic qualities, would be effective only when the urine was sufficiently acid to liberate formaldehyde. This product contains no ingredient insuring the constant acidity of the urine and its efficacy in neutral or alkaline urine would be of no significance.

PAR. 5. The respondent's advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondent's preparation, "Calomel, Rhubarb, and Colocynth Compound" is a cathartic and its use, by one suffering from nausea, vomiting, abdominal pains or other symptoms of appendicitis, is dangerous.

PAR. 6. Respondent's use of the foregoing false, deceptive, and misleading statements and representations has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and further had and now has the capacity and tendency to induce, and does, cause a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's said "Special Prostate Package for Home Treatment" and the preparations therein contained.

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

It is ordered, That the respondent, James R. Middlebrook, M. D., individually and doing business under the name and style of the Middlebrook Hospital and Clinic, or trading or doing business under any other name or names, his agents, representatives, and employees, directly or through any corporate or any other device, in connection with the offering for sale, sale, or distribution of the medicinal preparations designated "Calomel, Rhubarb, and Colocynth Compound," "Special Formula No. 17831" and "Methenamine (7½ Grains)," separately or in combination as enclosed in a package designated as "Special Prostate Package for Home Treatment," or any preparations of substantially similar composition or possessing substantial similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference: that said preparations separately or in combination will relieve pain or soothe or heal the affected parts involved in kidney, bladder or rectal diseases, or diseases of the prostate gland; that the preparation "Methenamine (7½ Grains)" is one of the best urinary antiseptic treatments for cleansing infection or inflammation from the kidneys, bladder, prostate, or urethral canal; that the preparation designated "Special Formula No. 17831," when applied through the rectum, medicates or penetrates the prostate gland in sufficient quantities by absorption through the tissues to be effective; that the price at which said "Special Prostate Package for Home Treatment" is offered for sale constitutes a special, reduced or introductory price, when such price is in fact the usual and customary price at which said package is offered for sale and sold by respondent in the normal and regular course of business; or which advertisement with respect to the preparation "Calomel, Rhubarb, and Colocynth Compound" fails to reveal that said preparation is a cathartic and should not be used by persons suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis; provided, however, that if the directions for use, whether they appear on the label or in the labeling, or both on the label and in the labeling, contain a warning of the said potential dangers in the use of said preparation, as hereinabove set forth, such advertisement need contain only the cautionary statement: **CAUTION, USE ONLY AS DIRECTED.**

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 de-

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fined in the Federal Trade Commission Act, of said preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement with respect to said preparation "Calomel, Rhubarb, and Colocynth Compound" fails to reveal the dangerous consequences which may result from the use of said preparation, as required in paragraph 1 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 service upon him of this order said respondent shall file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF

GRANT T. WHITESIDE, TRADING AS GRANT COMPANY

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

Docket 4553. Complaint, July 31, 1941—Decision, Dec. 11, 1941

Where an individual engaged in the interstate sale and distribution of medicinal preparations designated as "Ton Jon No. 1," "Ton Jon No. 2," and "Ton Jon No. 3"; by means of advertisements disseminated through the mails and in various other ways, including purported testimonials containing such exaggerated statements of claimed benefits received from use of said preparations as "No dread of gallstones after suffering 10 years," "Endorses Ton Jon No. 3, as the only treatment in many for prostate trouble.," "Ton Jon worth twenty times the price. Gave lasting relief," "Years of suffering ended," and "Says kidney stones came out like sand.";

- (a) Falsely represented that his said Ton Jon No. 1 was an effective treatment for ailments and diseases of the stomach and bowels which would bring complete relief from indigestion, pain in the chest and stomach, palpitation, headache, loss of weight or strength, nervousness, sleeplessness, and various other conditions and troubles;
- (b) Falsely represented that said Ton Jon No. 2 was a powerful liver medicine and an effective treatment for ailments and disorders of the liver and gall bladder, which would bring relief from impurities of the blood and other disorders, lazy liver, sick headache, billousness, constipation, dizzy spells, drowsy feeling, gall stones, high blood pressure and various other troubles;
- (c) Represented that his Ton Jon No. 3 was an effective treatment for ailments and disorders of the kidneys and prostate glands, which would give complete relief from bladder irritations and weakness, dull and sharp pain in the back, stiffness in back and lower limbs, nephritis, diminished sexual power, nervousness, mental depression, sleeplessness, tiredness, low blood pressure and various other conditions and troubles; when in fact such representations were false and it would not accomplish such or better results in the treatment of prostate gland and kidney disorders than any medicine had ever done before; and
- (d) Failed to reveal that prescribed use of first two cathartic preparations by one suffering from nausea, vomiting, abdominal pains or other symptoms of appendicitis was dangerous;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such false representations were true and of thereby inducing purchase by it of the preparations in question:

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. S. F. Rose for the Commission.

Nash & Donnelly, of Washington, D. C., for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Grant T. Whiteside, individually and doing business under the name and style of Grant 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Grant T. Whiteside, is an individual, trading and doing business under the name of Grant Co., with his office and principal place of business located in the city of Sabina, State of Ohio.

Respondent is now and for more than one year last past has been engaged in the preparation, offering for sale, sale, and distribution, of certain medicinal preparations designated as "Ton Jon No. 1," "Ton Jon No. 2," and "Ton Jon No. 3."

PAR. 2. Respondent, in the course and conduct of his aforesaid business, has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said medicinal preparations designated "Ton Jon No. 1," "Ton Jon No. 2" and "Ton Jon No. 3" by the United States mails and by various means in commerce, as commerce is defined by the Federal Trade Commission Act, which are likely to induce, directly or indirectly, the purchase of said preparations. The respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparations in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the false representations contained in said advertisements disseminated and caused to be disseminated by respondent, as aforesaid, are the following:

WHAT IT WILL DO

Ton Jon gets at the seat of common afflictions by aiding nature in throwing off toxic poisons, thus your nervousness and rheumatic aches and pain will disappear, you will feel full of pep like you never felt before in your life. So, if you are run down and any of the common ailments named above are ruining your life it would certainly be a mistake not to get Ton Jon and take it.

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WHAT TON JON NO. 1 WILL DO—
STOMACH AND BOWELS

Ton Jon No. 1 will aid nature in throwing off poisons that foster stomach trouble, bringing complete relief from indigestion, gas, bloat feeling like a rock in stomach, dyspepsia, pain in the chest and stomach, wild heart palpitation, awful headaches, loss of weight and strength, sour stomach, cramps, spitting up bits of foods and sour liquids, acid rising and belching and all-gone, tired feeling. It will give you an appetite like you never had before in your life. Ton Jon No. 1 will cleanse your bowels (not drastic or severe) as they were never cleansed before, producing proper elimination, giving them a daily natural action, thus cleansing and toning your blood, giving the nerves a new tingle.

WHAT TON JON NO. 2 WILL DO—
LIVER—GALL BLADDER

Ton Jon No. 2 will wake up that lazy liver, frequently clearing out impurities that may have contaminated your blood and inner organs for a long time, bringing relief from sick headaches that may last for days, attacks of biliousness, constipation, dizzy spells, lazy spells, drowsy tired feeling, relieving such embarrassing conditions as foul breath, unsightly complexion, sallowness or muddiness, and will in place give you a glowing complexion, one which the highest cosmetics cannot equal. When the liver bile fails to flow or food backs up into the stomach, causing pain and distress like stomach trouble. This bile must flow to prevent gallstones. Ton Jon No. 2 is a powerful liver medicine with double quick action on the bowels.

WHAT TON JON NO. 3 WILL DO—
KIDNEYS—PROSTATE

This treatment aids nature by flushing out the impurities, giving complete relief from bladder irritation and weakness, dull and sharp pains in the back, stiffness, dull and lower limbs, frequent getting up during the night, dizziness, spots before the eyes, swelling of the feet and lower limbs, puffs and dark circles beneath the eyes. Ton Jon No. 3 is nature's favorite means of correcting: prostatitis—inflammation of the prostate gland, the small organ surrounding the bladder.

* * * So if you want relief from long-time suffering bring in the coupon below. No matter what your ailment may be or how many medicines you have tried, be sure to read this offer for your benefit * * *

<i>Ton Jon No. 1. Stomach- Bowels</i>	<i>Ton Jon No. 2. Liver</i>	<i>Ton Jon No. 3</i>
Indigestion.	Lazy Liver.	Bladder Irritation.
Gas.	Sick Headaches.	Bladder Weakness.
Bloat.	Biliousness.	Dull and Sharp Pain in Back.
Dyspepsia.	Constipation.	Stiffness in Back and Lower Limbs.
Pain in Chest.	Dizzy Spells.	Frequent Getting up Nights.
Pain in Stomach.	Lazy Spells.	Spots Before Eyes.
Heart Palpitation.	Drowsy, Tired Feeling.	Swelling of the Feet and Lower Limbs.
Headaches.	Foul Breath.	
Loss of Weight.	Unsightly Complexion.	
Loss of Strength.	Sallowness or Muddiness.	

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<i>Ton Jon No. 1. Stomach- Bowels—Continued</i>	<i>Ton Jon No. 2. Liver—Con.</i>	<i>Ton Jon No. 3—Continued</i>
Sour Stomach.	Belching.	Puffed or Dark Circles Beneath the Eyes.
Cramps.	Acid Rising.	Nephritis.
Spitting Up Food.	Gall Bladder.	Cystitis.
Sour Liquids.	Gallstones.	Urethritis.
Acid Rising.	Stagnant Bile.	Prostatitis.
Belching.	Bad Blood.	Sexual Power Weakened.
Nervousness.	High-blood Pressure.	Nervousness
Skin Eruptions.		Irritability.
Bloated Feeling.		Mental Depression.
Coated Tongue.		Forgetfulness.
Foul Breath.		Melancholia.
Sleeplessness.		Neurasthenia.
Tired Feeling.		Pains in the Lower Back.
Constipation.		Pain in the Hips and Legs.
		Sleeplessness.
		Tiredness.
		Inability to Stand Work
		Low Blood Pressure.
		Low Temperature.
		Pains in Testicles.
		Pains in Penis.
		Pains in Rectum.
		Difficult Bowel Movement.
		Dribbling.
		Pain in Nape of Neck.
		Sudden Urination.
		Irritation.

Many of respondent's advertisements have appeared and now appear in the form of testimonials allegedly given by users and former users of respondent's products, accompanied by the photograph of the person purporting to give such testimonial. Such testimonial advertising contained many exaggerated statements of claimed benefits received from using said medicinal preparations, written in the first person, under prominent introductory headlines.

Among and typical of the false statements and representations contained in the headings of said newspaper testimonial advertisements disseminated and caused to be disseminated by the respondent, are the following:

No dread of gallstones after suffering 10 years.

Endorses Ton Jon No. 3, as the only treatment in many for prostate trouble.

Ton Jon worth twenty times the price. Gave lasting relief.

Years of suffering ended.

Says kidney stones came out like sand.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto, not set forth herein, all of which purport to be descriptive of the therapeutic properties of the preparations "Ton Jon No. 1," "Ton Jon No. 2," and "Ton Jon No. 3," respondent represents, directly and by implication:

That his preparation designated as "Ton Jon No. 1" is an effective treatment for ailments and diseases of the stomach and bowels which will bring complete relief from indigestion, gas, bloat, dyspepsia, pain in chest, pain in stomach, heart palpitation, headaches, loss of weight, loss of strength, sour stomach, cramps, spitting up food, sour liquids, acid rising, belching, nervousness, skin eruptions, bloated feeling, coated tongue, foul breath, sleeplessness, tired feeling, and constipation.

That his preparation designated as "Ton Jon No. 2" is a powerful liver medicine and an effective treatment for ailments and disorders of the liver and gall bladder which will bring relief from impurities of the blood and inner organs of the body, lazy liver, sick headaches, biliousness, constipation, dizzy spells, lazy spells, drowsy, tired feeling, foul breath, unsightly complexion, sallowness or muddiness, belching, acid rising, gall bladder, gallstones, stagnant bile, bad blood, and high-blood pressure.

That his preparation designated as "Ton Jon No. 3" is an effective treatment for ailments and disorders of the kidneys and prostrate gland which will give complete relief from bladder irritation, bladder weakness, dull and sharp pain in back, stiffness in back and lower limbs, frequent getting up nights, spots before eyes, swelling of the feet and lower limbs, puffed or dark circles beneath the eyes, nephritis, cystitis, urethritis, prostatitis, sexual power weakened, nervousness, irritability, mental depression, forgetfulness, melancholia, neurasthenia, pains in the lower back, pains in the hips and legs, sleeplessness, tiredness, inability to stand work, low-blood pressure, low temperature, pains in testicles, pains in penis, pains in rectum, difficult bowel movement, dribbling, pain in nape of neck, sudden urination, irritation.

PAR. 4. The foregoing statements and advertisements of the respondent are grossly exaggerated, false and misleading.

In truth and in fact, respondent's preparation designated as "Ton Jon No. 1" is not an effective treatment for ailments and diseases of the stomach and bowels and will not bring effective relief or complete relief from indigestion, gas, bloat, dyspepsia, pain in chest, pain in stomach, heart palpitation, headaches, loss of weight, loss of strength,

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sour stomach, cramps, spitting up food, sour liquids, acid rising, belching, nervousness, skin eruptions, bloated feeling, coated tongue, foul breath, sleeplessness, tired feeling, and constipation.

In truth and in fact respondent's preparation designated as "Ton Jon No. 2" is not a powerful liver medicine and an effective treatment for ailments and disorders of the liver and gall bladder and will not bring relief from impurities of the blood and inner organs of the body, lazy liver, sick headaches, biliousness, constipation, dizzy spells, lazy spells, drowsy, tired feeling, foul breath, unsightly complexion, sallowness or muddiness, belching, acid rising, gall bladder, gallstones, stagnant bile, bad blood, high-blood pressure.

In truth and in fact respondent's preparation designated as "Ton Jon No. 3" is not an effective treatment for ailments and disorders of the kidneys and prostate gland and will not give effective relief or complete relief from bladder irritation and weakness, dull and sharp pain in back, stiffness in back and lower limbs, frequent getting up nights, spots before eyes, swelling of the feet and lower limbs, puffed or dark circles beneath the eyes, nephritis, cystitis, urethritis, prostatitis, sexual power weakened, nervousness, irritability, mental depression, forgetfulness, melancholia, neurasthenia, pains in the lower back, pains in the hips and legs, sleeplessness, tiredness, inability to stand work, low-blood pressure, low temperature, pains in testicles, pains in penis, pains in rectum, difficult bowel movement, dribbling, pains in nape of neck, sudden urination, and irritation; and said preparation will not accomplish better results in the treatment of prostate gland and kidney disorders than any medicine has ever done before.

PAR. 5. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparations to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondent's preparations designated "Ton Jon No. 1" and "Ton Jon No. 2" are cathartics and their use, by one suffering from nausea, vomiting, abdominal pains or other symptoms of appendicitis, is dangerous.

PAR. 6. The use by the respondent of the foregoing false 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 a substantial portion of the purchasing public into the erroneous and mistaken belief that such false state-

ments, representations and advertisements are true, and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's said 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 within the intent and meaning of the Federal Trade Commission 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, 1941, issued and thereafter served its complaint in this proceeding upon respondent, Grant T. Whiteside, an individual, trading as Grant Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 20, 1941, the respondent filed his answer, in which answer he admitted all the material allegations of fact set out in said complaint to be true. In his supplemental answer of September 24, 1941, the respondent waived all intervening procedure and further hearing as to the facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answers thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Grant T. Whiteside, is an individual, trading and doing business under the name of Grant Co., with his office and principal place of business located in the city of Sabina, State of Ohio.

Respondent is now and for more than one year last past has been engaged in the preparation, offering for sale, sale, and distribution of certain medicinal preparations designated as "Ton Jon No. 1," "Ton Jon No. 2," and "Ton Jon No. 3."

PAR. 2. Respondent, in the course and conduct of his aforesaid business, has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said medicinal preparations designated "Ton Jon No. 1," "Ton Jon No. 2" and "Ton Jon No. 3" by the United States mails and by various means in commerce, as commerce is defined by the Federal Trade Commission Act, which are likely to induce, directly, or indirectly, the

purchase of said preparations. The respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparations in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the false representations contained in said advertisements disseminated and caused to be disseminated by respondent, as aforesaid, are the following:

WHAT IT WILL DO

Ton Jon gets at the seat of common afflictions by aiding nature in throwing off toxic poisons, thus your nervousness and rheumatic aches and pain will disappear, you will feel full of pep like you never felt before in your life. So, if you are run down and any of the common ailments named above are ruining your life it would certainly be a mistake not to get Ton Jon and take it.

WHAT TON JON NO. 1 WILL DO— STOMACH AND BOWELS

Ton Jon No. 1 will aid nature in throwing off poisons that foster stomach trouble, bringing complete relief from indigestion, gas, bloat feeling like a rock in stomach, dyspepsia, pain in the chest and stomach, wild heart palpitation, awful headaches, loss of weight and strength, sour stomach, cramps, spitting up bits of foods and sour liquids, acid rising and belching and all-gone, tired feeling. It will give you an appetite like you never had before in your life. Ton Jon. No. 1 will cleanse your bowels (not drastic or severe) as they were never cleansed before, producing proper elimination, giving them a daily natural action, thus cleansing and toning your blood, giving the nerves a new tingle.

WHAT TON JON NO. 2 WILL DO— LIVER—GALL BLADDER

Ton Jon No. 2 will wake up that lazy liver, frequently clearing out impurities that may have contaminated your blood and inner organs for a long time, bringing relief from sick headaches that may last for days, attacks of billousness, constipation, dizzy spells, lazy spells, drowsy tired feeling, relieving such embarrassing conditions as foul breath, unsightly complexion, sallowness or mud-diness, and will in place give you a glowing complexion, one which the highest cosmetics cannot equal. When the liver bile fails to flow or food backs up into the stomach, causing pain and distress like stomach trouble. This bile must flow to prevent gall stones. Ton Jon No. 2 is a powerful liver medicine with double quick action on the bowels.

WHAT TON JON NO. 3 WILL DO— KIDNEYS—PROSTATE

This treatment aids nature by flushing out the impurities, giving complete relief from bladder irritation and weakness, dull and sharp pains in the back,

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stiffness, dull and lower limbs, frequent getting up during the night, dizziness, spots before the eyes, swelling of the feet and lower limbs, puffs and dark circles beneath the eyes. Ton Jon No. 3 is nature's favorite means of correcting: prostatitis—inflammation of the prostate gland, the small organ surrounding the bladder.

* * * So if you want relief from long-time suffering bring in the coupon below. No matter what your ailment may be or how many medicines you have tried, be sure to read this offer for you benefit * * *.

<i>Ton Jon No. 1</i>	<i>Ton Jon No. 2</i>	<i>Ton Jon No. 3</i>
<i>Stomach-Bowels</i>	<i>Liver</i>	
Indigestion.	Lazy Liver.	Bladder Irritation.
Gas.	Sick Headaches.	Bladder Weakness.
Bloat.	Biliousness.	Dull and Sharp Pain in Back.
Dyspepsia.	Constipation.	Stiffness in Back and Lower Limbs.
Pain in Chest.	Dizzy Spells.	Frequent Getting Up Nights.
Pain in Stomach.	Lazy Spells.	Spots Before Eyes.
Heart Palpitation.	Drowsy, Tired Feeling.	Swelling of the Feet and Lower Limbs.
Headaches.	Foul Breath.	Puffed or Dark Circles Beneath the Eyes.
Loss of Weight.	Unsightly Complexion.	Nephritis.
Loss of Strength.	Sallowiness or Muddiness.	Cystitis.
Sour Stomach.	Belching.	Urethritis.
Cramps.	Acid Rising.	Prostatitis.
Spitting Up Food.	Gall Bladder.	Sexual Power Weakened.
Sour Liquids.	Gallstones.	Nervousness.
Acid Rising.	Stagnant Bile.	Irritability.
Belching.	Bad Blood.	Mental Depression.
Nervousness.	High-blood Pressure.	Forgetfulness.
Skin Eruptions.		Melancholia.
Bloated Feeling.		Neurasthenia.
Coated Tongue.		Pains in the Lower Back.
Foul Breath.		Pains in the Hips and Legs.
Sleeplessness.		Sleeplessness.
Tired Feeling.		Tiredness.
Constipation.		Inability to Stand Work.
		Low Blood Pressure.
		Low Temperature.
		Pains in Testicles.
		Pains in Penis.
		Pains in Rectum.
		Difficult Bowel Movement.
		Dribbling.
		Pain in Nape of Neck.
		Sudden Urination Irritation.

Many of respondent's advertisements have appeared and now appear in the form of testimonials allegedly given by users and former users of respondent's products, accompanied by the photograph of the person purporting to give such testimonial. Such testimonial advertising contained many exaggerated statements of claimed benefits received from using said medicinal preparations, written in the first person, under prominent introductory headlines.

Among and typical of the false statements and representations contained in the headings of said newspaper testimonial advertisements, disseminated and caused to be disseminated by the respondent, are the following:

No dread of gallstones after suffering 10 years.

Endorses Ton Jon No. 3, as the only treatment in many for prostate trouble.

Ton Jon worth twenty times the price. Gave lasting relief.

Years of suffering ended.

Says kidney stones came out like sand.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto, not set forth herein, all of which purport to be descriptive of the therapeutic properties of the preparations "Ton Jon No. 1," "Ton Jon No. 2," and "Ton Jon No. 3," respondent represents, directly and by implication:

That his preparation designated as "Ton Jon No. 1" is an effective treatment for ailments and diseases of the stomach and bowels which will bring complete relief from indigestion, gas, bloat, dyspepsia, pain in chest, pain in stomach, heart palpitation, headaches, loss of weight, loss of strength, sour stomach, cramps, spitting up food, sour liquids, acid rising, belching, nervousness, skin eruptions, bloated feeling, coated tongue, foul breath, sleeplessness, tired feeling, and constipation.

That his preparation designated as "Ton Jon. No. 2" is a powerful liver medicine and an effective treatment for ailments and disorders of the liver and gall bladder which will bring relief from impurities of the blood and inner organs of the body, lazy liver, sick headaches, biliousness, constipation, dizzy spells, lazy spells, drowsy, tired feeling, foul breath, unsightly complexion, sallowness or muddiness, belching, acid rising, gall bladder, gallstones, stagnant bile, bad blood, and high-blood pressure.

That his preparation designated as "Ton Jon No. 3" is an effective treatment for ailments and disorders of the kidneys and prostate gland which will give complete relief from bladder irritation, bladder weakness, dull and sharp pain in back, stiffness in back and lower limbs, frequent getting up nights, spots before eyes, swelling of the

feet and lower limbs, puffed or dark circles beneath the eyes, nephritis, cystitis, urethritis, prostatitis, sexual power weakened, nervousness, irritability, mental depression, forgetfulness, melancholia, neurasthenia, pains in the lower back, pains in the hips and legs, sleeplessness, tiredness, inability to stand work, low-blood pressure, low temperature, pains in testicles, pains in penis, pains in rectum, difficult bowel movement, dribbling, pain in nape of neck, sudden urination, irritation.

PAR. 4. The foregoing statements and advertisements of the respondent are grossly exaggerated, false, and misleading.

In truth and in fact, respondent's preparation designated as "Ton Jon No. 1" is not an effective treatment for ailments and diseases of the stomach and bowels and will not bring effective relief or complete relief from indigestion, gas, bloat, dyspepsia, pain in chest, pain in stomach, heart palpitation, headaches, loss of weight, loss of strength, sour stomach, cramps, spitting up food, sour liquids, acid rising, belching, nervousness, skin eruptions, bloated feeling, coated tongue, foul breath, sleeplessness, tired feeling, and constipation.

In truth and in fact respondent's preparation designated as "Ton Jon No. 2" is not a powerful liver medicine and an effective treatment for ailments and disorders of the liver and gall bladder and will not bring relief from impurities of the blood and inner organs of the body, lazy liver, sick headaches, biliousness, constipation, dizzy spells, lazy spells, drowsy, tired feeling, foul breath, unsightly complexion, sallowness or muddiness, belching, acid rising, gall bladder, gallstones, stagnant bile, bad blood, high blood pressure.

In truth and in fact respondent's preparation designated as "Ton Jon No. 3" is not an effective treatment for ailments and disorders of the kidneys and prostate gland; will not give effective relief or complete relief from bladder irritation and weakness, dull and sharp pain in back, stiffness in back and lower limbs, frequent getting up nights, spots before eyes, swelling of the feet and lower limbs, puffed or dark circles beneath the eyes, nephritis, cystitis, urethritis, prostatitis, sexual power weakened, nervousness, irritability, mental depression, forgetfulness, melancholia, neurasthenia, pains in the lower back, pains in the hips and legs, sleeplessness, tiredness, inability to stand work, low blood pressure, low temperature, pains in testicles, pains in penis, pains in rectum, difficult bowel movement, dribbling, pain in nape of neck, sudden urination, and irritation; and said preparation will not accomplish better results in the treatment of prostate gland and kidney disorders than any medicine has ever done before.

PAR. 5. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparations to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondent's preparations designated "Ton Jon No. 1" and "Ton Jon No. 2" are cathartics and their use, by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, is dangerous.

PAR. 6. The use by the respondent of the foregoing false 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 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 mistaken and erroneous belief, to purchase respondent's said preparations.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade 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 answers respondent admits all of the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Grant T. Whiteside, individually, and trading as Grant Co., or trading under any other name or names, his agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of the medicinal preparations designated as hereinafter set forth, or any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar properties, whether

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sold under the same names or any other name or names, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, or disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in such commerce of the medicinal preparation designated as "Ton Jon No. 1," which advertisement—

(A) Represents, directly or through inference, that said preparation—

(a) Is an effective treatment for ailments and diseases of the stomach and bowels.

(b) Will bring effective relief or complete relief from indigestion, gas, bloat, dyspepsia, pain in chest, pain in stomach, heart palpitation, headache, loss of weight, loss of strength, sour stomach, cramps, spitting up food, sour liquids, acid rising, belching, nervousness, skin eruptions, bloated feeling, coated tongue, foul breath, sleeplessness, tired feeling, and constipation.

(B) Fails to reveal that said preparation may be dangerous when used by persons suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis: *Provided, however,* That such advertisement need contain only the statement, "Caution, use only as directed," if and when the directions for use wherever they appear on the label, in the labeling, or both, contain a warning to the above effect.

2. 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, or disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in such commerce of the medicinal preparation designated as "Ton Jon No. 2," which advertisement—

(A) Represents, directly or through inference, that said preparation—

(a) Is a powerful liver medicine and an effective treatment for ailments and disorders of the liver and gall bladder.

(b) Will bring relief from impurities of the blood and inner organs of the body, lazy liver, sick headache, biliousness, constipation, dizzy spells, lazy spells, drowsy, tired feeling, foul breath, unsightly complexion, sallowness or muddiness, belching, acid rising, gall bladder, gallstones, stagnant bile, bad blood, and high blood pressure.

(B) Fails to reveal that said preparation may be dangerous when used by persons suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis: *Provided, however,* That such advertisement need contain only the statement, "Caution, use only as directed," if and when the directions for use wherever they appear on the label, in the labeling, or both, contain a warning to the above effect.

3. 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, or disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in such commerce of the medicinal preparation designated as "Ton Jon No. 3," which advertisement represents, directly or through inference, that said preparation—

(A) Is an effective treatment for ailments and disorders of the kidneys and prostate gland.

(B) Will give effective relief or complete relief from bladder irritation and weakness, dull and sharp pains in back, stiffness in back and lower limbs, frequent getting up nights, spots before eyes, swelling of the feet and lower limbs, puffed or dark circles beneath the eyes, nephritis, cystitis, urethritis, prostatitis, sexual power weakened, nervousness, irritability, mental depression, forgetfulness, melancholia, neurasthenia, pains in the lower back, pains in the hips and legs, sleeplessness, tiredness, inability to stand work, low blood pressure, low temperature, pains in testicles, pains in penis, pains in rectum, difficult bowel movement, dribbling, pain in nape of neck, sudden urination, and irritation.

(C) Will accomplish better results in the treatment of prostate gland and kidney disorders than any medicine has ever done before.

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

Syllabus

IN THE MATTER OF

A. S. ALOE COMPANY

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

Docket 3820. Complaint, June 14, 1939—Decision, Dec. 15, 1941

Where a corporation engaged in the manufacture and competitive interstate purchase, sale and distribution of surgical equipment, instruments, and supplies, including pressure and suction pumps, sterilizers, thermometers, syringes, and blood pressure measuring instruments, with principal place of business in St. Louis and branch distributing houses in Kansas City and Los Angeles, constituting one of the largest retail dealers in such products in the United States, and an important outlet therefor for manufacturers, jobbers, importers and distributors, and facilitating sales through its said two branches, a staff of approximately 100 traveling salesmen and general distribution to physicians, surgeons, hospitals, laboratories and others of a large number of catalogs, whereby it secured many mail orders;

Knowingly induced and received, through a studied and persistent course of action to induce sellers to grant to it favorable discriminatory prices, the benefit of differentials between the prices paid by it and those paid by its competitors for surgical products, varying from 10 to 40 percent less for such products of like grade and quality than paid by certain of its competitors to such sellers;

With result that the sum of such differentials in price might be to enable it—

1. To issue and distribute, through use of such sum to a substantial degree, large numbers of elaborate catalogs with each issue "larger and more complete than its predecessor" leading to its receiving many mail orders, and serving to introduce and lend prestige to its sales force;

2. To employ a larger and better qualified staff of traveling salesmen and to increase its sales force materially, or to remunerate such salesmen by very liberal commissions based on sales of surgical products, and to enable such salesmen to effect sales by granting excessive trade-in allowances, the used surgical products so traded in becoming the property of the salesman and the allowance being charged against salesman's commission;

3. To build up a demand for its surgical products by presenting free surgical products to the heads of medical departments, and to allow some of its salesmen to grant purchasers discounts from its regular list prices for certain products;

4. To sell a large percentage of its surgical products on liberal credit terms and to advertise such favorable terms, requiring only a small down payment with no interest on deferred payments, which were generally extended from 10 to 18 months and, in some instances, longer periods;

Effect of which discriminations in price, benefits whereof, thus received by it, were denied its competitors, might be substantially to lessen competition and tend to create a monopoly in it in the line of commerce concerned, and to injure, destroy or prevent competition with it in the resale of said surgical products of like grade and quality purchased from said sellers:

Held, That said corporation, in knowingly inducing and receiving such differentials in price which were prohibited by section 2 (a) of the Clayton

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Act, as amended by the Robinson-Patman Act, violated section 2 (f) of first-named statute, as thus amended.

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

Mr. Edward S. Ragsdale for the Commission.

Lewis, Rice, Tucker, Allen & Chubb, of St. Louis, Mo., 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, A. S. Aloe Co. (hereinafter called Aloe), is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, having its office and principal place of business located at 1819-21-23 Olive Street, St. Louis, Mo.

PAR. 2. Respondent Aloe is now and has been since June 19, 1936, engaged in the business of buying, selling, and distributing surgical equipment, instruments, and supplies (including pressure and suction pumps, sterilizers, thermometers, syringes, blood pressure measuring instruments, chemicals, and other similar products hereinafter designated as surgical products from its principal place of business, and from its two branch distributing houses, one of which is located in Kansas City, Mo., and the other in Los Angeles, Calif.

Respondent facilitates sales by the use of its 2 distributing branches hereinbefore mentioned; a large staff of traveling salesmen, numbering approximately 100, who travel throughout the United States soliciting and securing orders; and the general distribution to physicians, surgeons, hospitals, laboratories, and others, of approximately 100 thousand catalogs, each year, listing and illustrating respectively its surgical products, hospital supplies, and laboratory equipment. The distribution of said catalogs results in respondent Aloe securing many orders for surgical products transmitted to it by mail.

Respondent Aloe is one of the largest dealers in surgical products in the United States, and as a consequence is an essential outlet to sellers of such surgical products, hereinafter referred to, who wish extensive distribution of their surgical products throughout the United States.

Respondent Aloe in the course and conduct of its business is now and since June 19, 1936, has been in substantial competition with

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other corporations, individuals, partnerships, and firms similarly engaged in the business of buying, selling, and distributing surgical products, except insofar as such competition has been affected by the practices which are the subject of this complaint.

PAR. 3. Respondent Aloe and the competitors of respondent Aloe buy said surgical products from a large number of manufacturers, jobbers, importers, and distributors located in the various States of the United States (hereinafter called sellers), who, so far as is known to the Commission, are as follows:

Willmot Castle Co., Rochester, N. Y.
William A. Baum Co., New York City, N. Y.
Empire State Thermometer Co., New York City, N. Y.
Mallinckrodt Chemical Works, New York City, N. Y.
J. Sklar Manufacturing Co., Brooklyn, N. Y.
Star Surgical Instrument Mfg. Co., Chicago, Ill.
Western Instrument & Manufacturing Co., Chicago, Ill.
H. Carstens Manufacturing Co., Chicago, Ill.
Penn Surgical Manufacturing Co., Philadelphia, Pa.
F. Dittmar & Co., Inc., Philadelphia, Pa.

Each of said sellers sell and distribute surgical products in commerce between and among the various States of the United States and the District of Columbia, causing said surgical products to be shipped and transported from their respective places of business in the various States of the United States to respondent Aloe at its principal place of business in St. Louis, Mo., to its two branch distributing points located in Kansas City, Mo., and Los Angeles, Calif., and to respondent Aloe's customers, to competitors of respondent Aloe, and to said competitors' customers located in the various States of the United States and the District of Columbia.

Respondent Aloe and respondent's competitors resell and distribute said surgical products in commerce between and among the various States of the United States and the District of Columbia, causing said surgical products to be shipped and transported from their respective places of business in the various States of the United States to their respective customers located in the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of their respective businesses as above described, said sellers have been and are now being induced by respondent Aloe to discriminate in price between different purchasers buying said surgical products of like grade and quality in commerce for use, consumption and resale within the United States by charging said competitors of respondent Aloe higher prices than those charged respondent Aloe. Said discriminations in prices which

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favor respondent Aloe are not uniform on each surgical product sold or from each seller. Respondent Aloe pays said sellers from approximately 10 percent to approximately 30 percent less for said surgical products of like grade and quality than respondent's competitors pay said sellers, depending upon the surgical product and the seller, or either of them.

PAR. 5. The effect of said discriminations in prices, as set forth in paragraph 4 hereof, may be substantially to lessen competition, and to tend to create a monopoly in respondent Aloe in the line of commerce in which respondent Aloe and its competitors are engaged, and to injure, destroy, or prevent competition with respondent Aloe in the resale of said surgical products of like grade and quality purchased from said sellers.

PAR. 6. Respondent Aloe receives information as to the prices paid by its competitors to said sellers for said surgical products, refuses to purchase said surgical products from said seller unless it is granted prices lower than paid by its competitors, and accepts and receives such lower prices on said surgical products and thereby and while engaged in commerce, and in the course of such commerce, as alleged in paragraph 3 hereof, is now and has been since June 19, 1936, knowingly inducing and receiving the discriminations in price alleged in paragraph 4 hereof.

PAR. 7. The foregoing alleged acts of said respondent Aloe are in violation of Section 2 (f) of said act of Congress approved June 19, 1936, entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13) and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), the Federal Trade Commission on June 14, 1939, issued and served its complaint in this proceeding upon the respondent, A. S. Aloe Co., a corporation, charging it with knowingly inducing and receiving discriminations in prices from various sellers, in violation of subsection (f) of section 2 of said act as amended.

After the issuance of the complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the alle-

gations of the complaint were introduced by Edward S. Ragsdale, attorney for the Commission, before John P. Bramhall, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding.

After the introduction of said testimony and evidence, Milton H. Tucker, attorney for respondent, waived the introduction of evidence in opposition to the allegations of the complaint, trial examiner's report, filing of briefs, further hearings, and all intervening procedure.

Thereafter the respondent and its attorney entered into a stipulation as to the facts with W. T. Kelley, chief counsel of the Commission, which was approved by the Commission and entered of record. Said stipulation provides that the facts so stipulated, together with the testimony and exhibits introduced by the attorney for the Commission may be taken as the facts in this proceeding.

Thereafter the proceeding regularly came on for final consideration by the Commission upon the complaint, the answer thereto, the testimony and other evidence, and the stipulation as to the facts; 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, A. S. Aloe Co., is a corporation organized and existing under and by virtue of the laws of the State of Missouri, having its office and principal place of business located at 1819 Olive Street, St. Louis, Mo.

PAR. 2. Respondent is now and has been since June 19, 1936, engaged in the business of manufacturing, buying, selling, and distributing surgical equipment, instruments, and supplies, including pressure and suction pumps, sterilizers, thermometers, syringes, blood pressure measuring instruments, and other similar products hereinafter designated as surgical products, from its principal place of business and from its two branch distributing houses, one of which is located in Kansas City, Mo., and the other in Los Angeles, Calif.

Respondent is one of the largest retail dealers in surgical products in the United States, and is an important outlet of such surgical products for manufacturers, jobbers, importers and distributors hereinafter referred to, who wish extensive distribution of their surgical products throughout the United States.

Respondent facilitates sales by the use of its 2 distributing branches hereinbefore mentioned; a staff of approximately 100 traveling salesmen who travel throughout the United States soliciting and securing

orders, and the general distribution to physicians, surgeons, hospitals, laboratories, and others of a large number of catalogs, listing and illustrating respectively its surgical products, hospital supplies, and laboratory equipment. Through such distribution respondent secures many mail orders for surgical products.

Respondent, in the course and conduct of its business, is now and since June 19, 1936, has been in substantial competition with other corporations, and with individuals, partnerships, and firms similarly engaged in the business of buying, selling, and distributing surgical products.

PAR. 3. Respondent and its competitors purchase in the various States of the United States many thousands of various types of surgical products from a large number of manufacturers, jobbers, importers, and distributors (hereinafter called "sellers") who are located in the various States of the United States, some of which are as follows:

American Cystoscope Makers, Inc., New York City.

W. A. Baum Co., Inc., New York City.

Bausch & Lomb Optical Co., Rochester, N. Y.

Empire State Thermometer Co., New York City.

Rieker Instrument Co., Philadelphia, Pa.

Spencer Lens Co., Buffalo, N. Y.

The Vollrath Co., Sheboygan, Wis.

Welch Allyn Co., Auburn, N. Y.

Wilmot Castle Co., Rochester, N. Y.

H. Carstens Manufacturing Co., Chicago, Ill.

P. Dittmar & Co., Philadelphia, Pa.

Penn Surgical Manufacturing Co., Philadelphia, Pa.

J. Sklar Manufacturing Co., Long Island City, N. Y.

Star Surgical Instrument Co., Chicago, Ill.

Western Instrument & Manufacturing Co., Chicago, Ill.

Each of said sellers sells and distributes surgical products in commerce between and among the various States of the United States and in the District of Columbia, and causes such surgical products to be transported from their respective places of business in the various States of the United States to respondent at its principal place of business in St. Louis, Mo., and to respondent's two branch distributing houses. Such sellers also ship surgical products direct to respondent's customers, to competitors of respondent, and to the customers of respondent's competitors located in the various States of the United States and in the District of Columbia.

Respondent and its competitors resell and distribute said surgical products between and among the various States of the United States and in the District of Columbia, and cause said surgical products to be shipped and transported from their respective places of business located in the various States of the United States to their respective customers located in the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their respective businesses as above described, the sellers named in paragraph 3 hereof have charged respondent, and respondent has received the benefit of, lower prices on surgical products sold by said sellers to respondent than said sellers have charged competitors for surgical products of like grade and quality.

The differentials between the prices paid by respondent and by its competitors to such sellers for surgical products of like grade and quality are not uniform on each surgical product. The prices paid by respondent to such various sellers vary from approximately 10 percent to approximately 40 percent less for surgical products of like grade and quality than certain of respondent's competitors pay said sellers, depending upon the surgical product and the seller, or either of them.

Invoices produced by respondent and 28 competitive retail surgical dealers, involving purchases of surgical products of like grade and quality from said sellers, appear in evidence, and comparison of the prices respondent and such competitors paid for said surgical products have been made and are the basis for the tabulation which follows. This tabulation shows the names of the sellers, some of the surgical products sold, the respective prices paid by respondent and some of its competitors for each illustrative surgical product listed, and the percentage of price differential in favor of the respondent for each item listed, and is illustrative of the products of like grade and quality purchased from the sellers named in paragraph 3 hereof:

Sellers and producers	Prices to Aloe	Prices to certain competitors ¹	Percentage of price differential in favor of respondent
<i>American Cystoscope Makers, Inc.</i>			
(2327) Foley retention catheters, each.....	\$1.24	\$1.35	8.15
(591) Acmi antroscope, each.....	30.00	35.00	14.29
(470) Ruddock peritoneoscope, each.....	195.00	227.50	14.29
(176) Ravich lithotriptoscope, complete 27 Fr., each.....	99.00	115.50	14.29
(68A) Special foroblisque telescope, each.....	60.00	70.00	14.29

¹ Prices as testified to by various of the 28 competitors.

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Sellers and producers	Prices to Aloe	Prices to certain competitors	Percentage of price differential in favor of respondent
<i>W. A. Baum Co., Inc.</i>			
Baumanometers:			
Kompak model, each.....	\$14.75	\$17.70	16.67
Wall model, each.....	12.50	15.00	16.67
300 model, each.....	16.25	19.50	16.67
<i>Bausch & Lomb Optical Co.</i>			
(31-26-60-35) Microscope, each.....	165.00	174.40	5.30
(31-21-54-48) Microscope, each.....	109.50	125.60	12.50
<i>Empire State Thermometer Co.</i>			
20 cc Ideal luer syringe, dozen.....	10.56	12.00	12.00
Insulin syringes 20/40 S. W., dozen.....	4.20	5.00	16.00
2 cc Ideal luer syringe, dozen.....	4.20	5.00	14.00
20x1 Stainless luer needles, gross.....	7.50	9.00	16.67
20x1 Stainless luer needles S. B., gross.....	7.50	9.00	16.67
<i>Rieker Instrument Co.</i>			
(1010) Opal glass, each.....	.66 ² / ₃	.75	11.12
(1011A) Dare homoglobinometers, each.....	27.00	33.75	20.00
<i>Spencer Lens Co.</i>			
(820) Spencer microtome, each.....	199.50	228.00	12.50
(328) Spencer dark field illuminator, each.....	29.40	33.60	12.50
(361) Spencer microscope lamp, each.....	6.25	6.00	12.50
(33 MH) Microscope in leatherette case, each.....	102.05	125.60	18.75
<i>The Vollrath Co.</i>			
(95) Catheter trays (white ware-1), each.....	.66	.71	7.04
(112) Water pail (white ware-1), each.....	.99	1.07	7.48
(8-1) Sponge bowl (stainless steel-2), each.....	.81	.88	7.95
(134) Solution bowls (white ware-1), each.....	.57	.62	8.06
(10) Pus pans (white ware-1), each.....	.33	.36	8.33
<i>The Vollrath Co.</i>			
(85) Individual teapots (colored ware-3), each.....	.33	.375	12.00
(8 10) Pus pans (stainless steel-2), each.....	.64	.81	20.99
(8 134) Solution bowl (stainless steel-2), each.....	2.065	2.75	24.91
<i>Welch Allyn Co.</i>			
(200) Otoscope head, large handle, speculas, etc., each.....	10.45	13.20	20.83
(982) Ophthalmoscope and No. 216 otoscope, each.....	19.71	24.90	20.84
(106) Ophthalmoscope head, each.....	9.26	11.70	20.85
<i>Wilmot Castle Co.</i>			
Physician sterilizers:			
C-413 model, each.....	25.50	30.60	16.67
C-416 model, each.....	27.50	33.00	16.67
666 model, each.....	120.00	144.00	16.67
<i>H. Carstens Mfg. Co.</i>			
(4680) Medicated sounds 18 fr., dozen.....	10.80	12.00	10.00
(2466) Modernized ford stethoscope, dozen.....	10.80	13.20	18.18
(3099) XL gold plated pessaries 3/4" disc, small and medium, dozen.....	5.67	9.00	37.00
<i>F. Dittmar & Co., Inc.</i>			
(254) Phila. midget scopes, dozen.....	13.20	15.00	12.00
(4862) Guyon's catheter guides, dozen.....	3.00	4.50	33.33
(198) DeLee hillis stethoscope, dozen.....	30.00	48.00	37.50
(5222) Kelly's spincetroscope, dozen.....	20.00	36.00	44.44
<i>Penn Surgical Manufacturing Co.</i>			
(B-960) Penn insufflation apparatus, each.....	27.00	30.00	10.00
(D-390) Bowles stethoscope, dozen.....	10.00	15.00	33.33
(F-9591) Brinkerhoff specula, extra long, dozen.....	45.60	72.00	36.67
(D-11100) Pederson vaginal specula, dozen.....	12.60	21.00	40.00

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Sellers and producers	Prices to Aloe	Prices to certain competitors	Percentage of price differential in favor of respondent
<i>J. Sklar Manufacturing Co.</i>			
(F-492 $\frac{1}{4}$ S) Halstead mosquito forceps str. B. L., dozen.....	\$21.60	\$24.00	10.00
(F-4138) Thompkins rotary compressor, each.....	41.25	49.50	16.67
<i>J. Sklar Manufacturing Co.</i>			
(F-6403 $\frac{1}{4}$ S) Backhaus towel forceps 6 $\frac{1}{4}$ " B. L., dozen.....	23.00	28.80	20.14
(F-350 S) St. scissors 4 $\frac{1}{4}$ S. S., dozen.....	12.38	16.50	24.97
(F-7850) Davidson pneumothorax apparatus, each.....	37.50	50.00	25.00
(F-198) Lumbard's airways (large), dozen.....	16.80	22.50	25.33
(F-1402 $\frac{1}{4}$ S) Allis tissue forceps, dozen.....	23.00	31.20	26.28
(F-6105) Goodell's dilators (large), dozen.....	72.00	108.00	33.33
(F-4510) Brinkerhoff speculums (med.), dozen.....	28.40	45.00	36.89
(F-156) Taylor percussion hammer, dozen.....	4.50	7.20	37.50
<i>Star Surgical Instruments Co.</i>			
(ST 630) Sauer Sluder tonsilectomes, dozen.....	102.00	120.00	15.00
(ST 598) Hurd's tonsil dissectors, dozen.....	7.60	12.00	37.50
<i>Western Instrument & Mfg. Co.</i>			
(368) Jackson trachea tubes 1-2-3-4-5, dozen.....	24.00	30.00	20.00
(883 S) Grooved directors 6", dozen.....	1.80	2.70	33.33
(128 BX) Bowman lachrymal silver probes (3 to 8), dozen.....	3.90	6.00	35.00

PAR. 5. The sum of the differentials in price resulting from the lower prices set forth in paragraph 4, and granted the respondent since June 19, 1936, may be used to a substantial degree to enable the respondent to issue and distribute large numbers of elaborate catalogues to physicians, surgeons, hospitals and laboratories, each issue of such catalogue being "larger and more complete than its predecessor," and may result in respondent receiving many orders by mail and serve to introduce and lend prestige to its sales force.

It may, in part, further enable the respondent to employ a larger and better qualified staff of traveling salesmen and to increase its sales force materially, or to remunerate such salesmen on very liberal commissions based on the sales of surgical products, and to enable such salesmen to effect sales by granting, on occasion, excessive allowances on used surgical products traded in on respondent's new surgical products. Such used surgical products traded in become the property of the salesman, and the amount allowed purchaser is charged against the salesman's commission by respondent.

The lower prices respondent received may, in part, enable respondent in many instances to build up a demand for its surgical products by presenting, free, certain surgical products to the heads of the various medical departments. It may, in part, enable respondent to allow some of its salesmen, in securing orders for certain surgical products, to grant to purchasers discounts from the regular price listed in its catalogues. To illustrate, respondent advised its sale force that a few

of its salesmen felt that a list price is something from which to base a discount, and that respondent seriously objected to its salesmen cutting prices and using their own discounts when such salesmen do not know anything about the cost involved.

It may, in part, also enable the respondent to sell a large percentage of its surgical products on liberal credit terms and to advertise such favorable terms, which require only a small down payment with no interest charged on deferred payments, which are generally extended from 10 to 18 months, though in some instances longer periods of time are permitted. For example:

A seller wrote respondent complaining of respondent's selling its surgical products on a basis of 20 percent down and the balance over a period of 18 months without interest on deferred payments. The seller advised that it strenuously objected to such terms, saying money is worth something and that the liberal terms could only be given by reason of the extra discounts obtained over what competitors receive. Seller informed respondent that this special discount was extended with the understanding that it would not be used in any way to give respondent a price advantage over competitors.

The respondent replied that its terms were just what they had always been, 20 percent down, balance in 10 months, with a more liberal policy to internes, who were allowed 18 months to pay installments, and it may be that seller's products were sold on the 18-month term occasionally.

Respondent Aloe's competitors who do not receive discriminatory prices from sellers are prevented, in part, from publishing and distributing elaborate catalogues, from employing larger staffs of traveling salesmen; from paying salesmen more liberal commissions; from selling their surgical products on financial terms as liberal as respondent's terms, or allowing discounts from their regular list prices, granting excessive allowances on used surgical products, and presenting as gifts, surgical products, or reducing regular prices, without sacrificing legitimate profits.

PAR. 6. By receiving the benefit of such lower prices as found in paragraph 4, which have the effect set forth in paragraph 5, respondent has received the benefit of discriminations in price which may substantially lessen competition and tend to create a monopoly in respondent in the line of commerce in which respondent and its competitors are engaged, and to injure, destroy, or prevent competition with respondents in the resale of said surgical products of like grade and quality purchased from said sellers.

PAR. 7. At all times since June 19, 1936, respondent received information as to the prices paid by its competitors, illustrations of which

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prices are shown in paragraph 4. Such information was received directly from sellers and from their published catalogues, advertisements and discount schedules, as well as from statements from one seller concerning the prices of another seller, and otherwise. The following specific examples indicate respondent's knowledge of receiving the benefit of price differentials:

(a) The respondent received a letter from a seller asking how the revised Robinson-Patman Act will affect its firm on the matter of special discounts and special prices that respondent had enjoyed. The seller further stated, "I am inclined to believe that the act will be upset by the Supreme Court, but in the meantime we are certainly playing with fire." Respondent replied it had been informed that until the Federal Trade Commission takes some action in its specialized line, to fix maximum discounts based on quantity, sellers could give whatever discount they desired; that doubtless small, specialized industries would be let alone unless some one made specific application to the Commission, and for that reason it was not worrying. Respondent again wrote the seller, saying it did not believe the act enforceable, and enclosed a clipping from the U. S. News relative to the difficulties of enforcing the act.

(b) A seller wrote respondent and enclosed a letter seller received from a retail surgical supply dealer, who requested information from seller concerning its future policy with reference to discounts granted Aloe, in view of the passage of the Robinson-Patman Act. The seller suggested to respondent that respondent must have gone into the question of special discounts quite deeply as it relates to business with such firms as the seller's. The seller further advised respondent that in his understanding of the act, both the seller and the buyer, in a proven violation, could be held responsible. The seller suggested, therefore, that it appeared desirable to review their selling arrangements.

(c) The respondent also received a letter from a seller, advising that a gentleman in the trade desired to know if the seller intended to continue selling respondent at special discounts, in view of the Robinson-Patman Act. Seller requested respondent to advise what it thought of the act's effect on their relationship.

(d) Respondent received from some sellers letters and memoranda of information as to standard discounts or net prices to surgical dealers generally, on certain surgical products, which letters pointed out the lower prices or larger discounts granted on similar products to respondent. In certain instances sellers advised respondent that they did not make money on certain surgical products sold to respondent at the prices received from respondent.

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(e) The respondent wrote a seller requesting seller's catalogue with information relative to trade discounts applicable, and additionally requested a memorandum listing the surgical products respondent was purchasing and the special prices it paid for such products.

(f) The respondent was advised of a surgical product distributed by a seller, and of seller's prices to wholesalers, and suggesting, when the seller solicited respondent's business, to keep the prices furnished confidential, but to go to work on the seller and get him down to the wholesale prices, and informant was sure respondent "had not lost any of its ability to do that."

(g) Respondent informed its salesmen that in soliciting orders not to be afraid to tell a prospective customer that prices of surgical products were up a little, as prices have been going up throughout the country, and respondent could not obtain goods from wholesalers and manufacturers at the old prices. Respondent, in the same communication, advised such salesmen, your competitor is suffering worse than we are.

(h) A seller advised respondent that at a conference of surgical supply dealers, several dealers "were of the opinion that all the woes of the local surgical dealers would be eliminated if manufacturers would only discontinue special or preferential discounts given to the Aloe Company."

PAR. 8. At all times since June 19, 1936, respondent has knowingly engaged in practices calculated to, and which did, induce said sellers to grant respondent the discriminatory prices which are illustrated in paragraph 4. For example:

The following examples, which are taken from the respondent's correspondence with said sellers and various bulletins and material issued by respondent to its sales force since June 19, 1936, indicate respondent has knowingly engaged in a studied and persistent course of action to induce sellers to grant respondent favorable discriminatory prices on its purchases of surgical products:

(a) Respondent advised its salesmen that it had persuaded a seller to give it "certain leaders" at prices that even the cheapest lines could not compete with respondent, and whether you are calling on the tiniest institutions or the largest hospitals, these prices cannot possibly be beaten by our competitor. "Certain leaders" may be defined in this instance as surgical products with wide consumer demand.

(b) Respondent complained to a seller that competing distributors were selling a particular surgical product that respondent believed the seller manufactured exclusively for it. The seller replied it had always refrained from making exclusive models for any retailer, but the respondent was given the advantage of showing the particular sur-

gical product first, and the price advantage allowed respondent over all possible competitors should be evidence of seller's willingness to cooperate.

(c) A seller wrote respondent concerning respondent's orders for single products respondent had purchased and requested shipment to be made directly to respondent's customers, or to one of respondent's branches. Seller informed respondent that seller thought it and respondent would be on safer ground if such shipments were billed at the same price given by seller to every other surgical supply dealer, namely, list less 40 percent. Seller further advised respondent that respondent had the same responsibility as seller if the discounts would some day have to be explained.

Respondent later wrote said seller, whose published and established trade discount was 40 percent, that on a recent order for a single surgical product respondent had received a discount of only 40 percent, and requested that the order be charged against respondent's contract order and that an additional amount be allowed respondent, to give it its regular contract discount. The seller acceded to respondent's request by enclosing a credit memorandum for the difference between 40 and 50 percent.

(d) A seller wrote respondent quoting prices on quantity purchases of one of its new surgical products. Respondent replied that if the seller wanted respondent's sales force to work on this product in a big way, it would have to give respondent the maximum quantity discount, although respondent would not purchase in quantity.

(e) Respondent Aloe wrote a seller it was informed that seller was considering a change in its prices, discounts and sales policy, due to complaints from dealers and the Robinson-Patman Act. Respondent stated it did not think seller should be hasty and make any changes in policy without thoroughly investigating possibilities. The respondent said it had made a study of the act, and that seller should consider respondent's loyalty in handling its surgical products to the exclusion of competitive makes, and that respondent had 100 salesmen talking solely this manufacturer's surgical products, and consideration in the way of discounts was due customers furnishing such service, in comparison to small dealers who handle several competitive products. Respondent further stated that if the seller "recognized the ridiculous and foolish claims of the small dealer," it would force concerns such as respondent simply to drop its line, and if other sources were available, respondent would find them, which was a prospect bitter and difficult to contemplate after so many happy years. The seller replied that it appreciated how respondent felt

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regarding a change in discounts, and that it had a plan which it believed would meet with respondent's approval, and that it wanted to work with respondent in every possible way. Thereafter, a secret arrangement, not available to the trade generally, was effected.

CONCLUSION

The Commission concludes that the differentials in prices, as set forth in paragraph 4 hereof, are discriminatory, and are prohibited by 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 have been knowingly induced and received by respondent, and that the respondent thereby violated section 2 (f) of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence in support of the allegations of the complaint introduced before John P. Bramhall, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, and a stipulation entered into between the respondent and its attorney with W. T. Kelley, chief counsel of the Commission, which was approved by the Commission and entered of record, in which stipulation the respondent waived further hearings, the filing of trial examiner's report, briefs, oral argument and all intervening procedure: And the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (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 the respondent, A. S. Aloe Co., a corporation, its officers, directors, representatives, agents and employees, directly or indirectly, in connection with the purchase of surgical products in interstate commerce and in the District of Columbia, do forthwith cease and desist:

1. From receiving from the American Cystoscope Makers, Inc., the W. A. Baum Co., Bausch & Lomb Optical Co., Empire State Thermometer Co., Rieker Instrument Co., Spencer Lens Co., The Vollrath Co., Welch Allyn Co., Wilmot Castle Co., H. Carstens Manufacturing Co., F. Dittmar and Co., Penn Surgical Manufacturing Co., J. Sklar

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Manufacturing Co., Star Surgical Instrument Co., and Western Instrument Manufacturing Co., the benefits of the discriminatory prices set out in the tabulation contained in paragraph 4 of the findings of facts and from receiving from such sellers of surgical products, under like circumstances and conditions, the benefits of discriminations in price of a substantially similar degree, to the extent that any such discrimination shall exceed due allowance for the differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such products are sold and delivered.

2. From continuing or resuming the practice of inducing and receiving discriminations in prices shown in the tabulation contained in paragraph 4 of the Commission's findings as to the facts and conclusion.

3. From knowingly inducing or receiving discriminations in price prohibited by subsection 2 (a) of the Clayton Act as amended from any seller of surgical products in any manner whatsoever.

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

R. T. VANDERBILT COMPANY, INC., AND STANDARD
MINERAL COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED

Docket 3656. Complaint, Nov. 30, 1938—Decision, Dec. 16, 1941

Where a corporation, which was the sole sales agent and owner of the majority of the issued preferred voting stock of second corporate concern, engaged in mining or quarrying pyrophyllite, important raw material used extensively in the ceramic field, operating one of three deposits in North Carolina which, excepting those in California from which no sales were shown to have been made, were the only deposits in the United States developed in commercial quantities—

Acting in concert to restrict and restrain competition in pyrophyllite and to secure a monopoly in sale thereof for use in the manufacture of semivitreous earthenware; following acquisition by former company of certain patents covering semivitreous earthenware bodies composed of pyrophyllite and other ingredients, but which did not give exclusive right to use said product in manufacture of such ware or to mine or sell it—

- (a) Falsely represented, directly or by implication, through letters sent to competitors and manufacturers of ceramic products, that, by reason of its ownership of said patents, it had the sole right to sell pyrophyllite for use in the manufacture of semivitreous earthenware, and that no one had the right to use said substance in such manufacture without its license or consent; and
- (b) Warned customers and prospective customers of their competitors that the use by them in the manufacture of such earthenware of pyrophyllite purchased from said competitors constituted an infringement of the said patents, and threatened them with infringement suits in the event of such use;

Not in good faith in order to protect their own rights in connection with the manufacture of products in question, or to obtain a financial return, by licensing the use of such patents, but with intent of diverting trade in said substance to them from their competitors and creating a monopoly in themselves in the sale thereof; and

- (c) Refused to grant licenses under patents involved except to purchasers of said substance from them, and undertook to restrict such licenses to manufacture of earthenware bodies containing pyrophyllite acquired from them; and
- (d) Made sales of said substance to companies producing semivitreous earthenware, with accompanying licenses to use said patents, upon the condition and understanding that the buyers would not use or purchase pyrophyllite from their competitors, and for the purpose of monopolizing commerce therein;

With effect of suppressing, preventing and destroying competition between them and their competitors in the sale and distribution of such product in commerce:

Held, That such acts and practices, under the circumstances set forth, were to the prejudice of the public and their competitors, and constituted unfair methods of competition in commerce and unfair acts and practices, in violation of the Federal Trade Commission Act; and tended to, and did, substantially lessen competition and create a monopoly therein in them, in violation of the provisions of Section 3 of the Clayton Act, as amended.

Before *Mr. Arthur F. Thomas*, trial examiner.

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

Mr. Frank E. Barrows of Pennie, Davis, Marvin & Edmonds, of New York City, for respondents.

COMPLAINT

Count I

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that R. T. Vanderbilt Co., Inc., a corporation, and Standard Mineral 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, Standard Mineral Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business at 230 Park Avenue, New York City, State of New York. It is now and for many years last past has been engaged in the business of mining or quarrying at Hemp, Moore County, in the State of North Carolina, a crude mineral known as pyrophyllite, being a hydrous silicate of aluminum which is used extensively in the ceramic field, particularly in the production of semivitreous earthenware products.

Respondent, R. T. Vanderbilt Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 230 Park Avenue, New York City, State of New York. It is now and for many years last past has been engaged in the production, sale, and distribution of various minerals and chemicals, including said mineral known as pyrophyllite.

Respondent, R. T. Vanderbilt Co., Inc., is the sole distributor of said pyrophyllite which is mined and quarried by the respondent,

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Standard Mineral Co., Inc. In addition thereto, the respondent, R. T. Vanderbilt Co., Inc., is the owner of certain patents on a process for the admixture of pyrophyllite in connection with the manufacture and production of semivitreous earthenware bodies.

Respondent, R. T. Vanderbilt Co., Inc., owns the majority of the capital stock of respondent, Standard Mineral Co., Inc., and dominates its business policies and activities. Said respondents act in cooperation and in combination with each other in carrying out the acts and practices hereinafter charged, and are the largest of the three or four concerns engaged in the mining or quarrying and sale and distribution of pyrophyllite in the United States.

PAR. 2. The respondents, acting in cooperation as aforesaid, cause said pyrophyllite, when sold by them, to be shipped from the mines or quarries of the Standard Mineral Co., Inc., in the State of North Carolina to the respective 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 pyrophyllite sold and distributed by them in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents are in active and substantial competition with other corporations, and with individuals, firms and partnerships engaged in the sale and distribution of pyrophyllite in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, the respondent, R. T. Vanderbilt Co., Inc., with the active cooperation, knowledge and consent of the respondent, Standard Mineral Co., Inc., offers to license and does license the use of said patented process for the admixture of pyrophyllite in connection with the manufacture and production of semivitreous earthenware products, on the condition, agreement and understanding that such licensees shall purchase and use in connection therewith only that pyrophyllite which is mined or quarried by the respondent, Standard Mineral Co., Inc., and sold and supplied by the respondent, R. T. Vanderbilt Co., Inc. Licensees and purchasers of pyrophyllite from respondent, R. T. Vanderbilt Co., Inc., are required to agree that they will not purchase or use pyrophyllite acquired from any competitor of respondent, R. T. Vanderbilt Co., Inc.

PAR. 5. Respondent, R. T. Vanderbilt Co., Inc., in concert and cooperation with respondent, Standard Mineral Co., Inc., for the purpose and with the result of inducing the purchase of said pyrophyllite, has pursued and continues to pursue a course of action which has the

tendency and effect of stifling, suppressing, eliminating, preventing and destroying actual and potential competition between the said respondents on the one hand and all competitors of respondent, R. T. Vanderbilt Co., Inc., on the other hand, consisting of the use of the following acts, practices and methods:

1. Falsely representing that through its ownership of the aforesaid patented process, respondent, R. T. Vanderbilt Co., Inc., has the sole and exclusive right to sell and supply pyrophyllite for use in connection with the manufacture and production of semivitreous earthenware products, and that no one has or had the right to use said pyrophyllite in such connection or use without its license or consent.

2. Issuing and causing to be issued to the customers and prospective customers of respondents' competitors letters and communications threatening patent infringement suits against users of pyrophyllite purchased from respondents' competitors in manufacturing and producing semivitreous earthenware products as being an infringement of the patented process owned by said respondent, R. T. Vanderbilt Co., Inc.

3. Warning purchasers and prospective purchasers of pyrophyllite supplied by competitors of respondents of liability for infringement of the aforesaid patented process, through the use of pyrophyllite purchased from sources other than respondents', for use in accordance with the aforesaid patented process in the manufacture of semivitreous earthenware products.

PAR. 6. In truth and in fact respondent, R. T. Vanderbilt Co., Inc., does not have, and it has never had, the sole and exclusive right to sell and supply pyrophyllite for such purposes. Pyrophyllite for use in connection with the manufacture and production of semivitreous earthenware products can be lawfully used by anyone without the license and consent of the respondent, R. T. Vanderbilt Co., Inc. The issuing of warnings of infringement and threats to sue by the respondent, as hereinabove set forth, were not made in good faith with the intention of bringing such suits, but for the purpose of injuring said competitors and of intimidating them, their agents, customers and prospective customers. By this means the respondent causes said customers and prospective customers of competitors to refuse to buy and to refrain from buying pyrophyllite from said competitors. Said acts and practices also have the tendency and effect of otherwise embarrassing, obstructing, prejudicing and injuring the business of competitors of respondents in the production and sale of pyrophyllite in commerce as herein described.

PAR. 7. The aforesaid acts and practices and course of action on the part of respondents as herein alleged had, and now have, the

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capacity, tendency and effect of (1) restraining, suppressing, or preventing actual and potential competition in the production, sale and distribution of pyrophyllite and semivitreous earthenware products made therefrom; (2) hindering, restricting, and obstructing the free flow of pyrophyllite and semivitreous earthenware products made therefrom in the channels of trade and commerce among and between the various States of the United States so as to deny the public those advantages which would be attained under conditions of normal and unobstructed free and fair competition in said trade and industry; (3) unfairly diverting trade from, and otherwise prejudicing and injuring, respondents' competitors in their respective businesses in the production, sale and distribution of pyrophyllite and semivitreous earthenware products made therefrom; and (4) of otherwise operating as a restraint upon and a detriment to the freedom of fair and legitimate competition in said trade or industry of using, distributing and selling pyrophyllite and semivitreous earthenware products made therefrom 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 and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Count II

The Federal Trade Commission having reason to believe that said respondents, R. T. Vanderbilt Co., Inc., and Standard Mineral Co., Inc., 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, commonly known as the Clayton Act, hereby issues this its complaint against respondents and states its charges in respect thereto as follows:

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

PAR. 2. For its charges under this paragraph of this count said Commission relies upon the matters and things set out in paragraph 2 of count I of this complaint to the same extent and as though the allega-

tions of said paragraph 2 of said count I were set out in full herein, and said paragraph 2 of said count I is incorporated herein by reference and made a part of the allegations of this count.

PAR. 3. For its charges under this paragraph of this count said Commission relies upon the matters and things set out in paragraph 3 of count I of this complaint to the same extent and as though the allegations of said paragraph 3 of said count I were set out in full herein, and said paragraph 3 of said count I is incorporated herein by reference and made a part of the allegations of this count.

PAR. 4. In the course and conduct of their business in commerce among and between the various States of the United States and in the District of Columbia, respondent, R. T. Vanderbilt Co., Inc., acting with the cooperation, knowledge and consent of the respondent, Standard Mineral Co., Inc., and to their mutual benefit, profit and advantage, as aforesaid, has made sales and contracts for the sale of pyrophyllite and has offered to grant, and has granted, the privilege or license of the use of its patented process for the admixture of pyrophyllite in connection with the manufacture and production of semivitreous earthenware products, with the condition, understanding and agreement that the pyrophyllite mined or quarried by the respondent, Standard Mineral Co., Inc., and sold and supplied by the respondent, R. T. Vanderbilt Co., Inc., and no other, was and is to be used in connection with said process.

The respondent, R. T. Vanderbilt Co., Inc., has refused, and does refuse, to grant such license under any other condition, agreement or understanding, and its licensees have agreed, and are required by respondents to agree, in consideration of such license, that they shall purchase the pyrophyllite used in connection with said process solely from the respondent, R. T. Vanderbilt Co., Inc., and that they will not purchase or use pyrophyllite acquired from any competitor of said respondent, R. T. Vanderbilt Co., Inc., and pursuant to such agreement or understanding said licensees and purchasers have refused and continue to refuse to purchase pyrophyllite from the competitors of the respondent, R. T. Vanderbilt Co., Inc.

The effect of such license agreements, sales and contracts for sale, upon such condition, agreement and understanding may be, is, and has been to substantially lessen competition or tend to create a monopoly in said respondents in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts of respondents 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, and commonly known as the Clayton Act,

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and of an act of Congress approved October 15 A. D. 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", and amendments thereto, the Federal Trade Commission, on November 30 A. D. 1938, issued and thereafter served its complaint in this proceeding upon the respondents, R. T. Vanderbilt Co., Inc., and Standard Mineral Co., Inc., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of the provisions of the Federal Trade Commission Act, and with acts and practices resulting in substantial lessening of competition and tending to create a monopoly in said respondents, in commerce, in violation of the provisions of section 3 of said act of Congress approved October 15 A. D. 1914. After the issuance of said complaint and the filing of a joint answer by the respondents, testimony and other evidence in support of the allegations of the complaint were introduced by John R. Phillips, Jr., attorney for the Commission, and evidence in opposition to the allegations of the complaint was introduced by Frank E. Barrows, attorney for the respondents, before Arthur F. Thomas, a trial examiner of the Commission theretofore duly 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 said complaint, the answer thereto, the testimony and other evidence, the report of the trial examiner thereon and exceptions to said report, briefs in support of the complaint and in opposition thereto, and oral argument of the aforesaid attorneys. 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, R. T. Vanderbilt Co., Inc., is a corporation organized under the laws of the State of New York, with its principal office located at 230 Park Avenue, in the city and State of New York.

Respondent, Standard Mineral Co., Inc., is a corporation organized under the laws of the State of North Carolina, with its principal office located at 230 Park Avenue, in the city and State of New York.

PAR. 2. Respondent, Standard Mineral Co., Inc., is now, and for a number of years last past, has been engaged in the business of mining or quarrying, at Hemp, N. C., pyrophyllite, a hydrous silicate of aluminum, used extensively in the ceramic field, particularly in the production of semivitreous earthenware bodies.

PAR. 3. Respondent, R. T. Vanderbilt Co., Inc., is engaged in the sale and distribution of minerals and chemicals, and is the sole sales agent of respondent, Standard Mineral Co., Inc.

Respondent, R. T. Vanderbilt Co., Inc., owns the majority of the issued preferred voting stock of respondent, Standard Mineral Co., Inc. Both respondents have the same president and treasurer, who are also directors in both corporations, and both corporations have offices at the same address. Respondent, R. T. Vanderbilt Co., Inc., controls and dominates the business policies and activities of respondent, Standard Mineral Co., Inc.

PAR. 4. Respondent, Standard Mineral Co., Inc., sells and distributes pyrophyllite mined or quarried by it to purchasers thereof located in various States of the United States and in the District of Columbia.

PAR. 5. Respondents, in the conduct of their business, have been and now are in active, substantial competition with other corporations and with individuals and partnerships engaged in the production, sale and distribution of pyrophyllite in commerce between and among various States of the United States and in the District of Columbia.

PAR. 6. Respondents' total sales of pyrophyllite during the years 1935 to 1938, inclusive, were: 15,660 tons in 1935; 22,136 tons in 1936; 22,972 tons in 1937, and 18,494 tons in 1938. Of this tonnage its sales to the ceramic industry for the respective years were: 2,752 tons in 1935; 3,862½ tons in 1936; 5,516 tons in 1937, and 5,740½ tons in 1938. Most, if not all of these shipments to the ceramic trade were made to customers located in States other than the State of North Carolina, and most, if not all, were for use under the Sproat patents.

The sales of pyrophyllite by the Carolina Pyrophyllite Co., Inc., which started in business in 1936, had reached by 1937, a monthly total of 500 tons, practically all of which was to the ceramic trade. Its sales gradually increased until, in February, 1940, they amounted to approximately 1,000 tons a month of which about 75 percent was

sold to the ceramic trade. These sales were, in large part, made to customers located in States other than the State of North Carolina.

The Pyrophyllite Talc Products Co. started business in 1937. The only sale of pyrophyllite made by this company to a ceramic manufacturer located in a State other than the State of North Carolina was one of two tons to the Superior Ceramic Corporation, of Anderson, Ind. It sells to manufacturers located in North Carolina approximately one carload a month. In February 1940, its total sales were 26 carloads, but there is no evidence to show the amount of the tonnage or the destination of the shipments.

PAR. 7. Pyrophyllite has been used for 80 years or more in the manufacture of ceramic products, but only in recent years has it become an important raw material. The only deposits of pyrophyllite in the United States which have been developed in commercial quantities are located in California and North Carolina, in which latter State are the Hemp Staley and Glendon deposits. At the time of the issuance of the complaint herein the Hemp deposits were operated by respondent, Standard Mineral Co., Inc.; the Staley deposits by Carolina Pyrophyllite Co., Inc., and the Glendon deposits by Pyrophyllite Talc Products Co. No sales from California deposits are shown to have been made.

PAR. 8. Respondent, R. T. Vanderbilt Co., Inc., acquired by assignment from Ira Elmer Sproat Letters Patent No. 1984163, entitled "Earthenware Body," issued December 11, 1934; Letters Patent No. 2068154 entitled "Earthenware Body," issued January 19, 1937, and a reissue of Patent No. 1984163 under date of November 10, 1937, as Re. 20555, entitled "Earthenware Bodies." These patents cover semivitreous earthenware bodies composed of pyrophyllite and a number of other ingredients.

PAR. 9. The first Sproat patent, No. 1984163, contemplates use of the following ingredients: Pyrophyllite, Georgia or South Carolina kaolin, ball clay, feldspar, and flint; the second Sproat patent No. 2068154 contemplates use of the following ingredients: Flint, feldspar, ball clay, Georgia kaolin, pyrophyllite, whiting, magnesite, lime-bearing talc and malacolite; the reissue of the first patent, numbered Re. 20555, comprises the following ingredients: Flint, feldspar, ball clay, Georgia Kaolin, pyrophyllite, whiting, lime-bearing talc and malacolite. None of these patents grant the exclusive right to the use of pyrophyllite in the manufacture of semivitreous earthenware. Pyrophyllite is but one of a number of ingredients used in producing the semivitreous earthenware bodies covered by the patent.

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The Felspathic Research Corporation is the holder of what is known as the "Kraner Patent," No. 2075445. Application for this patent was filed August 27, 1932, and Letters Patent were issued thereon, March 30, 1937, entitled "Method of Forming Ceramic Bodies." This patent contemplates the use of pyrophyllite in the production of vitreous bodies, and two formulae are included in the letters patent, to cover the manufacture of different types of bodies. The first comprises the following ingredients: Basalt, pyrophyllite, talc, ball clay, china clay, mica, whiting, and feldspar. The second comprises the following ingredients: Kentucky ball clay, Kentucky ball clay (dark special), Georgia china clay, pyrophyllite, talc, and whiting.

PAR. 10. Pyrophyllite is one of a number of ingredients involved in the manufacture of vitreous earthenware bodies, and there is nothing in the Sproat patents giving exclusive right to use this product in such manufacture, nor do these patents grant the exclusive right to mine or sell this product. Patents have been granted to others involving the use of pyrophyllite in combination with other ingredients in the manufacture of vitreous earthenware bodies, as instanced by the Kraner patent. A letter to the Vanderbilt Co. from its patent attorneys, dated January 5, 1935, states:

Since the sale of pyrophyllite to a tile company is not in itself an infringement of the patent, the liability of the seller is that of contributory infringer in the event the purchaser uses the pyrophyllite in a manner which infringes the patent.

In another letter to the Vanderbilt Co. from its attorneys, dated August 4, 1936, it is stated:

All of the claims of your patent No. 1984163 are directed to the earthenware product. Pyrophyllite is an unpatented and unpatentable commodity. The production of the product patented by your patent involves the use of pyrophyllite, but the mere purchase or sale of pyrophyllite does not involve direct infringement of your patent. Your patent is infringed only by the making, using, or selling of the patented earthenware product.

In another letter, dated November 19, 1939, the attorneys state:

In the particular situation here involved, I think you should avoid reference, in letters to the trade, to infringement by the use of pyrophyllite purchased elsewhere and should offer to grant licenses on reasonable terms. You can sell pyrophyllite on the basis that the purchaser gets a license under the patent for all pyrophyllite he buys from you, but should avoid what might prove to be an unfortunate attempt to make licenses depend solely upon the purchase of pyrophyllite from you.

PAR. 11. Respondents sought to use the Sproat patents to control the pyrophyllite market and to secure a monopoly in the production and sale of pyrophyllite. The report of the directors of respondent, Standard Mineral Co., Inc., for the period from April 1, 1931, to March 31, 1932, contains the following statement:

Our efforts to develop new uses for our products are progressing as well as can be expected, and of particular interest is the fact that at least one important consumption will be controlled through patents owned by our sales agent.

In order to secure a monopoly in themselves in the sale of pyrophyllite to be used in the manufacture of semivitreous earthenware, respondents have acted in concert and cooperation to restrict and restrain competition in said product by means of the letters described in paragraph 12 hereof and the acts and practices of respondent Vanderbilt Co. herein set forth.

PAR. 12. Respondent, Vanderbilt Co., acting in concert and cooperation with respondent, Standard Mineral Co., Inc., obtained from its patent attorneys drafts of letters to be sent by it to manufacturers of ceramic bodies and to producers and distributors of pyrophyllite. The letter from the attorneys in which the said drafts were enclosed appears in evidence, but the drafts do not. However, the attorneys quote said drafts in their briefs filed in this proceeding, as follows:

Proposed letter to National Tile Co.:

We are writing to call your attention to our United States Letters Patent No. 1984163 granted December 11, 1934, entitled "Earthenware Body."

We are informed that you are using pyrophyllite in the manufacture of earthenware bodies such as covered by this patent. We request that you discontinue any such infringement and assure us that our rights will be respected.

Proposed letter to various tile companies which are not now infringing:

We are writing to call your attention to our United States Letters Patent No. 1984163 granted December 11, 1934, entitled "Earthenware Body," and relating to the production of semivitreous earthenware bodies with the use of pyrophyllite admixed with clay.

We are prepared to sell you pyrophyllite for use in connection with this patented invention and we are writing to advise you of our rights in this regard so that you may not unknowingly incur liability for infringement through use of pyrophyllite purchased elsewhere for use in accordance with our patented invention.

Proposed letter to the Talc Mining & Milling Co.:

We are writing to call your attention to our United States Letters Patent No. 1984163 granted December 11, 1934, entitled "Earthenware Body."

We understand you are now selling pyrophyllite to the ceramic trade for use in making earthenware bodies such as covered by this patent. Inasmuch as the sale of pyrophyllite for use in making the patented products constitutes con-

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tributory infringement and makes the contributory infringer liable equally with the direct infringer, we are writing you to advise you of our rights in this matter, which we assume you will want to respect to the end that unnecessary litigation may be avoided.

* * * * *

Respondent, Vanderbilt Co., on January 7, 1935, sent the following letter to the National Tile Co.:

DEAR SIRs: We are writing to call your attention to our United States Letters Patent No. 1984163 granted December 11, 1934, entitled "Earthenware Body" and relating to the production of semivitreous earthenware bodies with the use of pyrophyllite admixed with clay.

We are prepared to sell you pyrophyllite for use in accordance with this patented invention and we are writing to advise you of our rights in this regard so that you may not unknowingly incur liability for infringement through use of pyrophyllite purchased elsewhere for use in accordance with our patented invention.

Shipments of pyrophyllite from us carry with them a license for their use, and if you have been using, in accordance with our patent pyrophyllite not bought from us, we request that you discontinue such infringement and we shall be glad to have your assurance that our patent rights will be respected.

Other letters, identical with the foregoing except for the omission of the third paragraph, were sent by respondent, Vanderbilt Co. to 10 other manufacturers of ceramic products located in New York, New Jersey, Georgia, and Ohio. With each of said letters was enclosed a copy of United States Letters Patent No. 1984163.

On January 14, 1935, the Vanderbilt Co. sent a letter to Franklin Tile Co., Lansdale, Pa., in which it is stated:

Every carload of PYRAX pyrophyllite that we ship you automatically carries with it a license for use under the terms of our U. S. Patent No. 1984163.

Typical of the letter sent by the Vanderbilt Co. on January 7, 1935, to producers and distributors of pyrophyllite, is the following:

Gerhardt Tile Corporation,
Stanley, N. C.

DEAR SIRs: We think we should call to your attention our United States Letters Patent No. 1984163 granted December 11, 1934, entitled "Earthenware Body."

We understand you contemplate selling pyrophyllite to the ceramic trade for use in making earthenware bodies such as covered by this patent.

Inasmuch as the sale of pyrophyllite for use in making the patented product constitutes contributory infringement and makes the contributory infringer liable equally with the direct infringer, we are writing you to advise you of our rights in this matter, which we assume you will want to respect, to the end that unnecessary litigation may be avoided.

In November 1937, subsequent to the reissue of the first Sproat patent, respondent, Vanderbilt Co., in accordance with draft prepared by its patent attorneys, sent to seventeen manufacturers of

ceramic products located in New York, New Jersey, Pennsylvania, West Virginia, Indiana, Ohio, and Georgia, the following letter:

We are writing to call to your attention United States Letters Patent Reissue No. 20555 reissued November 16, 1937, entitled: "Earthenware Bodies," relating to the production of semivitreous earthenware bodies with the use of pyrophyllite, clay and calcium compound. We are prepared to sell you pyrophyllite for use in producing the products of this patent.

A copy of the letters patent referred to was enclosed in each of these letters.

The respondent did not follow the draft of letter prepared by its patent attorneys to be sent to National Tile Co., but, acting on its own initiative, stated:

* * * If you have been using in accordance with our patent pyrophyllite not bought from us, we request that you discontinue such infringement * * *.

PAR. 13. After receiving the letters described in paragraph 12 hereof, a number of manufacturers of ceramic products, because of the implied threat of an infringement suit by the Vanderbilt Co., refused to purchase and did not purchase pyrophyllite produced by competitors of the respondents, although in some instances they stated a preference for the product of such competitors. Some of said manufacturers agreed to purchase the products of respondents' competitors if an indemnity bond were furnished to save them harmless in the event of an infringement suit. Between January 1935 and April 1937 three sales of pyrophyllite were made by competitors of respondents to manufacturers of ceramic bodies, with each of which such indemnity bond was furnished. Two of these bonds also covered any breach of agreement to purchase all pyrophyllite used in connection with the Sproat patents from respondents.

PAR. 14. Respondent, Vanderbilt Co., acting in concert and cooperation with respondent, Standard Mineral Co., Inc., has assumed in the letters described in paragraph 12 hereof, that the manufacturers of ceramic products will be confined to the use of respondent's patents in the manufacture of semivitreous earthenware bodies, and, either directly or by implication and innuendo has:

(a) Falsely represented that by reason of its ownership of the Sproat patents it has the sole and exclusive right to sell and supply pyrophyllite for use in connection with the manufacture and production of semivitreous earthenware bodies, and that no one has the right to use pyrophyllite in such manufacture without the license or consent of said respondent.

(b) Warned customers and prospective customers of respondents' competitors that the use by them in the manufacture of semivitreous earthenware of pyrophyllite purchased from such competitors con-

stitutes an infringement of the Sproat patents, and threatened such manufacturers with infringement suits in the event of such use.

(c) Denied the use of its Sproat patents to manufacturers of semi-vitreous earthenware unless the pyrophyllite to be used by them in such manufacture is purchased from respondents.

PAR. 15. The Sproat patents were acquired by respondent, Vanderbilt Co., for the purpose of securing a monopoly in the sale of pyrophyllite to be used in the manufacture of ceramic products, and not for the purpose of protecting it in the manufacture of such product. There is nothing disclosed in the record indicating that respondent ever manufactured ceramic products or contemplated such manufacture.

The respondents have refused to grant licenses under the Sproat patents except to purchasers from them of pyrophyllite, and have attempted to restrict such licenses to the manufacture of earthenware bodies containing pyrophyllite acquired from them. Sales by respondents of pyrophyllite to companies producing semivitreous earthenware and accompanying licenses to use the Sproat patents, were made upon the condition and understanding that the buyers would not use or purchase pyrophyllite from competitors of the respondents, and for the purpose of monopolizing commerce in pyrophyllite.

The letters described in paragraph 12 hereof were not sent in good faith for the purpose of protecting the rights of the Vanderbilt Co. in connection with the manufacture of such products; neither were said letters sent for the purpose of obtaining a financial return from said patents by licensing the use thereof. They were sent for the purpose of carrying out respondents' policy as expressed in the report of respondent Standard Mineral Co., Inc., referred to in Paragraph 11 hereof, that "One important consumption will be controlled through patents owned by our sales agent," and with the purpose and intent of diverting trade in pyrophyllite to respondents from their competitors, and of creating a monopoly in respondents in the sale of pyrophyllite.

PAR. 16. The acts and practices of the respondents as herein set forth have and had the tendency and effect of stifling, suppressing, eliminating, preventing, and destroying competition between said respondents and their competitors in the sale and distribution of pyrophyllite in commerce between and among various States of the United States.

CONCLUSION

The acts and practices of the respondents, as set forth in the foregoing findings as to the facts, under the circumstances therein, set

forth, are to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act; and said acts and practices tend to, and do, substantially lessen competition and create a monopoly in respondents, in commerce, in violation of the provisions of section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and the amendments thereto.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answer of the respondents, the testimony and other evidence, the report of the trial examiner thereon and exceptions to said report, briefs in support of the complaint and in opposition thereto, and oral argument by the attorney for the Commission and the attorney for respondents, 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 and the provisions of section 3 of an act of Congress approved October 15 A. D. 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" and the amendments thereto.

It is ordered, That the respondents, R. T. Vanderbilt Co., Inc., and Standard Mineral Co., Inc., their 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 pyrophyllite in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from.

1. Directly or by implication or innuendo, either orally or by letters, circulars or any other means, representing that the Sproat patents, or any other patent owned or controlled by the respondents, or either of them, confer upon the respondents, or either of them, the exclusive right to use pyrophyllite in the manufacture of semivitreous earthenware bodies, or that said patents confer the exclusive right upon the respondents, or either of them, to sell or supply pyrophyllite to be used in the manufacture of semivitreous earthenware bodies.

2. Directly, or by implication or innuendo, either orally or by letters, circulars, or any other means, threatening any person, firm or corporation with patent infringement or damage suit, or other legal

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action, in bad faith, for the purpose of diverting the trade of any competitor to the respondents.

3. Licensing the use of the Sproat patents, or any other patent owned or controlled by the respondents, or either of them on the condition, agreement, or understanding that the licensee shall purchase from the respondents, or either of them, the pyrophyllite used in the process covered by any of said patents.

4. Licensing the use of the Sproat patents, or any other patent owned or controlled by the respondents, or either of them, upon the condition, agreement or understanding that the licensee shall not purchase or procure from a competitor of respondents the pyrophyllite used in the process covered by any of said patents.

5. Making any sale, or contract, or agreement for sale, of prophyllite, on the condition, agreement, or understanding that the purchaser thereof shall not use, in the manufacture of semivitreous earthenware, pyrophyllite purchased from or supplied by a competitor of respondents.

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

POST INSTITUTE SALES CORPORATION, POST INSTITUTE, LOUIS J. STERN AND HELMUTH M. KIESEWETTER

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

Docket 4129. Complaint, May 7, 1940—Decision, Dec. 16, 1941

Where a corporation engaged in interstate sale and distribution of the "Ultrasol Scalp Treatment," consisting of Ultrasol Hair Bath, Ultrasol Pituitary Fluid, and Ultrasol .33, together with the manufacturer thereof who was its president, manager, and majority stockholder; by means of advertisements disseminated through the mails, newspapers, and periodicals, and circulars, leaflets, pamphlets, and other advertising literature, directly and by implication—

- (a) Represented that the process of keratinization interferes with the natural growth of hair and prevents the free emergence of new hair, that insufficiency of pituitary secretion at the hair root causes abnormal loss of hair, faded hair, and other hair troubles, and that use of their said preparations, either singly or in combination, would remove keratin epidermal tissue and cause their pituitary content to penetrate to the hair roots and stimulate or revive the growth of hair; and
- (b) Represented that the use of their preparations, either singly or in combination, would stop abnormal loss of hair, cause fuzz to develop into mature hair, cause dull, faded hair to become brilliant, normalize dry or oily scalp, check premature graying, restore natural color to the hair, and be effective in removing or curing dandruff;

The facts being that said preparations had no therapeutic value in the treatment of any normal condition of hair or scalp and the only benefit which might be obtained from their use was the possible counterirritant action supplied by massage on application thereof, keratinization of the skin is a normal process and adherence to the scalp of the scaly substance formed thereby, not necessarily a diseased condition, can be removed by a good shampoo medium; shedding of such cells has no significance as respects growth of hair, for which, in any event, external application of pituitary substance would be of no value; and products in question, either singly or in combination, would not bring about the results claimed therefor or remove the scale referred to better than soap and water or any other cleansing agent, and, beyond effecting temporary removal of dandruff scales, did not constitute a cure or remedy for said condition; and

Where said corporation and individual, engaged as above set forth—

- (c) Represented, through the use of the word "Institute" in their trade and corporate names and in various forms of advertising, that they were a scientific organization formed to promote learning and research, and furthered such misrepresentation by such statements as "After twelve years of research Post Institute presents Ultrasol, a new hair discovery," and "The ethics of the Institute preclude exaggerated claims" when in fact "Post

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Institute" was merely a trade name used by said individual in connection with the manufacture and sale of his preparations, and said corporation was engaged as aforesaid in sale and distribution thereof;

- (d) Placed in their various advertising a replica of a seal, usually round, on the outer margin of which appeared, in large letters "CERTIFIED SAFE", and in the center "Post Institute certifies that Ultrasol is made to meet the highest standards of city, State and Federal boards of health," implying thereby that their said preparations had been certified, tested, or approved by boards of health, when in fact such products had never been thus certified, tested or approved by any board of health or any department of the Federal Government; and
- (e) Placed in advertising booklets and circulars such statements as "References concerning the influence of the stratum corneum on the emergence of hair," "Concerning the relation of the pituitary gland to hair growth," and "Concerning the absorption of substances through the hair follicle"; followed by references to certain medical works, with tendency and capacity to cause purchasers to believe that their said preparations had been examined and approved by the doctors referred to, when in fact such doctors had not examined or approved their preparations and did not subscribe to the theories appearing in their booklets and advertising;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that all such representations were true, and of inducing it to purchase their cosmetic preparations because of such belief;

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. John M. Russell for the Commission.

Mr. Morris L. Bower, 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 Post Institute, Inc., and Post Institute, corporations, and Louis J. Stern, individually trading under the name of Post Institute, and as an officer of Post Institute, Inc., and Post Institute, corporations, and Helmuth M. Kiesewetter, individually, and as officer of Post Institute, 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Post Institute, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws

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of the State of New York, having its office and principal place of business at 105 East Sixteenth Street, in the city of New York, in said State; respondent, Post Institute, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having its office at 9 East Fortieth Street, in the city of New York, N. Y., and its principal place of business at 105 East Sixteenth Street, in the city of New York, N. Y.

Louis J. Stern, an individual, is president and treasurer of Post Institute, Inc., vice president of Post Institute, corporations, and also trades as Post Institute, and has his principal office and place of business at 105 East Sixteenth Street, in the city of New York, N. Y. Helmuth M. Kiesewetter is president and treasurer of corporate respondent, Post Institute, and is an individual having his office and place of business at 9 East Fortieth Street, in the city of New York, N. Y. Respondents Louis J. Stern and Helmuth M. Kiesewetter direct and control the sales activities and policies of said corporate respondents with respect to the acts and practices herein set forth.

All of said respondents act in conjunction and cooperation with each other in the performance of 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 preparations for the hair and scalp, known as "Ultrasol Hair Bath," "Ultrasol Pituitary Fluid," and "Ultrasol 33," recommended for use in combination as "Ultrasol Scalp Treatment." Respondents caused said preparations, when sold, to be transported from their places of business in the State of New York, to purchasers thereof located in various other States of the United States and in the District of Columbia. 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. 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 preparations, 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 preparations; and the respondents have also disseminated, and are now disseminating, and have caused, and are now causing the dis-

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semination of false advertisements concerning their said preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by 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:

Ultrasol rids the scalp pores of those hard, little particles of foreign matter, which are bound to collect there from time to time; it stimulates the hair roots to normal scalp lubrication; creates a condition under which normal hair growth may continue, and one's hair may again be its healthy, glowing best.

POST INSTITUTE

presents

A REVOLUTIONARY HAIR DISCOVERY

After twelve years of research, Post Institute presents Ultrasol, a new hair discovery. Although Ultrasol has won enthusiastic endorsement from distinguished users, the ethics of the Institute preclude exaggerated claims. The safety, simplicity and economy of Ultrasol has been demonstrated by thousands of men and women, who have used Ultrasol at home, and by over 100,000 treatments, given by specialists.

* * * * *

Ultrasol users report:

How abnormal hair loss has stopped.

How fuzz has grown to mature hair.

How the scalp feels refreshed, free from dandruff.

How dull, faded hair becomes brilliant.

How dry scalp becomes normal.

How limp, dull, scanty, "impossible hair" is revived without scalp manipulation or tiring massage.

Ultrasol courses for women are designed:

To revive limp, dull, scanty, "impossible hair" * * * without strong rinses, scalp manipulation or tiring massage.

To strengthen the hair for lasting, artistic permanent waving.

To normalize dry or oily scalp.

To give dyed hair even, "refined" luster.

To keep the scalp and hair clean, free from dandruff, without soap or drying solutions.

To check abnormal hair falling and combat premature graying.

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PAR. 4. Through the use of the aforesaid statements and representations, and others of similar import and meaning, not specifically set out herein, the respondents represent, directly and by implication, that their preparations, used either singly or in combination, will revive the growth of hair and are cures or remedies for baldness and constitute competent and effective treatments therefor; that the use of said preparations will stop abnormal loss of hair, cause fuzz to develop into mature hair, cause dull, faded hair to become brilliant, normalize dry or oily scalp, check premature graying, and restore the natural color to the hair; and that the use of said preparations will be effective in removing and curing dandruff.

PAR. 5. The aforesaid representations and claims, used and disseminated by the respondents, as hereinabove described, are grossly exaggerated, misleading and untrue. In truth and in fact, respondents' preparations, whether used singly or in combination, have no therapeutic value in the cure or treatment of baldness, and will not revive the growth of hair. The use of said preparations will not stop the abnormal loss of hair or cause fuzz to develop into mature hair. Said preparations will not normalize dry or oily scalp, check premature graying or restore the natural color to the hair. Respondents' preparations have no therapeutic value in removing or curing dandruff or causing dull, faded hair to become brilliant in excess of furnishing a dressing for the hair and providing a shampoo which might aid in removing scales.

PAR. 6. In addition to the representations hereinabove set forth, the respondents have further represented that the formation of keratinized epidermal waste obstructs the hair follicle, interferes with natural lubrication, restricts growth of hair, and prevents free emergence of new hair, and that other causes of loss of hair and hair troubles are caused by insufficiency of pituitary secretion at the hair roots, and that their preparations have therapeutic value in correcting such conditions.

Typical of such representations regarding the efficacy of respondents' preparations in such conditions, which the respondents disseminate, and have caused to be disseminated, in the manner hereinabove described, is the following:

AFTER MATURE RESEARCH

Post Institute has formulated the theory that abnormal hair loss, faded hair and most other hair troubles, in non-pathological cases, are due to:

(A) Neo-keratin, horn-like matter, which fills up the "funnel" of the hair follicle, interferes with natural lubrication, restricts the growth of luxuriant hair and often prevents the free emergence of new hair.

(B) Insufficiency, at the hair root, of some constituent of pituitary secretion.

Based on this theory, the Institute has designed Ultrasol and the method for applying it:

(a) To remove neo-keratin; (b) to supply to the scalp—in a manner planned to aid penetration—a special extract from the whole-gland pituitary body, in combination with other ingredients, which the Institute has found, by practical tests, conducive to hair improvement; (c) to create a condition under which natural revival of hair growth may become possible.

Through the use of the aforesaid statements, and representations, and others of similar import and meaning, not specifically set out herein, the respondents have represented, directly and by implication, that their preparations will remove keratin epidermal tissues and cause pituitary substance to penetrate to the hair roots and stimulate the growth of hair.

In truth and in fact, respondents' preparations, used either singly or in combination, will have no effect upon the process of keratinization. Furthermore, there is no scientific basis for the assumption that pituitary or other substance, applied to the scalp, will penetrate to the hair roots and stimulate the growth of hair.

PAR. 7. In addition to the representations hereinabove set forth, the respondents, by the use of the word "Institute" in their trade or corporate name and in their various forms of advertising, represent that they are a scientific organization, formed for the purpose of promoting learning and research.

In furtherance of this representation, the respondents placed in their advertising material statements to the same effect, of which the following are typical examples:

AFTER TWELVE YEARS OF RESEARCH
POST INSTITUTE PRESENTS
ULTRASOL
A NEW HAIR DISCOVERY

The ethics of the Institute preclude exaggerated claims.

By a costly process, Post Institute isolates from whole gland pituitary body a special extract.

As an additional means of furthering such representations, the respondents place on their various advertising a replica of a seal, usually round in design, by means of which the respondents represent that their products have been certified, tested or approved by some scientific organization or some State, city or federal board of health-

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An example of one of such seals is one of a circular design, on the outer margin of which appears the following, in large letters:

CERTIFIED SAFE

and in the center of which appears the following legend:

POST INSTITUTE
CERTIFIES
THAT ULTRASOL IS
MADE TO MEET THE
HIGHEST STANDARDS
OF CITY, STATE, AND
FEDERAL
BOARDS OF HEALTH

In truth and in fact, Post Institute is not a scientific organization, formed for the purpose of promoting learning and research, and its products have not been certified, tested or approved by any scientific organization or board of health of any city or State or any department of the Federal Government.

PAR. 8. A further example of the false and misleading representations made by the respondents is the placing in their booklets, advertising and describing their products, the following statement:

REFERENCES

CONCERNING THE INFLUENCE OF THE STRATUM CORNEUM ON THE EMERGENCE OF HAIR. Reference is made to the works of W. J. O'Donovan, M. D., a physician at the Skin Department of London Hospital, lecturer at the London School of Dermatology, St. John's Hospital; J. M. H. Macloed, Vice-President, Dermatological Section of the Royal Society of Medicine.

CONCERNING THE RELATION OF THE PITUITARY GLAND TO HAIR GROWTH. Reference is made to the works of William Engleback, M. D., authority on endocrinology, late Professor, St. Louis College of Medicine.

CONCERNING THE ABSORPTION OF SUBSTANCES THROUGH THE HAIR FOLLICLE. Reference is made to the works of George Clinton Andrews, M. D., Associate Professor of Dermatology, College of Physicians and Surgeons, Columbia University; Richard J. Sutton, M. D., Professor of Dermatology, University of Kansas, School of Medicine, and Richard L. Sutton, Jr., M. D., Assistant Professor of Dermatology, University of Kansas.

By this means, the respondents represent that the doctors and physicians, so named, subscribe to the theories, appearing in said booklet, and in effect approve respondents' product, when in truth and in fact said doctors and physicians have not examined or approved respondents' preparations and do not subscribe to the theories appearing in respondents' booklets and advertising.

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PAR. 9. The use by the respondents of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations are true, and induces a substantial portion of the purchasing public to purchase respondents' cosmetic preparations because of such erroneous and mistaken belief, engendered as above set forth.

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 May 7, 1940, issued and subsequently served its complaint on the respondents, Post Institute Sales Corporation, a corporation (formerly known as Post Institute, Inc.), Post Institute, a corporation, Louis J. Stern, individually, trading as Post Institute and as officer of Post Institute Sales Corporation (formerly known as Post Institute, Inc.) and Post Institute, a corporation, and Helmuth M. Kiesewetter, individually, and as officer of Post Institute, 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' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John M. Russell, attorney for the Commission, and in opposition to the allegations of the complaint by Morris L. Levine, attorney for the respondents, 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, this proceeding regularly came on for final hearing before the Commission on said complaint, answers 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. Respondent, Post Institute Sales Corporation, 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 105 East Sixteenth Street in the city of New York, State of New York. Said corporation was originally incorporated under the name of Post Institute, Inc., and on or about July 6, 1939, the name of said corporation was changed to Post Institute Sales Corporation. During the time that said respondent operated under the name of Post Institute, Inc., it was engaged in the manufacture and in the sale and distribution of certain preparations for the hair and scalp known as Ultrasol Hair Bath, Ultrasol Pituitary Fluid, and Ultrasol .33, recommended for use, in combination, as Ultrasol Scalp Treatment. On or about July 6, 1939, at the time the name of respondent corporation was changed to Post Institute Sales Corporation, said corporate respondent discontinued the manufacture of said preparations and from that time until the present, said preparations have been manufactured by respondent Louis J. Stern, an individual trading as Post Institute, and said respondent Post Institute Sales Corporation has been sole distributor of said preparations so manufactured by the said respondent Louis J. Stern, trading as Post Institute.

Respondent, Louis J. Stern, is an individual, trading under the name of Post Institute. Prior to July 6, 1939, said respondent Louis J. Stern was president and owner of all the capital stock of Post Institute, Inc. Subsequent to July 6, 1939, said respondent Louis J. Stern has been president and manager of Post Institute Sales Corporation and owns 60 percent of the capital stock of said corporation. Said respondent Louis J. Stern has, at all times mentioned herein, directed and controlled the policies and sales activities of Post Institute Sales Corporation and its predecessor, Post Institute, Inc.

Post Institute, a corporation, also known as the Post Institute of Delaware, Inc., a corporation, was organized under and by virtue of the laws of the State of Delaware, having its principal office at 100 West Tenth Street, Wilmington, Del., and was engaged in the sale and distribution of preparations known as Ultrasol Scalp Treatment, in the city of Philadelphia, State of Pennsylvania. Said corporation was dissolved on March 4, 1939.

Respondent, Helmuth M. Kiesewetter, is an individual, and was president of Post Institute of Delaware, Inc., a corporation, until its

dissolution in March, 1939. Said respondent is also the owner of five percent of the stock of Post Institute Sales Corporation but is not a director or officer of said corporation and has not actively participated in any of the acts and practices hereinafter found.

PAR. 2. Respondent, Post Institute Sales Corporation, a corporation (formerly known as Post Institute, Inc.), and respondent Louis J. Stern, individually and trading as Post Institute and as officer and director of Post Institute Sales Corporation, a corporation (formerly known as Post Institute, Inc.), have caused said preparations for the hair and scalp known as Ultrasol Hair Bath, Ultrasol Pituitary Fluid, and Ultrasol .33, when sold to be transported from their places of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. 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. 3. In the course and conduct of their aforesaid businesses, the said respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparations, by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act, and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparations by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations in commerce as "commerce" is defined in the Federal Trade Commission Act.

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

AFTER MATURE RESEARCH

Post Institute has formulated the theory that abnormal hair loss, faded hair and most other hair troubles, in nonpathological cases, are due to:

(A) Neo-keratin, horn-like matter, which fills up the "funnel" of the hair follicle, interferes with natural lubrication, restricts the growth of luxuriant hair and often prevents the free emergence of new hair.

(B) Insufficiency, at the hair root, of some constituent of pituitary secretion.

Based on this theory, the Institute has designated Ultrasol and the method of applying it:

(a) To remove neo-keratin; (b) to supply to the scalp—in a manner planned to aid penetration—a special extract from the whole-gland pituitary body, in combination with other ingredients, which the Institute has found, by practical tests, conducive to hair improvement; (c) to create a condition under which natural revival of hair growth may become possible.

Ultrasol rids the scalp pores of those hard, little particles of foreign matter, which are bound to collect there from time to time; it stimulates the hair roots to normal scalp lubrication; creates a condition under which normal hair growth may continue, and one's hair may again be its healthy, glowing best.

Ultrasol users report:

How abnormal hair loss has stopped.

How fuzz has grown to mature hair.

How the scalp feels refreshed, free from dandruff.

How dull, faded hair becomes brilliant.

How dry scalp becomes normal.

How limp, dull, scanty, "impossible hair" is revived without scalp manipulation or tiring massage.

Ultrasol courses for women are designed:

To revive limp, dull, scanty, "impossible hair" * * * without strong rinses, scalp manipulation or tiring massage.

To strengthen the hair for lasting, artistic permanent waving.

To normalize dry or oily scalp.

To give dyed hair even, "refined" luster.

To keep the scalp and hair clean, free from dandruff, without soap or drying solutions.

To check abnormal hair falling and combat premature graying.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import and meaning, not specifically set out herein, the said respondents represent, directly and by implication, that the process of keratinization interferes with the natural growth of hair and prevents the free emergence of new hair; that insufficiency of pituitary secretion at the hair root causes abnormal loss of hair, faded hair, and other hair troubles; and that the use of respondents' preparations, either singly or in combination, will remove keratin epidermal tissue and cause pituitary substance to penetrate to the hair roots and stimulate or revive the growth of hair. By the same means the said respondents represent, directly or by implication, that the use of their preparations, either singly or in combination, will revive the growth of hair, stop abnormal loss of hair, cause fuzz to develop into mature hair, cause dull, faded hair to become brilliant, normalize dry or oily scalp, check premature graying, restore natural color to the hair, and be effective in removing or curing dandruff.

PAR. 5. Respondents' preparations are designed for external application to the hair and scalp, and contain whole-gland pituitary body,

a special extract, combined with derivatives from oil, cholesterol, and lecithin. The only benefit which might be obtained from the use of respondents' preparations is the possible counterirritant action supplied by massage on application of these preparations. Respondents' preparations have no therapeutic value in the treatment of any abnormal condition of the hair or scalp.

The keratinization of the skin is a normal process and forms a scaly or horny substance on the scalp, as well as other parts of the skin. In some cases it sheds easily and in other cases adheres to the scalp. The adherence to the scalp is not necessarily a disease condition and can be removed by a good shampoo medium. Respondents' preparations would have no more effect than soap and water or any other cleansing agent under such conditions. The shedding of such epidermal horny cells has no significance in the growth of hair.

The pituitary gland is not generally recognized by the medical profession as being a controlling factor in the growth of hair, although it may, under certain conditions, have some bearing upon hair growth. Under the conditions of use the extract of whole-gland pituitary body contained in respondents' preparations is inactive, since the use of pituitary substance by external application has no value whatsoever and is ineffective in the treatment of any hair or scalp condition.

The use of said respondents' preparations *Ultrasol Hair Bath*, *Ultrasol Pituitary Fluid*, and *Ultrasol .33*, either singly or in combination, will not revive the growth of hair, stop abnormal loss of hair, cause fuzz to develop into mature hair, or cause dull, faded hair to become brilliant. The use of said preparations will not normalize dry or oily scalp, check premature graying, or restore natural color to the hair. Respondents' preparations do not constitute a cure or remedy for dandruff and have no value in the treatment of dandruff in excess of effecting the temporary removal of dandruff scales.

PAR. 6. The Commission further finds that the said respondents represent, through the use of the word "Institute" in their trade or corporate name and in various forms of advertising, that they are a scientific organization formed for the purpose of promoting learning and research, when, in fact, Post Institute is a trade name used by Louis J. Stern, an individual, in connection with the commercial manufacture and sale of his various preparations, and Post Institute Sales Corporation, is a corporation engaged in the sale and distribution of various preparations manufactured by the said Louis J. Stern. Said respondents are not scientific organizations formed for the purpose of promoting learning and research. In furtherance of their plan

of misrepresentation as to the nature and scope of the business conducted by them, the respondents use in advertising the following statements and representations:

AFTER TWELVE YEARS OF RESEARCH

POST INSTITUTE PRESENTS

ULTRASOL

A NEW HAIR DISCOVERY

The ethics of the Institute preclude exaggerated claims

PAR. 7. In addition to the acts and practices hereinabove described, the respondents place on their various advertising, a replica of a seal, usually round in design, on the outer margin of which appears the following, in large letters:

CERTIFIED SAFE

and in the center of which appears the following legend:

POST INSTITUTE

CERTIFIES

THAT ULTRASOL IS

MADE TO MEET THE

HIGHEST STANDARDS

OF CITY, STATE, AND

FEDERAL

BOARDS OF HEALTH

The use of such seal has a tendency and capacity to cause purchasers and prospective purchasers to believe that said respondents' preparations have been certified, tested, or approved by city, State, or federal boards of health, when, in fact, such products have never been certified, tested, or approved by any board of health of any city, State or any department of the Federal Government.

PAR. 8. The Commission further finds that the said respondents place the following statements in their various advertising booklets and circulars:

REFERENCES

CONCERNING THE INFLUENCE OF THE STRATUM CORNEUM ON THE EMERGENCE OF HAIR. Reference is made to the works of W. J. O'Donovan, M. D., a physician at the Skin Department of London Hospital, lecturer at the London School of

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Dermatology, St. John's Hospital; J. M. H. Macloed, Vice President, Dermatological Section of the Royal Society of Medicine.

CONCERNING THE RELATION OF THE PITUITARY GLAND TO HAIR GROWTH. Reference is made to the works of William Englebach, M. D., authority on endocrinology, late Professor, St. Louis College of Medicine.

CONCERNING THE ABSORPTION OF SUBSTANCES THROUGH THE HAIR FOLLICLE. Reference is made to the works of George Clinton Andrews, M. D., Associate Professor of Dermatology, College of Physicians and Surgeons, Columbia University; Richard J. Sutton, M. D., Professor of Dermatology, University of Kansas, School of Medicine, and Richard L. Sutton, Jr., M. D., Assistant Professor of Dermatology, University of Kansas.

The use of the above statements in their various booklets and circulars describing their various preparations and the results to be obtained from their use, has the tendency and capacity to cause purchasers and prospective purchasers to believe that said respondents' preparations have been examined and approved by the various doctors referred to in said references, when, in fact, such doctors and physicians have not examined or approved respondents' preparations and do not subscribe to the theories appearing in respondents' booklets and advertising.

PAR. 9. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations are true and induces a substantial portion of the purchasing public to purchase said respondents' cosmetic preparations because of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, 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 upon the evidence, and exceptions filed thereto, 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Post Institute Sales Corporation, a corporation (formerly known as Post Institute, Inc.), and its officers and respondent Louis J. Stern, an individual, trading as Post Institute, 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 preparations for the hair and scalp designated Ultrasol Hair Bath, Ultrasol Pituitary Fluid, and Ultrasol 33, either singly or in combination under the designation of Ultrasol Scalp Treatment, or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other name or names, do forthwith cease and desist from:

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 respondents' preparations, either singly or in combination, will revive the growth of hair, stop abnormal loss of hair, cause fuzz to develop into mature hair, or cause dull, faded hair to become brilliant.

(b) That the use of respondents' preparations, either singly or in combination, will normalize dry or oily scalp, check premature graying, or restore natural color to the hair.

(c) That respondents' preparations, either singly or in combination, constitute a cure or remedy for dandruff, or have any value in the treatment of dandruff in excess of effecting the temporary removal of dandruff scales.

(d) That the pituitary substance contained in respondents' preparations is an active ingredient or that it will have any effect upon the growth of hair under the conditions of use.

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, which advertisement contains any of the representations prohibited in paragraph (1) hereof and the respective subdivisions thereof.

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3. The use, in circulars and other advertising material, of any general reference to any article or book written by any doctor or physician which does not subscribe to the statements or theories contained in such circulars and other advertising without disclosing that such article or book does not constitute an endorsement of respondents' preparations or subscribe to the theories advanced by the respondents in such advertising material.

4. The use of the word "Institute," or any other word of similar import or meaning, in respondents' corporate or trade name, or representing through any other means or device, or in any manner, that respondents constitute scientific organizations or associations formed for the purpose of promoting learning and research, or that the business operated by them, or any of them, is anything other than a private business enterprise for profit.

5. The use of any seal, emblem, or other insignia, which represents, either directly or by implication, that respondents' preparations have been certified, tested, or approved by any board of health of any city or State or by any department of the Federal Government.

It is further ordered, That the complaint be dismissed as to the respondents, Helmuth M. Kiesewetter, an individual, and Post Institute, a corporation, also known as Post Institute of Delaware, Inc., a corporation.

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

Complaint

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IN THE MATTER OF

**MELVIN V. EISENBERG, IRWIN GOLDBERG, HARRY
KROHNER, AND SEYMOUR EISENBERG, TRADING AS
BENTLEY COMPANY, MAIL ORDER DIVISION**

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

Docket 4552. Complaint, July 31, 1941—Decision, Dec. 16, 1941

Where four individuals engaged in interstate sale and distribution of their "Fat-O-No" medicinal preparation; by means of advertisements disseminated through the mails and otherwise—

- (a) Represented, directly and by implication, that their said product was a safe, simple, easy and effective treatment for obesity and an amazing fat-reducing remedy, purity and safety of which were guaranteed by a leading insurance company, and that it was recommended by many physicians; the facts being it was not such a treatment or remedy, or so guaranteed or recommended, but contained the drugs pilocarpine hydrochloride, apocynin, phytolaccin, desiccated thyroid and phenolphthalein in quantities sufficient to be harmful to the user;
- (b) Failed to reveal facts material in the light of said representations in that use of the product in question under usual or prescribed conditions, might cause diarrhea and a dependence upon a laxative for evacuation of the bowels, and its use by one suffering from nausea, vomiting, abdominal pains or other symptoms of appendicitis, was dangerous; and
- (c) Failed to reveal further material facts in that use of said preparation as aforesaid might result in edema of the lungs, and might also accelerate metabolic processes, resulting in nervousness and irritability, and dangerously increase body temperature and heart action;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing it because of such belief, to purchase their said preparation:

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

Mr. R. P. Bellinger for the Commission.

Mr. Robert H. Rudnick, 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 Melvin V. Eisenberg, Irwin Goldberg, Harry Krohner, and Seymour Eisenberg, individuals trading as Bentley Company, Mail Order Division, 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

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Complaint

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

PARAGRAPH 1. Respondents, Melvin V. Eisenberg, Irwin Goldberg, Harry Krohner, and Seymour Eisenberg are individuals trading as Bentley Company, Mail Order Division, with their principal place of business located at 900 N. Francisco Avenue, Chicago, Ill. The individual addresses of each of the four respondents are respectively as follows: Melvin V. Eisenberg, 2829 Augusta Boulevard, Chicago, Ill.; Irwin Goldberg, 4811 North Harding Avenue, Chicago, Ill.; Harry Krohner, 4708 North St. Louis Avenue, Chicago, Ill.; Seymour Eisenberg, 2729 East Chestnut Street, Chicago, Ill.

PAR. 2. The respondents are now, and since October 1940, have been, engaged in the sale and distribution of a medicinal preparation designated as "Fat-O-No."

In the course and conduct of their said business respondents caused said preparation, 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 mentioned herein have maintained, a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparation by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparation in commerce, as commerce is defined 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 aforesaid, are the following:

LOSE EXCESS FAT

Try the simple easy method recommended by so many thousands of people during the last 20 years. This amazing reducing remedy is known as FAT-O-NO.

Reduce quickly and safely without strenuous exercise or starvation diets: Purity and safety guaranteed under a \$10,000.00 bond posted with a leading insurance company. The complete formula printed on every package. Recommended by many doctors.

FAT-O-NO tablets the Bonded and Guaranteed Safe, Easy and Pleasant way for flesh reducing.

PAR. 4. By the use of the representations hereinabove set forth and others similar thereto not specifically set out herein, respondents represent, directly and by implication, that their said preparation designated as "Fat-O-No" is a safe, simple, easy, and effective treatment for obesity, or for the reduction of excess fat; that said preparation is an amazing fat reducing remedy; that its purity and safety is guaranteed by a leading insurance company and that said preparation is recommended by many physicians.

PAR. 5. The aforesaid representations and advertisements used and disseminated by the respondents as hereinabove described, are grossly exaggerated, false, and misleading.

In truth and in fact, respondents' said preparation is not a safe, simple, easy and effective treatment for obesity or for the reduction of excess fat. Said preparation is not an amazing fat reducing remedy. The purity and safety of said preparation is not guaranteed by a leading insurance company and said preparation is not recommended by many physicians.

PAR. 6. The respondents' advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondents' said preparation contains the drugs pilocarpine hydrochloride, apocynin, phytolaccin, desiccated thyroid, and phenolphthalein in quantities sufficient to be harmful to the user. The use of said preparation may cause diarrhea and a dependence upon a laxative for the evacuation of the bowels. Its use by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, is dangerous. Further, the use of said preparation may result in a dangerous condition known as edema of the lungs. Furthermore, the use of said preparation may accelerate the metabolism processes of the body resulting in nervousness, and irritability. Its use may also increase the body temperature and the heart action to an extent that is dangerous to health.

PAR. 7. The use by respondents of the foregoing false, deceptive and misleading statements and advertisements with respect to their said

preparation, disseminated as aforesaid, has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and induces a portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said preparation.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 31, 1941, issued and thereafter served its complaint in this proceeding upon said respondents, Melvin V. Eisenberg, Irwin Goldberg, Harry Krohner, and Seymour Eisenberg, individuals trading as Bentley Co., Mail Order Division, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. The time within which respondents should have filed answer in this proceeding expired on August 21, 1941, and no answer was filed. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and their counsel, Robert H. Rudnick, Esq., 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 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 Melvin V. Eisenberg, Irwin Goldberg, Harry Krohner, and Seymour Eisenberg, are individuals, trading as

Bentley Company, Mail Order Division, with their principal place of business located at 900 N. Francisco Avenue, Chicago, Ill. The individual addresses of each of the four respondents are, respectively, as follows: Melvin V. Eisenberg, 2849 North Augusta Boulevard, Chicago, Ill.; Irwin Goldberg, 4811 North Harding Avenue, Chicago, Ill.; Harry Krohner, 4708 North St. Louis Avenue, Chicago, Ill.; Seymour Eisenberg, 2729 East Chestnut Street, Chicago, Ill.

PAR. 2. From October 1940 to March 1941 the respondents were engaged in the sale and distribution of a medicinal preparation designated as "Fat-O-No."

In the course and conduct of their said business respondents caused said preparation, 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 maintained, during said period of time, a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents disseminated and caused the dissemination of false advertisements concerning their said preparation by the United States mails and by various other means, in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said preparation; and respondents also disseminated and caused the dissemination of false advertisements concerning their said preparation by various means, for the purpose of inducing and which were likely to induce, directly or indirectly the purchase of their said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as aforesaid, were the following:

LOSE EXCESS FAT

Try the simple easy method recommended by so many thousands of people during the last 20 years. This amazing reducing remedy is known as FAT-O-NO. Reduce quickly and safely without strenuous exercise or starvation diets. Purity and safety guaranteed under a \$10,000.00 bond posted with a leading insurance company. The complete formula printed on every package. Recommended by many doctors. FAT-O-NO tablets the Bonded and Guaranteed Safe, Easy and Pleasant way for flesh reducing.

PAR. 4. By the use of the representations hereinabove set forth and others similar thereto not specifically set out herein, respondents represented, directly and by implication, that their said preparation designated as "Fat-O-No" was a safe, simple, easy, and effective treatment for obesity, or for the reduction of excess fat; that said preparation was an amazing fat-reducing remedy; that its purity and safety were guaranteed by a leading insurance company, and that said preparation was recommended by many physicians.

PAR. 5. The aforesaid representations and advertisements used and disseminated by the respondents as hereinabove described, were grossly exaggerated, false, and misleading.

In truth and in fact respondents' said preparation is not a safe, simple, easy and effective treatment for obesity or for the reduction of excess fat. Said preparation is not an amazing fat-reducing remedy. The purity and safety of said preparation is not guaranteed by a leading insurance company, and said preparation is not recommended by many physicians.

PAR. 6. The respondents' advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

In truth and in fact, respondents' said preparation contains the drugs pilocarpine hydrochloride, apocynin, phytolaccin, desiccated thyroid, and phenolphthalein in quantities sufficient to be harmful to the user. The use of said preparation may cause diarrhea and a dependence upon a laxative for the evacuation of the bowels. Its use by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, is dangerous. Further, the use of said preparation may result in a dangerous condition known as edema of the lungs. Furthermore, the use of said preparation may accelerate the metabolic processes of the body, resulting in nervousness and irritability. Its use may also increase the body temperature and the heart action to an extent that is dangerous to health.

PAR. 7. The use by respondents of the foregoing false, deceptive, and misleading statements and advertisements with respect to their said preparation, 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 statements, representations and advertisements were true, and induced

a portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and 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, Melvin V. Eisenberg, Irwin Goldberg, Harry Krohner, and Seymour Eisenberg, individuals trading as Bentley Co., Mail Order Division, or trading under any other name or names, their representatives, agents, servants, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their medicinal preparation designated as "Fat-O-No," 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 by implication, that said preparation is a safe, simple, easy or effective treatment for obesity or for the reduction of excess fat; that said preparation constitutes a competent fat-reducing remedy; that the purity and safety of said preparation are guaranteed by an insurance company; or that many physicians have recommended said preparation.

2. 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 fails to reveal that the use of said preparation may result in edema of the lungs, may cause nervousness and irritability because of acceleration of the metabolic processes of the body, and may increase the body temperature and the heart action to a dangerous extent.

3. 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 fails to reveal that said preparation should not be used in cases of nausea, vomiting, abdominal pains, or other symptoms of appendicitis: *Provided, however,* That such advertisement need contain only the statement, "Caution, use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a warning to the above effect.

4. 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 paragraphs 2 and 3 hereof.

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

IN THE MATTER OF

NEWTON PAPER 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 4559. Complaint, Aug. 8, 1941—Decision, Dec. 16, 1941

Where a corporate manufacturer of specialty papers, which had attained and maintained a dominant position approaching monopoly in the manufacture and original interstate sale of "bogus" paper, a cheap flexible product cut by dies into stays of various shapes and sizes for lining handbags and pocket-books; an association of stay die cutters; the executive secretary of said association, in effect its business manager; four corporations, two partners and an individual, engaged in stay die cutting, all organizers and members of said association and participants in the formation of its policies and the unlawful acts and practices below set forth; engaged, excepting said association and secretary thereof, in interstate sale and shipment of such "bogus" paper or converted products thereof, and, prior to 1933, in free and open competition which would have continued but for unlawful acts and practices below set forth—

- (a) Entered into, on or about October 1, 1933, and thereafter continuously carried out an understanding and combination to lessen and restrain competition and trade in the interstate sale and distribution of "bogus" paper, either in its original or converted form, and to monopolize such business in themselves; and

Where said die cutters, pursuant to such understanding and combination—

- (b) Organized aforesaid association to assist them in carrying out the same and, under its auspices, held meetings at which they fixed and established prices, terms, discounts and charges for their products;
- (c) Refused to solicit or sell their products to customers of other members, under penalties prescribed and assessed by said association, and, through said association, allocated among themselves all new and prospective customers;
- (d) Furnished such association with lists of their customers and the name of any customer who was delinquent in his accounts, and refused to sell any customer who had become delinquent with any other member; and
- (e) Restricted, as far as practicable, their purchases of "bogus" paper to aforesaid manufacturer and distributors; and

Where such association and its aforesaid secretary, chief instrumentality in coordinating efforts and unlawful acts and practices in question of the corporations and concerns above referred to; in the pursuit of their objectives—

- (f) Cooperated with said die cutters by holding meetings of members, by circulating prices, discounts, and charges fixed and established by said die cutters, by circulating lists of delinquent customers, by prescribing and assessing penalties for members' violation of said understandings and agreements, and by other acts and practices; and

Where aforesaid manufacturer—

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(g) Restricted its sales and shipments of said paper to aforesaid three distributors, thereby giving them sole control and monopoly of the sale and distribution thereof; and

Where distributors aforesaid—

(h) Refused to sell to any die cutter not a member of said association on the same terms and conditions they sold to members;

Capacity, tendency and effect of which understanding and combination, and things done in pursuance thereof, were, as respects "bogus" paper and its converted products, to—

1. Unduly restrict and restrain competition in the manufacture and interstate distribution thereof;

2. Enable aforesaid corporations, partners and individuals to control and substantially monopolize such business;

3. Prevent competitors and prospective competitors from entering into the field of manufacture, conversion, or sale and distribution of said products; and

4. Fix, maintain and enhance the price thereof and enhance the price to the consuming public of the products of which "bogus" paper had become a part:

Held, That such acts and practices were all to the prejudice of the public, and had a dangerous tendency to and did actually hinder and prevent price competition between and among aforesaid corporations and concerns in the purchase and sale of "bogus" paper, both in its original and converted forms, in commerce; placed in aforesaid corporations and concerns the power to fix, control, maintain and enhance prices of such commodity; increased the prices thereof to purchasers and users, and to the public for the finished products of which such commodity had become a part; created in aforesaid corporations and concerns a substantial monopoly in the dealings in said commodity in interstate commerce; unreasonably restrained commerce; and constituted unfair methods of competition therein.

Mr. Wm. T. Chantland for the Commission.

Mr. Herbert S. Blake, Jr., of New York City, for Newton Paper Co.

Mr. Max Siskind, of New York City, for Henry Fuchs & Son, Joe Salwen Paper Co. and Salwen Paper Co.

Mr. Samuel N. Haberman, of New York City, for Stay Die Cutters Association, Inc., Sidney Haberman, Art Metal Die Manufacturers, Die-Craft Cutting Co., Inc., R. & C. Mounting & Finishing Co., New York Leather Embossing Co., Harry Litky, Lansky Die Cutting Co. and F. & S. Die Cutting Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the corporations, partnerships, firms and individuals named in the caption hereof, hereinafter more particularly described and referred to as respond-

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ents, 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. (a) Respondent, Newton Paper Mills, for many years last past has been, and now is, a corporation duly organized, existing, and doing business as a Massachusetts corporation, with its principal office and place of business at Holyoke, Mass. For many years last past it has been, and still is, engaged in the business of manufacturing, selling, and shipping in interstate commerce of various specialty papers including so-called "bogus" paper, of which up to the present time, respondent has attained and maintained a dominant position approaching monopoly in the manufacture and original sale.

(b) Respondents, Samuel Fuchs, trading as Henry Fuchs and Son, with his principal office and place of business at 215 Greene Street, New York; Solomon J. Salwen and Morris Ruben and Sidney Salwen, copartners trading as Joe Salwen Co., with its principal office and place of business at 405 East Fourth Street, New York, N. Y.; and Salwen Paper Co., a New York corporation with its principal place of business at 187 Greene Street, New York, N. Y. (all hereinafter referred to as distributors), have each for several years last past been engaged and still are engaged in the sale, shipment, and distribution in interstate commerce of various types of paper, including so-called "bogus" paper.

(c) Respondent, Stay Die Cutters Association, Inc., is a corporation organized about October 1933 and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 225 West Thirty-fourth Street, New York, N. Y. Said respondent is a trade association organized by and comprised of and controlled by individuals and concerns engaged in the stay die cutting industry.

Respondent, Sidney Haberman, since during 1938 has been and still is executive secretary of said Stay Die Cutter Association, Inc., and using said title, has acted as and performed the duties of business manager and has been in active charge of the office and business of said Association.

(d) Respondent, Art Metal Die Manufacturers, is a New York corporation with its principal office and place of business at 115 West Twenty-ninth Street, New York, N. Y.; and respondent, Die-Craft Cutting Co., Inc., is a New York corporation with its principal office and place of business at 120 East Sixteenth Street, New York, N. Y.; and respondent, R. & C. Mounting & Finishing Co., is a New

York corporation with its principal office and place of business at 102 Tompson Street, New York, N. Y.; and respondent, New York Leather Embossing Co., is a New York corporation with its principal office and place of business at 129 West Twenty-fifth Street, New York, N. Y.; and respondent, Harry Litky, maintains his principal office and place of business at 580 Broadway, New York, N. Y.; and respondent, Jennie Lansky, trading as Lansky Die Cutting Co., maintains her principal office and place of business at 194 Greene Street, New York, N. Y.; and respondent, Morris Silverberg, trading as F. & S. Die Cutting Co. maintains his principal office and place of business at 57 East Eleventh Street, New York; and all of the hereinaforesaid corporations, partnerships and individuals have been, and still are, engaged in the stay die cutting business and industry, and sell and ship their products in interstate commerce, and all of them took part in organizing, and have since been, and still are members of respondent, Stay Die Cutters Association, Inc., and all have participated in the formation of its policies and the doing of unlawful acts and practices hereinafter set forth.

PAR. 2. In the course and conduct of their said businesses, all of said respondents (except the respondent association and its executive secretary), have caused to be sold and shipped, and have shipped "bogus" paper, or the converted products thereof, from their various places of business within the States of New York and Massachusetts to the purchasers thereof located in States other than said States of New York and Massachusetts, and there has been for many years last past and now is a continuous current of interstate trade and commerce in "bogus" paper product in its original or converted form between and among the several States of the United States; and respondent, Stay Die Cutters Association, Inc., and its executive secretary, Sidney Haberman, have cooperated with and aided the other respondents in the directing and restricting of such sales and shipments.

PAR. 3. "Bogus" paper is a cheap, flexible paper cut by dies into stays of various shapes and sizes and used chiefly in lining handbags and pocketbooks. Said paper has been and is sold by respondent, Newton Paper Mills, and any of its competitors that may still be in the business, to die cutting concerns. When respondent die cutting concerns have cut said paper into the shapes and sizes as required by its customers, they sell and ship the converted product to their various competing customer-makers of handbags and pocketbooks. The stay die cutting industry aggregates in excess of \$300,000 gross sales per annum. For said business, those engaged therein use approximately \$200,000 worth of "bogus" paper made by respondent,

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Newton Paper Mills, and buy said paper either direct from said manufacturer, or from some one or more of the three above-named respondent distributors.

For some years prior to October 1933, there was free and open competition between and among the makers of, and dealers in "bogus" paper, including respondent Newton Paper Mills and the distributors hereinbefore named, and between and among the various concerns engaged in the die cutting industry, including the respondent die cutting concerns, in the sale of their converted product of said paper; and all of said concerns would still be thus engaged in free and open competition but for the unlawful acts and practices as hereinafter stated.

PAR. 4. On or about October 1, 1933, the respondents entered into and thereafter carried out and are still carrying out an understanding, agreement, combination and conspiracy to hinder, lessen, restrict, and restrain competition and trade in the sale and distribution of "bogus" paper, either in its original or converted form, in commerce between and among the several States of the United States and to monopolize in themselves the business in said commerce.

Pursuant to and in furtherance of said understanding, agreement, combination, and conspiracy, said respondents have performed, and now perform, among others, the following acts and practices:

1. Respondent die cutters organized respondent, Stay Die Cutters Association, Inc., to assist them in carrying out said understanding, agreement, combination, and conspiracy.

2. Respondent die cutters refuse to solicit or sell their products to customers of other members of respondent association, under penalties prescribed and assessed by respondent association.

3. Respondent die cutters, through respondent Association, allocate among themselves all new and prospective customers.

4. Respondent die cutters furnish respondent Association with lists of their customers and the name of any customer who is delinquent in his accounts.

5. Respondent die cutters refuse to sell any customer who has become delinquent in his accounts with any other member.

6. Respondent die cutters restrict their purchases of "bogus" paper to the respondent manufacturer and distributors.

7. Respondent manufacturer and distributors refuse to sell to any die cutter not a member of respondent Association on the same terms and conditions they sell to said members.

8. Respondent die cutters, under the auspices of respondent Association, hold meetings at which they fix and establish prices, terms, discounts, and charges for their respective products.

9. Respondent Association, and respondent, Haberman have cooperated with the respondent die cutters by holding meetings of members; by circulating and distributing prices, discounts, and charges fixed and established by said respondent die cutters; by circulating and distributing lists of delinquent customers, and also by prescribing and assessing penalties for violation of said understandings and agreements entered into by said members, as hereinbefore described, and by doing and performing other acts and practices in carrying out said understandings and agreements.

Respondents have carried out, and are still carrying out, the aforesaid purposes and objectives, and in the carrying out of said purposes and objectives, respondent Association and its executive secretary have been the chief instrumentality in coordinating such efforts and unlawful acts and practices of all the respondents.

PAR. 5. The said understanding, agreement, combination, and conspiracy as aforescribed, and the things done thereunder and in pursuance and furtherance thereof, as hereinbefore alleged, have had and now have the capacity, tendency and effect of:

(a) Unduly restricting and restraining competition in the manufacture and distribution of "bogus" paper in its original and converted forms in commerce between and among the several States of the United States.

(b) Enabling the respondents to control and substantially monopolize the business of the manufacture, sale, and distribution of "bogus" paper and its converted products in said commerce.

(c) Preventing competitors and prospective competitors, either in the manufacture or distribution of said "bogus" paper and its converted products, from entering into the field of manufacture, conversion, or distribution of said products.

(d) To fix, maintain, and enhance the price to the users of said products, and to the extent of any such enhancement of price, to likewise enhance the price to the consuming public of the products of which "bogus" paper became a part.

PAR. 6. The understanding, agreement, combination, and conspiracy and acts described in the foregoing paragraphs have continued to the present.

PAR. 7. The acts and practices of respondents as aforescribed are all to the prejudice of the public and have a dangerous tendency to hinder, and have actually hindered and prevented, price competition between and among respondents in the purchase and sale of "bogus" paper both in its original and converted forms, in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to fix, control, maintain, and enhance

prices of said commodities; have increased the prices of said commodities paid by purchasers thereof, and consequently the prices paid by the users thereof, and of the public for the finished products of which they became a part; have created in said respondents a substantial monopoly in the dealings in said commodities in commerce throughout the several States of the United States; have unreasonably restrained such commerce in "bogus" paper both in its original and converted forms, 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 8, 1941, issued, and August 11, 1941, served its complaint in this proceeding upon respondents, Newton Paper Co. (designated in the complaint as Newton Paper Mills), Samuel Fuchs, trading as Henry Fuchs & Son, Solomon J. Salwen and Sidney Salwen, two of the copartners, trading as Joe Salwen Co., Salwen Paper Co., a corporation, Stay Die Cutters Association, Inc., Sidney Haberman, individually, and as executive secretary of Stay Die Cutters Association, Inc., Art Metal Die Manufacturers, a corporation, Die-Craft Cutting Co., Inc., a corporation, R. & C. Mounting and Finishing Co., a corporation, New York Leather Embossing Co., a corporation, Harry Litky, Jennie Lansky, trading as Lansky Die Cutting Co., and Morris Silverberg, trading as F. & S. Die Cutting Co., and on September 9, 1941, served its complaint upon Reuben Salwen, one of the copartners trading as Joe Salwen Co., and on September 10, 1941, served its complaint upon Maurice J. Salwen, one of the copartners, trading as Joe Salwen Co., charging said respondents with the use of unfair methods of competition in violation of the provisions of said act. After the issuance of said complaint and after the time set for filing answer had expired, the Commission by order entered herein granted the motion of respondents, Stay Die Cutters Association, Inc., Sidney Haberman, individually, and as executive secretary of Stay Die Cutters Association, Inc., Art Metal Die Manufacturers, Die-Craft Cutting Co., Inc., R. & C. Mounting and Finishing Co., New York Leather Embossing Co., Harry Litky, Jennie Lansky, trading as Lansky Die Cutting Co., and Morris Silverberg, trading as F. & S. Die Cutting Co., for permission to file an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which answer was duly filed

in the office of the Commission; and after the issuance of said complaint and the filing of answers by certain other respondents, namely, Samuel Fuchs, trading as Henry Fuchs & Son, Solomon J. Salwen, Maurice J. Salwen, Reuben Salwen, and Sidney Salwen, copartners, trading as Joe Salwen Paper Co. (designated in the complaint as Solomon J. Salwen, Morris Ruben and Sidney Salwen, copartners trading as Joe Salwen Co.), Salwen Paper Co., and Newton Paper Co., the Commission, by order entered herein, granted the motion of said respondents for permission to withdraw their said answers and to substitute therefor answers admitting all the material allegation of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answers were duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for hearing before the Commission on said complaint and answer and substitute answers, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

· PARAGRAPH 1. Newton Paper Co., a corporation, named in the complaint as Newton Paper Mills, a corporation, accepted service and has filed its answer in its proper name; respondents Maurice J. Salwen and Reuben Salwen, named in the complaint as "Morris Ruben," were served with the complaint in their proper names as two of the copartners, trading as Joe Salwen Paper Co. and have joined in the answer of said Joe Salwen Paper Co., named in the complaint as Joe Salwen Co.

PAR. 2. Respondent, Newton Paper Co., for many years last past has been, and now is, a corporation duly organized, existing, and doing business as a Massachusetts corporation, with its principal office and place of business at Holyoke, Mass. For many years last past it has been, and still is, engaged in the business of manufacturing, selling, and shipping in interstate commerce various specialty papers including so-called "bogus" paper, as to which up to the present time respondent has attained and maintained a dominant position approaching monopoly in the manufacture and original sale.

PAR. 3. Respondents, Samuel Fuchs, trading as Henry Fuchs & Son, with his principal office and place of business at 215 Greene Street, New York, N. Y.; Solomon J. Salwen, Maurice J. Salwen, Reuben Salwen, and Sidney Salwen, copartners trading as Joe Salwen Paper

Co., with their principal office and place of business at 405 East Fourth Street, New York, N. Y.; and Salwen Paper Co., a New York corporation with its principal place of business at 187 Greene Street, New York, N. Y. (all hereinafter referred to as distributors) have each for several years last past been engaged and still are engaged in the sale, shipment and distribution in interstate commerce of various types of paper, including so-called "bogus" paper.

PAR. 4. Respondent, Stay Die Cutters Association, Inc., is a corporation organized about October 1933, and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 225 West Thirty-fourth Street, New York, N. Y. Said respondent is a trade association organized by and comprised of and controlled by individuals and concerns engaged in the stay die cutting industry.

PAR. 5. Respondent, Sidney Haberman, since during 1938 has been and still is executive secretary of said Stay Die Cutters Association, Inc., and using said title, has acted as and performed the duties of business manager and has been in active charge of the office and business of said association.

PAR. 6. Respondent, Art Metal Die Manufacturers, is a New York corporation with its principal office and place of business at 115 West Twenty-ninth Street, New York, N. Y.; and respondent, Die-Craft Cutting Co., Inc., is a New York corporation with its principal office and place of business at 120 East Sixteenth Street, New York, N. Y.; and respondent, R. & C. Mounting and Finishing Co., is a New York corporation with its principal office and place of business at 102 Tompson Street, New York, N. Y.; and respondent, New York Leather Embossing Co., is a New York corporation with its principal office and place of business at 129 West Twenty-fifth Street, New York, N. Y.; and respondent, Harry Litky, maintains his principal office and place of business at 580 Broadway, New York, N. Y.; and respondent, Jennie Lansky, trading as Lansky Die Cutting Co., maintains her principal office and place of business at 194 Greene Street, New York, N. Y.; and respondent, Morris Silverberg, trading as F. & S. Die Cutting Co., maintains his principal office and place of business at 57 East Eleventh Street, New York, N. Y. (all hereinafter referred to as die cutters); and all of the hereinaforesaid corporations, partnerships, and individuals have been, and still are, engaged in the stay die cutting business and industry, and sell and ship their products in interstate commerce, and all of them took part in organizing and have since been and still are members of respondent Stay Die Cutters Association, Inc., and all have participated in the

formation of its policies and the doing of unlawful acts and practices hereinafter set forth.

PAR. 7. "Bogus" paper is a cheap, flexible paper cut by dies into stays of various shapes and sizes and used chiefly in lining handbags and pocketbooks. Said paper has been and is sold by respondent Newton Paper Co. only to respondent distributors and such paper has been sold by said Newton Paper Co.'s competitors either to distributors, or direct to die cutting concerns. When respondent die cutting concerns have cut said paper into the shapes and sizes as required by its customers, they sell and ship the converted product to their various competing customer-makers of handbags and pocketbooks. The stay die cutting industry aggregates in excess of \$300,000 gross sales per annum, and for said business, those engaged therein use approximately \$200,000 worth of "bogus" paper made by respondent Newton Paper Company, which they can and do buy only from some one or more of the three respondent distributors.

PAR. 8. In the course and conduct of their said businesses, all of said respondents (except the respondent association and its executive secretary), have caused to be sold and shipped, and have shipped, "bogus" paper, or the converted products thereof, from their various places of business within the States of New York and Massachusetts to the purchasers thereof located in States other than said States of New York and Massachusetts, and there has been for many years last past and now is a continuous current of interstate trade and commerce in "bogus" paper product in its original or converted form between and among the several States of the United States; and respondent Stay Die Cutters Association, Inc., and its executive secretary, Sidney Haberman, have cooperated with and aided the other respondents in the directing and restricting of such sales and shipments.

PAR. 9. For some years prior to October 1933, there was free and open competition between and among the makers of, and dealers in, "bogus" paper, including respondent Newton Paper Co. and the distributor respondents, and between and among the various concerns engaged in the die cutting industry, including the respondent die cutting concerns, in the sale of their converted product of said paper; and all of said concerns would still be engaged in full, free, and open competition, but for the unlawful acts and practices as hereinafter set forth.

PAR. 10. On or about October 1, 1933, respondents entered into and thereafter carried out and are still carrying out an understanding and combination to hinder, lessen, restrict, and restrain competition and

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trade in the sale and distribution of "bogus" paper, either in its original or converted form, in commerce between and among the several States of the United States, and to monopolize in themselves the business in said commerce.

PAR. 11. Pursuant to and in furtherance of said understanding and combination, said respondents have performed and now perform, or have aided and participated in, among others, the following acts and practices:

(a) Respondent die cutters organized respondent Stay Die Cutters Association, Inc., to assist them in carrying out said understanding and combination.

(b) Respondent die cutters refuse to solicit or sell their products to customers of other members of respondent association, under penalties prescribed and assessed by respondent association.

(c) Respondent die cutters, through respondent association, allocate among themselves all new and prospective customers.

(d) Respondent die cutters furnish respondent association with lists of their customers and the name of any customer who is delinquent in his accounts.

(e) Respondent die cutters refuse to sell any customer who has become delinquent in his accounts with any other member.

(f) Respondent die cutters, as far as practicable, restrict their purchases of "bogus" paper to the respondent manufacturer and respondent distributors.

(g) Respondent die cutters, under the auspices of respondent association, hold meetings at which they fix and establish prices, terms, discounts, and charges for their respective products.

(h) Respondent association and respondent Haberman have cooperated with the respondent die cutters by holding meetings of members; by circulating and distributing prices, discounts, and charges fixed and established by said respondent die cutters; by circulating and distributing lists of delinquent customers, and also by prescribing and assessing penalties for violation of said understandings and agreements entered into by said members, as hereinbefore described, and by doing and performing other acts and practices in carrying out said understandings and agreements.

(i) Respondent manufacturer has restricted its sales and shipments of said paper to the three respondent distributors, thereby giving them sole control and monopoly of the sale and distribution of said product of the said dominant producer respondent.

(j) Respondent distributors refuse to sell to any die cutter not a member of respondent association on the same terms and conditions they sell to said members.

PAR. 12. Respondents have carried out, and are still carrying out, the aforesaid purposes and objectives, and in the carrying out of said purposes and objectives respondent association and its executive secretary have been the chief instrumentality in coordinating such efforts and unlawful acts and practices of all the respondents.

PAR. 13. The said understanding and combination as aforescribed, and the things done thereunder and in pursuance and furtherance thereof, as hereinbefore set forth have had, and now have, the capacity, tendency and effect of:

(a) Unduly restricting and restraining competition in the manufacture and distribution of "bogus" paper, in its original and converted forms, in commerce between and among the several States of the United States;

(b) Enabling respondents to control and substantially monopolize the business of the manufacture, sale and distribution of "bogus" paper and its converted products in said commerce;

(c) Preventing competitors and prospective competitors, either in the manufacture or distribution of said "bogus" paper and its converted products, from entering into the field of manufacture, conversion, or sale and distribution of said product;

(d) Fixing, maintaining, and enhancing the price to the users of said product and to the extent of any such enhancement of price, of likewise enhancing the price to the consuming public of the products of which "bogus" paper has become a part.

PAR. 14. The understanding and combination, and acts and practices above set forth have continued to the present.

CONCLUSION

The acts and practices of respondents as aforesaid are all to the prejudice of the public and have a dangerous tendency to hinder, and have actually hindered and prevented, price competition between and among respondents in the purchase and sale of "bogus" paper both in its original and converted forms, in commerce, within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to fix, control, maintain, and enhance prices of said commodity; have increased the prices of said commodity to the purchasers thereof, and consequently the prices to the users thereof, and to the public for the finished products of which they have become a part; have created in said respondents a substantial monopoly in the dealings in said commodity in commerce throughout the several States of the United States; have unreasonably restrained commerce in "bogus" paper both in its original and converted forms, and all con-

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stitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Newton Paper Co., hereinafter referred to as respondent manufacturer, Samuel Fuchs, trading as Henry Fuchs & Son, Solomon J. Salwen, Sidney Salwen, Reuben Salwen and Maurice J. Salwen, copartners trading as Joe Salwen Paper Co., Salwen Paper Co., a corporation, hereinafter referred to as respondent distributors, Stay Die Cutters Association, Inc., hereinafter referred to as respondent Association, Sidney Haberman, individually and as executive secretary of said respondent Association, Art Metal Die Manufacturers, a corporation, Die-Craft Cutting Company, Inc., a corporation, R. & C. Mounting and Finishing Co. a corporation, New York Leather Embossing Co., a corporation, Harry Litky, Jennie Lansky, trading as Lansky Die Cutting Co., and Morris Silverberg, trading as F. & S. Die Cutting Co., hereinafter referred to as respondent die cutters, and their officers, representatives, agents and employees, and each of them, directly or indirectly, or through any corporate or other device in connection with the sale, offering for sale, or distribution of "bogus" paper in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into or carrying out any understanding, agreement, combination, or conspiracy, or any equivalent cooperation, concert or common course of action to hinder, lessen, restrict, or restrain competition and trade in the sale or distribution of "bogus" paper, either in its original or converted form, in commerce between and among the several States of the United States, or to monopolize in themselves the business or any part of such business in said commerce, and to that end,

It is further ordered, That respondent die cutters, directly or indirectly, or through any corporate or other device in connection with the sale, offering for sale, or distribution of "bogus" paper in said commerce do forthwith cease and desist from performing any of the

following acts or practices pursuant to understanding or agreement, or any equivalent cooperation, concert or common course of action:

1. Fixing and establishing prices, terms, discounts and charges for said "bogus" paper, or attending meetings for such purpose.

2. Allocating through respondent Association, or any other similar agency, new and prospective customers for "bogus" paper among the members of said respondent Association.

3. Refusing to solicit the sale of or to sell "bogus" paper to customers of other members of said respondent Association.

4. Restricting their purchases of "bogus" paper to the respondent manufacturer and distributors, or any other manufacturer or distributor.

5. Furnishing said respondent Association, or its officers or representatives, with lists of their respective customers or the names of their customers delinquent in their accounts.

6. Refusing to sell any delinquent customer or other members of said respondent Association.

7. Utilizing respondent Association, or any similar agency, or its officers or representatives, as a means or instrumentality in aid of, or in carrying on, any of the acts or practices forbidden by this order, and

It is further ordered, That respondent Association and Sidney Haberman, either individually or as an officer or representative of said Association, or any other agent or representative of said Association, directly or indirectly, or through any corporate or other device, pursuant to said understanding or agreement, or any equivalent cooperation, concert, or common course of action, do forthwith cease and desist from:

1. Holding meetings of respondent die cutters to fix and establish prices, terms, discounts, and charges for their products.

2. Circulating and distributing prices, terms, discounts, and charges for "bogus" paper fixed and established by respondent die cutters.

3. Circulating and distributing lists of customers and prospective customers of respondent die cutters and the names of customers of respondent die cutters who are delinquent in their accounts.

4. Prescribing and assessing penalties for violation of said understanding or agreement by the respondent die cutters.

5. Otherwise cooperating with the said respondent die cutters in the carrying out and enforcement of said understanding or agreement, and

It is further ordered, That respondent manufacturer and respondent distributors and their officers, representatives, agents, and employees,

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directly or indirectly, or through any corporate or other device, in connection with the sale, offering for sale, or distribution of "bogus" paper in said commerce, pursuant to said understanding or agreement, or any equivalent cooperation, concert, or common course of action, do forthwith cease and desist from:

1. Refusing to sell "bogus" paper to any die cutter not a member of respondent Association on the same terms and conditions as they sell to members of said Association.

2. Otherwise cooperating with the respondent die cutters and respondent Association in the carrying out and enforcement of said understanding or agreement.

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. J. BORTZ AND EDITH BORTZ, TRADING AS CHAMPION
BATTERY COMPANY AND THE BALL COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4134. Complaint, May 16, 1940—Decision, Dec. 18, 1941*

Where two individuals, engaged under the names, "The Ball Co." and "Champion Battery Co.," in the competitive interstate sale and distribution to retailers of so-called sales promotional plans, involving (1) in its dealing under former name, units for which the dealer paid 5 cents to their representative and undertook to pay balance of 15 cents, upon delivery, without prior opportunity for inspection, and which consisted of gift certificate, "ivory ware" cup, saucer and cereal dish, and printed handbills and penants or posters for the merchant's use, the scheme purportedly contemplating that \$5.00 in purchases, when stamped out on his certificate, entitled a customer to receive said dishes from the dealer with the further provision that the dealer sending in such punched-out certificate, together with name and address of customer and 39 cents for an additional unit of such "ivory ware", was entitled to 23 cents refund; and involving, (2) when trading under latter name, a purported selling plan, varying from the former, in that when the punched-out certificate was sent to them with name of the customer, it was to be accompanied by a varying remittance for a so-called trial order of dry batteries, depending on the particular novelty desired by the customer, and the 20 cents paid by the dealer for certificate was to be refunded—

- (a) Made use, as aforesaid, of trade name "The Ball Co." in offer and sale of their first-described promotional sales plan and dinner ware, and in their contract forms and on letterheads displayed the heading "The Ball Co., Dinnerware Department"; and represented, through their sales representatives, that such concern was a department of, or connected with, or a representative of, the well known Ball Brothers Company, manufacturers of mason jars, and that said plan was an effort on the part of the latter to recoup lost sales volume attributed to increased use of tin and other food containers, and was to introduce the new dinnerware made by said Ball Bros. Co., and, further, that the retail dealer might become the representative of said company and receive substantial profits on future sales of such dinnerware;
- (b) Concealed, in some instances, the fact that the dealer would not receive a refund unless additional purchases were made by his customer, and displayed to dealers, as samples of the ware, merchandise of substantially better grade and more attractively colored and decorated than that actually furnished;
- (c) Made use, as aforesaid, of name "The Champion Battery Co." in offer and sale of their said promotional sales plan involving batteries, and represented, through their sales representatives, that they were agents of, or

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that their said concern was connected with, the well-known Champion Spark Plug Co., of Toledo, Ohio; that latter was commencing the manufacture of batteries, and that the sales plan offered was to advertise the new line; and that great profits could be made from future resale of batteries which would be promoted by extensive advertising by the concern above referred to; and displayed, offered and sold, in such connection, batteries marked and designated as "Champion";

- (d) Concealed the fact that the dealer's customers would have to purchase batteries in order to secure the novelties included in the plan, by misrepresentations or by failure to exhibit a true copy of the so-called "advertising gift check," and represented the number of samples of such novelties to be furnished to the dealer as greater than the number actually furnished; and,
- (e) Represented, through the advertising handbills furnished to contracting dealers for the sales promotion plan offered under the name of "Champion Battery Co." that the various novelties were available to customers of the purchasing dealer "free," when in fact the cost of such articles was included in the price of the batteries which had to be purchased to obtain them; Notwithstanding the fact they were in no way connected with the Ball Bros. Co. of Muncie, Ind., long time manufacturer of glass fruit jars, or with the Champion Spark Plug Co. of Toledo, Ohio, products of both of which were well and favorably known to the purchasing public, nor were their dinnerware, or their so-called "Champion" batteries, respectively, products of said companies;

With intent and effect of misleading and deceiving many members of the public who had confidence in the aforesaid companies and their products into the purchase of their so-called promotional sales plans and accompanying merchandise, in the false belief that they were dealing with or securing the products of said Ball Bros. Co. or Champion Spark Plug Co., and of misleading and deceiving their customers into the belief that they were connected with said widely-known companies and dealt in their products; and

- (f) Frequently misrepresented, through their sales representatives, the quantities of handbills and advertising pennants or posters which would be furnished to the purchasing dealer, and displayed purported samples of such advertising material far superior to that actually furnished;
- (g) Represented, as aforesaid, that they were introducing a new line of merchandise, and that the sales plan offered was for the purpose of bringing it to the attention of the public, and made numerous other false representations to induce purchases; and
- (h) Made use of a form of contract or agreement which provided that the purchasing dealer had read its terms, that the order was not subject to change or cancellation, and that "No terms or representations except as printed herein will be recognized by this company," notwithstanding which they accepted the benefits of orders which contained written alterations of the printed terms, and, while collecting the full amount due thereunder, complied only in part with the altered terms;

With effect of misleading and deceiving retail dealers into purchase of their so-called sales promotional plans and accompanying merchandise, in reliance upon such misrepresentations, of placing in the hands of dealers a means and instrumentality whereby the latter might mislead and deceive

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the consuming public, and of unfairly diverting trade in commerce to them from their competitors; to the injury of such competitors and the public: *Held*, That such methods, acts and practices were all to the prejudice of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Maurice C. Pearce for the Commission.

Mr. William K. Campbell, of Detroit, Mich., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that D. J. Bortz and Edith Bortz, individually, and trading as Champion Battery Co., and the Ball Co., respectively, 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 it charges in that respect as follows:

PARAGRAPH 1. Respondents, D. J. Bortz and Edith Bortz, are individuals doing business under the trade names of Champion Battery Co., and the Ball Co., with their principal office and place of business located in Room 403, Morgan Building, Detroit, Mich. Respondents are now, and since the early part of the year 1939 have been, engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of certain so-called sales promotional plans, including, in connection therewith, the sale and distribution of "advertising gift checks," "gift certificates," and various articles of merchandise, novelty gifts, and premiums. Respondents cause such advertising gift checks, gift certificates and articles of merchandise, including novelty gifts, and premiums used in connection with the operation of their so-called sales promotional plans, when sold, to be transported from their place of business in the State of Michigan to purchasers thereof located in the 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 the sale and distribution of said so-called sales promotional plans and articles of merchandise, including novelty gifts and premiums 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. Respondents, in the course and conduct of the business conducted by them under the respective trade names Champion Battery Co. and the Ball Co., are now and at all times herein mentioned have been in substantial competition with other individuals and with corporations, partnerships, and firms likewise engaged in the sale and distribution in commerce of so-called sales promotional plans which include or employ in their operation "advertising gift checks," "gift certificates," and other articles of merchandise, including novelty gifts, and premiums.

PAR. 3. Respondents, through their agents and salesmen, solicit and sell their so-called sales promotional plants to retail dealers located in various States of the United States. Said "advertising gift checks" consist of cards describing novelty gifts and premiums and containing figures on the margin thereof aggregating \$5. Through the operation of said plans, as represented by agents of respondents, the dealer distributes such checks among his customers and prospective customers, and as purchases are made by such customers, the dealer punches the figure on the margin of the check corresponding to the amount purchased. When the entire amount has been punched out on the check, the customer or the dealer, in the case of the Champion Battery Co., may forward the gift check to respondents with a purchase order of batteries and bulbs and receive in return, in addition to batteries and bulbs ordered, one of the novelty gifts described in said check, as selected by the customer. In the case of the so-called sales-promotional plan operated in the name of the Ball Co., the customer, on surrendering the gift check, is to be supplied with pieces or combination sets of dinnerware.

Said "advertising gift checks" and "gift certificates" are sold to dealers in minimum orders of 100 and 200, respectively, for which the dealer pays 20 cents per check or certificate, or \$20 for an order of 100 and \$40 for an order of 200. The amount paid by the dealer for each check, in the case of the Champion Battery Co., is to be refunded to him when the full amount on a gift check has been punched out and the check forwarded to respondents for redemption by either the dealer or the customer, together with 20 cents for a purchase order of batteries. In the case of the Ball Co., the amount paid by the dealer is to be refunded to him when the full amount of the gift certificate has been punched out and the certificate, with the name and address of the customer appearing thereon, is forwarded to the respondents for redemption by the dealer.

Respondents furnish the dealer with various advertising handbills, which are headed with the word "Free" in large letters and

describe the premiums offered, to be used by said dealer in putting the aforesaid plan into operation and effect.

PAR. 4. Respondents, doing business under the respective trade names Champion Battery Co., and the Ball Co., as aforesaid, through their salesmen and agents, make many false and misleading statements, and representations with respect to their so-called sales promotional plans. In soliciting dealers and with a view to making sales contracts and increasing their business, respondents represent that Champion Battery Co. is a representative of, or connected with, and is putting on an advertising campaign for, the Champion Spark Plug Co., which has earned a valuable good will and reputation through the manufacture and sale of "Champion Spark Plugs," and which is located at 900 Upton Avenue, Toledo, Ohio. Respondents represent further that the dealers' customers, upon forwarding the advertising gift checks to respondents for redemption, will receive various articles of merchandise "Free" in the way of premiums or prizes, and that so-called sales promotional plan will be without cost to the dealer in that the amount paid for such advertising gift checks by the dealer will be refunded by respondents upon redemption of the said checks. Respondents further represent that the dealer will be furnished a certain designated number of advertising handbills of attractive design and superior quality, the same being exhibited to the dealer, and attractive samples of substantial novelty gifts to be displayed by the dealer in putting the plan into operation and effect; that the plan has been designed to facilitate the advertising of a new line of batteries; that the novelty premiums are to be delivered to customers on a deposit of 20¢ for a purchase order of batteries with the gift check completely punched; and that the batteries sold by respondents are manufactured by the Champion Spark Plug Co.

Similarly, respondents represent that the Ball Co. is connected with, or a representative of, Ball Brothers Co., of Muncie, Ind., which has earned a favorable reputation and valuable good will through the manufacture and sale of glass fruit preserving jars; that because of the decline in the fruit preserving jar business during recent years due to increasing use of tin products, the Ball Co. has decided to introduce a new line of colored chinaware with a view to recouping lost sales volume. Respondents further represent that the dinnerware supplied in connection with the operation of the so-called sales promotional plan is of a high grade, of celebrated type known as "Fiesta," and attractive samples of such ware, in red and blue, green and yellow, are exhibited to prospective dealer-customers by respond-

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ents' sales representatives. Prospective dealer-customers are assured by respondents' sales agents that the amount paid for gift certificates by the dealer will be refunded by respondents upon redemption of the said certificates. Respondents likewise represent that the dealer will be furnished a certain designated number of advertising handbills of attractive design and quality and three-piece units of colored Fiesta dinnerware for each gift certificate, to be used by the dealer in supplying the customers who surrender their certificates for redemption. Respondents' salesmen impress customers with the idea that the so-called sales promotional plan is to facilitate the advertising of a new line of dinnerware, to stimulate the sale of the same through retail store channels, and that the dinnerware sold by respondents is manufactured by the well-known Ball Brothers Co.

PAR. 5. Respondents' representations as herein set forth are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondents, doing business under the trade name Champion Battery Co. are not representatives of, or connected with, or putting on an advertising campaign for, the Champion Spark Plug Co. Dealers are not reimbursed for the sums paid by them to respondents in advance for sales checks or certificates. The "free" premium or prize that is sent to customers of dealers is not free to said customers but they are, on the contrary, required in each instance to pay a larger sum of money for the purchase of a designated number of flash light batteries and bulbs than had been represented to them or was understood by them, which sum of money is substantial and represents full payment for said flash light batteries, bulbs, and premiums or prizes received. Dealers are not furnished the designated number of advertising handbills promised and those furnished are cheap and unattractive and far inferior to sample advertising matter shown by agents. Novelty gifts shipped are short of the number promised and inferior to samples shown. Gift samples are likewise short of the number promised and of inferior quality. Respondents' plan is not designed to facilitate the advertising of a new line of batteries. Premiums are not delivered to customers as represented on a deposit of 20 cents for a purchase order of batteries and bulbs when the gift check is completely punched. The batteries sold by respondents are not manufactured by Champion Spark Plug Co.

The various representations made by and on behalf of respondents doing business under the trade name the Ball Co. are likewise false, misleading, grossly exaggerated and untrue. Respondents are not a department of, or connected with, nor do they in any way represent, Ball Brothers Co. of Muncie, Ind., nor has said Ball Brothers Co. added any line of dinnerware to their glass jar manufacturing busi-

ness. Respondents' so-called sales promotional plan is not without cost to the dealers who purchase and use the same in their business and the amount paid for such gift certificates by the dealers is not refunded by respondents on redemption of said certificates. Customers of dealers do not receive "free" sets of dinnerware, but on the contrary are required to remit the sum of 39 cents with each certificate returned to respondents, which sum of money represents and covers not only the value of the said dinnerware but a substantial profit on the same. The dealer is not furnished the promised number of advertising handbills, nor are handbills of the quality or design shown by agents. The dinnerware shipped to customers by respondents is not genuine Fiesta ware as represented nor in colors as represented, but on the contrary consists only of the cheapest milk-white glassware found in 5 and 10 cent stores, and samples as well as premium lots of dinnerware are short of the numbers promised. Respondents' plan is not designed to facilitate the advertising of a new line of dinnerware nor to stimulate the sale of dinnerware through additional retail store channels, and the dinnerware sold by respondents is not manufactured by Ball Brothers Co.

PAR. 6. Respondents in the further course and conduct of their business under the respective trade names Champion Battery Co. and the Ball Co., for the purpose of appropriating the business established by the reputation and good will of the Champion Spark Plug Co. and Ball Brothers Co., respectively, and also for the purpose of misleading and deceiving purchasers and prospective purchasers, place and have placed the word "Champion" upon the labels of their batteries sold by them trading as Champion Battery Co., and employ the word "Ball" in connection with sales made when trading as the Ball Co., respectively, thus representing or implying that such articles are manufactured by, or are the products of, the Champion Spark Plug Co., or Ball Brothers Co., respectively. 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, City of Toledo, in the State of Ohio. The Ball Brothers Co. is a corporation organized and doing business under and by virtue of the laws of the State of Indiana with its factory and principal place of business located in Muncie, Ind.

The Champion Spark Plug Co. is now, and for many years last past has been, engaged in the manufacture of spark plugs to be used in automobiles and other mechanical apparatus and in the sale and distribution of said products in commerce between and among the various States of the United States and in the District of Columbia, causing said products, when sold, to be shipped from their place of business

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in the State of Ohio to the purchasers thereof located in States of the United States other than the State of Ohio. Said products are sold under and are designated by the trade name "Champion."

The Ball Brothers Co. is now, and for many years last past has been, engaged in the manufacture of glass fruit preserving jars to be used in canning vegetables and fruits, and in the sale and distribution of said products in commerce between and among the various States of the United States and in the District of Columbia, causing said products, when sold to be shipped from its place of business in the State of Indiana to the purchasers thereof located in the States of the United States other than the State of Indiana. Said glass fruit preserving jars are sold under and are designated by the trade name "Ball."

Said companies have built up and enjoy a valuable good will in the words "Champion" and "Ball" as applied to their respective products, particularly spark plugs used in automobiles and other mechanical apparatus, and fruit jars which are used in canning vegetables and fruits. 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 product of the well and favorably known Champion Spark Plug Co. and have manifested a preference for such "Champion" products.

Likewise, members of the purchasing public have, through long usage and over a long period of time, identified fruit jars and other products which bear the name "Ball" as the products of the well and favorably known Bali Brothers Co. and have manifested a preference for such "Ball" products.

PAR. 7. The use by respondents of the names "Champion" and "Ball" as a part of their respective trade names herein, without any accompanying words indicating that said trade names do not indicate the products of and business conducted by the said Champion Spark Plug Co. and the said Ball Brothers Co., respectively, constitutes in itself false and misleading representations by respondents that their products are the products of the Champion Spark Plug Co. and of the Ball Brothers Co. In truth and in fact, respondents' articles of merchandise are not the products of or made by Champion Spark Plug Co. or the Ball Brothers Co., but are obtained by respondents from other sources to the injury and damage to the good will which said companies have built up and have enjoyed for many years in the manufacture, sale, and distribution of their respective products among the purchasing public of the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts, practices and methods used by the respondents place in the hands of retailers a means and instrumentality whereby the consuming and purchasing public is misled and deceived.

PAR. 9. The use by the respondents of the methods, acts and practices hereinabove alleged has had, and now has, the tendency and capacity to mislead and deceive retailers and to cause them erroneously to believe that all of said statements, claims and representations are true, and that said batteries and said dinnerware products are manufactured by Champion Spark Plug Co. and Ball Brothers Co., respectively, and to purchase said so-called sales promotional plan, advertising gift checks, gift certificates, and other articles of merchandise used in putting said plan into operation and effect, thereby unfairly diverting trade in said commerce to the respondents from their competitors to their injury and to the injury of the public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 16, 1940, issued and subsequently served its complaint in this proceeding upon respondents, D. J. Bortz, and Edith Bortz, individually, and trading as Champion Battery Co., and as the Ball 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 an attorney for 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 (respondent not having filed brief and oral argument not having been requested); and the Commission having duly considered the matter

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and being now fully advised in the premises, finds that this proceeding is in the interest 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, Donald J. Bortz (the individual referred to in the complaint as D. J. Bortz), and Edith Bortz, are individuals doing business as the Champion Battery Co. and, until recently, as the Ball Co. Respondents have their principal office and place of business at Room 403, Morgan Building, Detroit, Mich. The trade names used by respondents are registered in the name of Edith Bortz as owner and the business of respondents is carried on under the management and control of her husband, Donald J. Bortz. Respondents are now, and for more than 2 years last past have been, engaged in the sale and distribution of so-called sales promotional plans and, in connection therewith, the sale and distribution of certain certificates, advertising material, and various articles of merchandise.

PAR. 2. In the course and conduct of the aforesaid business respondents have caused the said certificates, advertising material, and articles of merchandise, when sold, to be transported from their place of business in the State of Michigan to purchasers in other States of the United States. Respondents maintain, and have maintained, a course of trade in the sale and distribution of the said articles used in connection with the operation of the so-called sales promotion plans in commerce among and between the various States of the United States and in the District of Columbia.

In the conduct of the aforesaid business under the trade names of Champion Battery Co. and the Ball Co. respondents are now, and have been, in substantial competition with other individuals and with corporations, partnerships, and firms likewise engaged in the sale and distribution in commerce of so-called sales promotional plans which, in principle, are substantially the same as those used by respondents.

PAR. 3. Respondents, through their agents and salesmen, solicit and sell their so-called sales promotional plans to retail dealers located in various States of the United States.

The purported plan of operation under the name of the Ball Co. is to sell said sales promotional plan to retail dealers in the guise of a means of increasing the business of the purchasing dealer. It is provided that the plan will be sold in units of 200, the dealer agreeing to pay 20 cents for each unit purchased, 5 cents of which is paid to

the respondents' representative at the time of sale and the remainder upon delivery of the material purchased and prior to any opportunity for inspection thereof. Each unit consists of a so-called gift certificate; a cup, saucer, and cereal dish designated as "ivory ware"; and certain printed handbills and pennants or posters. The gift certificates are intended for distribution by the retail dealer to his customers. Each such certificate has numbers printed on its margin to the aggregate of 500, which numbers are to be punched out by the dealer in accordance with purchases made from him by the holder of the certificate, and when a total of \$5 worth of merchandise has been purchased by the holder of the gift certificate he is to receive from the dealer upon surrender of such certificate a cup, saucer, and cereal dish made of said ivory ware. The handbills and pennants or posters are intended for the use of the retail merchant in advertising the plan to his customers. It is provided that when the dealer sends the punched-out certificate to respondents, together with the name and address of the customer and 39 cents for an additional unit of ivory ware, respondents will refund to the dealer 23 cents for each certificate so redeemed.

The purported selling plan followed by the respondents when trading under the name of Champion Battery Co. is similar in substance to that used by them in trading under the name of the Ball Co. The details of the plan vary, however, in that when purchases to the requisite amount have been made from the retail dealer and the certificate or "advertising gift check" is sent to respondents, together with the name of the customer and a remittance for a so-called trial order of dry batteries, a novelty such as a pencil which illuminates a small space around its point or an illuminated mirror is sent to the customer and the 20 cents paid by the dealer for the certificate is refunded to him. The amount of the remittance to be sent to the respondents with the certificate varies with the novelty item selected, as indicated on the reverse of such certificate. For example, the purchase of 6 batteries at 10 cents each is required in case a pencil light is wanted, or 10 batteries at 10 cents each in case the "mirror lite" is wanted.

PAR. 4. In the actual operation of respondents' business in the sale to retail merchants of the aforesaid sales promotional plans, respondents' sales representatives have made many false and misleading representations to purchasers. Among such representations were statements that the Ball Co. was a department of, or connected with, or a representative of, the well-known Ball Brothers Co., manufacturers of mason jars; that the plan being offered was an

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effort on the part of the Ball Brothers Co. to recoup lost sales volume attributed to increased use of tins and other containers for packing food products; that the plan was to introduce the new dinnerware made by the Ball Brothers Co. and it was anticipated that further business would result from the distribution of samples of the new merchandise; and that the retail dealer might become the representative of Ball Brothers Co. in making future sales and receive substantial profits on such business. In some instances the fact that the dealer would not receive a refund unless additional purchases were made by his customers was concealed from the purchasing dealer. The merchandise displayed to dealers as being samples of the ware to be furnished by respondents was materially different from that actually furnished and was of substantially better grade and more attractively colored and decorated than that actually furnished.

In the course of the business done by the respondents under the name of the Champion Battery Co. their sales representatives have represented themselves to be agents of, or that the Champion Battery Co. was connected with, the well-known Champion Spark Plug Co. of Toledo, Ohio; that the Champion Spark Plug Co. was commencing the manufacture of batteries and the sales plan offered was to facilitate the advertising of the new line; and that great profits could be made from future resales of batteries which would be promoted by extensive advertising by the Champion Spark Plug Co. The fact that the dealers' customers would have to make purchases of batteries in order to secure the novelties included in the plan was concealed from dealers by misrepresentations or by failure to exhibit a true copy of the so-called advertising gift check, and the number of samples of the novelty merchandise to be furnished to the dealer for exhibition to his customers in connection with the operation of the plan was represented to be greater than the number actually furnished.

The batteries displayed as samples by respondents' representatives and those distributed by respondents were marked and designated as "Champion" batteries.

The advertising handbills furnished by respondents to dealers who contracted for the sales promotion plan offered under the name of Champion Battery Co. represented that various items of novelty merchandise were available to customers of the purchasing dealer "free." Actually the cost of such articles is included in the price of the batteries which must be purchased to obtain the so-called free article of merchandise.

Respondents' sales representatives, operating under the name of the Ball Co. and of the Champion Battery Co., frequently misrepresented the quantities of handbills and advertising pennants or posters which would be furnished to the purchasing dealer and displayed purported samples of such advertising material far superior in quality and appearance to that actually furnished by respondents. Such sales representatives have represented that they are introducing a new line of merchandise and that the sales plan offered is for the purpose of aiding in bringing the new product to the attention and knowledge of the public, and have made numerous other false representations in order to induce the purchase of respondents' so-called sales promotional plans and accompanying merchandise. Respondent's contract forms, as well as their letterheads used in connection with business transacted as the Ball Co., carry the heading "The Ball Company, Dinnerware Department."

Respondents are not in any way connected with Ball Brothers Co. of Muncie, Indiana, or with the Champion Spark Plug Co. of Toledo, Ohio. The dinnerware offered for sale, and sold by them is not made by Ball Bros. Co.; nor are the batteries offered for sale, and sold by them made by the Champion Spark Plug Co.

The form of contract or agreement used by respondents in their sales to dealers, which form is to be signed by respondents' representative and by the purchasing dealer, provides that dealers have read its terms, that the order is not subject to change or cancellation, and that "No terms or representations except as printed herein will be recognized by this company." Respondents, however, have accepted the benefits of orders which by handwritten changes appearing thereon contain alterations of the printed terms, and such acceptance could not be without knowledge of the changes in the terms. They have in such instances, while collecting the full amount due under such orders, complied only in part with the altered terms thereof.

PAR. 5. The Ball Brothers Co. of Muncie, Ind., for many years has been engaged in the manufacture of glass fruit jars to be used in canning vegetables, fruits, and other products, and in the sale and distribution of such jars throughout the United States. The Champion Spark Plug Co. for many years has been engaged in the manufacture of spark plugs for use in automobile motors and other internal combustion motors and has sold and distributed such products throughout the United States. Both of these companies have spent large sums of money in advertising their products and obtaining a wide consumer acceptance therefor and in otherwise establishing pub-

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lic good will for their products. Their products are well and favorably known to the purchasing public and are known to be, and accepted as, excellent products of their respective kinds. Many members of the purchasing public, having knowledge of and confidence in the aforesaid companies and their products and in reliance upon the representations made to them concerning the identity with or connection of the Ball Co. and the Champion Battery Co. with such companies, have been misled and deceived into the purchase of respondents' so-called promotional plans and accompanying merchandise under the false and erroneous belief that they were dealing with or securing the products of Ball Bros. Co. or Champion Spark Plug Co.

The Commission concludes that the purpose of respondents in using the word "Ball" as a part of their trade name, the Ball Co., in connection with the sale of glass and other dinnerware and in using the word "Champion" as a part of their trade name, Champion Battery Co., in connection with the sale of electric batteries has been, and is, to mislead, confuse, and deceive their customers and the public into the belief that respondents are connected with Ball Bros. Co., widely known manufacturer of glass jars, and with Champion Spark Plug Co., widely known manufacturers of spark plugs, and into the belief that the products offered for sale, and sold, by respondents are those of such widely known manufacturers; and, further, that these acts and practices have the capacity and tendency to create such erroneous beliefs in the minds of members of the purchasing public.

PAR. 6. The use by the respondents of the foregoing methods, acts, and practices has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, retail dealers and has caused them, in reliance upon such false and misleading representations, to purchase respondents' so-called sales promotional plan and accompanying merchandise, and has placed in the hands of dealers a means and instrumentality whereby the consuming public may be misled and deceived, and unfairly diverts trade in commerce to respondents from their competitors to their injury and to the injury of the public.

CONCLUSION

The aforesaid methods, 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 and unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard 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 filed in support of the complaint (no brief having been filed in opposition 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, Donald J. Bortz, and Edith Bortz, individually and trading as Champion Battery Co., or as the Ball Co., or under any other name, jointly or severally, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of any sales promotion plan, glassware, china, batteries, or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or by implication:

1. Representing that respondents' business is in any way connected with, or that respondents represent, Ball Brothers Co., the Champion Spark Plug Co., or any other business with which respondents have no such connection or which respondents have no authority to represent.

2. Representing that merchandise offered for sale, or sold, in connection with, or separately from, a sales promotion plan is the product of, or manufactured by, any concern other than the actual producer or manufacturer.

3. Representing in any manner that respondents will furnish to purchasers of any sales promotion plan quantities of merchandise greater than the quantities actually furnished.

4. Representing by the use of purported samples, or otherwise, that the merchandise offered for sale, or sold, by respondents is of a quality or value different from the actual quality or value thereof.

5. Representing that respondents are conducting any advertising or other campaign to introduce or sell any article or articles of merchandise for or on behalf of any manufacturer or other concern when such campaign is not in fact being conducted at the instance of and on behalf of such manufacturer or other concern.

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6. Representing, or supplying to others the means of representing, that articles of merchandise, the cost of which is included in the purchase price of other merchandise in combination with which such articles are offered, are "free," either by the use of the term stated or any other term or terms of similar import or meaning.

7. Representing that respondents will redeem gift certificates without further cost or obligation to the purchasing dealer or his customers, or upon any other terms, or conditions different from the actual terms and conditions upon which such certificates will be redeemed.

8. Using the word "Ball," the word "Champion," or any simulations thereof, as a part of any trade, or other name or names without clearly and unequivocally disclosing that respondents are not in any way connected with Ball Bros., Co., of Muncie, Ind., or the Champion Spark Plug Co., of Toledo, Ohio, respectively.

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.

Complaint

IN THE MATTER OF

G. J. TRITICO, DOING BUSINESS AS KAS-MO REMEDY CO.

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

Docket 3536. Complaint, Aug. 15, 1938—Decision, Dec. 23, 1941

Where an individual engaged in the manufacture of his "Kas-Mo Salve," and in the competitive interstate sale and distribution thereof; through radio broadcasts and circulars and pamphlets distributed among prospective purchasers in various States—

Represented that his said product had antiseptic qualities and was an antiseptic, and a cure or remedy for pimples, boils, carbuncles, skin risings, skin eruptions, cuts, chronic sores, irritations caused by bad blood, bites of insects, and rectal irritations, and constituted a competent and effective treatment for such conditions, and that use thereof would prevent the spread of infection, assist nature in rapid healing of all skin troubles, and give relief from pain;

Facts being that preparation in question, which was a mild astringent and counterirritant ointment possessing negligible antiseptic or healing qualities, was not a cure or remedy, and did not constitute a competent or effective treatment, for any of the conditions named, and in treatment of rectal irritations its therapeutic value was limited to furnishing temporary relief only;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that all of such representations were true, and with result that a number of the consuming public purchased a substantial volume of his said preparation, and trade was thus unfairly diverted to him from his competitors who did not misrepresent the quality, character, or effectiveness 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.

Before *Mr. Arthur F. Thomas, Mr. John J. Keenan, and Mr. Miles J. Furnas*, trial examiners.

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

Mr. Quentin Keith, of Port Arthur, Tex., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that G. J. Tritico, doing business under the trade name of "Kas-Mo Remedy 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

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

PARAGRAPH 1. G. J. Tritico is an individual, doing business under the trade name of "Kas-Mo Remedy Co.," with his office and place of business located at 949 Seventh St., Port Arthur, Tex. Respondent is now and has been for many years last past engaged in the business of manufacturing, selling, and distributing a medical product designated as "Kas-Mo Salve."

PAR. 2. Respondent causes his said medical preparation when sold, to be transported from his place of business in the State of Texas, to the purchasers thereof, located in the various States of the United States other than Texas, and in the District of Columbia.

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

PAR. 3. In the course and conduct of his said business, respondent is now and has been in substantial competition with other individuals and with partnerships, firms, and corporations likewise engaged in the business of selling and distributing similar preparations and preparations used for the same and similar purposes, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in the course and conduct of his business, as aforesaid, and for the purpose of inducing the purchase of his medical preparation, has made many statements and representations by means of radio broadcasts, and by bulletins and pamphlets circulated among prospective purchasers in the various States of the United States and in the District of Columbia. All of said statements purport to be descriptive of the therapeutic and antiseptic values of respondent's aforesaid preparation.

Among other statements appearing in the advertisements and descriptive literature and the radio broadcasts, as aforesaid, are the following:

Kas-Mo treatment will prevent the spread of infection and relieve you of further worries.

Kas-Mo is doubly guaranteed to do just exactly as the manufacturers say. Kas-Mo leads the league in healing, antiseptic qualities.

Famous antiseptic salve. * * * Use it if you are suffering with boils, carbuncles, cuts, or burns, or bothered with those obstinate sores that have not healed for many years. The effectiveness of this Kas-Mo Salve can be proven by you in a very short time.

Take a small portion of Kas-Mo and touch that pimple with it * * * keeping it covered until it heals.

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Kas-Mo will render to you an invaluable aid if you are suffering from painful boils, sores, or other irritations that seem incurable.

Will bring you the same remarkably satisfactory results that it has brought to thousands of people.

Give Kas-Mo a fair chance to relieve your pain and the results will be gratifying.

You can enjoy the freedom from pain, cuts, bruises, or sores that are supposedly incurable, or any other irritation caused by bad blood.

Found reliable by thousands—for more than thirty years.

Is a painless treatment for boils and other external eruptions of the skin. A soothing application for painful risings, superficial cuts, slight burns, small wounds, bites of insects, and recommended to relieve rectal irritations.

Continue the treatment until desired results are obtained.

Kas-Mo medication assists nature in making rapid healing of skin troubles as indicated.

All of said statements, together with similar statements appearing in the respondent's literature, and radio broadcasts, purport to be descriptive of respondent's preparation and of its effectiveness in use. Through such statements, respondent represents, directly and by inference, that the preparation "Kas-Mo Salve" is doubly guaranteed; that it will prevent the spread of infection; that it leads in healing and the relief from pain; that it has antiseptic qualities and is an antiseptic; that it constitutes a cure and remedy for the treatment of pimples, boils, carbuncles, skin risings, external eruptions of the skin, cuts, burns, chronic sores, irritations caused by bad blood, bites of insects, relief of rectal irritations; and that it assists nature in the rapid healing of all skin troubles.

PAR. 5. The representations made by respondent with respect to the nature and effect of his preparation when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, "Kas-Mo Salve" is not doubly guaranteed. It is not an antiseptic and does not possess antiseptic or healing qualities. It will not prevent the spread of infection. It is not a cure or remedy for the treatment of pimples, boils, carbuncles, skin risings, external eruptions of the skin, wounds, chronic sores, irritations caused by bad blood, bites of insects, and relief of rectal irritations. It has no healing properties and will not relieve pain. It will not assist nature in the rapid healing of skin troubles.

The true facts are, that the ingredients of "Kas-Mo Salve" have no therapeutic value in healing, nor in relieving pain, nor as a cure or remedy for the treatment of the various conditions and disorders as claimed in respondent's advertising literature and radio broadcasts. Respondent's preparation is only a mild astringent and counterirritant ointment.

PAR. 6. There are, among the respondent's competitors, many who distribute and sell similar medical preparations or other preparations designed, intended, and sold for similar usage, 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 his product and its effectiveness when used, as hereinabove set out, were and are calculated to have, and have had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. On account of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's product, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of selling and distributing similar medical preparations, and who truthfully advertise their respective products and the effectiveness thereof when used. As a consequence thereof, injury has been done and is now being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 15 A. D. 1938, issued and subsequently served its complaint on the respondent, G. J. Tritico, doing business under the name of "Kas-Mo Remedy Co.," charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of said complaint were introduced by Edward W. Thomerson, D. T. Puckett, and G. A. Rault, attorneys for the Commission, and in opposition to the allegations of the complaint by Quentin Keith, 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 brief in support of the complaint, filed by John R. Phillips, Jr., attorney for the Commission (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, G. J. Tritico, is an individual doing business under the trade name of Kas-Mo Remedy Co., with his office and place of business located at 949 Seventh Street, Port Arthur, Tex. Respondent is now, and for several years last past has been, engaged in the business of manufacturing, selling, and distributing a medicinal preparation designated as "Kas-Mo Salve." Respondent causes said preparation, when sold, to be transported from his place of business in the State of Texas 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 preparation in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of his said business respondent is now, and has been, in substantial competition with other individuals and with partnerships, firms, and corporations likewise engaged in the sale and distribution, in commerce, between and among the various States of the United States, of preparations used in the treatment of the various diseases and conditions for which respondent recommends his preparation.

PAR. 3. In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of his medicinal preparation, "Kas-Mo Salve," the respondent has made false and deceptive statements and representations by means of radio broadcasts and by circulars and pamphlets distributed among prospective purchasers located in various States of the United States.

Among the false and deceptive statements and representations appearing in advertisements, descriptive literature, and radio broadcasts, are the following:

Kas-Mo treatment will prevent the spread of infection and relieve you of further worries.

Kas-Mo leads the league in healing, antiseptic qualities.

Famous antiseptic salve * * * Use it if you are suffering with boils, carbuncles, cuts, or burns, or bothered with those obstinate sores that have not

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healed for many years. The effectiveness of this Kas-Mo Salve can be proven by you in a very short time.

Take a small portion of Kas-Mo and touch that pimple with it * * * keeping it covered until it heals.

Kas-Mo will render to you an invaluable aid if you are suffering from painful boils, sores, or other irritations that seem incurable.

Will bring you the same remarkably satisfactory results that it has brought to thousands of people.

Give Kas-Mo a fair chance to relieve your pain and the results will be gratifying.

You can enjoy the freedom from pain, cuts, bruises, or sores that are supposedly incurable or any other irritation caused by bad blood.

Is a painless treatment for boils and other external eruptions of the skin. A soothing application for painful risings, superficial cuts, slight burns, small wounds, bites of insects, and recommended to relieve rectal irritations.

Continue the treatment until desired results are obtained.

Kas-Mo medication assists nature in making rapid healing of skin troubles as indicated.

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 that his preparation, "Kas-Mo Salve," has antiseptic qualities and is an antiseptic; that it is a cure or remedy for pimples, boils, carbuncles, skin risings, external eruptions of the skin, cuts, chronic sores, irritations caused by bad blood, bites of insects, and rectal irritations, and constitutes a competent and effective treatment for such conditions; and that its use will prevent the spread of infection, assist nature in rapid healing of all skin troubles, and give relief from pain.

PAR. 5. The formula for respondent's preparation, "Kas-Mo Salve," is as follows:

- 1 gallon alcohol.
- 3 ounces rosin (yellow).
- 8 ounces solid extract of stramonium leaves (Lilly).
- 24 ounces beeswax.
- 4 ounces copper acetate (merck).
- Vaseline Q. S.
- M. F. T. Ungt.

Respondent's preparation is a mild astringent and counterirritant ointment possessing negligible antiseptic or healing qualities. The use of this preparation will not prevent the spread of infection. Said preparation is not a cure or remedy for pimples, boils, carbuncles, skin risings, external eruptions of the skin, cuts, chronic sores, irritations caused by bad blood, or insect bites, and does not constitute a

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competent or effective treatment for any of these conditions. The therapeutic value of this preparation in the treatment of rectal irritations is limited to the furnishing of temporary relief only.

PAR. 6. The false and misleading statements and representations made by the respondent in designating or describing his product and its effectiveness when used, have had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. On account of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's preparation, with the result that trade has been diverted unfairly to the respondent from his competitors who are likewise engaged in the sale and distribution in commerce among and between the various States of the United States, of preparations used in the treatment of the various diseases and conditions for which respondent recommends his preparation and who do not in any way misrepresent the quality or character of their preparations, or their effectiveness in use.

CONCLUSION

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

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 the trial examiners of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, report of the trial examiners upon the evidence, and brief filed in support of the complaint; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, G. J. Tritico, doing business under the trade name of "Kas-Mo Remedy Co.," his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of his medicinal preparation designated "Kas-Mo Salve," or any other preparation of substantially similar composition or possessing substantially

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similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from representing:

1. That respondent's preparation, "Kas-Mo Salve," is a cure or remedy for pimples, boils, carbuncles, skin risings, external eruptions of the skin, cuts, chronic sores, irritations caused by bad blood, or insect bites, or that said preparation constitutes a competent or effective treatment for any of such conditions.

2. That said preparation has any therapeutic value in the treatment of rectal irritations in excess of furnishing temporary relief.

3. That the use of respondent's preparation will prevent the spread of infection.

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

Syllabus

IN THE MATTER OF

BEHO RUBBER CO., INC., AND BERNARD HOLTZMAN, MAE MURRAY AND MILTON M. HOLTZMAN, INDIVIDUALLY AND AS OFFICERS AND DIRECTORS OF BEHO RUBBER CO., INC., ALSO TRADING AS THE BEST TIRE HOUSE, THE MODERN IMPROVED RETREAD OUTLET, AND THE ASSURED REMODEL TIRE DISTRIBUTORS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3973. Complaint, Dec. 14, 1939—Decision, Dec. 23, 1941

Where a corporation and two individuals, general officers thereof, engaged, under corporate and various other trade names, in competitive interstate sale and distribution of retreaded or recapped tires for automobiles, trucks, and buses; in seeking to induce salesmen to accept employment with them through advertisements in newspapers and other publications of general circulation, and through their "crew managers" whom they employed to travel in the various States seeking salesmen and purchasers for their products—

- (a) Represented that they paid their salesmen a salary of \$40.00 a week and commission, and all expenses while being trained; and
- (b) Represented that they manufactured the retreaded or recapped tires which they sold, and used only the best carcasses, i. e., best quality of used tires, in their said products;

Notwithstanding fact they did not pay their salesmen aforesaid salary, or any other sum per week, and a commission, or any of the expenses of beginners employed by them, did not manufacture their said products, and the carcasses used by them were only of average quality and in many instances inferior to the average used in such tires; and

Where said corporation and individuals, engaged as aforesaid; through their salesmen whom they supplied with sales kits, order blanks and literature bearing various trade names made use of by them, and with cross-cut sections of tires to display to customers; as typical of many similar claims—

- (c) Represented that the tires purchased from them would be identical in quality with the samples displayed by salesman taking an order, and of the size ordered by the purchaser, that carcasses used by them were less than 1 year old, that their tires would be free from boots or patches, were suitable for the purpose for which they were purchased, and would give many miles of service in normal course of usage at a fraction of the cost of new tires;

The facts being they did not ship to purchasers tires of the same quality as the sample displayed by their salesman, but made a practice of shipping shoddy and in many cases worthless tires; they had no way of knowing the age of the carcasses they used, which, in some instances, were old and useless; said products in most instances did contain boots and patches, and, furthermore, were not suitable for purposes for which purchased, and in many instances were serviceable for a few days only, if as much;

- (d) Falsely represented that the tires would be shipped to the purchaser from points in his vicinity, and that they would ship tires on consignment, and

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represented the freight rate as lower than was the fact, and, further, contrary to the fact, that they would supply purchasers with free tire racks and metal tire stands and would pay one-half the expenditures incurred by purchasers in advertising their products; and

- (e) Falsely represented that corporation in question and purported concerns represented by some seven or eight trade names they used had no connection or affiliation with one another and were separate and distinct competitive businesses, engaged in sale and distribution of products in question, of which they further represented themselves falsely as the manufacturers, notwithstanding they had never made such products but purchased them from various sources;

With the result that their salesmen, as aforesaid, were enabled to misrepresent the true status of their business and, under another trade name, were enabled to make sales of their products to those who had had previous unsatisfactory dealings with them; and

Where said corporation and individuals—

- (f) Made use of a disclaimer of liability clause under the warranty clause in their order blanks in order to escape liability from the promises and representations of their salesmen, which was not called to the attention of purchasers signing the order blanks and was so inconspicuously placed that in most instances it was not observed by such purchasers, who had the right to assume said warranty clause as intended for their protection;
- (g) Guaranteed, in said warranty clause, to replace unsatisfactory merchandise upon payment of one-half of the list price, notwithstanding fact such undertaking was not guarantee at all, since payment of amount thus called for approximated cost of the tire to them and the purchaser was required to pay shipping charges before any such replacement was made; and
- (h) Made a practice of shipping to purchasers unsatisfactory and worthless tires, in many cases not worth the shipping charges paid by the purchaser, and not in any manner suitable for the purpose for which they were intended and purchased;

With effect of misleading and deceiving salesmen and prospective salesmen, and purchasers and prospective purchasers of their tires into the erroneous belief that aforesaid false, misleading and deceptive representations and implications were true, and of causing a substantial number of purchasing public, because of said belief, to act as salesmen for them and to purchase substantial numbers of their said products:

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. Edward E. Reardon*, 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 Beho Rubber Co., Inc., a corporation, and Bernard Holtzman, Mae Murray, and Milton M.

Holtzman, individually and as officers and directors of Beho Rubber Co., Inc., also trading as the Best Tire House, the Modern Improved Retread Outlet, and the Assured Remolded Tire Distributors, 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, Beho Rubber 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 Indiana Avenue, Chicago, Ill. Respondents Bernard Holtzman, Mae Murray, and Milton M. Holtzman are individuals and are president, secretary, and vice president, respectively, and members of the board of directors of the respondent Beho Rubber Co., Inc. All of said individual respondents have offices and place of business at 2441 Indiana Avenue, Chicago, Ill. Respondents, Beho Rubber Co., Inc., Bernard Holtzman, Mae Murray, and Milton M. Holtzman, are trading and doing business under various trade names, including The Best Tire House, The Modern Improved Retread Outlet, and The Assured Remolded Tire Distributors, at various addresses in the city of Chicago, as well as under the name of the corporate respondent. The business conducted under said various trade names is conducted from 2441 Indiana Avenue, Chicago, Ill.

The respondents, Beho Rubber Co., Inc., Bernard Holtzman, Mae Murray, and Milton M. Holtzman, 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 18 months 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 aforesaid business, and for the purpose of inducing salesmen to accept employment with respondents and thus to further the sale of their said products, respondents have caused numerous advertisements to be inserted in

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newspapers and other publications circulated generally among prospective agents and purchasers throughout the United States and in the District of Columbia, which contain statements and representations relative to employment with respondents. Similar statements and representations are made to prospective agents and purchasers by "crew managers" employed by the respondents who travel in the various States of the United States and in the District of Columbia, seeking agents and purchasers for respondents' said products. Among and typical of the representations and statements made in newspapers and other publications are the following:

HELP WANTED—MEN

MEN WITH CARS—To travel, selling automotive products; attractive salary and commission. See M. H. Shepard, 8:30 to 2:00. 2441 S. Indiana Avenue.

Through said advertisements, statements, and representations made by said crew managers, respondents represent that salesmen employed by them are paid a salary of \$40 a week and commission, and that all expenses of salesmen will be paid by the respondents while such salesmen are being trained, and that the respondents manufacture the retreaded or recapped tires they sell, and that they use only the best carcasses, that is, the best quality of used tires, in their retreaded or recapped tires. Many other statements and representations of similar import and meaning are made and used by the respondents in securing salesmen to further the sale of their said product.

The aforesaid representations and implications used by the respondents are false, misleading and deceptive, for in truth and in fact respondents do not pay their salesmen a salary of \$40 a week, or any other sum per week, and a commission, nor do they pay any of the expenses of beginners employed by them; they do not manufacture the retreaded or recapped tires sold by them; and the carcasses used in the retreaded or recapped tires sold by the respondents, in most instances, are only of average quality, and are, in many cases, inferior to the average carcass used in retreaded or recapped tires.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said products, respondents have made, or caused to be made through their salesmen traveling throughout the various States of the United States and in the District of Columbia, many statements and representations to the purchasing public concerning their said retreaded or recapped tires, the quality thereof, and the terms and conditions under which

said tires are offered for sale and sold. Among and typical of the representations so made by the respondents are the following:

1. That the tires purchased from the respondents will be identical in quality with the samples displayed to the purchaser by the salesman taking the order.

2. That 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 or patches.

4. That the tires shipped by the respondents will be of the size ordered by the purchaser and will be shipped to the purchaser from points in the vicinity in which the purchaser is located.

5. That respondents will ship tires to purchasers on consignment.

6. That the freight rate on respondents' tires will be a lower rate than the actual rate applying to such shipments.

7. That large concerns, such as Sears, Roebuck & Company, sell retreaded or recapped tires, and that the respondents supply Sears, Roebuck & Company with retreaded or recapped tires for resale to the purchasing public.

8. That respondents will supply purchasers of their tires with free tire racks and metal tire stands, and that they will pay one-half of the advertising expenditures incurred by purchasers in advertising respondents' products.

9. That Beho Rubber Co., Inc., 2441 Indiana Avenue, Chicago, Ill., The Best Tire House, 2433 Indiana Avenue, Chicago, Ill., The Modern Improved Retread Outlet, 709 South Dearborn Street, Chicago, Ill., and The Assured Remolded Tire Distributors, 2441 Indiana Avenue, Chicago, Ill., have no connection or affiliation with each other and that they are each separate and distinct businesses and in competition with each other in the sale and distribution of retreaded or recapped tires.

10. 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 new tires.

11. That respondents are the manufacturers of the retreaded or recapped tires sold by them.

Many other statements and representations of similar import or meaning are made and used by the respondents in connection with the sale and distribution of their retreaded or recapped tires.

Respondents supply their sales agents with sales kits, order blanks, and other literature under the different names and addresses under which respondents do business, and with sample tires or cross-cut

sections of tires to be displayed to customers, and in connection with the trade names The Best Tire House, The Modern Improved Retread Outlet, and The Assured Remolded Tire Distributors, the order blanks supplied to such salesmen and upon which the signatures of the purchasers are secured contain under the designation "Warranty," "Our Warranty," or "Agreement" a disclaimer of liability for any promise or representation, express or implied, not set forth on said order blank. This disclaimer of liability for any promise or representation, express or implied, not set forth in said order blank is placed under the designation "Warranty," "Our Warranty," or "Agreement" for the purpose of concealing the disclaimer from purchasers.

Respondents also use various guarantees which lead purchasers to believe that said products are of good quality, and respondents represent that if such tires are not as guaranteed they will be replaced for one-half price.

PAR. 5. The aforesaid acts and practices, representations, and implications used and disseminated by the respondents as aforesaid are misleading and deceptive, for in truth and in fact respondents do not ship tires to purchasers of the same quality as the samples displayed by their salesmen, but make a practice of shipping shoddy and, in many cases, worthless merchandise instead; 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 made of old and useless tires. Respondents' tires are not free from boots and patches, and, in most instances, contain boots and patches. Respondents do not, in all instances, ship purchasers tires of the size ordered, and shipments of respondents' tires 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 applying to purchases from respondents is often much higher than it is represented to be by respondents' salesmen. Sears, Roebuck & Co. does not sell retreaded or recapped tires, and respondents do not sell retreaded or recapped tires to Sears, Roebuck & Co. Respondents do not supply purchasers with free tire racks, nor metal stands, nor do they pay one-half of the advertising expenditures incurred by purchasers in advertising respondents' products.

Respondents, in supplying their salesmen with sales kits, order blanks, and literature for the Best Tire House, the Modern Improved Retread Outlet, and the Assured Remolded Tire Distributors, and sample tires or cross-cut sections of tires to display to customers, thus enable the salesmen to misrepresent the true status of respondents' business, and to represent that the businesses conducted under the various trade names used are each in competition with the other, and

thereby they are enabled to procure purchases of respondents' products from persons having previous unsatisfactory dealings with respondents under one or the other of said trade names. In truth and in fact all orders secured by the respondents under any of said trade names, or in the name of the corporate respondent, are received at and filled from 2441 Indiana Avenue, Chicago, Ill., and not at the other listed addresses.

Respondents resort to the disclaimer of liability clause placed in said order blanks under the "Warranty" or other designations in denying liability for the promises and representations made to purchasers by their salesmen. The disclaimer of liability clause in such orders is not called to the attention of purchasers of respondents' products who sign such order blanks nor is it observed in most instances by such purchasers because of the fact that it is placed in an unusual and inconspicuous place in said order blanks. Respondents' guarantee under their warranty to replace unsatisfactory merchandise upon payment of one-half of the list price is in truth and in fact no guarantee at all, for the payment of this amount approximates the cost of the merchandise to the respondents and the purchaser is required to prepay the shipping charge before any such replacement is made.

Respondents make a practice of shipping unsatisfactory and worthless merchandise to purchasers, which, in many instances, is not worth the freight or shipping charges paid by the purchaser; in many instances respondents' merchandise is not suitable in any manner for the purpose for which it was intended and purchased by the purchaser, and the purchaser thereof will not secure "many miles" of service or any service whatsoever, from said tires, and the cost of the service obtained through the use of respondents' said tires is not but a fraction of the cost of the service secured from new tires, but is, in truth and in fact, generally in excess of the cost for service which would be incurred through the use of new tires. None of the respondents make or manufacture the retreaded or recapped tires offered for sale and sold by them, nor do any of respondents operate or control, a plant or factory where such tires are manufactured. The tires sold by the respondents are purchased from various sources.

PAR. 6. The aforesaid acts and practices of the respondents in connection with the offering for sale, sale and distribution of said retreaded and recapped tires have had, and now have, a capacity and tendency to, and do, mislead and deceive salesmen and prospective salesmen and purchasers and prospective purchasers of respondents' said products into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive representations and implications are true, and cause a substantial number of the purchasing public,

because of said erroneous and mistaken belief, to purchase a substantial number of respondents' said tires.

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 December 14 A. D. 1939, issued and thereafter served its complaint in this proceeding upon the respondents, Beho Rubber Co., Inc., a corporation, and Bernard Holtzman, Mae Murray, and Milton M. Holtzman, individually and as officers and directors of Beho Rubber Co., Inc., also trading as the Best Tire House, the Modern Improved Retread Outlet, and the Assured Remolded Tire Distributors, 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 the allegations of the complaint were introduced by Charles S. Cox, and in opposition thereto by Ednyfed H. Williams and Albert E. Hallett, Jr., attorneys for the respondents, before Edward E. Reardon, a duly appointed trial examiner 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 answers thereto, the testimony and other evidence, report of the trial examiner thereon and exceptions thereto, and briefs filed 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, Beho Rubber Co., Inc., is a corporation organized under the laws of the State of Illinois, and up until October 1939, its principal office and place of business was located at 2441 Indiana Avenue, Chicago, Ill., and since that date, at 2427 South Michigan Avenue, Chicago, Ill. Respondents, Bernard Holtz-

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man and Milton M. Holtzman, are president and vice president, respectively, and members of the board of directors of respondent corporation, and respondent Mae Murray at one time was secretary and a member of the board of directors of respondent corporation, but is no longer such secretary. All of the individual respondents, except Mae Murray have, since October 1939, had their offices and places of business at 2427 South Michigan Avenue, Chicago, Ill.

PAR. 2. The corporate respondent and the individual respondents are trading and doing business under various trade names, including "The Best Tire House," "The Modern Improved Retread Outlet," "The Manufacturers Retread Outlet," "The Assured Remolded Tire Distributors," "The Red Flame Tire Co.," "James Rubber Co.," "Retread Tire Distributors" and "The Honor Tire Exchange." All of the respondents have acted in concert and in cooperation each with the other in doing the things hereinafter set forth.

PAR. 3. Respondents for more than 18 months prior to December 14, 1939, were engaged and now are engaged in selling and distributing used tires which had been retreaded or recapped for use on automobiles, trucks and busses. Respondents cause said tires to be transported from their place of business in Chicago, Ill., to purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. Respondents maintained and now maintain a course of trade in said tires in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondents, in the course and conduct of their business, as set forth herein, have been and now are in competition with other corporations, individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. Respondents, in the course and conduct of their business and for the purpose of inducing salesmen to accept employment with respondents and thus to further the sale of their products, have caused numerous advertisements to be inserted in newspapers and other publications circulated generally among prospective salesmen and purchasers throughout the United States, which contain statements and representations relative to employment with respondents. Similar statements and representations are made to prospective salesmen and purchasers by "crew managers" employed by respondents to travel in the various States of the United States, seeking salesmen and purchasers for respondents' products. Among and

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typical of the representations and statements made in newspapers and other publications are the following:

MAN WITH CAR—to travel selling automotive products; attractive salary and commission; must be ready to leave for road immediately. See M. H. Shepard, 8:30 to 2:30, 2441 South Indiana Ave.

SALESMAN WITH CAR TO TRAVEL. Selling tires; tire experience unnecessary. Possible earnings equal to 1928-1929 "boom days." No investment or deposit on kits necessary. See Mr. Hallett, Pennsylvania Hotel, * * *.

A witness testified that one of respondents' advertisements stated a salary of \$40 a week and commissions would be paid by respondents to agents. M. H. Shepard, one of respondents "crew managers," acting on behalf of respondents, advised persons answering respondents' advertisements for salesmen, that if they acted as respondents' salesmen in the sale of their tires, they would receive a salary of \$40 a week and commissions, and that all their expenses would be paid by respondents while they were being trained; that the respondents manufactured the retreaded or recapped tires sold by them and used only the best carcasses; that is, the best quality of used tires, in their retreaded or recapped tires.

The aforesaid representations and implications are false, misleading, and deceptive, in that respondents do not pay their salesmen a salary of \$40 a week, or any other sum per week, and a commission, nor do they pay any of the expenses of beginners employed by them; they do not manufacture the retreaded or recapped tires sold by them, and the carcasses used in the retreaded or recapped tires sold by them, in most instances, are only of average quality and in many instances are inferior to the average carcasses used in retreaded or recapped tires.

PAR. 6. Respondents, in the course and conduct of their business, and for the purpose of inducing the purchase of their products, have made, or caused to be made through their salesmen traveling throughout the various States of the United States many statements and representations to the purchasing public concerning respondents' retreaded or recapped tires, the quality thereof and the terms and conditions under which said tires are offered for sale and sold. Among and typical of the representations so made or caused to be made, are the following:

1. That the tires purchased from the respondents will be identical in quality with the samples displayed to the purchaser by the salesman taking the order.

2. That carcasses used by respondents in their retreaded or recapped tires are less than 1 year old.

3. That respondents' tires will be free from boots or patches.

4. That the tires shipped by the respondents will be of the size ordered by the purchaser and will be shipped to the purchaser from points in the vicinity in which the purchaser is located.

5. That respondents will ship tires to purchasers on consignment.

6. That the freight rate on respondents' tires will be a lower rate than the actual rate applying to such shipments.

7. That large concerns, such as Sears, Roebuck & Co., sell retreaded or recapped tires and that the respondents supply Sears, Roebuck & Co. with retreaded or recapped tires for resale to the purchasing public.

8. That respondents will supply purchasers of their tires with free tire racks and metal tire stands, and that they will pay one-half the advertising expenditures incurred by purchasers in advertising respondents' products.

9. That Beho Rubber Co., Inc., 2441 Indiana Avenue; the Best Tire House, 2433 Indiana Avenue; the Modern Improved Retread Outlet, 709 South Dearborn Street; the Assured Remolded Tire Distributors, 2441 Indiana Avenue; Manufacturers Retread Outlet; Red Flame Tire Co., 1829 South State Street; James Rubber Co., Sixteenth Street and South Michigan Avenue; Retail Tire Distributors, 1656 Indiana Avenue, and since December 14, 1939, the Honor Tire Exchange, 2427 South Michigan Avenue—all located in Chicago, Ill.—have no connection or affiliation with each other, and that they are each separate and distinct businesses and are in competition with each other in the sale and distribution of retreaded or recapped tires.

10. 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 new tires.

11. That respondents are the manufacturers of the retreaded or recapped tires sold by them.

PAR. 7. The representations and implications set forth in paragraph 6 are false, misleading, and deceptive in that:

1. Respondents do not ship tires to purchasers thereof of the same quality as the sample displayed to the purchaser by their salesman taking the order, but, on the contrary, respondents in filling such orders make a practice of shipping shoddy and in many cases, worthless tires.

2. Respondents have no way of knowing the age of the carcasses used in the retreaded or recapped tires sold by them, and in some instances the tires are made of old and useless tires.

3. Respondents' tires are not free from boots and patches, but in most instances contain boots and patches.

4. Respondents do not, in all instances, ship purchasers tires of the size ordered, and shipments of respondents' tires are not made from

points in the vicinity in which the purchaser is located, except in the vicinity of Chicago, Ill.

5. Respondents do not ship tires to purchasers on consignments.

6. The freight rates applying to purchasers from respondents are often much higher than as represented by respondents.

7. Sears, Roebuck & Co. never bought any tires from respondents. From 1934 to February 1939, said company sold and distributed retreaded tires purchased by them from the Delco Co.; but since February 15, 1939, they have not sold any retreaded tires except in their Chicago retail branch store, to close out their stock.

8. Respondents do not supply purchasers with free tire racks or metal stands, nor do they pay one-half of the advertising expenditures incurred by purchasers in advertising respondents' tires.

9. Respondent's representations that the various concerns mentioned in subparagraph 9 of paragraph 6 have no connection or affiliation with each other and that they are each separate and distinct businesses and in competition with each other, are false, in that all of the said businesses are controlled by the respondents and are, in reality, merely trade names used by the respondents. Respondents have but one place of business, which is now located at 2427 South Michigan Avenue, and was formerly located at 2441 Indiana Avenue, Chicago. The various other addresses are of premises occupied by small business concerns with which respondents have arranged for the reception of their mail addressed to one of their several trade names, and the orders contained in the mail so received are filled from the place of business of the respondents.

10. Respondents tires are not suitable for the purposes for which they are purchased and will not give many miles of service in the normal course of usage at a fraction of the cost of new tires, but in fact, in many instances when so used they are only serviceable for a few days. In one instance shown a purchaser, upon receiving one of respondents' tires, sought to inflate it after mounting it on a spare, and the tire blew out at 35 pounds pressure.

11. Respondents have never manufactured the tires sold by them, nor do any of the respondents own or control a plant or factory wherein such tires are manufactured. Respondents purchase their tires from various sources.

PAR. 8. Respondents supply their salesmen with sales kits, order blanks and literature bearing the various trade names used by respondents, as hereinbefore set forth, and furnish them with cross-cut sections of tires to display to customers, thus enabling the salesmen

to misrepresent the true status of respondents' business and to represent that the businesses conducted under the various trade names used are each in competition with the other, and said salesmen are thereby enabled to make sales of respondents' products to persons having had previous unsatisfactory dealings with respondents under one or another of said trade names.

In truth and in fact, all orders secured by respondents under any of the said trade names, or in the name of the corporate respondent, were filled and shipped from respondents' place of business located at 2441 Indiana Avenue, Chicago, Ill., and not from the other listed addresses, until, in October 1939, and since that date, they have been filled from 2427 South Michigan Avenue, Chicago, Ill.

Respondents, in order to escape liability from the promises and representations made to purchasers by their salesmen, resort to a disclaimer, of liability clause placed in its order blanks under the "warranty" clause. The disclaimer of liability clause in such orders is not called to the attention of purchasers of respondents' products who sign such order blanks, nor in most instances is it observed by such purchasers, because it is so inconspicuously placed in the order blanks, and purchasers assume, and have the right to assume, that the "warranty" clause is intended for their protection. Respondents, in their warranty clause, guarantee to replace unsatisfactory merchandise upon payment of one-half of the list price, but this is, in fact, no guarantee at all, as the payment of this amount approximates the cost of the tires to the respondents, and the purchaser is required to pay the shipping charges before any such replacement is made.

Respondents make a practice of shipping unsatisfactory and worthless tires to purchasers, which in many cases, are not worth the freight or shipping charges paid by the purchaser. In many cases the tires are not in any manner suitable for the purpose for which they were intended and purchased.

PAR. 9. The aforesaid acts and practices of the respondents in connection with the offering for sale, sale and distribution of their retreaded or recapped tires, have had, and now have, the capacity and tendency to, and do, mislead and deceive salesmen and prospective salesmen, and purchasers and prospective purchasers of respondents' tires into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive representations and implications are true, and cause a substantial number of the purchasing public, because of said mistaken and erroneous belief, to act as salesmen for the respondents and to purchase substantial numbers of said tires.

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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 answers of respondents, testimony, and other evidence in support of and in opposition to the allegations of the complaint, the report of the trial examiner thereon and exceptions thereto, and briefs filed in behalf of the Commission and of the respondents; 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 respondent, Beho Rubber Co., Inc., a corporation, also trading as the Best Tire House, the Modern Improved Retread Outlet, and the Assured Remolded Tire Distributors, its officers, directors, agents, representatives, and employees, and respondents Bernard Holtzman, Mae Murray, and Milton M. Holtzman, individually and as officers and directors of Beho Rubber Co., Inc., trading under its corporate name or under any of its said trade names, or any trade name or names, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of retreaded or recapped tires, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. By the use of purported samples or otherwise that the tires sold by respondents are of a quality or value different from that of the actual quality or value of such tires.

2. That the "carcasses" used by respondents in their retreaded or recapped tires are less than 1 year old, when such is not the fact.

3. That tires which are not free from boots or patches are free from boots or patches.

4. That the tires shipped by respondents will be of sizes ordered by the purchaser, unless said sizes are furnished.

5. That tires ordered by purchasers will be shipped from any point other than the actual point of shipment.

6. That respondents will ship tires to purchasers on consignment unless such tires are shipped on consignment.

7. That the freight rate on respondents' tires will be lower than the actual rate applying to such shipments.

8. That, except for sale over the counter at its retail store in Chicago, Sears, Roebuck & Co. sell retreaded or recapped tires.

9. That respondents supply Sears, Roebuck & Co. with retreaded or recapped tires for resale to the public.

10. That respondents will supply purchasers of their tires with free tire racks and metal tire stands, when such is not the fact.

11. That respondents will pay one-half or any other portion of the advertising expenditures incurred by purchasers in advertising respondents' products unless respondents pay such amounts to such purchasers as represented.

12. That the business conducted by respondents under their several trade names has no connection with and is not a part of the business of respondents.

13. That tires which contain boots or patches, rotten rubber or other defects which render them not suitable for ordinary usage are suitable for ordinary usage and from representing that such tires will give many miles of service in the normal course of usage at a fraction of the cost of new tires.

14. That respondents manufacture the retreaded or recapped tires sold by them.

15. That any specified salary or commission is paid salesmen for the sale of respondents' products in excess of that actually paid.

16. That persons learning to become salesmen will be reimbursed for the expenses incurred by them in this connection, when such is not the fact.

17. That tires are sold under a warranty against defects, unless all the terms and conditions of such warranty are conspicuously set forth and strictly complied with.

And do further cease and desist from—

Inserting in the warranty clause of their order blanks a disclaimer of liability for promises and representations made purchasers by their salesmen.

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
LIFE SAVERS CORPORATION

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 4571. Complaint, Aug. 18, 1941—Decision, Dec. 23, 1941

Where a corporation engaged in the manufacture of its "Life Savers" confection, and in the competitive interstate sale and distribution thereof to corporate and cooperative chain stores, individual retail stores, and department stores, who were in substantial competition in the resale of said products, it selling its merchandise of like grade and quality at a uniform price per box, less 20 percent—

(a) Granted and paid, generally at the end of each quarter of a year, to some corporate retail food, drug, and variety chains, to whom, in some instances, delivery was made at each individual store, and in others to said chains' central warehouses, a sum equal to 10 percent of the net dollar volume of purchases made at its aforesaid invoice price, while refusing such 10 percent payment to other chain stores, department stores, single unit retail stores, and jobbers competitively engaged with such favored purchasers;

With result of lessening competition in the line of commerce concerned, of inducing purchasers receiving such payment, in many instances, to discontinue dealing in competitors' products and, in other instances, of substantially decreasing their purchases thereof, and of injuring competition with such customers of said corporation who knowingly received aforesaid discount:

Held, That in granting and paying discount, as aforesaid, corporation violated the provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act; and

Where said corporation, engaged as aforesaid—

(b) Paid and contracted to pay sums of money equal to 10 percent of the net invoice amount of purchases to numerous corporate chain store customers in consideration of their entering into and fulfilling an agreement whereby some of them collected orders from their individual retail stores and transmitted the same to it, while other retail units sent in such orders direct, and shipped its said products to the central warehouse or the individual stores of said chain-store customers, who, additionally and pursuant to agreement in question, provided displays of said confection by each retail store in a manner acceptable to it; while failing to make such payments as compensation for like services and facilities available to other customers, competitively engaged in the distribution of said "Life Savers," including any customer who had received from it any other 10 percent allowance:

Held, That in practice aforesaid, corporation in question violated the provisions of subsection (d) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. James A. Purcell*, trial examiner.

Mr. A. W. DeBirny for the Commission.

Mr. Jerome L. Isaacs of Rogers, Hoge & Hills, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsections (a) and (d) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

Count 1

PARAGRAPH 1. Respondent, Life Savers Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business located at Port Chester, N. Y.

PAR. 2. Respondent is now, and has been since June 19, 1936, engaged in the business of manufacturing and selling a candy confection known as "Life Savers" for resale within 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 respondent sells the aforesaid product to purchasers located in the various States of the United States and causes said products when sold to be shipped and transported from its place of business in the State of New York across State lines to the respective purchasers thereof located in each of the several States of the United States, the Territories thereof, and in the District of Columbia. There is, and has been at all times mentioned herein, a constant current of trade in said product between respondent located in the State of New York and various purchasers located as aforesaid.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has been and is now engaged in substantial competition in commerce with other manufacturers of candy confections, especially with the Beech-Nut Packing Co., which, for many years prior hereto, has been and is now engaged in selling and shipping such confections in commerce across State lines to purchasers thereof located in the various States of the United States and in the District of Columbia.

Respondent in the course and conduct of its business and since June 19, 1936, has sold its merchandise of like grade and quality to various purchasers among which are multiple retail outlets, department stores, single retail outlets and wholesalers. All such customers are invoiced Life Savers at a price of 65 cents a box less a discount of 20 percent, the cost of such goods to such customers being 52 cents, which is the same price as that at which respondent's principal competitor, the

Beech-Nut Packing Co., invoices its competitive product to such class of customers. Such multiple retail outlets, single retail outlets, department stores and the customers of such wholesalers are all competitively engaged with one another in the resale of such products.

PAR. 4. In the course and conduct of its said business, the respondent since February 1938, has, in addition to the customary 20 percent discount, granted and paid secretly to some multiple retail outlet customers a quarterly rebate of 10 percent of the dollar volume of such customers' purchases. The respondent thereby has discriminated in price in favor of such multiple retail outlet customers and against competing single retail outlets, department stores and wholesalers. To other customers competitively engaged with such favored customers, the respondent has not paid or offered to pay and has refused any such rebate.

PAR. 5. The effect of the discrimination in price alleged in paragraph 4 has been and may be substantially to lessen competition in the line of commerce in which respondent is engaged and to injure competition with respondent and with such customers of respondent who knowingly receive the benefit of such discrimination.

Such discrimination in price by respondent between different purchasers of commodities of like grade and quality in interstate commerce in the manner and form aforesaid is in violation of the provisions of subsection (a) of section 2 of the Act described in the preamble hereof.

Count 2

PARAGRAPH 1. Paragraphs 1 and 2 of count 1 are hereby adopted and made a part of this count as fully as if herein set out verbatim.

PAR. 2. In the course and conduct of its business in commerce, respondent since February 1938, has secretly paid and contracted to pay to approximately 150 customers an amount calculated at 10 percent of the dollar volume of such customers' purchases as compensation and in consideration for services and facilities furnished by such customers in connection with the sale and offering for sale of Life Savers while refusing to make such payment available on proportionally equal terms to all competing customers, or on any terms to some of its 4,500 customers, competing in the distribution of such Life Savers. Such payment is for servicing retail stores covering the display and distribution of Life Savers and is not in addition to the price discrimination referred to in count 1 hereof.

PAR. 3. It has been the policy of Life Savers Corporation as set forth in instructions from the vice president in charge of sales, to conceal from all except the favored customers the details of the agree-

ments relating to compensation of customers for services connected with display facilities. District managers have been instructed by the sales department that their division managers should deny to customers any knowledge of such allowances and under no circumstances to tell a customer to write to the respondent as that "more or less puts us on the spot."

PAR. 4. The respondent has endeavored to prevent the spread of the allowances to small customers even though such operators would give exclusive display. District managers of respondent have refused small retail drug chains an opportunity to earn this display service allowance.

PAR. 5. Respondent in some instances grants compensation for services covering the prominent display and distribution of Life Savers to the extent of eight flavors, in other instances requiring that thirteen or some other number of flavors be so serviced and displayed. Such display service compensation agreements frequently, but not always, contemplate that such customer will no longer display any flavor of Beech-Nut mints or fruit drops.

PAR. 6. The above-described acts and practices of respondents are in violation of subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, the Clayton Act, as amended by 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 18, 1941, issued and thereafter served its complaint in this proceeding upon respondent, Life Savers Corporation, a corporation, charging it with the violation of the provisions of subsections (a) and (d) of section 2 of said act.

After issuance of the complaint and the filing of respondent's answer thereto, a hearing was held before James A. Purcell, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, at which a stipulation was entered into between A. W. DeBirny, attorney for the Commission, and Jerome L. Isaacs, attorney for the respondent, and made a part of the record. By this stipulation, respondent admitted all the material allegations of the complaint and waived further hearings, the filing of briefs, oral argument and all intervening procedure.

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Thereafter this proceeding regularly came on for final disposition by the Commission on the complaint, the answer thereto, the stipulation and the trial examiner's report: 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, Life Savers Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Port Chester, N. Y.

PAR. 2. Respondent is now, and since June 19, 1936, has been, engaged in the business of manufacturing and selling a candy confection known as "Life Savers," for resale within 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, respondent sells the aforesaid product to purchasers located in the various States of the United States, and causes said product, when sold, to be shipped and transported from its place of business in the State of New York, across State lines, to the respective purchasers thereof located in each of the several States of the United States, the Territories thereof and the District of Columbia. There is, and has been at all times mentioned herein, a constant current of trade in said product between respondent, located in the State of New York, and various purchasers located as aforesaid.

PAR. 3. Life Savers Corporation is in substantial competition in commerce with Beech-Nut Packing Co. and at least one other company, each of which manufactures a candy confection similar to Life Savers, and sells and distributes the same to customers located throughout the United States.

PAR. 4. Corporate chain store customers, voluntary and cooperative chain store customers, individual retail store customers, department-store customers and such retail-store purchasers who are customers of respondent's jobbers are generally in substantial competition in the resale of products purchased from respondent or from a customer of respondent.

PAR. 5. Respondent in the course and conduct of its business since February 1938, has sold its merchandise of like grade and quality to various purchasers. All Life Savers are invoiced at a price of 65 cents a box less 20 percent, the invoice price of such goods to such customers being 52 cents. In connection therewith, respondent has granted and

paid to some corporate retail food, drug and variety chains, generally at the end of each quarter of a year, a sum equal to 10 percent of the net dollar volume of purchases made at the aforesaid invoice price. In some instances, such chain stores received delivery at each individual store while in other instances delivery was made to such chains' central warehouses. Other chain store customers competitive in commerce with the chains receiving the 10 percent were not granted or paid said 10 percent. Likewise, purchasers either competitively engaged themselves or whose customers were competitively engaged with the favored purchasers, such as department stores, single unit retail stores, and jobbers, were not paid said 10 percent.

PAR. 6. The effect of the granting and paying of the 10 percent heretofore referred to or any percentage discount is to lessen competition in the line of commerce in which Life Savers Corporation, Beech-Nut Packing Co., and at least one other company are engaged and to induce the purchasers receiving such payment in many instances to discontinue the purchase and sale of products manufactured by such competitors and in other instances substantially to decrease their purchases of such competitors' products.

PAR. 7. The effect of the granting and paying of the 10 percent discount heretofore referred to is to injure competition with such customers of respondent who knowingly receive the benefit of such discount.

PAR. 8. Respondent since February 1933, and at present has contracted and is contracting to pay and has paid and is paying to numerous corporate chain store customers sums of money equal to 10 percent of the net invoice amount of purchases, in consideration of such customers entering into and fulfilling an agreement whereby some of such customers collect orders from their individual retail stores and transmit the same to respondent while other retail store units send such orders in direct. Respondent thereafter ships its products to the central warehouse of the chain customer or to the individual retail stores owned by the chain; additionally, and pursuant to the said agreement, such customers provide displays of Life Savers by each of such retail stores in a manner acceptable to the respondent. At all times while respondent was making such payments available to the aforesaid customers, other customers competitively engaged with such customers in the distribution of Life Savers have not had and do not have such payments made available to them as compensation or in consideration for like services and facilities which they have furnished or are willing and able to furnish. Such payments were not available to any customer who received from respondent any other 10 percent allowance.

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CONCLUSION

The Commission concludes that the respondent Life Savers Corporation has violated the provisions of subsections (a) and (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission; the answer of respondent; the stipulation entered into on the record between the attorney for the Commission and the attorney for respondent, in which respondent admits all the material allegations of the complaint and waives further hearings, the filing of briefs, oral argument, and all intervening procedure; and the report of the trial examiner: And the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of section 2 (a) and (d) 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, Life Savers Corporation, its officers, directors, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its candy confection known as "Life Savers," in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Selling goods of like grade and quality to some purchasers at a price which is 10 percent different than to other purchasers, and from selling goods of like grade and quality to some purchasers at any different price than to other purchasers unless such difference makes only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered.
2. Paying 10 percent or any other percentage of the net dollar volume of purchases to some mass or multiple retail outlet distributors in consideration of their furnishing services or facilities connected with the sale and offering for sale of goods purchased from respondent, such as accepting delivery at a central warehouse and distributing to more than one individual retail store, while not making such payment available on proportionally equal terms to other competing mass or multiple retail outlet distributors who accept delivery at a central warehouse and distribute to individual retail stores or while not making such payment available on proportionally equal terms to jobbers competing in the distribution of such products who in fact

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take delivery at their central warehouse and distribute to individual retail stores.

3. Compensating or paying 10 percent or any other percentage of the net dollar volume of purchase to any customer for services furnished by or through such customer while not making such compensation or payment in consideration of like services furnished by or through other customers available on proportionally equal terms to such customers competitively engaged in the distribution of such products.

It is further ordered, That the respondent Life Savers 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

JAMES LEDWITH AND MORTON E. ROSENTHAL, TRADING AS WOODFINISHING PRODUCTS COMPANY, AND J. M. THOMAS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 4579. Complaint, Aug. 29, 1941—Decision, Dec. 23, 1941

Where two partners engaged in the manufacture of paints, varnishes, stains, thinners, lacquers, sealers, toners, and other woodfinishing materials, and in competitive interstate sale and distribution thereof to furniture manufacturers and others; and the sales manager of their branch office who was their sales agent and representative, visiting the above-mentioned trade and procuring orders therefrom for the aforesaid products; acting together and through said individual—

Gave and offered to give, to finishers, foremen and other employees of manufacturers of furniture, without the knowledge and consent of their respective employers, substantial sums of money as inducements to influence said employees to purchase the products of said partners, and to recommend such purchases and the use of said products to their employers, or as promised rewards or gratuities for having induced such purchases by employers or for having recommended the use of such products to said employers;

With effect of diverting trade unfairly to them from their competitors who do not indulge in said acts and practices; to the substantial injury of competition in commerce:

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

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that James Ledwith and Morton E. Rosenthal, individually and as copartners, trading as Woodfinishing Products Co. and J. M. Thomas, individually and as agent for James Ledwith and Morton E. Rosenthal, copartners trading as Woodfinishing Products Company, 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, James Ledwith and Morton E. Rosenthal, are individuals doing business as copartners under the name of Woodfinishing Products Co. with their principal office and place of business located at 34 Industrial Street, New York, N. Y. They also maintain a branch office and manufacturing plant at 572 Waughtown Street, Winston-Salem, N. C.

Respondents, Ledwith and Rosenthal, are engaged in the manufacture of paints, varnishes, stains, thinners, lacquers, sealers, toners, and other wood-finishing materials and in the sale and distribution thereof to manufacturers of furniture and others located in the various States of the United States and in the District of Columbia. Said respondents cause and have caused said products when sold to be transported from their aforesaid places of business in New York, N. Y., and Winston-Salem, N. C., to their customers located in the various other States of the United States and in the District of Columbia. There is now, and for several years last past has been, a constant course of trade by said respondents in said products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business said respondents are, and have been, in competition with other individuals and partnerships and with corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

Respondent, J. M. Thomas, an individual, during a period of several years last past, has been and still is sales manager for said Winston-Salem branch office, and agent of, and sales agent and representative for, respondents Ledwith and Rosenthal, and, among other duties and activities in said latter connection, the said Thomas visits the trade hereinabove mentioned and solicits and procures orders from said trade for the aforesaid products manufactured and sold in the commerce aforesaid by respondents Ledwith and Rosenthal.

All of said respondents act together and in cooperation in doing the acts and things as herein alleged.

PAR. 2. In the course and conduct of said business as described in paragraph 1 hereof, respondent Thomas, acting for and in behalf of, and in concert with, respondents Ledwith and Rosenthal, has, from time to time during several years last past, offered to give, and has given, to finishers, foremen, and other employees of manufacturers of furniture, without the knowledge and consent of their respective employers, substantial sums of money as inducements to influence said employees to purchase the products of respondents Ledwith and Rosen-

thall, to recommend such purchases to such employers, and to recommend to said employers the use of said products, or as promised rewards or gratuities for having induced such purchases by such employers or for having recommended the use of said products to such employers. In making said gifts of money, respondent Thomas, in order to conceal said transactions and the identity of the donors of said sums, has made payments of said sums to aforesaid employees in cash only.

PAR. 3. The use by the respondents of the acts and practices hereinabove set forth were and are calculated to have, and have, a tendency and capacity to, and do, divert trade unfairly to respondents from their competitors also engaged in the business of selling wood-finishing materials, as aforesaid, who do not indulge in said acts and practices. As a result thereof, substantial injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States, and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on August 29, 1941, issued, and thereafter served its complaint in this proceeding upon respondents James Ledwith and Morton E. Rosenthal, individually and as copartners, trading as Woodfinishing Products Co. and J. M. Thomas, individually, and as agent for James Ledwith and and Morton E. Rosenthal, copartners, trading as Woodfinishing Products Co., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer the Commission, by order entered herein, granted respondents' request for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the matter and being now fully advised in the prem-

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

FINDINGS AS TO THE FACTS

PARAGRAPHS 1. Respondents, James Ledwith and Morton E. Rosenthal (named in the complaint as Morton E. Rosenthal), are individuals doing business as copartners under the name of Woodfinishing Products Co. with their principal office and place of business located at 34 Industrial Street, New York, N. Y. They also maintain a branch office and manufacturing plant at 572 Waughtown Street, Winston-Salem, N. C.

Respondents, Ledwith and Rosenthal, are engaged in the manufacture of paints, varnishes, stains, thinners, lacquers, sealers, toners, and other wood-finishing materials and in the sale and distribution thereof to manufacturers of furniture and others located in the various States of the United States and in the District of Columbia. Said respondents' cause and have caused said products when sold to be transported from their aforesaid places of business in New York, N. Y., and Winston-Salem, N. C., to their customers located in the various other States of the United States and in the District of Columbia. There is now, and for several years last past has been, a constant course of trade by said respondents in said products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business said respondents are, and have been, in competition with other individuals and partnerships and with corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

Respondent, J. M. Thomas, an individual, during a period of several years last past, has been and still is sales manager for said Winston-Salem branch office, and agent of, and sales agent and representative for respondents, Ledwith and Rosenthal, and, among other duties and activities in said latter connection, the said Thomas visits the trade hereinabove mentioned and solicits and procures orders from said trade for the aforesaid products manufactured and sold in the commerce aforesaid by respondents Ledwith and Rosenthal.

All of said respondents act together and in cooperation in doing the acts and things as herein found.

PAR. 2. In the course and conduct of said business as described in paragraph 1 hereof, respondent, Thomas, acting for and in behalf of,

and in concert with, respondents, Ledwith and Rosenthal, has, from time to time during several years last past, offered to give, and has given, to finishers, foremen and other employees of manufacturers of furniture, without the knowledge and consent of their respective employers, substantial sums of money as inducements to influence said employees to purchase the products of respondents Ledwith and Rosenthal, to recommend such purchases to such employers, and to recommend to said employers the use of said products, or as promised rewards or gratuities for having induced such purchases by such employers or for having recommended the use of said products to such employers. In making said gifts of money, respondent Thomas, in order to conceal said transactions and the identity of the donors of said sums, has made payments of said sums to aforesaid employees in cash only.

PAR. 3. The use by the respondents of the acts and practices hereinabove set forth were and are calculated to have, and have a tendency and capacity to, and do, divert trade unfairly to respondents from their competitors also engaged in the business of selling wood finishing materials, as aforesaid, who do not indulge in said acts and practices. As a result thereof, substantial injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States, and in the District of Columbia.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, James Ledwith and Morton E. Rosenthal (named in the complaint herein as Morton E. Rosenthal),

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trading as Woodfinishing Products Co. or trading under any other name or names, and respondent J. M. Thomas, individually and as agent for respondents, James Ledwith and Morton E. Rosenthal, and respondents' agents, representatives, and employees, directly, or through any corporate or other device, in connection with the offering for sale, sale, and distribution of paints, varnishes, stains, thinners, lacquers, sealers, toners, or other wood-finishing products in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Giving or offering to give sums of money or other things of value to employees of respondents' customers or prospective customers, or those of their competitors' customers or prospective customers, without the knowledge or consent of their employers, as inducements to influence said employees to purchase the products of respondents, or to recommend such purchases to said employers, or to recommend to said employers the use of respondents' products or as promised gratuities for having induced such purchases by such employers, or for having recommended the use of respondents' products to such employers, or to influence such employers to refrain from dealing, or contracting to deal, with competitors of respondents, or to influence such employers to continue to deal with respondents.

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

IN THE MATTER OF

E. R. DAVIS, TRADING UNDER THE NAME OF E. R. DAVIS
PRESCRIPTION COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4289. Complaint, Aug. 29, 1940—Decision, Jan. 7, 1942*

Where an individual engaged in interstate sale and distribution of his "Davis Formula No. 7895" medicinal preparation; in advertisements disseminated through the mails and by radio continuities, circulars, leaflets, pamphlets, and other advertising literature, in which he included quotations or purported quotations from testimonials; directly and by implication—

Represented that his said formula was a cure or remedy for asthma or hay fever and a competent and effective treatment therefor, use of which would prevent attacks and recurrence of attacks thereof and relieve the suffering incident thereto;

Facts being said formula or preparation—in the package of which he included a 4-ounce bottle of concentrated Vitamin A containing 30,000 International units per gram, and in which preparation were included potassium iodide and lobelia, sometimes used to relieve temporarily the symptomatic spasms of asthma—was not a cure or remedy for any of the many different types of asthma, which do not all yield to same treatment, and had no therapeutic value in treatment thereof in excess of furnishing temporary relief from its symptomatic paroxysms, nor value in preventing recurrence of attacks of ailments referred to; and, as respects hay fever, did not constitute a cure or remedy therefor or have any substantial therapeutic value in the treatment thereof;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such false representations were true, and of thereby inducing it to purchase his said preparation:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. William L. Pencke* for the Commission.

Mr. E. R. Davis, pro se.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that E. R. Davis, an individual, trading under the name of E. R. Davis Prescription Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding

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

PARAGRAPH 1. Respondent, E. R. Davis, is an individual trading under the name, E. R. Davis Prescription Company, with his principal office and place of business in Bellingham, State of Washington. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of a medicinal preparation designated as Asthma and Hay Fever Remedy No. 7895, in commerce among and between the various States of the United States. Respondent causes said preparation, when sold, to be transported from his place of business in the State of Washington to purchasers thereof located in various other States of the United States. At all times mentioned herein respondent has maintained a course of trade in said medicinal preparation in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Don't suffer needlessly with asthma and Hay Fever. The Davis Asthma and Hay Fever Remedy #7895 really works. Hundreds of users throughout Canada and here in Whatcom Co. are its best boosters. Many have written sincere letters of thanks for relief after all other treatments had failed completely. But it is a hundred times easier to prevent Hay Fever than to cure it. * * * It is taken internally and works through the blood, the nerves, the membranes of the nose. The vitamin A contained in the remedy builds up the mucous membrane of the nose so that it does not become so easily irritated. But if you wish to free yourself from the agony of hay fever this summer, remember that you should begin today.

Have you given up all hope of ever finding any relief for asthma? After trying dozens of so-called remedies, many persons have given up hope * * * but the

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fact stands out that Davis Asthma Remedy #7895 has brought real relief to many who have suffered for 15, 20, and even 30 years.

Thousands of people, after trying hit-and-miss remedies, have come to the conclusion that there is no real cure for asthma or hay fever. That is neither true nor fair! Science is each year making tremendous strides towards the cure and prevention of every disease. One of the greatest steps toward the relief of asthma and hay fever is the discovery of a Canadian druggist * * * the Davis Asthma and Hay fever remedy #7895. Mr. Davis, a graduate of the Ontario college of Pharmacy and Toronto University, compounded this remedy when all known treatments failed to help him. Three days after taking his treatment he was improved, and within three weeks he was entirely cured of asthma.

Adrenalin and Ephedrin users and powder smokers should cut out the use of such rapidly as possible under the use of this medicine. They only relieve.

TASTELESS CONCENTRATE

VITAMIN "A"

100 Times the Strength of Cod Liver Oil

Adults: 2 or 3 drops; children: 1 or 2 drops at meals 3 times a day, on food.

As your cost is only about half of most other remedies, and as asthma, all forms of hay fever, eczema and also sick headaches are now considered members of one family and are in the blood stream, you should continue the remedy for a good while in smaller doses to thoroughly protect yourself. The average case gets relief from the severe spasms after a couple of days.

ASTHMA

Do you really know of a person who got permanent results by injections, inhalations, or smokes? How could they when asthma is the evidence of a constitutional trouble?

"DAVIS' FORMULA NO. 7895"

with a separate supply of "Vitamin A" is for internal use entirely and affects the blood, nerves and mucous membranes. Safe and effective—3 weeks' treatment only.

PAR. 3. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative and therapeutic properties of the preparation sold and distributed by him, the respondent has represented and does now represent, directly and by inference, that the preparation Asthma and Hay Fever Remedy No. 7895 is a cure or remedy for asthma, hay fever and bronchial asthma and that it constitutes a competent and effective treatment therefor, that the use of said preparation will prevent attacks of asthma and hay fever or the recurrence thereof and will relieve the suffering incident thereto.

PAR. 4. The aforesaid representations and claims, used and disseminated by the respondent as hereinabove described, are grossly exaggerated, misleading and untrue. In truth and in fact, the medicinal

preparation sold and distributed by the respondent is not a cure or remedy for asthma, hay fever and bronchial asthma and does not constitute a competent and effective treatment therefor in excess of furnishing temporary symptomatic relief from the paroxysms of asthma and attacks of hay fever. Said product is of no value in the prevention or treatment of hay fever, respiratory infections or in increasing the resistance of nasal mucous membranes.

PAR. 5. The use by the respondent of the foregoing false, deceptive and misleading statements and representations disseminated as aforesaid has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, 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.

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 29 A. D. 1940, issued and subsequently served its complaint on the respondent, E. R. Davis, an individual trading under the name of E. R. Davis Prescription 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 said complaint were introduced by Carrel F. Rhodes, attorney for the Commission, and in opposition to the allegations of the complaint by E. R. Davis, respondent, pro se, before William C. Reeves, 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 upon 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 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, E. R. Davis, is an individual trading under the name of E. R. Davis Prescription Co., with his principal office and place of business in the city of Bellingham, State of Washington. Respondent is now, and for more than three years last past has been, engaged in the sale and distribution of a medicinal preparation designated Davis' Formula No. 7895, in commerce among and between the various States of the United States. Respondent causes said preparation, when sold, to be transported from his place of business in the State of Washington 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 medicinal preparation in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparation, by the United States mails 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 preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

ASTHMA AND HAY FEVER

Davis' Formula No. 7895

Davis' Formula No. 7895 was worked out by E. R. Davis, Phm. B., of New Westminster, B. C., Canada.

Mr. Davis is a graduate of the Ontario College of Pharmacy and Toronto University, 1898, and holds diplomas from New York City, Saskatchewan, Alberta and Gold Medalist in B. C. Examinations, 1918.

Mr. Davis says: "In 1917 I contracted a very heavy cold which took about three months to shake off, leaving me with a bronchitis which soon developed into Bronchial Asthma and Spasmodic Asthma. For 16 years I fought this baffling condition, trying every ready made remedy I could find, new chemicals, chiropractors, specialists, herbalists, dieticians, etc., without any worthwhile benefit.

In July, 1933, I got so weak I could neither talk nor work properly, or walk even a couple of blocks for want of breath and wondered whether I could carry on business another day. In despair I decided to test out my conclusions of what an asthma remedy should contain and after carefully working out the proportions of the various ingredients I began its use.

"To my surprise and delight I was much better in three days and in three weeks I seemed completely free from Asthma."

Vancouver nurse says: "6 years ago I contracted bronchial pneumonia and for 4 years spent as much as 3 months in bed continually with asthmatic attacks. 2 years ago I took 3 bottles of "Davis' Formula 7895" and have not had an attack since. I feel fine and am telling others."

Here is a statement from a letter written by Mrs. Nellie La Fave—1225 E. Base Line—San Bernardino, Calif.: "Your Davis formula #7895 has in ten days done wonders for me—I am sixty four years old and thanks to your remedy Davis Formula #7895. I am rapidly regaining my normal good health. I shall keep on telling others of this formula."

Mrs. F. of Stellacoom, Wash., writes: "I have been a very bad case for 21 years. I appear to be entirely free with 2 bottles of your medicine."

PAR. 3. Through the use of the statements hereinabove set forth and others similar thereto, not specifically set out herein, respondent has represented, directly and by inference, that his preparation Davis' Formula No. 7895 is a cure or remedy for asthma and hay fever; that it constitutes a competent and effective treatment therefor; and that the use of said preparation will prevent attacks of asthma and hay fever and the recurrence thereof and will relieve the suffering incident thereto.

PAR. 4. The formula for respondent's preparation, Davis' Formula No. 7895, is as follows:

Aqua chloroformi B. P.....	oz..	2
Potassium iodide.....	drs..	10
Elixir aromatic U. S. P.....	oz..	4½
Tincture lobelia U. S. P.....	min..	256
Liquor strychnine Hcl.....	min..	32
Liquor arsenic Hcl.....	min..	48

. in 8-ounce bottle, 64 doses

In the package in which the Davis' Formula No. 7895 is supplied to purchasers the respondent also includes a ¼-ounce bottle of concentrated vitamin A containing 30,000 International units per gram.

PAR. 5. Asthma is a paroxysmal disease. There are two ingredients in respondent's preparation which are sometimes used in the treatment of asthma for the purpose of loosening the mucous, and temporarily relieving the spasms which are symptomatic of this condition. These ingredients are potassium iodide and lobelia. However, there are many different types of asthma, and all will not yield to the same treatment but require a different type of treatment. Respondent's preparation is not a cure or remedy for any type of asthma and has

no therapeutic value in the treatment of asthma in excess of furnishing temporary relief from the paroxysms which are symptomatic of this condition. While this preparation might, under certain conditions, build up the bodily resistance to some diseases, it has no value in preventing the recurrence of attacks of asthma, and so far as hay fever is concerned, the value of this preparation in the treatment of hay fever is so slight as to be immaterial, and this preparation does not constitute a cure or remedy for hay fever or have any substantial therapeutic value in the treatment 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 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.

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 William C. Reeves, 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 in support of the complaint 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, E. R. Davis, an individual trading under the name of E. R. Davis Prescription Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his medicinal preparation known as Davis' Formula No. 7895, or any other preparation of substantially similar composition or possessing substantially similar

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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 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 is a cure or remedy for asthma or has any therapeutic value in the treatment thereof, in excess of furnishing temporary relief from the paroxysms of asthma.

(b) That respondent's preparation is a cure or remedy for hay fever, or that it has any substantial therapeutic value in the treatment of such disorder.

(c) That the use of respondent's preparation will prevent attacks of asthma or hay fever, or prevent any recurrence of such attacks.

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 preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof and respective subdivisions thereof.

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

IN THE MATTER OF
ARTHUR JACOBSON

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

Docket 4466. Complaint, Feb. 19, 1941—Decision, Jan. 7, 1942

Where an individual engaged in interstate sale and distribution of certain devices and courses of instruction explaining their uses, which were all represented as a treatment for defects of eyesight without resort to glasses, drugs, or surgery, said devices consisting of a so-called "eye tester" and an "eye adjuster," together with various charts, and the course of instruction being made up of printed pamphlets designated "Better Eyesight System" and "Training the Eyes to See Correctly"; by means of advertisements in periodicals, circulars, leaflets, pamphlets, letters, and other advertising literature including quotations or purported quotations from testimonials; directly or by implication—

- (a) Represented that his said system was new and revolutionary, that by means of the "eye tester" a person could quickly and easily test his eyes, and by means of the "eye adjuster" could adjust his eyes and make each eye better able to see alone as well as in harmony with the other eye;

The facts being that his system was neither new nor revolutionary but was taken with modifications and adaptations from other systems of eye treatment by so-called natural methods; his "eye tester" simply measured the user's visual perception but did not enable the user to diagnose any visual defect or determine its cause; and his "eye adjuster" was no more than a convenient means of shutting off the vision of one eye so as to permit the unaided use of the other; and

- (b) Represented that use of his said system would improve the eyesight, eliminate headaches and nervousness, overcome tired feeling and cause the eyes to become clear and strong, would correct nearsightedness, astigmatism and strabismus and result in perfect eyesight without glasses, and eliminate the need of drugs, glasses, and surgery in the treatment of poor eyesight; and that 90 percent of the physical defects of the eye could be remedied by the use of his devices and courses;

The facts being that, while there are many causes for defective vision, including errors of refraction, various diseases of the eyes, toxemias, and inherited imperfections in the visual organs, his devices, courses and treatment were the same, regardless of the causes or nature of the visual defect; headaches and nervousness may be due to numerous causes other than eye strain; such physical defects as nearsightedness and astigmatism are not subject to correction by said devices or courses; proper treatment when exercise is prescribed in cases of strabismus requires adaptation to the particular case and use of his devices and courses, while possibly in some instances tending to correct muscular imbalance, will not result in perfect eyesight, eliminate need of drugs, glasses and surgery in the treatment of poor eyesight or correct 90 percent of the physical defects of the eyes or any material percentage thereof; and

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(c) Represented that properly fitted glasses do not solve the problem of falling eyesight or correct said condition; that stronger lenses must be used from time to time; and that use of glasses causes the eye muscles to become lazy with the result that they do not perform their natural functions;

The facts being, one's vision may be affected by physical condition or by illness not directly related to the eyes and may improve with the state of health and a "lazy" condition of the muscles of the eyes may be due to fatigue; properly fitted glasses do correct many faults of vision; it is not necessary in all cases to obtain stronger lenses from time to time; some individuals in the course of time being enabled to discard the use of glasses entirely; and use of properly fitted glasses does not cause the eye muscles to become lazy nor prohibit them from performing their natural functions;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such advertisements were true and of thereby inducing the purchase by it of substantial quantities of the said devices and courses:

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. W. W. Sheppard*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. H. M. Braggans and *Mr. Austin L. Grimes*, of Little Falls, 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 Arthur Jacobson, an individual, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent Arthur Jacobson is an individual with his office and principal place of business located at Upsala, Minn.

PAR. 2. Said respondent is now and for more than one year last past has been engaged in the offering for sale, sale and distribution of certain devices together with a course of instruction explaining and describing the uses thereof, all of which are represented as a treatment for defects of human eyesight without resort to glasses, drugs or surgery. Such devices consist of a so-called "Eye Tester" and an "Eye Adjuster," together with charts and other paraphernalia. The course of instruction consists of printed pamphlets designated as "Better Eyesight System" and "Training The Eyes To See Correctly." The various devices and course of instruction are sold together and are designed to complement each other.

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Respondent causes said devices, together with the course of instruction, when sold, to be transported from his place of business in the State of Minnesota to the purchasers thereof located in other States of the United States.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said devices and said course of instruction sold and distributed by him, in commerce, between and among the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of, false advertisements concerning his said device and course of instruction 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 the said devices and course of instruction, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said devices and course of instruction 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 having a general circulation are the following:

NEW SYSTEM IS REVOLUTIONARY * * *

This new system does not require glasses, medicines, or drugs of any kind. You do not have to submit to any trick diets or expensive treatments. You do not need to refrain from going to shows. In fact, attending a reasonable number of shows will actually improve the eyesight.

You too should begin using this system. It will improve your eyesight.

I have followed the instructions on "Training The Eyes To See" to the best of my ability and already my headaches and nervousness have disappeared.

* * * I followed the simple instructions faithfully and at the end of 10 days I noticed a great change in my eyes. I lost that tired feeling. My eyes became clear and strong and I found that I could discard my glasses.

Learn how to see again!

Naturally * * *

Safely * * *

And without drugs.

THE EYE TESTER: A new invention (patent applied for) which enables you to quickly and easily test your eyes right in your own home.

THE EYE ADJUSTER: Another invention which actually "adjusts" your eyes and makes each eye better able to see alone as well as in harmony with the other eye.

See better. Correct nearsightedness, astigmatism, and strabismus without glasses, drugs or surgery.

PERFECT Eyesight without glasses.

Properly fitted glasses correct the distortion of the image making your vision clear and distinct but glasses do not remove the basic cause of faulty vision any more than a crutch will cure a broken leg. You know of course that lenses in your glasses must be changed from time to time—and the pitiful part of these changes is that stronger and stronger lenses must be used * * *. But in most cases glasses tend to hide the beauty and charm of naturally magnetic eyes, because they seldom fit the contour of the face. They do not—can not—solve your problem of failing eyesight.

Lazy muscles I found forget how to work and must be trained in a natural way without "eye crutches" to again do their natural job.

* * * If anyone would spend five minutes a day doing what you did 90 percent of the physical defects of the eyes would be removed.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import not specifically set out herein, the respondent represents and has represented, directly or by implication:

That his system is new and revolutionary; that the use of said system, consisting of the various devices and course of instruction, will eliminate the need of drugs, glasses and surgery in the treatment of poor eyesight; that the use of said system will improve the eyesight, will eliminate headaches and nervousness, will overcome tired feeling and cause the eyes to become clear and strong, thus enabling the user to discard glasses; that by its use a person is enabled to see naturally and safely without the use of drugs; that by means of the "Eye Tester" a person can quickly and easily test his eyes; that by means of the "Eye Adjuster" a person can adjust his eyes and make each eye better able to see alone as well as in harmony with the other eye; that said devices are new inventions discovered by respondent. Respondent further represents that the use of said devices and course of instruction will correct nearsightedness, astigmatism and strabismus without resort to glasses, drugs or surgery; that the use of said system will result in perfect eyesight, without glasses; that properly fitted glasses do not solve the problem of failing eyesight, do not correct failing eyesight and that stronger lenses must be used from time to time; that the use of glasses causes the eye muscles to become lazy and consequently they do not perform their natural functions; that 90 percent of the physical defects of the eyes can be remedied by the use of respondent's devices and course of instruction.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact respondent's system is not new nor is it revolutionary. The use of such system, consisting of the various devices and course of instruction, will not eliminate the need of drugs, glasses, and surgery in the treatment of poor eyesight. The use of such system will not improve the eyesight, nor will it eliminate headaches or nervousness or overcome tired feeling and cause the eyes to become clear and strong, thereby enabling the user to discard glasses. A person suffering from poor eyesight is not enabled, by the use of such system, to see naturally and safely, without the use of drugs or glasses. There is nothing new about the principles of the "Eye Tester" and "Eye Adjuster," and their use will not enable one to adjust or test one's eyes and make each eye better able to see alone as well as in harmony with the other eye. The use of respondent's devices and course of instruction will not correct nearsightedness, astigmatism and strabismus without resort to glasses, drugs or surgery, nor will their use result in perfect eyesight without glasses. Properly fitted glasses do remove the basic cause of faulty vision, and it is not necessary in all cases to obtain stronger lenses from time to time. The use of properly fitted glasses does not cause the eye muscles to become lazy or prohibit eye muscles from performing their natural functions. The use of respondent's system will not remove or remedy 90 percent or any appreciable percent of the physical defects of the eyes.

PAR. 6. 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 and misleading advertisements are true, and induces, and has induced, the purchasing public by reason of such belief, so induced, to purchase substantial quantities of respondent's said devices and course of instruction.

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 February 19, 1941, issued and subsequently served its complaint in this proceeding upon respondent Arthur Jacobson, an individual, charging him with the use of unfair

and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer 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 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 said complaint, the answer thereto, testimony and other evidence, report of the trial examiner, and briefs in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Arthur Jacobson is an individual with his office and principal place of business in Upsala, Minn. For more than one year last past he has been engaged in the offering for sale, sale, and distribution of certain devices and courses of instruction explaining and describing the uses thereof, all of which are represented as a treatment for defects of human eyesight without resort to glasses, drugs, or surgery. Such devices consist of a so-called "eye tester" and a so-called "eye adjuster," together with various charts, and the course of instruction consists of printed pamphlets designated as "Better Eyesight System" and "Training the Eyes to See Correctly."

PAR. 2. In the course and conduct of his aforesaid business respondent causes said devices and the accompanying courses of instruction, when sold, to be transported from his place of business in the State of Minnesota to purchasers thereof located in other States of the United States, and maintains, and has maintained, a course of trade in said devices and courses of instruction in commerce between and among the various States of the United States.

PAR. 3. Respondent, a public school teacher who is still engaged in that work, began having difficulty with his eyes about 1922 and was told that he had astigmatism and strabismus. Over a period of years he purchased and used various eyeglasses but found it necessary to have them changed from time to time. About 1932 he read a book called "Instantaneous Personal Magnetism" in which certain eye exer-

cises were recommended. After using the recommended exercises regularly for about two months he found that he was able to discard his eyeglasses, and has not since used such glasses. Respondent suggested the use of such exercises to some of his pupils, who were apparently benefited thereby. He became familiar with various courses for the self-treatment of faults of vision by exercise, massage, and other so-called natural methods such as the Macfadden system for strengthening the eyes, the Doctor Bates system, the Barrett Institute of Natural Eyesight system, and the Doctor Richardson system.

About 1933 respondent conceived the idea of preparing a course of instruction for sale to others, and did prepare such a system of exercises based upon his reading and his personal experience. Respondent's devices and accompanying courses of instruction have been sold to numerous purchasers. The price charged by respondent originally was \$1, which was subsequently increased to \$2, and subsequently to \$3. The instructions and devices have been changed or modified from time to time by respondent, the most recent changes having been made in 1942. Respondent is not a graduate of, nor has he attended, any medical school. His knowledge of medicine and of the anatomy of the human eye and the treatment of defects or diseases thereof is limited to such information as he has acquired by reading.

PAR. 4. In the course and conduct of his aforesaid business respondent, by means of the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said devices and courses of instruction; and respondent by various means has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said devices and courses of instruction 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 aforesaid, by advertisements in periodicals and by circulars, leaflets, pamphlets, letters, and other advertising literature, are the following:

NEW SYSTEM IS REVOLUTIONARY.

This new system does not require glasses, medicines, or drugs of any kind. You do not have to submit to any "trick" diets or expensive treatments. You

do not need to refrain from going to shows. In fact, attending a reasonable number of shows will *actually improve* the eyesight.

* * * * *
 You, too, should begin using this system. *It will improve your eyesight!!*
 * * * * *

I have followed the instructions on "Training the Eyes to See" to the best of my ability and already my headaches and nervousness have disappeared.

* * * * *
 * * * I followed the simple instructions faithfully and at the end of ten days, I noticed a great change in my eyes. I lost that tired feeling, my eyes became clear and strong, and I found that I could discard my glasses.
 * * * * *

Learn how to SEE again!
 Naturally * * *
 Safely * * *
 And without drugs!

* * * * *
 THE EYE TESTER: A new invention (patent applied for) which enables you to quickly and easily test your eyes right in your own home.

THE EYE ADJUSTER: Another invention which actually "adjusts" your eyes and makes each eye better able to see alone as well as in harmony with the other eye.

* * * * *
 SEE Better. Correct nearsightedness, astigmatism, and strabismus without glasses, drugs or surgery.
 * * * * *

PERFECT Eyesight without glasses.
 * * * * *

Properly fitted glasses correct the distortion of the image making your vision clear and distinct. But glasses *do not remove* the *basic cause* of faulty vision any more than a crutch will cure a broken leg. You know of course that lenses in your glasses must be changed from time to time—and the pitiful part of these changes is that stronger and stronger lenses must be used.

* * * * *
 * * * But in most cases glasses tend to hide the beauty and charm of naturally magnetic eyes, because they seldom fit the contour of the face.

* * * They do not—*cannot*—solve your problem of falling eyesight.
 * * * * *

Lazy muscles, I found, forget how to work and must be trained in a *natural* way, without "eye crutches," to again do their *natural* job.

* * * If everyone would spend five minutes a day doing what you did, ninety percent of the physical defects of the eyes would be removed.

PAR. 5. By the use of statements such as those set out in the preceding paragraph respondent has represented, directly or by implication, that his system of eye treatment, consisting of the said devices and courses of instruction, is new and revolutionary; that by means of the "eye tester" a person can quickly and easily test his eyes; that by means of the "eye adjuster" a person can adjust his eyes and make each eye better able to see alone as well as in harmony with the other eye; that the use of said system will improve the eyesight, will eliminate head-

aches and nervousness, will overcome tired feeling and cause the eyes to become clear and strong; that said system will correct nearsightedness, astigmatism, and strabismus without resort to glasses, drugs, or surgery; that the use of said system will result in perfect eyesight without glasses and will eliminate the need of drugs, glasses, and surgery in the treatment of poor eyesight; that properly fitted glasses do not solve the problem of failing eyesight, do not correct failing eyesight, and that stronger lenses must be used from time to time; that the use of glasses causes the eye muscles to become lazy, and consequently they do not perform their natural functions; that 90 percent of the physical defects of the eyes can be remedied by the use of respondent's devices and courses of instruction.

PAR. 6. There are many causes for defective vision, including errors of refraction, various diseases of the eyes, toxemias, and inherited faults or imperfections in the visual organs. Respondent's devices and courses of instruction are the same regardless of the cause of the defective vision of any purchaser; that is, the same treatment is recommended by respondent without regard to the nature of the visual defect. Respondent's system is not new or revolutionary but was taken with modifications and adaptations from various other systems of eye treatment by so-called natural methods.

Respondent's "eye tester" simply functions as a means of measuring the degree of the user's visual perception, but does not enable the user to determine the cause of any visual defect or in any way to diagnose any visual defect which he may have. Respondent's "eye adjuster" is, in effect, a convenient means of shutting off the vision of one eye so as to permit the unaided use of the other. This device does not enable an individual to adjust his eyes and make either eye see better alone or in harmony with the other eye.

The vision of an individual may be affected by his general physical condition or by illness or disease not directly related to the eyes and may improve with any improvement in his state of health. A "lazy" condition of the muscles of the eyes may be due to fatigue. Headaches and nervousness may be due to eye strain and also may be due to numerous other causes. Nearsightedness is a physical defect of the eye and is due to the fact that light entering the eyeball focuses in a plane in front of the retina. Astigmatism is a defect of the curvature of the refractive surfaces of the eye in which rays of light are not focused to a single point but form a diffuse area on the retina. These defects are not subject to correction by respondent's devices or courses of instruction. Strabismus is a physical defect of the eyes in which there is a deviation of one of the eyes from its proper direction so that visual axes cannot be directed simultaneously at the same objective point.

When exercise is prescribed in such cases of muscular imbalance proper treatment requires knowledge of the cause and nature of the particular conditions existing in each case and adaptation to the needs of each such case. The use of respondent's devices and course of instruction may in some instances be of some benefit in tending to correct conditions of muscular imbalance. The use of respondent's devices and course of instruction will not result in perfect eyesight; they will not eliminate the need of drugs, glasses, and surgery in the treatment of poor eyesight; and they will not correct 90 percent of the physical defects of the eyes, or any material percentage of such defects.

Properly fitted eyeglasses correct many faults of vision and it is not necessary in all cases to from time to time obtain stronger lenses. In fact, in some instances individuals may in the course of time be enabled to discard the use of glasses entirely. The use of properly fitted glasses does not cause the eye muscles to become lazy or prohibit them from performing their natural functions.

PAR. 7. The use by 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 and misleading advertisements are true, and induces, and has induced, the purchasing public by reason of such belief, so induced, to purchase substantial quantities of respondent's said devices and courses of instruction.

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, 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 briefs filed herein by counsel for the Commission and counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Arthur Jacobson, an individual, his agents, representatives, and employees, directly or through any cor-

porate or other device, in connection with the offering for sale, sale, or distribution of his system for the treatment of defects of the human eye or conditions resulting therefrom, which system consists of devices designated as an "eye tester" and as an "eye adjuster" and charts and courses of instruction designated as "Better Eyesight System" and as "Training the Eyes to See Correctly," or of any other system, devices, or courses of instruction which are substantially similar in character to the present system, devices, or courses of instruction, whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly:

1. 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 represents, directly or through inference:

(a) That respondent's devices or courses of instruction are a new or revolutionary system for the treatment of defects of human vision.

(b) That the use of respondent's devices or courses of instruction, either separately or in conjunction with one another, will eliminate headache or nervousness, overcome tired feeling, cause the eyes to become clear and strong, enable the user to discard glasses, or result in perfect eyesight.

(c) That the use of respondent's devices or courses of instruction, either separately or in conjunction with one another, will correct nearsightedness or astigmatism, or eliminate the need of drugs, glasses, or surgery in the treatment of poor eyesight.

(d) That respondent's devices or courses of instruction, either separately or in conjunction with one another, constitute a competent or effective treatment of, or remedy for, defects of vision or conditions resulting therefrom, or have any therapeutic value in the treatment of defects of vision or conditions resulting therefrom in excess of possibly assisting toward the correction of strabismus in cases where the particular exercise recommended is adapted to the needs of the particular case.

2. Disseminating, or causing to be disseminated, by any means, any advertisement for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said devices and courses of instruction, 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 him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Complaint

IN THE MATTER OF
NATURE'S HERB COMPANY

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

Docket 4601. Complaint, Sept. 29, 1941—Decision, Jan. 9, 1942

Where a corporation engaged in interstate sale and distribution of a preparation known as Sterling Capsules; in advertisements in newspapers and periodicals, circulars, leaflets, and other advertising literature—

(a) Represented that said product constituted a competent, effective, and remarkable cure or remedy for arthritis, rheumatism, sciatica, lumbago, neuralgia, and neuritis; would permanently relieve pains, aches, stiffness, and soreness in stubborn cases of such conditions; and would produce amazing and remarkable results;

The facts being its value in the treatment of said conditions was limited to that of a laxative or cathartic and a mild analgesic which would afford temporary relief from pain; and

(b) Failed to give adequate directions for using said capsules and to reveal that the preparation contained gelsemium root, use of which drug, under usual conditions or those described in said advertisements, might have injurious consequences unless the dosage was limited to two or three days; and

(c) Failed further in said advertisements to give adequate warning that said preparation was a laxative or cathartic, depending on dosage; that it was potentially dangerous, and not to be taken by one suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting, or other symptoms of appendicitis;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, and thereby inducing it to purchase said product:

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

Mr. James L. Baker for the Commission.

Mr. Clinton Robb, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Nature's Herb 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, Nature's Herb Co., is a corporation, created, organized and existing under and by virtue of the laws of the

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State of California, with its office and principal place of business at 1260 Market St., San Francisco, Calif.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain medicinal preparation advertised as Sterling Capsules.

In the course and conduct of its business, the respondent causes said medicinal preparation, 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.

Respondent maintains and, at all times mentioned herein, has maintained, a course of trade in said medicinal preparation, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing, the dissemination of, false advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act.

Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by circulars, leaflets, and other advertising literature are the following:¹

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set forth herein, the respondent represents and has represented, directly and by implication, that its medicinal preparation, advertised as Sterling Capsules, constitutes a competent, effective, and remarkable cure or remedy for arthritis, rheumatism, sciatica, lumbago, neuralgia, and neuritis; that its use will permanently relieve pains, aches, stiffness, and soreness in stubborn cases of the aforesaid condition; and that its use will produce amazing and remarkable results.

¹ The quoted matter set forth at length in the complaint at this point, in which respondent purports to describe the qualities and effectiveness of its said preparation, is also set forth in the findings, *infra*, at p. 509, and for that reason is here omitted in the interest of brevity.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact the preparation sold and distributed by the respondent as aforesaid, advertised as Sterling Capsules, is not a competent, effective, or remarkable cure or remedy for arthritis, rheumatism, sciatica, lumbago, neuralgia, or neuritis and has no substantial therapeutic value in the treatment of said conditions. Its use will not permanently relieve pains, aches, stiffness, and soreness in cases of the aforesaid condition. Furthermore, said preparation is of no therapeutic value except as a laxative or a cathartic which will temporarily evacuate the bowels and as a mild analgesic which will afford temporary relief from pains associated with the above-mentioned conditions.

PAR. 6. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions presumed in such advertisements, under such conditions as are customary or usual.

In truth and in fact, said preparation is dangerous to health in that its cumulative effect in the system may result in chronic local irritation of the alimentary tract, gastrointestinal disturbances, collapse, or other physical impairment. The danger of such injury may be avoided only by limitation of dosage to a period of not more than 2 or 3 days.

Furthermore, respondent's said preparation is a laxative or a cathartic, depending upon dosage, and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting, or other symptoms of appendicitis. Its frequent or continued use may result in dependence on a laxative.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its preparation, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and 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 September 29, 1941, issued, and on October 3, 1941, served its complaint in this proceeding upon respondent, Nature's Herb Co., a corporation, charging it with the use of unfair and deceptive acts or practices in commerce in violation of the provisions of said act. On the 28th day of October 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 and its counsel, Clinton Robb, 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. 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 this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Nature's Herb Co., is a corporation duly organized and existing under the laws of the State of California with its office and principal place of business at 1260 Market Street, San Francisco, Calif.

PAR. 2. For several years last past respondent has been and now is engaged in the business of distributing and selling, in commerce among and between the various States of the United States and in the District of Columbia, a preparation known and advertised as Sterling Capsules.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and caused to be disseminated, and in some instances now is disseminating and causing to be disseminated, certain advertisements concerning its product, Sterling Capsules, by

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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 caused to be disseminated, and in some instances now is disseminating and causing to be disseminated, certain 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 Sterling Capsules in commerce, as commerce is defined in the Federal Trade Commission Act.

Among, and typical of, the statements contained in the aforesaid advertisements, so disseminated and caused to be disseminated, by United States mails, by advertisements in newspapers and periodicals, by circulars, leaflets, and other advertising literature, are the following:

NEURITIS, RHEUMATISM

ARTHRITIS

No Relief, No Cost!

STERLING CAPSULES must relieve pains, aches, stiffness, and soreness, or no cost. If tired of spending money without getting definite benefit, call or write for full particulars regarding STERLING CAPSULES and our money-back guarantee.

NATURE'S HERB COMPANY, Div. 156,
1260 Market St., San Francisco.

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DON'T BE A SLAVE TO

ARTHRITIS

RHEUMATISM, NEURITIS

Learn about the amazing relief others have obtained from STERLING CAPSULES. Pains, aches, stiffness and soreness must soon be alleviated or no cost to you. If tired of spending money without getting definite help call or write for full particulars regarding STERLING CAPSULES and our money-back guarantee.

NATURE'S HERB COMPANY, Div. 190,
1260 Market St., San Francisco.

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NEURITIS, RHEUMATISM

ARTHRITIS

No Relief, No Cost!

STERLING CAPSULES have given excellent results in stubborn cases where other methods failed. They must relieve pains, aches, stiffness, and soreness, or no cost. If tired of spending money without getting definite benefit, call or write for full particulars regarding STERLING CAPSULES and our money-back guarantee.

NATURE'S HERB Co., Div. 136,
1260 Market St., San Francisco.

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NEURITIS, RHEUMATISM

ARTHRITIS

No Relief, No Cost!

STERLING CAPSULES must relieve the pains and aches to your satisfaction or no cost. This offer is open to every sufferer who obtains the capsules at our store and takes them as directed for thirty days. If tired of spending money without getting satisfactory results, call or write for full particulars regarding STERLING CAPSULES and our money-back guarantee.

NATURE'S HERB CO., Div. 314,
1260 Market St., San Francisco.

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ARE YOU A SLAVE TO PAINS OF

ARTHRITIS

RHEUMATISM, NEURITIS?

If so we want you to try STERLING CAPSULES on our written guarantee of money back if they fail to relieve the pains and aches to your satisfaction after taking as directed for thirty days. This offer is open to every sufferer who buys the capsules at our retail store. Call or write for full particulars regarding STERLING CAPSULES and copy of guarantee.

NATURE'S HERB CO., Div. 322,
1260 Market St., San Francisco.

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DON'T BE A SLAVE TO

ARTHRITIS

RHEUMATISM, NEURITIS

Learn about the amazing results given by STERLING CAPSULES in stubborn cases. Pains, aches, stiffness, and soreness must soon be relieved, or no cost to you. If tired of spending money without getting satisfactory relief, write for full particulars regarding STERLING CAPSULES and our money-back guarantee.

NATURE'S HERB CO., Div. 22,
1260 Market St., San Francisco, Calif.

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STERLING CAPSULES

A highly effective combination of medicines for the relief of Pains, Aches, Stiffness, or Soreness due to RHEUMATISM, ARTHRITIS, SCIATICA, LUMBAGO, NEURALGIA, or NEURITIS. Contains no narcotics—no dope of any kind. Sterling Capsules have proven to be one of the most remarkable medicinal preparations ever offered by us for alleviating the above conditions. Men and women who had suffered a long time, trying one treatment after another without getting more than slight temporary relief, tell us that their pains and aches have not returned since taking Sterling Capsules.

Sterling Capsules are Recommended for the Following: * * *

Pain, stiffness, or soreness in muscles of the neck, shoulders, arms, legs, hips, or back.

Dull pain at the back of the neck, often accompanied by severe headache.

Gnawing pain, numbness, tingling or tenderness along the course of the sciatic nerve, which extends down the thigh and leg to the sole of the foot.

Extreme stiffness and soreness in muscles at the small of the back caused by lumbago. Agonizing pain is usually felt when the sufferer attempts to sit down or get up.

Dull, burning pain or soreness in joints of the toes, fingers, ankles, arms, knees, or hips resulting from arthritis.

SOLD ON A MONEY-BACK GUARANTEE OF SATISFACTION

We guarantee to refund your money if Sterling Capsules should fail to give satisfactory results after taking them as directed for thirty days.

A month's supply of three bottles costs only \$5. Single bottle sufficient for 10 days, costs \$2.00. Our money-back guarantee applies to every person who has taken THREE bottles within 30 days, whether purchased singly or all at one time. This guarantee is reserved exclusively for persons who buy the capsules direct from us at retail.

NATURE'S HERB REMEDY

1260 Market St.

San Francisco, Calif.

PAR. 4. The statements hereinbefore set forth and other statements similar thereto not specifically set forth herein, represents that respondent's medicinal preparation, Sterling Capsules, constitutes a competent, effective and remarkable cure or remedy for arthritis, rheumatism, sciatica, lumbago, neuralgia, and neuritis; that its use will permanently relieve pains, aches, stiffness, and soreness in stubborn cases of the aforesaid conditions; and that its use will produce amazing and remarkable results.

PAR. 5. In truth and in fact the preparation sold and distributed by the respondent as aforesaid, advertised as Sterling Capsules, is not a competent, effective, or remarkable cure or remedy for arthritis, rheumatism, sciatica, lumbago, neuralgia, and neuritis, and has no substantial therapeutic value in the treatment of said conditions. The therapeutic value of Sterling Capsules is limited to that of a laxative or cathartic which will temporarily evacuate the bowels and to that of a mild analgesic which will afford temporary relief from pain associated with the above-named conditions.

PAR. 6. The respondent's advertisements, so disseminated, fail to reveal adequate directions for using Sterling Capsules and that the present formula for this preparation contains Gelsemium Root, the use of which drug, under the conditions described in said advertisements or under customary or usual conditions, may have injurious consequences and be potentially dangerous to health unless the dosage is limited, under said present formula, to not more than two or three days.

The respondent's advertisements further fail to reveal adequate warning that said preparation is a laxative or cathartic, depending

on dosage; and that it is potentially dangerous and that it is not to be taken by one suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting, or other symptoms of appendicitis.

PAR. 7. The use by the respondent of the foregoing statements and representations with respect to its preparation, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and 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, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which provides among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Nature's Herb Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its medicinal preparation advertised as Sterling Capsules, or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that said prepa-

ration constitutes a competent or effective cure or remedy for arthritis, rheumatism, sciatica, lumbago, neuralgia, or neuritis; or that said preparation is of any therapeutic value in excess of a mild analgesic which may afford temporary relief from pain associated with the aforesaid diseases or conditions, and in excess of a laxative or cathartic which will temporarily evacuate the bowels; or which advertisement fails to reveal (a) that said preparation may be injurious to health unless its dosage is limited to a period of 2 or 3 days; and (b) that said preparation should not be used by persons suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis; provided, however, that if the directions for use of said preparation, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain warnings of the potential dangers in the use of said preparation as hereinabove set forth, such advertisement need contain only the cautionary statement: CAUTION, USE ONLY AS DIRECTED.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fails to comply with the affirmative cautionary requirements as set forth in said paragraph.

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

IN THE MATTER OF
HIRAM CARTER, INC., AND S. FRED GRIFFIN

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

Docket 4101. Complaint, Apr. 23, 1940—Decision, Jan. 12, 1942

Where a corporation and an individual who was its president and principal owner and directed and controlled its sales policies and other activities; engaged in interstate sale and distribution of six medicinal preparations including a salve, collectively designated as "Old Surgeon's" or "Old Surgeon's Remedy" or "Old Surgeon's Double Duty Remedy," together comprising a treatment divided into a so-called preparatory course lasting for 5 days to be followed by a second course for an indefinite period; by various advertisements distributed through the mails and otherwise, directly or by implication—

- (a) Represented that their said products constituted a cure or remedy, or a competent and effective treatment for impotence, lost energy, indigestion, rheumatism, asthenia, neurasthenia, general debility, neuritis, polyneuritis, and arthritis; and
- (b) Represented that said preparations would prevent premature old age and would rejuvenate those who had been overcome by the vicissitudes thereof; and that their use would restore and beneficially affect the functioning of exhausted glands, nerves, or organs;

The facts being that the combination of drugs involved in said treatment did not constitute a remedy or a competent treatment for the conditions named; said "Old Surgeon's" had no therapeutic value except for temporarily decreasing pain or discomfort; had no influence on the underlying causes of "general debility"; would not prevent premature old age, or rejuvenate its victims; would not restore or benefit exhausted glands, nerves, or organs; and had no therapeutic usefulness in excess of its laxative and analgesic qualities except in cases of anemia due to iron deficiency or in cases of deficiency of thiamin chloride, riboflavin, or nicotinic acid; and

- (c) Represented that the price at which its said preparations were offered for sale was special or reduced and much less than the usual price;

Facts being that "Old Surgeon's" sold not for \$5.00 as represented, but for approximately \$1.94, which was not a special or reduced price but that at which preparations in question were customarily offered for sale in the regular course of business; and

- (d) Represented that their physical plant, equipment and facility was greater than was the fact through use upon their letterheads and stationery of an exaggerated depiction of their purported place of business, showing a large two or three story building;

When in fact, their business occupied two office rooms and a loft on the second floor of a moving picture theatre;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public—members of which prefer to patronize large, well-established manufacturers and dealers because of the belief that they are more reliable and afford better service and other advantages—into the mistaken

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belief that representations and implications above set forth were true and into the purchase of products in question, by reason thereof:

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. John W. Addison* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. R. P. Bellinger 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 Hiram Carter, Inc., a corporation, and S. Fred Griffin, 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, Hiram Carter, 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 5706 Hoffman Drive, Elmhurst, Long Island, N. Y. The respondent, S. Fred Griffin, of the same address, is president and principal owner of said corporation and directs and controls the sales policies and other activities of the said corporate respondent with respect to the acts and practices herein described.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of various medicinal preparations, which are designated generally as Old Surgeon's, Old Surgeon's Remedy, and Old Surgeon's Double Duty Remedy, in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause said 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 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 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, in circulars, pamphlets, and other printed or written matter, all of which are distributed in commerce between and among the various States of the United States and in the District of Columbia, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said 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 caused to be disseminated as aforesaid are the following:

Pictures of a dejected, haggard, worried-looking man, followed by pictures, apparently of the same man, in robust health and in a bright, gay, and cheerful mood, with the following statements directly underneath:

He's listless and low, sleeps poorly, nerves on edge, bothered with indigestion and sundry aches and pains, but worst of all his strength seems to have ebbed away so he's only half the man he used to be.

Back on the job again feeling tip top. Hard work means nothing now—and after a good day's work he feels like going out evenings for a good time. Life is worth living once more. He tells all his friends about Old Surgeon's and he's sending his photograph and testimonial for the benefit of others who need the same kind of help. His message is "Go thou and do likewise."

In circular letters:

* * * they can't say exactly what is wrong but they know they have lost much of their force and get-up; sleep is disturbed maybe more or less casual rheumatism pains, indigestion, irritable, etc.—what worries them most being, they feel generally way below what they know they ought to and nothing they do for it seems to hit the spot.

It is astonishing how many there are living at 50 percent of their normal usefulness and spirit, always drugged by intestinal pollution—and never suspecting the cause of it all.

I want you to expect a great deal from Old Surgeon's.

You want results as quickly as possible, of course.

You are anxious to feel stronger and livelier, and better able to stand the strain of every-day life.

Now about the costs again. I promised to keep them low enough to be within your reach. The full price for one complete set of Old Surgeon's is \$5.00 and many have said if I charged them ten times \$5.00 and more they got their money's worth over and over again. But during these troubled days when

everything is selling for half price or less I don't expect folks to pay what Old Surgeon's is *worth*. Neither do I ask you to pay the full price in advance.

What I am willing to do is to provide the needed course I am counting on for renewed uplift—results to make you *well satisfied*—and charge you only for costs of medicines, postage, etc.

Read about Ingredient A—how it effects the nervous system—how it is invaluable in subdued *energy* and *weakness*—whether general or limited to a single function.

How it sharpens the mental faculties and influences a more cheerful and contented frame of mind. How its value as a tonic in *stimulating the flagging forces of the aging*—"can hardly be over-estimated." How Ingredient B is the outstanding agent among all known medicines for the purpose of increasing red blood cells, and is prescribed with benefit to the feeble, in sluggishness of functions, and in all run-down conditions.

How Ingredient C has the peculiar action of special vascular dilation, and combined with Ingredient A, raises the sensitiveness of all reflexes and impulses.

How Ingredient D is of distinct aid in *improving digestion*, improves the gastric secretion and spontaneous action—and promotes *constructive regeneration*.

How Ingredient E increases the flow of bile and is a *diuretic stimulant to the kidneys*, relieves *intestinal poisoning* influences metabolism by augmenting urea and elimination of uric acid—and is particularly serviceable in *mitigating pains of subacute rheumatism*.

Read carefully what is said about the mischievous effects, and dangers, coming from the stagnating contents of the Intestinal canal, and how *seeming regularity of the bowels is often misleading*. The importance of proper hygienic measures to correct this condition, and the value of Ingredient F for this purpose. Such are the words of medical authority, the sum of all truth obtainable as known to this group of scientists.

They tell you *how it works out in practice* how they had been troubled with indigestion, "nerves," weakness, pains, felt continually tired-out, miserable and low—all before their time.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondents represent that their medicinal preparations designated as Old Surgeon's, Old Surgeon's Remedy, and Old Surgeon's Double Duty Remedy, are a cure or remedy or a competent and effective treatment for impotence or lost energy, indigestion, rheumatism, asthenia, neurasthenia, gout, sciatica, general debility, neuritis, and arthritis; that said preparations will prevent premature old age and will rejuvenate those who have been overcome by the vicissitudes of old age; that the use of such preparations will restore or beneficially affect the functioning of exhausted glands, nerves, or organs; that the price at which said preparations are offered for sale is a special or reduced price and is much less than the price at which said preparations are customarily offered for sale in the normal and regular course of business.

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PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact said preparations are not a cure or remedy or a competent or effective treatment for lost energy, asthenia, neurasthenia, general debility or general weakness and possess no therapeutic value in connection with such disorders. Said preparations are not a cure or remedy for indigestion, rheumatism, gout, sciatica, neuritis, or arthritis, and said preparations possess no therapeutic value in connection with the treatment of said conditions or disorders in excess of possessing slight laxative and analgesic properties. Said preparations will not prevent premature old age nor will they rejuvenate those who have been overcome by the vicissitudes of old age. The use of said preparations will not serve to restore or beneficially affect the functioning of glands, nerves, or organs. The price at which said preparations are offered for sale is in no sense a special or reduced price, but is the regular and customary price at which said preparations are offered for sale and sold in the normal and regular course of business.

PAR. 6. In addition to the representations hereinabove set forth, the respondents are also engaged in the dissemination of false and misleading advertisements through the use of an exaggerated pictorial representation of their place of business, appearing on circulars and other printed matter, depicting respondents' place of business as a large, two- or three-story building, and thereby creating the impression that their business is larger and more extensive than is actually the fact.

PAR. 7. In truth and in fact, respondents do not occupy a large, two- or three-story building in the operation of their said business, but merely occupy two small offices and a loft on the second floor of a building used principally by a moving picture theater.

PAR. 8. A substantial portion of the purchasing public has shown a marked preference for dealing with and purchasing products and merchandise from manufacturers or other dealers who operate on a large scale, have extensive plants and do a large volume of business, believing that by purchasing from such large concerns superior quality, better service, lower prices, and other advantages can be obtained.

PAR. 9. Respondents are further engaged in the dissemination of false advertisements by writing and transmitting letters through the United States mails to prospective purchasers, which letters are written in the first person, and thereby infer or imply that Hiram Carter in person is the writer thereof, and constitute in part a story of his implied recovery from various physical ailments by virtue of using Old Surgeon's remedies or products.

PAR. 10. In truth and in fact, the said Hiram Carter died several years ago. He was not the author of any of said letters.

PAR. 11. The use by respondents of the foregoing false, deceptive, misleading, and exaggerated statements, representations and implications with respect to respondents' preparations and business status, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations, and implications are true, and into the purchase of respondents' said products because of said erroneous and mistaken belief.

PAR. 12. 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 April 23, 1940, issued and subsequently served its complaint in this proceeding upon respondents Hiram Carter, Inc., a corporation, and S. Fred Griffin, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by attorneys 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 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. Respondent, Hiram Carter, 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 5706 Hoffman Drive, Elmhurst, Long Island, N. Y. Respondent S. Fred Griffin, of the same address, is president and principal owner of said corporation and directs and controls the sales policies and other activities of said corporate respondent 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 in commerce between and among the various States of the United States and in the District of Columbia of various medicinal preparations which are designated as "Old Surgeon's," or "Old Surgeon's Remedy," or "Old Surgeon's Double Duty Remedy." Respondents have caused said 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 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 aforesaid business respondents, by means of the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said medicinal preparations; and respondents, by various means, have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said medicinal preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated as aforesaid are the following:

Pictures of a dejected, haggard, worried-looking man, followed by pictures apparently of the same man in robust health and in a bright, gay, and cheerful mood, with the following statements directly underneath such pictures:

He's listless and low, sleeps poorly, nerves on edge, bothered by indigestion and sundry aches and pains. But worst of all, his strength seems to have ebbed away so he's only half the man he used to be.

Back on the job again feeling tip top. Hard work means nothing now—and after a good day's work he feels like going out evenings for a good time. Life is worth living once more. He tells all his friends about Old Surgeon's. And he's

sending his photograph and testimonial for the benefit of others who need the same kind of help. His message is "Go thou and do likewise."

Other representations are:

* * * they can't say exactly what is wrong but they know they have lost much of their force and get-up, sleep is disturbed, maybe more or less casual rheumatism pains, indigestion, irritable, etc.—what worries them most being, they feel generally way below what they know they ought to. And nothing they do for it seems to "hit the spot."

* * * * *
It is astonishing how many there are living at 50 percent of their normal usefulness and spirit, always drugged by intestinal pollution—and never suspecting the cause of it all.

* * * * *
I want you to expect a great deal from Old Surgeon's.

* * * * *
You want results as quickly as possible, of course.

You are anxious to feel stronger and livelier, and better able to stand the strain of everyday life.

Now about the costs again. I promised to keep them low enough to be within your reach. The full price for one complete set of Old Surgeon's is \$5.00 and many have said if I charged them ten times \$5.00 and more they got their money's worth over and over again. But during these troubled days when everything is selling for half price or less I don't expect folks to pay what Old Surgeon's is worth. Neither do I ask you to pay the full price in advance.

What I am willing to do is to provide the needed Course I am counting on for renewed uplift—results to make you *well satisfied*—and charge you only for costs of medicines, postage, etc.

* * * * *
Read about Ingredient A—how it effects the nervous system—how it is invaluable in *subdued energy* and *weakness*—whether general or limited to a single function.

How it *sharpen*s the *mental faculties* and influences a more cheerful and contented frame of mind. How its value as a tonic in *stimulating the flagging forces of the aging*—"can hardly be overestimated."

How Ingredient B is the outstanding agent among all known medicines for the purpose of increasing red blood cells, and is prescribed with benefit to the feeble, in sluggishness of functions, and in *all run down conditions*.

How Ingredient C has the peculiar action of special vascular dilation, and combined with Ingredient A, raises the sensitiveness of all reflexes and impulses.

How Ingredient D is of distinct aid in *improving digestion*, improves the gastric secretion and spontaneous action—and promotes *constructive regeneration*.

How Ingredient E increases the flow of bile and is a *diuretic stimulant to the kidneys*, relieves *intestinal poisoning*, influences metabolism by augmenting urea and elimination of uric acid—and is particularly serviceable in *mitigating pains of subacute rheumatism*.

Read carefully what is said about the mischievous effects, and dangers, coming from the stagnating contents of the intestinal canal, and how seeming *regularity of the bowels is often miscading*. The importance of proper hygienic measures to correct this condition, and the value of Ingredient F for this purpose.

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* * * They tell you how it works out in practice. How they had been troubled with indigestion, "nerves," weakness, pains, felt continually tired out, miserable, and low—old before their time.

* * * * *
All "PLAYED OUT" when PLAYTIME comes—and he used to be Brimming Over With Life!

* * * * *
* * * Among its many indications, perhaps loss of appetite, muscular weakness, low blood pressure, polyneuritis, neuritis, nervousness, irritability, excessive fatigue, retardment of senility, gastro-intestinal malfunction, lowering of tonicity or balance, when not attributable to definite disease, * * *.

Glow of Living—RECAPTURED

Here's the other—and *pleasanter side* of the picture. A well earned holiday after a week's hard work. He isn't as young as he used to be—he's past fifty in fact—but what of it?

He's married to the little woman beside him for twenty years—but as his wife laughingly remarks—he acts like a big boy without a care in the world. And is she proud of him?

There was a time in his life neither of them like to think about. It was those dark years when a strange, unhealthy "something" seemed to take the very life out of him.

She suffered too. How she missed those delightful hours of companionship—the wonderful family life that made her so happy before that awful change came over him.

PAR. 4. By the use of statements such as those set forth in the preceding paragraph respondents have represented, directly or by implication, that their medicinal preparations designated as "Old Surgeon's," "Old Surgeon's Remedy," and "Old Surgeon's Double Duty Remedy" are a cure or remedy, or a competent and effective treatment for impotence, lost energy, indigestion, rheumatism, asthenia, neurasthenia, general debility, neuritis, polyneuritis, and arthritis; that said preparations will prevent premature old age and will rejuvenate those who have been overcome by the vicissitudes of old age; that the use of such preparations will restore and beneficially affect the functioning of exhausted glands; nerves, or organs; and that the price at which said preparations are offered for sale is a special or reduced price and is much less than the price at which said preparations are customarily offered for sale in the normal and regular course of business.

PAR. 5. Respondents' "Old Surgeon's" treatment consists of six preparations which are designated and referred to as "No. 22," "No. 44," "No. 55," "No. 66," "No. 77," and "No. 88," respectively. The formulae for these preparations are as follows:

No. 22:

Magnesium Sulphate, 40 grains.

Phenolphthalein, 1 grain.

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Sodium Carbonate, 1 grain.

No. 44:

Sodium Salicylate, 4 2/10 grains.

Methylene Blue, ¼ grain.

No. 55, a salve for external application:

Methyl Salicylate, 2 parts.

Menthol, 1 part.

Guiacol, 1 part.

Lanolin, 8 parts.

No. 66, until about January 1, 1940:

Saccharated Ferrous Carbonate, 4 grains.

Quinine Sulphate, ¼ grain.

Extract Nux Vomica, 1/15 grain.

Yohimbine Hydrochloride, 1/18 grain.

Vitamin B₁, 25 International Units.

Riboflavin and other factors

No. 66, since about January 1, 1940

Quinine Sulphate 2¼ grains.

Iron Sulphate Exsiccated, 2 grains.

Thiamin Chloride, 200 International Units.

Riboflavin, 375 Gamma.

Nicotinic Acid, 2 milligrams.

No. 77:

Sodium Bicarbonate, 40 grains.

Citric Acid, 20 grains.

No. 88:

Cascara Sagrada, 1 grain.

And necessary filler.

The treatment recommended by respondents through the use of the aforesaid medicinal preparations is divided into a so-called preparatory course lasting for 5 days and followed by a second course to be continued for an indefinite period. The directions for the "preparatory course" provide for dissolving one "No. 22" powder in water, adding one "No. 77" powder, and taking immediately upon arising in the morning, followed by two "No. 44" pills after the noon meal and two more such pills after the evening meal. The same routine is to be followed on the second day. On the third day the combination of "No. 22" and "No. 77" is to be taken as before, with one "No. 44" pill after each of the three meals. On the fourth day one "No. 44" pill is recommended after each of the three meals, and the same routine is indicated for the fifth day. After the completion of this "preparatory course" the directions for the second course provide for taking four "No. 44" pills daily, one after each of the three meals and before going to bed on Mondays, Tuesdays, and Wednesdays of each week; and four "No. 66" pills daily, one after each of the three meals and before going to bed on Thursdays, Fridays, Saturdays, and Sundays of each week. "No. 88" pills are represented

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as a laxative and it is suggested that from one to five may be taken as needed to keep the bowels open. The "No. 55" salve is to be used when desired by applying to parts affected.

PAR. 6. The combination of "No. 22" and "No. 77" amounts to an alkaline laxative with the possible effect of purgation. The effect of this preparation is temporary only and wears off in a few days, leaving the individual as much or more constipated than ever. The therapeutic value of the preparation designated as "No. 44" is largely, if not entirely, that of sodium salicylate, which is an analgesic and anti-rheumatic and which may afford partial temporary relief from rheumatic pain or discomfort and partial relief from general discomfort in joints or muscles. When its use is discontinued the effects soon wear off. The methylene blue content in "No. 44" has no definitely established therapeutic usefulness. It is excreted by the kidneys and colors the urine blue or green, and this may have some psychological effect upon the patient.

The "No. 55" salve is a local analgesic and when applied locally is a mild irritant. It might serve the purpose of a counter irritant and result in dilating the cutaneous blood vessels, improving circulation through the skin at the point of application, affording a feeling of warmth, and having a tendency to relieve local pain. The effect of this preparation is temporary only.

In the form used until about 1940 the preparation designated as "No. 66" contained saccharated ferrous carbonate, which is useful in the treatment of anemia due to iron deficiency but has no therapeutic usefulness in anemia due to other causes. Quinine sulphate in sufficient quantities is a specific for malaria, but the amount contained in the preparation designated "No. 66" is insufficient to have any value in the treatment of malarial conditions although it may have some stomachic or tonic value. The active ingredient of nuxvomica contained in "No. 66" is strychnine and the dosage in the quantity recommended by respondent would have a mild stimulating action on the central nervous system and possibly some tonic value. The yohimbine hydrochloride content of "No. 66" is a drug which has not been recognized as having therapeutic usefulness. It has been suggested as an aphrodisiac but in the dosage contained in "No. 66" would not have any effect upon the normal person except possibly to cause vertigo, mental confusion, or irritation of the kidneys. In toxic doses it is likely to damage the kidneys. The Vitamin B content of this preparation might be useful in instances where the individual suffers from a deficiency, but such cases are not particularly common and the dosage is not sufficient for therapeutic purposes in cases of actual deficiency.

The formula used in "No. 66" since about the first of 1940 does not contain the extract of *nux vomica* or the yohimbine hydrochloride formerly used and the vitamin content has been changed. The quinine sulphate and the iron sulphate contained in the modified formula have the same therapeutic value and the same limitations as indicated for those ingredients of the original formula. Vitamin therapy is at present a somewhat uncertain field. There are certain deficiency diseases such as beriberi and pellagra which are effectively treated by the administration of vitamins. In the absence of vitamin deficiency, however, there is no demonstrated therapeutic value in the administration of vitamins.

The therapeutic content of the preparation known as "No. 88" is *casacara sagrada*, which is a mild irritant laxative.

PAR. 7. When taken as directed the combination of drugs designated by respondents as "Old Surgeon's" does not constitute a cure or remedy, or a competent or effective treatment, for impotence, lost energy, indigestion, asthenia, or neurasthenia. "Old Surgeon's" has no therapeutic value in the treatment of rheumatism, neuritis, polyneuritis, or arthritis except for a temporary decrease in pain or discomfort, and with respect to general debility it will have no influence on the underlying causes which produce the combination of symptoms so designated. "Old Surgeon's" will not prevent premature old age, nor will it rejuvenate those who have been overcome by the vicissitudes of old age. Its use will not restore or beneficially affect the functioning of exhausted glands, nerves, or organs. "Old Surgeon's" has no therapeutic usefulness in excess of its laxative and analgesic qualities except in those cases where there is an anemia due to iron deficiency or where there is a deficiency of thiamin chloride, riboflavin, or nicotinic acid.

The price of "Old Surgeon's" is not \$5, as represented, but is approximately \$1.94. This price of \$1.94 is not a special or reduced price but is the price at which such preparations are normally and customarily offered for sale in the regular course of business.

PAR. 8. Respondents also disseminate, as aforesaid, false and misleading advertisements through the use upon their letterheads and other stationery of an exaggerated pictorial representation of their purported place of business. These illustrations depict a large two- or three-story building. In fact respondents' business occupies two office rooms and a loft on the second floor of a building used as a moving picture theater. Members of the purchasing public have a preference for trading with or patronizing large, well-established manufacturers and dealers because of the belief that such concerns are more reliable, more responsible, afford better service, and other advantages.

PAR. 9. The use by respondents of the foregoing false, deceptive, misleading, and exaggerated statements, representations, and implications with respect to their medicinal preparations, the price thereof, and the size of their business establishment has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and implications are true, and into the purchase of respondents' said products because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices as herein 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, testimony and other evidence 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 argument 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 Hiram Carter, Inc., a corporation, its officers, agents, representatives, and employees, and S. Fred Griffin, an individual, his 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 the medicinal preparations designated as "Old Surgeon's," or any other medicinal preparation or preparations which are substantially similar in composition or possess substantially similar properties, whether sold under the same name or any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, 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 represents, directly or through inference—

- (a) That respondents' medicinal preparations constitute a cure or remedy, or a competent or effective treatment, for impotence, lost

energy, indigestion, asthenia, or neurasthenia, or will prevent premature old age, or will restore or beneficially affect the functioning of exhausted glands, nerves, or organs, or will rejuvenate those who have been overcome by the vicissitudes of old age;

(b) That respondents' medicinal preparations constitute a cure or remedy for rheumatism, neuritis, polyneuritis, or arthritis, or have any therapeutic value in the treatment of such conditions in excess of affording temporary partial relief from the symptoms of pain;

(c) That respondents' medicinal preparations have any therapeutic value in excess of that afforded by a laxative or analgesic in the treatment of any other diseases or conditions, except in cases of anemia due to iron deficiency or in certain conditions resulting from a deficiency of thiamin chloride, riboflavin, or nicotinic acid where such deficiency is adequately supplied by respondents' preparations under conditions of use;

(d) That the usual and customary prices at which respondents offer for sale or sell their medicinal preparations in the regular course of business are special or reduced prices, or less than the prices at which said preparations are customarily offered for sale or sold in the regular course of business.

2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

3. Representing pictorially, or otherwise, that the physical plant, equipment, and facilities owned, used, or occupied by respondents are greater than is the fact.

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
THE POWERINE COMPANY

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

Docket 4423. Complaint, Dec. 18, 1940—Decision, Jan. 13, 1942

Where a corporation engaged in competitive interstate sale and distribution of petroleum products to retailers and jobbers—

Furnished and distributed to its dealers its so-called "Right in the Palm of Your Hand" sales promotion plan for use in the sale and distribution of its said products to the consuming public in a manner involving operation of a game of chance, gift enterprise, or lottery scheme, under which customer of dealer, by pasting into the booklet provided 180 10-cent sales receipts, became entitled, according to the award designated and concealed within each booklet's gold seal, to "three quarts of corporation's motor oil, a grease job, or five, ten, or twenty gallons of gasoline, or to \$1, \$2 or \$20 in cash"; said corporation refunding such awards to retailers upon the return of the booklets; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries or games of chance in the sale of its products in accordance with said plan under which retailer dealer purchased from it and sold and distributed its said products in accordance therewith, and involving the sale of a chance to procure merchandise or sums of money of much greater value than the amounts to be paid therefor; contrary to the established public policy of the United States Government, and in violation of criminal laws, and in competition with many who are not willing to use any method involving chance or contrary to public policy and refrain therefrom;

With result that many dealers in and ultimate purchasers of such products were attracted by its said sales plan and element of chance involved therein and were thereby induced to purchase said products from it in preference to those of aforesaid competitors, and with capacity and tendency thereby to unfairly divert trade to it from them:

Held, That such acts and practices, under the circumstances as 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. Carrel F. Rhodes and *Mr. J. W. Brookfield, Jr.*, for the Commission.

Mr. Frank C. Myers, of Denver, Colo., for respondent.

COMPLAINT

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

Trade Commission, having reason to believe that the Powerine Co., a corporation, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, the Powerine Co., is a corporation organized and doing business under and by virtue of the laws of the State of Colorado with its offices and principal place of business located at Denver, Colo. Respondent is now and for more than a year last past has been engaged in the sale and distribution of petroleum products to retail dealers and jobbers. Respondent causes and has caused its products, when sold, to be shipped and transported from its aforesaid place of business in the State of Colorado to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now and has been for more than one year last past a course of trade by said respondent in such petroleum 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 petroleum products labeled "Powerine" and "Powerlube" to retail dealers and jobbers. In connection with the sale of said petroleum products, respondent distributes and has distributed to said dealers a so-called "Right in the Palm of Your Hand" device for use in the sale and distribution of said petroleum products to the consuming public in a manner involving the operation of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods employed in selling and distributing said petroleum products to the consuming public by means of said device are substantially as follows:

Respondent's "Right in the Palm of Your Hand" device consists of a booklet, together with a number of sales receipts or coupons. In the booklet are blank spaces provided for the pasting of 180 sales receipts or coupons. On the outside of the booklet is a gold colored seal under which are listed the prizes to be awarded when the spaces for the sales receipts or coupons are completely filled. The booklets which are distributed to the dealers and by them to

the consuming public contain the following legend: On the outside of said booklet appears—

RIGHT IN THE PALM OF YOUR HAND

(Gold colored seal here)

Read every word carefully in this book—it is of interest to you

Warning—Patent Pending

On the inside of the front page—

OUR APPRECIATION SALES PLAN

For each 10¢ you spend for any product at our Stations listed on the back of this book, you will be given a receipt. When you have filled this book with receipts, do not break the seal or it will become VOID. Present it to our Station Manager intact.

You will receive no less than: Three Quarts of Powerlube Motor Oil, a Grease Job, 5 Gallons of Gasoline, 10 Gallons of Gasoline, 20 Gallons of Gasoline, or you may receive \$1.00 in Cash, \$2.00 in Cash, or \$20.00 in Cash.

NO BLANKS

Buy All Your Needs From

POWER-LUBE

DEALERS AND DISTRIBUTORS

(Six pages for Sales Receipts Coupons follow)

The petroleum products, services or cash awards so designated and described under said seal vary in value in accordance with each individual booklet, and such designations or descriptions of said awards or prizes are effectively concealed from purchasers and prospective purchasers until the said receipts have been pasted on the six pages of each of the said booklets, and the gold colored seals thereon are then broken and removed therefrom. The said prizes or awards are thus distributed to the purchasing public wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's said petroleum products and devices expose the same to the purchasing public and sell and distribute such products in accordance with the above-described sales plans or methods. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries, gift enterprises, or games of chance in the sale of said products in ac-

cordance with the sales plans or methods hereinabove described. Such sales plans or methods have the tendency and capacity to, and do, induce the consuming or purchasing public to purchase respondent's said products in preference to like or similar products offered for sale and sold by its competitors.

PAR. 4. The sale of such products to the consuming public in the manner above described involves a game of chance or the sale of a chance to procure articles of said products or sums of money of much greater values than the amounts to be paid therefor. The use by respondent of said methods in the sale of its products and the sale of such products by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to the established public policy of the Government of the United States and in violation of criminal law. The use by respondent of said sales plans or methods has the tendency to unfairly hinder competition. Many persons, firms, and corporations who sell and distribute products in competition with the respondent as above described are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, products similar to those distributed by respondent are attracted by respondent's said sales plans or methods and by the element of chance involved in the sale of said products in the manner above described and are hereby induced to purchase said products from respondent in preference to similar products offered for sale and sold by said competitors of respondent who do not use the same or similar methods. The use of said methods by respondent has the capacity and tendency, because of said game of chance, gift enterprise or lottery scheme, to unfairly divert trade to respondent from its competitors who do not use the same or equivalent or similar methods.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission 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 18 A. D. 1940, issued and subsequently served its complaint on the respondent, the Powerine

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 said complaint were introduced by Carrel F. Rhodes, attorney for the Commission, and in opposition to the allegations of the complaint by Frank C. Myers, attorney for the respondent, before William C. Reeves, 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 upon 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 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, the Powerine Co., is a corporation organized and doing business under and by virtue of the laws of the State of Colorado, with its offices and principal place of business located at Denver, Colo. Respondent is now, and for more than two years past has been engaged in the sale and distribution of petroleum products to retail dealers and jobbers, which products are sold under the trade names of "Powerine" and "Powerlube." Respondent causes said products when sold, to be shipped and transported from its place of business in the State of Colorado 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 petroleum products in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale of petroleum products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its business and in connection with the sale and distribution of said petroleum products, respondent distributes to its said dealers a sales promotion plan designated "Right in the Palm of Your Hand" for use in the sale and distribu-

tion of said petroleum products to the consuming public in a manner involving the operation of a game of chance, gift enterprise, or lottery scheme. The sales promotion plan employed in selling and distributing said petroleum products to the consuming public is substantially as follows:

Respondent's sales promotion plan designated "Right in the Palm of Your Hand" consists of a booklet, together with a number of sales receipts or coupons. In the booklet are blank spaces provided for the pasting of 180 sales receipts or coupons. On the outside of the booklet is a gold colored seal under which is listed the prize to be awarded when the spaces for the sales receipts or coupons are completely filled. The booklets which are distributed to the dealers, and by them to the consuming public, contain the following legend: On the outside of said booklet appears—

RIGHT IN THE PALM OF YOUR HAND

(Gold colored seal here)

Read every word carefully in this book—it is of interest to you

Warning—Patent Pending.

On the inside of the front page—

OUR APPRECIATION SALES PLAN

For each 10¢ you spend for any product at our Stations listed on the back of this book, you will be given a receipt. When you have filled this book with receipts, do not break the seal or it will become void. Present it to our Station Manager intact.

You will receive no less than: Three quarts of Power-lube Motor Oil, a Grease Job, 5 Gallons of Gasoline, 10 Gallons of Gasoline, 20 Gallons of Gasoline, or you may receive \$1.00 in Cash, \$2.00 in Cash, or \$20.00 in Cash.

NO BLANKS

Buy All Your Needs From

POWER-LUBE

DEALERS AND DISTRIBUTORS

(Six pages for Sales Receipts Coupons follow)

The petroleum products or cash awards so designated and described under said seal vary in value in accordance with each individual booklet, and such designations or descriptions of said awards or prizes are effectively concealed from purchasers and prospective purchasers until

the said receipts have been pasted on the six pages of each of the said booklets, and the gold colored seals thereon are then broken and removed therefrom. The said prizes or awards are thus distributed to the purchasing public wholly by lot or chance.

PAR. 4. Retail dealers who purchase respondent's products, expose the same to the purchasing public, and sell and distribute such products in accordance with the above-described sales plans or methods and issue to purchasers a stamp or receipt covering cash purchases, in denominations of 10 cents each, and when the spaces of the booklet are filled with stamps or receipts in the equivalent of 10 cents each, the seal is removed from the outside of the first page of the booklet and the purchaser receives the award designated under such seal. When the award is paid to the purchaser in cash or merchandise, as therein provided, the booklet is returned by the retail dealer to the respondent, and the award so given is refunded to the retail dealer by the respondent. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries, gift enterprises, or games of chance in the sale of said products in accordance with the sales plans or methods hereinabove described. Such sales plans or methods have the tendency and capacity to, and do, induce the consuming or purchasing public to purchase respondent's said products in preference to like or similar products offered for sale and sold by its competitors.

PAR. 5. The sale of such products to the consuming public in the manner above described involves a game of chance or the sale of a chance to procure merchandise or sums of money of much greater values than the amounts to be paid therefor. The use by the respondent of said methods in the sale of its products, and the sale of such products by and through the use thereof and by the aid of said methods, is a practice of the sort which is contrary to the established public policy of the Government of the United States and in violation of criminal law. The use by respondent of said sales plans or methods has a tendency and capacity to unfairly hinder competition. Many persons, firms, and corporations who sell and distribute products in competition with the respondent, 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 which is contrary to public policy, and such competitors refrain therefrom.

PAR. 6. Many dealers in, and ultimate purchasers of, products similar to those distributed by respondent are attracted by respondent's said sales plans or methods and by the element of chance involved in the sale of said products in the manner above described, and are thereby induced to purchase said products from the respondent in preference to similar products offered for sale and sold by said competitors of

respondent who do not use the same or similar methods. The use of said methods by the respondent has the capacity and tendency, because of said game of chance, gift enterprise, or lottery scheme, to unfairly divert trade to respondent from its competitors who do not use the same or equivalent or similar methods.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceedings having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before William C. Reeves, 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 respondent, the Powerine Co., a corporation, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, the Powerine 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 petroleum products, 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, retail dealers or others, sales promotion booklets and stamps, or any other sales plans or devices which are to be used, or may be used, in the sale or distribution of petroleum products, or any other merchandise, to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. 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.

Complaint

34 F. T. C.

IN THE MATTER OF

BOULEVARD 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 3396. Complaint, Apr. 30, 1938—Decision, Jan. 15, 1942*

Where a corporation engaged in manufacture and in competitive interstate sale and distribution of candy, including certain assortments packed and assembled so as to involve the use of a lottery scheme when sold and distributed to consumers, a typical assortment consisting of a number of 1-pound boxes of candy, an additional article of merchandise, and a punchcard for use in sale and distribution thereof under a plan by which the chance selection of certain numbers entitled a purchaser to one of said boxes and purchaser of the last punch received the article of merchandise, the amount paid by a customer for his chances or his receipt of a free chance was dependent upon the particular number secured, and those failing to qualify as aforesaid for box of candy, retail value of which was greater than the cost of any punch, received nothing other than privilege of a punch;

Sold to wholesalers and jobbers aforesaid assortments, retailer purchasers of which exposed and sold same to the purchasing public in accordance with the aforesaid sales plan, and thereby 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 common law and criminal statutes and the United States Government, and in competition with those who do not use such methods;

With the result that many dealers and ultimate purchasers were attracted by said method of packing candy and the element of chance involved in sale thereof, and were thereby induced to deal in such candy in preference to its competitors who do not use such methods, whereby trade was unfairly diverted to it from them:

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

Before *Mr. Charles F. Diggs, Mr. Miles J. Furnas, Mr. Robert S. Hall, Mr. Lewis C. Russell, and Mr. John J. Keenan*, trial examiners.

Mr. D. C. Daniel for the Commission.

Pennish & Rashbaum, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Boulevard Candy Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a

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

PARAGRAPH 1. Respondent, Boulevard Candy 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 1925 South Western Avenue, Chicago, Ill. 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 transported from its principal place of business in Chicago, Ill., to purchasers thereof in the State of Illinois and in various other States of the United States and in the District of Columbia, at their respective places of business. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondent in such candy between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy in commerce 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 and jobbers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner:

This assortment is composed of a number of one-pound boxes of candy and an additional article of merchandise, together with a device commonly called a punch board. Purchasers punching numbers ending in "0" receive the same without charge. Purchasers punching numbers ending in 1, 2, 3, and 4 pay 1, 2, 3, and 4 cents, respectively. Purchasers punching numbers ending in 5, 6, 7, 8, and 9 pay 5 cents. When a punch is made from the board a number is disclosed. The board bears statements of legends informing prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a one-pound box of candy, and the purchaser of the last punch on the board is entitled to, and receives, the additional article of merchandise. A purchaser who does not qualify by obtaining one of the numbers calling for a box of candy, or by punching the last number on the board, receives nothing for his money other than the privilege of punching a number from the board. The num-

bers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated from the board. The retail value of each of said boxes of candy is greater than any of the designated prices of said punches. The boxes of candy are thus sold and distributed to the purchasing public wholly by lot or chance.

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

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

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to secure a box of candy. The use by respondent of said method in the sale of candy and the sale of candy by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the tendency unduly to hinder competition or to create a monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms and corporations who make and sell candy in competition with 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. 5. Many dealers in, and ultimate purchasers of, candy are attracted by respondent's said method and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said

candy so packed and sold by respondent in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or an equivalent or similar method. The use of said method by respondent has a tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent or similar method, to exclude from said candy trade all competitors who are unwilling to, and who do not, use the same or an equivalent or similar method because the same is unlawful, to lessen competition in said candy trade, to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent or similar method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent 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 method or an equivalent or similar method.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 30, A. D. 1938, issued and subsequently served its complaint on the respondent, Boulevard Candy Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of said complaint were introduced by P. C. Kolinski, D. C. Daniel, L. P. Allen, Jr., and J. W. Brookfield, Jr., attorneys for the Commission, and in opposition to the allegations of the complaint by Lewis E. Pennish and H. P. Kishner, attorneys for the respondent, before trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, 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, and oral argu-

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ment of counsel; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Boulevard Candy 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 1925 South Western Avenue, Chicago, Ill. Respondent is now, and for more than 4 years last past has been, engaged in the manufacture of candy, and in the sale and distribution thereof to wholesale dealers and jobbers. Respondent causes, and has caused, its products, when sold by it, to be transported from its place of business in Chicago, Ill., 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 candy in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its said business, the respondent is 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.

PAR. 3. In the course and conduct of its business, respondent sells, and has sold, to wholesale dealers and jobbers, certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner:

This assortment is composed of a number of 1-pound boxes of candy and an additional article of merchandise, together with a device commonly called a punch card. Purchasers punching numbers ending in 0 receive the same without charge. Purchasers punching numbers ending in 1, 2, 3, and 4, pay 1, 2, 3, and 4 cents, respectively. Purchasers punching numbers ending in 5, 6, 7, 8, and 9 pay 5 cents. When a punch is made from the board a number is disclosed. The board bears statements or legends informing prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a 1-pound box of candy, and the purchaser of the last punch on the board is entitled to, and receives, the additional article of merchandise. A purchaser who does not qualify by obtaining one of the numbers calling for a box of candy or by punching the last number

on the board receives nothing for his money other than the privilege of punching the number from the board. The numbers are effectively concealed from the purchasers and prospective purchasers until a punch has been made and the particular punch separated from the board. The retail value of each of said boxes of candy is greater than any of the designated prices of said punches. The boxes of candy are thus sold and distributed to the purchasing public wholly by lot or chance.

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

PAR. 4. Retail dealers who purchase respondent's said candy, directly or indirectly expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others, a means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth, and said sales plan has a tendency and capacity to induce purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 5. 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 secure a box of candy. The use by the respondent of said method in the sale of candy, and the sale of candy by and through the use thereof, and by the aid of said method, is a practice of a sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States.

PAR. 6. Many dealers in, and ultimate purchasers of, candy are attracted by respondent's said method and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent, in preference to candy offered for sale and sold by its competitors, with the result that trade has been diverted unfairly to the respondent from its competitors who are likewise engaged in the sale and distribution of candy in commerce among and between the various States of the United States, who do not use the same or an equivalent or similar method.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of re-

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spondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony, and other evidence taken before 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 examiner upon the evidence and exceptions filed thereto, 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, Boulevard Candy Co., a corporation, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Boulevard Candy Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of candy, or any other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy or any other merchandise so packed or assembled that sales of such candy or other merchandise to the public are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme.
2. Supplying to, or placing in the hands of, others push or pull cards, punchboards, or other lottery devices, either with assortments of candy or other merchandise, or separately, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling or distributing said candy or other merchandise to the public.
3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

Syllabus

IN THE MATTER OF
RETAIL COAL MERCHANTS 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 3911. Complaint, Oct. 5, 1939—Decision, Jan. 19, 1942

Where an association of all the retail coal dealers in and about Richmond, Va., with two or three exceptions, selling and distributing 80 to 90 percent of all the coal sold at retail in such trade area; and, as their competitors, purchasing the major portion of their coal from dealers in other States; together with the officers and the members thereof who were in competition with one another and with others in said trade area except as restricted by acts and practices below set forth;

Following their conception of a plan under which schedules of uniform prices, terms and conditions of sale on the various grades and varieties of coal sold were placed, at regular intervals, in the hands of all retailer members, who, in order to remain such, were required to establish and maintain such fixed schedules;

In pursuance of a scheme to compel a number of retail coal dealers in said city—who declined to join the association and to observe such fixed schedule of prices, etc., but continued to sell coal on a competitive basis, at prices usually substantially lower—to become members and maintain such prices, etc., through agreements with wholesale dealers supplying most of the coal shipped into Richmond, under which such wholesalers would refuse to sell or ship coal to any retailer in the area in question who was not a member or who, being a member, did not maintain the association's prices—

- (a) Conducted an intensive campaign among nonmember dealers to bring them into the association and threatened them with the loss of their sources of coal unless they became members;
- (b) Called on wholesale coal dealers and urged them under threat of boycott to cooperate with the association by refusing to sell coal to any dealer who was not a member thereof or who, being such, did not maintain association prices;
- (c) Attempted to induce such wholesalers to insert in their contracts with retailers a clause to the effect that if the dealer failed to conduct his business in conformity with the standards approved by his locality, the wholesaler would have the right to discontinue supplying coal under the contract;
- (d) Arranged joint meetings between the members of the association and wholesale coal dealers and there, under threat of boycott, sought and secured cooperation of latter;
- (e) Issued a list of "cooperators," showing the names of retailer members in one column and the names of certain wholesalers in the other, and distributed such list among the retailers and wholesalers named;

With the result that it became increasingly difficult for the twenty-odd non-member retailers in said city to obtain coal and they concluded it necessary to, and did, join the association in question, following which they had such difficulty no further; and

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Where three corporations and four partners, large wholesalers of coal or sales agents for operators of coal mines, selling and distributing the output of mines in West Virginia, Ohio, and Virginia, to retailers in various States, including the aforesaid association members—

- (f) Agreed with said association and the officers and members that they would not ship to nonmember retail coal dealers, in city aforesaid, or to those whose coal prices did not conform to those agreed upon;

With the result that said understanding and conspiracy had the effect of—

(1) Unlawfully restricting and restraining the movement in commerce of coal purchased by retail coal dealers in said city for resale in trade area in question and of thus restricting resale, and substantially enhancing prices of such coal to the consuming public, and maintaining prices at artificial levels, and otherwise depriving the public of benefits which would flow from normal competition; and of

(2) Eliminating price competition among members and between such members and other competitors in the resale of coal in the trade area in question; with tendency and capacity to create in such members a monopoly in the purchase of coal in interstate commerce for resale in said trade area, and in the sale of coal at retail therein:

Held, That such agreement, understanding, combination, and conspiracy, and the acts and things done in furtherance thereof, as above set forth, were all to the prejudice of the public and constituted unfair methods of competition in commerce.

Before *Mr. John W. Addison* and *Mr. Randolph Preston*, trial examiners.

Mr. Wilbur N. Baughman, *Mr. J. W. Brookfield, Jr.* and *Mr. Edward L. Smith* for the Commission.

Richardson & Kemper, of Bluefield, W. Va., for Bluefield Coal & Coke Co.

Hayden & Dalzell, of Washington, D. C., for Cabell Coal Co., Inc.

Brown, Jackson & Knight, of Charleston, W. Va., for Cabin Creek Consolidated Sales Co.

Hunton, Williams, Anderson, Gay & Moore, of Richmond, Va., for A. T. Massey Coal Co.

Barbour, Garnett, Pickett & Keith, of Washington, D. C., for Red Jacket Coal Sales Co.

Mr. George C. Peery, of Tazewell, Va., and *Mr. George D. Horning, Jr.*, of Washington, D. C., for Virginia Smokeless Coal Co.

Mahan, Bacon & White, of Fayetteville, W. Va., for White Oak Coal Co.

Blue, Dayton & Campbell, of Charleston, W. Va., for Wyatt Coal Sales 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 Retail Coal Merchants Association, hereinafter referred to as either "association respondent" or "respondent"; D. Walton Mallory, Edwin A. Newmann, A. Holland White, and Charles H. Hall, Jr., hereinafter referred to as either "officers respondents" or "respondents"; L. D. Wingfield and James L. Hatcher, as coowners of Wingfield-Hatcher Coal Co.; A. M. Hungerford, doing business as Hungerford Coal Co.; Massey-Wood & West, a corporation; Sydnor-Howey & Co., Inc., a corporation; D. W. Mallory & Co., Inc., a corporation; Ellison & Hawes, Inc., a corporation; W. E. Seaton & Sons, Inc., a corporation; and Gill Fuel Co., Inc., a corporation, separately and as members of respondent, Retail Coal Merchants Association, and as representatives of the members of said respondent as a class, hereinafter referred to as "members respondents" or "respondents"; Bluefield Coal and Coke Co., a corporation; Cabell Coal Co., Inc., a corporation; Cabin Creek Consolidated Sales Co., a corporation; A. T. Massey Coal Co., a corporation; Red Jacket Coal Sales Co., a corporation; George W. St. Clair, Robert Henry Moore, Mrs. Robert Henry Moore, Katherine St. Clair Santori, and Houston St. Clair, partners, doing business under the partnership name of Virginia Smokeless Coal Co.; White Oak Coal Co., a corporation; and Wyatt Coal Sales Co., a corporation; hereinafter referred to as either "wholesale dealers respondents" or 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, Retail Coal Merchants Association, is an association of coal dealers, organized on April 18, 1930, as a corporation, under the laws of the State of Virginia, with its principal office and place of business located at 209 Broad-Grace Arcade Building, Richmond, Va. The membership of said respondent is composed of approximately all the retail coal dealers located in and about Richmond, Va. The ostensible purpose of the respondent Association, according to its bylaws, is to establish and maintain a standard of honorable dealing in the retail coal business in that vicinity.

The names and addresses of the officers of said respondent, Retail Coal Merchants Association, who individually and as such officers of said respondent, are named as respondents herein, are:

D. Walton Mallory, president, c/o D. W. Mallory & Co., Inc.,
Richmond, Va.

Edwin D. Newmann, vice president, Richmond, Va.

A. Holland White, treasurer, Richmond, Va.

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Charles H. Hall, Jr., secretary, Retail Coal Merchants Association, 209 Broad-Grace Arcade Building, Richmond, Va.

The membership of said respondent, Retail Coal Merchants Association, constitutes a class so numerous and changing as to make it impracticable to specifically name them all as parties respondent herein. The following respondents, among others, are members of said respondent, Retail Coal Merchants Association, are fairly representative of the whole membership, and are named as respondents herein in their individual capacities, in their capacities as members of said respondent, Retail Coal Merchants Association, and as representatives of all members of said respondent, Retail Coal Merchants Association, as a class, including those not herein specifically named who are also made respondents herein :

L. D. Wingfield and James L. Hatcher, are coowners of the business operated as Wingfield-Hatcher Coal Company, with their office and principal place of business being located in Richmond, Va.

A. M. Hungerford, is the individual owner of the Hungerford Coal Company, which was established in 1925 and has his office and principal place of business located at 717 East Gray Street, Richmond, Va.

Massey-Wood & West, is a corporation, organized under the laws of the State of Virginia in 1928, with its office and principal place of business being located at Lombardy Underpass, Richmond, Va.

Sydnor-Howey & Co., Inc., is a corporation organized under the laws of the State of Virginia in 1913, with its principal place of business located in Richmond, Va.

D. W. Mallory & Co., Inc., is a corporation, organized and existing under the laws of the State of Virginia, with its office and principal place of business being located in Richmond, Va.

Ellison & Hawes, Inc., is a corporation, organized and existing under the laws of the State of Virginia, with its office and principal place of business being located at 530 East Main Street, Richmond, Va.

W. E. Seaton & Sons, Inc., is a corporation, organized under the laws of the State of Virginia in 1928, with its office and principal place of business being located at 1129 West Marshall Street, Richmond, Va.

Gill Fuel Co., Inc., is a corporation, organized and existing under the laws of the State of Virginia, with its office and

principal place of business being located at 21st and Decatur Streets, Richmond, Va.

PAR. 2. Respondent, Bluefield Coal & Coke Co., is a corporation organized and existing under the laws of the State of West Virginia, with principal offices located at Bluefield, W. Va.

Respondent, Cabell Coal Co., Inc., is a corporation organized and existing under the laws of the State of Virginia, with principal offices located at Covington, Va.

Respondent, Cabin Creek Consolidated Sales Co., is a corporation, organized and existing under the laws of the State of Delaware, with principal offices located at Cincinnati, Ohio.

Respondent, A. T. Massey Coal Co., is a corporation, organized and existing under the laws of the State of Virginia, with principal offices located at Richmond, Va.

Respondent, Red Jacket Coal Sales Co., is a corporation, organized and existing under the laws of the State of Delaware, with principal offices located at Columbus, Ohio.

Respondents. George W. St. Clair, Robert Henry Moore, Mrs. Robert Henry Moore, Katherine St. Clair Santori, and Houston St. Clair, are partners, doing business under the partnership name of Virginia Smokeless Coal Co., with their principal offices located at Tazewell, Va.

Respondent, White Oak Coal Co., is a corporation, organized and existing under the laws of the State of West Virginia, with principal offices located at Mount Hope, W. Va.

Respondent, Wyatt Coal Sales Co., is a corporation, organized and existing under the laws of the State of West Virginia, with principal offices located at Charleston, W. Va.

All of said wholesale dealer respondents are engaged in the wholesale coal business at the respective points of location hereinabove indicated.

PAR. 3. The members respondents of the association respondent, in the course and conduct of their respective businesses, sell and distribute a large percentage (probably 90 percent) of all the coal sold at retail in the trade area in and around Richmond, Va.

PAR. 4. Members respondents are in competition with one another and with other retail coal dealers in Richmond, Va., in selling, and seeking to sell, coal at retail in the trade area in and around Richmond, Va., except insofar as said competition has been hindered, lessened, restrained, or restricted, or potential competition among them forestalled, by the unlawful understanding, agreement, combi-

nation, and conspiracy, and the acts, policies, and practices done pursuant thereto, as hereinafter set out.

PAR. 5. Members respondents and their said competitors purchase practically all the coal necessary for the conduct of their respective businesses from producers whose mines and places of business are located in States other than the State of Virginia, and when said purchases are made, and as a part thereof, said producers regularly have shipped, or caused to be shipped, and do ship, or cause to be shipped, the coal from their respective mines and their respective places of business located in the several States of the United States, in commerce, into, through, and between the various States of the United States, to the member respondents and their said competitors located in Richmond, Va.

PAR. 6. The wholesale dealers respondents comprise large coal mine operators or sales agents therefor, who, in the course and conduct of their business, operate, or obtain the output of, various coal mines situated in the States of West Virginia, Ohio, and Virginia, and who, thereafter in the course and conduct of their business, sell and distribute said coal at wholesale to retail coal dealers located in the various States of the United States and in the District of Columbia, including the members respondents hereinbefore referred to, and as a part of said sales and distribution ship, or cause to be shipped, said coal from the afore-mentioned mines to the purchasers thereof located in States of the United States other than those in which said mines are situated.

PAR. 7. Said wholesale dealers respondents and members respondents, in the manner before described, maintain a constant current of trade in coal in commerce between and among the several States of the United States and particularly between the States of West Virginia, Ohio, and Virginia.

PAR. 8. For several years last past association respondent, officers respondents, members respondents, and wholesale dealers respondents, have entered into, and thereafter carried out, an understanding, agreement, combination, and conspiracy for the purpose, and with the effect, of unlawfully restricting, restraining, suppressing, and eliminating competition in, and monopolizing, the retail sale of coal in the trade area in and around Richmond, Va., purchased by said dealers in the manner hereinbefore described.

PAR. 9. Pursuant to this understanding, agreement, combination, and conspiracy, entered into by and between and among the aforesaid respondents, and in furtherance thereof, the said respondents have, among other acts and things, done the following:

(a) The wholesale dealers respondents have agreed with the members respondents, acting through and by means of the association respondent, not to ship, and they have refrained from shipping, coal from the mines of said wholesale dealers respondents located in States of the United States other than the State of Virginia, to those retail coal dealers in Richmond, Va., who are not members of association respondent, or whose retail prices on coal in the trade area in and around Richmond, Va., do not conform to those agreed upon by members respondents.

(b) Members respondents have agreed among themselves as to the retail prices, terms and conditions of sale to be quoted and collected for their coal; have caused such prices, terms and conditions of sale to be filed with association respondent, who in turn distributes same to all members respondents and to the aforesaid wholesale dealers respondents, who are referred to therein as "cooperators"; and have agreed among themselves to adhere to such prices, terms and conditions of sale pending the filing of changes with association respondent.

(c) Members respondents, accompanied by the secretary of the association respondent, have called on wholesale coal dealers, including the wholesale dealers respondents, and outlined their plans and urged said wholesale coal dealers under threat of boycott to cooperate with them by refusing to sell coal to any nonmember or to any dealer who undersold the association, thus eliminating all price competition and forcing all nonmembers to join the association if they wanted to stay in business.

(d) Association respondent, through its secretary, has arranged joint meetings between members respondents and wholesale dealers respondents, in different cities and towns in the State of Virginia, as well as in Washington, D. C., where the plans, purposes, and practices of the association and its members were outlined to the wholesale dealers and their cooperation solicited, under threat of boycott.

(e) Association respondent and its members conducted intensive campaigns amongst all nonmembers to get them to join the association, with the result that all eligible retail coal dealers in Richmond, Va., but one, finally joined the association under actual threat from the members respondents and the wholesale dealers respondents that no supply of coal would be obtainable otherwise.

(f) Association respondent, through its secretary, attempted to get wholesale coal dealers to insert in their contracts, or renewals thereof, with retail dealers, a clause to the effect that if the said retail dealer failed to conduct his business in conformity with the standards approved by his locality, the shipper would have the right, after 30 days' notice, to discontinue supplying coal under the contract.

(g) Said association respondent, officers and members respondents, and wholesale dealers respondents have used, and are now using, other collective and collusive means and methods to effectuate the aforementioned agreement, combination, and conspiracy.

PAR. 10. Each of the respondents, at the times herein mentioned, acted in concert with one or more of the other respondents in doing and performing the acts and things herein alleged in furtherance of the understanding, agreement, combination, and conspiracy hereinbefore set out.

PAR. 11. The afore-mentioned agreement, understanding, combination, and conspiracy, and the things done thereunder, and pursuant thereto, and in furtherance thereof, as hereinbefore alleged, have had, and do have, the effect of unlawfully restricting and restraining the movement in commerce, between and among the several States of the United States, of coal purchased by the retail coal dealers in Richmond, Va., for resale in the trade area in and around said city; of unduly and unlawfully restricting the resale of coal purchased by said retailers in Richmond, Va., in the manner hereinbefore described, in the trade area in and around Richmond, Va.; of substantially enhancing prices of said coal to the consuming public thereof; of maintaining said prices at artificial levels, and otherwise depriving the public of the benefits that would flow from normal competition among members respondents and between said members respondents and other retail coal dealers in Richmond, Va.; of eliminating price competition among members respondents and between said members respondents and other competitors in the resale of coal purchased in the manner before described in the trade area in and around Richmond, Va., with the tendency and capacity of creating in members respondents a monopoly in said trade.

Said agreement, understanding, combination, and conspiracy, and the acts and things done thereunder and pursuant thereto, as above alleged, constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 5, 1939, issued and subsequently served its complaint in this proceeding upon the respondents, Retail Coal Merchants Association, a corporation; D. Walton Mallory, individually and as president of Retail Coal Merchants Association; Edwin D. Newmann, individually and as vice president of Retail Coal

Merchants Association; A. Holland White, individually and as treasurer of Retail Coal Merchants Association; Charles H. Hall, Jr., individually and as secretary of Retail Coal Merchants Association; L. D. Wingfield and James L. Hatcher, as coowners of Wingfield-Hatcher Coal Co.; A. M. Hungerford, doing business as Hungerford Coal Co.; Massey-Wood & West, a corporation; Sydnor-Howey & Co., Inc., a corporation; D. W. Mallory & Co., Inc., a corporation; Ellison & Hawes, Inc., a corporation; W. E. Seaton & Sons, Inc., a corporation; and Gill Fuel Co., Inc., a corporation, members of Retail Coal Merchants Association; Bluefield Coal & Coke Co., a corporation; Cabell Coal Co., Inc., a corporation; Cabin Creek Consolidated Sales Co., a corporation; A. T. Massey Coal Co., a corporation; Red Jacket Coal Sales Co., a corporation; George W. St. Clair, Robert Henry Moore, Mrs. Robert Henry Moore, Katherine St. Clair Santori, and Houston St. Clair, partners, doing business under the partnership name of Virginia Smokeless Coal Co.; White Oak Coal Co., a corporation; and Wyatt Coal Sales Co., a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the filing by the respondents of their answers to said 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 trial examiners of the Commission theretofore duly designated by it. Thereafter, on March 12, 1941, the Commission, by order entered herein, granted the motion of respondents, Retail Coal Merchants Association, and the officers and members thereof, for permission to withdraw their original 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. Subsequently additional hearings were held before said trial examiners at which further testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced with respect to the other respondents herein (respondent, A. T. Massey Coal Co., however, offering no testimony or other evidence in opposition to the allegations of said complaint). All of the testimony and other evidence introduced at the hearings held herein 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 evi-

dence, 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. Respondent, Retail Coal Merchants Association, is an association of coal dealers, organized on April 18, 1930, as a corporation under the laws of the State of Virginia, with its principal office and place of business located at 209 Broad-Grace Arcade Building, Richmond, Va. The membership of the association includes, with some two or three exceptions, all of the retail coal dealers located in and about Richmond, Va. The ostensible purpose of the association, according to its bylaws, is to establish and maintain a standard of honorable dealing in the retail coal business in that vicinity.

The names and addresses of the officers of the association, who are joined as respondents herein both individually and as such officers, are:

D. Walton Mallory, president, % D. W. Mallory & Co., Inc., Richmond, Va.

Edwin D. Newmann, vice president, Richmond, Va.

A. Holland White, treasurer, Richmond, Va.

Charles H. Hall, Jr., secretary, Retail Coal Merchants Association, 209 Broad-Grace Arcade Building, Richmond, Va.

The membership of the association constitutes a class so numerous and changing as to make it impracticable specifically to name all of them herein. The following respondents are members of the association, and are fairly representative of the whole membership. They are named as respondents in this proceeding in their individual capacities, in their capacities as members of the association, and as representatives of all members of the association as a class, including those members who are not specifically named herein:

L. D. Wingfield and James L. Hatcher are coowners of the business operated as Wingfield-Hatcher Coal Co., with their office and principal place of business located in Richmond, Va.

A. M. Hungerford is the individual owner of the Hungerford Coal Co., which was established in 1925 and has his office and principal place of business located at 717 East Gray Street, Richmond, Va.

Massey-Wood & West is a corporation organized under the laws of the State of Virginia in 1928, with its office and principal place of business located at Lombardy Underpass, Richmond, Va.

Sydnor-Howey & Co., Inc., is a corporation organized under the laws of the State of Virginia in 1913, with its principal place of business located in Richmond, Va.

D. W. Mallory & Co., Inc., is a corporation organized under the laws of the State of Virginia, with its office and principal place of business located in Richmond, Va.

Ellison & Hawes, Inc., is a corporation organized under the laws of the State of Virginia, with its office and principal place of business located at 530 East Main Street, Richmond, Va.

W. E. Seaton & Sons, Inc., is a corporation organized under the laws of the State of Virginia in 1928, with its office and principal place of business located at 1129 West Marshall Street, Richmond, Va.

Gill Fuel Co., Inc., is a corporation organized under the laws of the State of Virginia, with its office and principal place of business located at Twenty-first and Decatur Streets, Richmond, Va.

PAR. 2. Respondent, Bluefield Coal & Coke Co., is a corporation organized and existing under the laws of the State of West Virginia, with its principal offices located at Bluefield, W. Va.

Respondent, Cabell Coal Co., Inc., is a corporation organized and existing under the laws of the State of Virginia, with its principal offices located at Covington, Va.

Respondent, Cabin Creek Consolidated Sales Co., is a corporation organized and existing under the laws of the State of Delaware, with its principal offices located at Cincinnati, Ohio.

Respondent, A. T. Massey Coal Co., is a corporation organized and existing under the laws of the State of Virginia, with its principal offices located at Richmond, Va.

Respondent, Red Jacket Coal Sales Co., is a corporation organized and existing under the laws of the State of Delaware, with its principal offices located at Columbus, Ohio.

Respondents, Robert Henry Moore, Mrs. Robert Henry Moore, Katherine St. Clair Santori, and Houston St. Clair, are copartners, doing business under the partnership name of Virginia Smokeless Coal Co., with their principal offices located at Tazewell, Va. George W. St. Clair, who was formerly a member of the copartnership, and who was named in the complaint as a respondent, died shortly after this proceeding was instituted.

Respondent, White Oak Coal Co., is a corporation organized and existing under the laws of the State of West Virginia, with its principal offices located at Charleston, W. Va.

Respondent, Wyatt Coal Sales Co., is a corporation organized and existing under the laws of the State of West Virginia, with its principal offices located at Charleston, W. Va.

The Commission having concluded that the evidence is insufficient to establish that respondents, Bluefield Coal & Coke Co., Cabin Creek Consolidated Sales Co., Red Jacket Coal Sales Co., and Wyatt Coal Sales Co., were parties to the combination and conspiracy hereinafter described, the terms "respondents" and "wholesale dealer respondents," as used hereinafter, will not include these four respondents, unless the contrary is indicated.

PAR. 3. The members of the respondent association, in the course and conduct of their respective businesses, sell and distribute the major portion (some 80 to 90 percent) of all of the coal sold at retail in the trade area in and around Richmond, Va.

PAR. 4. These member respondents are in competition with one another and with other retail coal dealers in Richmond, Va., in the purchase of coal in commerce among and between the several States of the United States, and in the sale and the offering for sale of such coal at retail in the trade area in and around Richmond, Va., except insofar as such competition has been hindered, lessened, restrained, and restricted, and except insofar as potential competition has been forestalled, by the acts and practices hereinafter set forth.

PAR. 5. The member respondents and their competitors purchase the major portion of all the coal necessary for the conduct of their respective businesses from wholesale dealers or sales agents whose places of business are located in States other than the State of Virginia. When such purchases are made, and as a part thereof, such wholesale dealers and sales agents ship such coal, or cause such coal to be shipped, from their respective places of business located in the several States of the United States in commerce into, through, and between various States of the United States, to the member respondents and their competitors located in Richmond, Va.

PAR. 6. The wholesale dealer respondents are large wholesalers of coal or sales agents for operators of coal mines. Such wholesale dealer respondents, in the course and conduct of their business, obtain the output of various coal mines situated in the States of West Virginia, Ohio, and Virginia, and thereafter in the course and conduct of their business sell and distribute such coal to retail coal dealers located in the various States of the United States, including the member respondents hereinabove referred to. As a part of such sale and distribution, such

wholesale dealer respondents ship such coal, or cause such coal to be shipped, from the aforesaid mines to the purchasers thereof located in States of the United States other than those in which such mines are situated.

Respondent, Virginia Smokeless Coal Co., is the sales agent of a mining corporation which owns and operates coal mines located in Tazewell County, Va., and in Buchanan County, Va. Until some time in the year 1937, the main office of the Virginia Smokeless Coal Co. was located in Bluefield, W. Va., and all orders obtained by the company's sales representatives from dealers in Richmond, Va., and elsewhere were forwarded to such main office for acceptance or rejection. In 1937 such main office was moved to Tazewell, Va. Coal sold to purchasers in Richmond is transported by rail from the mines in Tazewell County or Buchanan County, Va., to Bluefield, W. Va., where it is weighed on the scales of the railway company. It then continues by rail to its destination in Richmond. This method of handling and route of shipment has obtained for many years, both before and after the main office of the company was moved from Bluefield to Tazewell.

PAR. 7. The wholesale dealer respondents and the member respondents, in the manner above described, maintain and have maintained a constant current and course of trade in coal in commerce among and between the several States of the United States.

PAR. 8. Several years ago respondent association, through its officers and members, conceived the idea of establishing and maintaining a system of uniform prices, terms, and conditions governing the sale of coal at retail in the Richmond trade area. The exact date on which the plan was conceived is not disclosed by the record, but the plan was put into active operation as early as 1936, and remained in active operation until after the institution of this proceeding. Under the plan, schedules of prices, terms, and conditions of sale on the various grades and varieties of coal sold in that area were prepared by the association at regular intervals and placed in the hands of all retail dealers who were members of the association. In order for a retail dealer to remain a member of the association it was necessary that he establish and maintain the schedule of prices, terms, and conditions of sale fixed by the association.

PAR. 9. There were at the time of the beginning of the operation of the plan a number of retail coal dealers in Richmond who were not members of the association. These dealers declined to observe the schedule of prices, terms, and conditions fixed by the association and refused to join the association but continued to sell coal on a competitive basis, their prices usually being substantially less than the prices maintained by the association members. For the purpose

of compelling these independent dealers to become members of the association and maintain the association's schedule of uniform prices, terms, and conditions of sale, the association conceived the idea of entering into agreements with certain wholesale coal dealers who supplied most of the coal shipped into Richmond, under which agreements such wholesale dealers would refuse to sell or ship coal to any retail dealer in that area who was not a member of the association or who, being a member of the association, did not maintain the prices fixed by the association.

An intensive campaign was conducted by the association and its members among such nonmember dealers for the purpose of bringing them into the association, such dealers being threatened with the loss of their sources of coal unless they became members of the association. Officers and members of the association also called on wholesale coal dealers and urged such wholesalers, under threat of boycott, to cooperate with the association by refusing to sell coal to any dealer who was not a member of the association or who, being a member, did not maintain the association prices. The association also attempted to induce such wholesalers to insert in their contracts with retail dealers a clause to the effect that if the dealer failed to conduct his business in conformity with the standards approved by his locality, the wholesaler would have the right to discontinue supplying coal under the contract.

In further pursuance of its plan the association arranged for a meeting between representatives of the association and certain of the wholesalers, which meeting was held at the John Marshall Hotel in Richmond on July 23, 1936. At this meeting representatives of respondents, Cabell Coal Co., Inc., A. T. Massey Coal Co., and White Oak Coal Co., were present. Exactly what transpired at the meeting is not clear from the record, but a cooperative program between the association and the wholesalers was discussed, and this meeting was the forerunner of a second meeting held in Washington, D. C.

With respect to this second meeting, the association, through its executive secretary, addressed a letter on August 7, 1936, to nine wholesale coal dealers, among whom were respondents, Cabell Coal Co., Inc., A. T. Massey Coal Co., Virginia Smokeless Coal Co., and White Oak Coal Co. This letter read as follows:

With further reference to our meeting in Richmond, on July 23d, and as per the recommendation made at that meeting, we have appointed Messrs. F. S. Levering, president of E. P. Murphy & Son; Ivor Massey, president of Massey, Wood & West, Inc.; and Arthur M. Hungerford, owner and manager of Hungerford Coal Co., to meet with you gentlemen and carry to a successful conclusion the matters discussed at the above meeting.

Believing further that we should meet on neutral ground, I would thank you to advise me if you, or your representative, with full authority to act, could meet the committee in Washington, D. C., on Friday, August 14th. Immediately upon your reply I will arrange for the hour and place of meeting.

In the event that this date does not meet your schedule, I would suggest that in your reply you name several dates, any one of which would make it possible for you to be present.

May I suggest, gentlemen, that the Retail Coal Merchants of Richmond have not in the past, nor do they anticipate in the future, trying to force you gentlemen to do anything unethical or unlawful, our desire being simply to work out a cooperative program suitable to all parties concerned.

On August 11, 1936, the association, through its executive secretary, addressed a second letter to the same addresses, this second letter reading as follows:

With further reference to my letter of August 7th, and your several replies in which suggestions were made for a meeting between the dates of August 17th and September 8th, we have decided to make a compromise and now request that you arrange to meet in Washington, D. C., on Tuesday, August 25th.

Our present plan is to hold this meeting in the Ambassador Hotel at 10:00 a. m., therefore, unless we advise you to the contrary, we will be expecting you as per the above.

Please bear in mind that your representative at this meeting should have full authority to act for your company, and in the meantime we will advise you of any change in the plan.

This meeting was held in Washington, D. C., on August 25, 1936, as announced in this letter, there being present, among others, the executive secretary of the association, a number of retail dealers who constituted a committee appointed by the association, and representatives of a number of wholesale dealers, including respondents Cabell Coal Co., Inc., Virginia Smokeless Coal Co., and White Oak Coal Co. Cabell Coal Co., Inc., was represented by both its president and its vice president, Virginia Smokeless Coal Co. by its sales representative in the Richmond area, and White Oak Coal Co. by its president. During the course of the meeting the committee representing the association requested the wholesalers to agree that they would not sell or ship coal to any retail coal dealer in Richmond who was not a member of the association. That the wholesale dealer respondents did enter into this agreement is evidenced by developments following the meeting.

PAR. 10. Subsequent to this meeting the association issued what was known as a list of "cooperators." This list was divided into two columns, one showing the names of all of the retail dealers in Richmond who were then members of the association, and the other showing the names of certain wholesale dealers. This latter column included, among other wholesale dealers, the names of respondents, Cabell Coal

Co., Inc., A. T. Massey Coal Co., Virginia Smokeless Coal Co., and White Oak Coal Co. This list of cooperators was distributed among the retailers and wholesalers named therein, and the respondent wholesalers thereby had knowledge that their names were included in the list. None of them made any effort to repudiate the action of the association in listing them as cooperators, nor was any protest of any kind made by them with respect to their being named as cooperators.

PAR. 11. After the meeting in Washington and the issuance and distribution of the list of cooperators it became increasingly difficult for the retail dealers in Richmond who were not members of the association, to obtain coal. A number of instances are disclosed by the record in which respondents Cabell Coal Co., Inc., A. T. Massey Coal Co., Virginia Smokeless Coal Co., and White Oak Coal Co., declined to sell or ship coal to dealers because they were not members of the association. The situation among nonmember dealers thereby became so difficult that in May 1937 a meeting was held by them for the purpose of discussing their inability to obtain coal. A committee was appointed at this meeting for the purpose of investigating the matter, and upon the basis of the report of this committee practically all of these nonmember dealers, some twenty in number, concluded that in order for them to be able to continue in business and obtain coal it would be necessary that they join the association, and they did in fact for that reason become members immediately thereafter. After joining the association they had no further difficulty in obtaining coal. There were only some two or three dealers in Richmond who remained outside the association, and these dealers, because of their nonmembership in the association, continued to experience difficulty in obtaining coal.

PAR. 12. A further circumstance showing that the agreement referred to above was entered into at the meeting of August 25, 1936, and that respondents, Cabell Coal Co., Inc., and Virginia Smokeless Coal Co. in particular; were parties to the agreement, is a letter addressed to each of these companies by the association on March 3, 1937, which read as follows:

The time is approaching for further action, as a result of our meeting at the Ambassador Hotel, in Washington, D. C., on August 25, 1936, and we would request that you arrange to meet with us at the Hamilton Hotel, Washington, D. C., on Wednesday, March 10th, at 10 a. m., at which time we will make report to you, regarding our efforts and hope that we will have your confirmation on your intentions to carry out your part of our agreement.

Thanking you for your cooperation, and awaiting your prompt advices that you will meet with us on the above date, we beg to remain,

Both Cabell Coal Co., Inc. and Virginia Smokeless Coal Co. replied by letter, the former accepting the invitation and the latter declining

it, stating that "It is taking every bit of energy and time we have to keep our mines running this month." In neither of these replies, however, was any exception taken to the references made in the association's letter to the meeting in Washington and the "agreement" between the parties.

So far as the record discloses, this meeting scheduled for March 10, 1937, was never held:

PAR. 13. The Commission finds that the respondents entered into and thereafter carried out an understanding, agreement, combination, and conspiracy for the purpose of unlawfully restricting, suppressing, and eliminating competition in the purchase by retail dealers in Richmond, Va., of coal in commerce among and between the several States of the United States, and in the retail sale of such coal in the trade area in and around said city. The Commission further finds that this agreement, understanding, combination, and conspiracy, and the things done thereunder and pursuant thereto and in furtherance thereof, have had and do have the effect of unlawfully restricting and restraining the movement in commerce among and between the several States of the United States of coal purchased by retail coal dealers in Richmond, Va., for resale in the trade area in and around said city; of unduly and unlawfully restricting the resale of coal purchased by such retailers in the trade area in and around Richmond, Va.; of substantially enhancing prices of such coal to the consuming public; of maintaining such prices at artificial levels and otherwise depriving the public of the benefits which would flow from normal competition among member respondents and between such member respondents and other retail coal dealers in Richmond, Va.; and of eliminating price competition among member respondents and between such member respondents and other competitors in the resale of coal in the trade area in and around Richmond, Va., with the tendency and capacity to create in such member respondents a monopoly in the purchase of coal in commerce among and between the several States of the United States, for resale in the trade area in and around Richmond, Va., and in the sale of coal at retail in such area.

CONCLUSION

The aforesaid agreement, understanding, combination, and conspiracy, and the acts and things done thereunder and pursuant thereto and in furtherance thereof, as herein found, are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, including the answer of respondent association and the officers and members thereof admitting all the material allegations of fact in said complaint, 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 said 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 certain of the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Retail Coal Merchants Association, a corporation; and D. Walton Mallory, Edwin D. Newmann, A. Holland White, and Charles H. Hall, Jr., individually and as officers of said association; and L. D. Wingfield and James L. Hatcher, trading as Wingfield-Hatcher Coal Co.; A. M. Hungerford, trading as Hungerford Coal Co.; Massey-Wood & West, a corporation; Sydnor-Howey & Co., Inc., a corporation; D. W. Mallory & Co., Inc., a corporation; Ellison & Hawes, Inc., a corporation; W. E. Seaton & Sons, Inc., a corporation; and Gill Fuel Co., Inc., a corporation, individually and as members of said association; and all other members of said association, as representatives for whom the said members named above were made respondents herein; and the officers, representatives, agents, and employees of all of the respective members of said association; directly or through any corporate or other device, in connection with the purchase by such members, or any of them, of coal in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Carrying out any understanding, agreement, combination, or conspiracy with wholesale coal dealers, and from entering into any future understanding, agreement, combination, or conspiracy with wholesale coal dealers, for the purpose or with the effect of restricting, restraining, suppressing, or eliminating competition in, or monopolizing, the retail sale of coal in the trade area in and around Richmond, Va.

2. Agreeing or carrying out any agreement through respondent association, or through any other cooperative agency, with wholesale coal dealers, that such wholesale coal dealers will not ship coal from mines located in States of the United States other than the State of Virginia, or coal from or through States other than the State of

Virginia, to retail coal dealers in Richmond, Va., who are not members of said respondent association, or any other association of which respondents may be members, or to retailers in Richmond, Va., whose prices for coal in the trade area in and around said city do not conform to those agreed upon by the members of such association.

3. Calling upon wholesale coal dealers and urging such wholesale coal dealers, under threat of boycott, to cooperate with the said respondents by refusing to sell coal to any nonmember of said association, or to any dealer underselling the prices fixed by said association.

4. Arranging joint meetings between the members of said association and wholesale coal dealers, and there seeking such cooperation of such wholesale coal dealers, under threat of boycott.

5. Soliciting nonmembers of said respondent association to join said association, under threat that no supply of coal will be obtainable by such nonmembers unless they join said association.

6. Attempting, through the secretary of said association, or by any other person or means, to induce wholesale coal dealers shipping coal from or through States other than the State of Virginia into the city of Richmond, Va., to insert in their contracts with retail dealers a clause to the effect that if the retail dealer fails to conduct his business in conformity with the price standards approved by respondents in his locality, the shipper shall have the right to discontinue supplying coal under such contracts.

7. Using any other collective or collusive means or methods to effectuate any understanding, agreement, combination, or conspiracy for the purpose of or with the effect of restraining, restricting, suppressing, and eliminating competition in, or monopolizing, the importation from States other than the State of Virginia of coal to be sold at retail in the trade area in and around Richmond, Va.

It is further ordered, That respondents Cabell Coal Co., Inc., a corporation; A. T. Massey Coal Co., a corporation; White Oak Coal Co., a corporation; and Robert Henry Moore, Mrs. Robert Henry Moore, Katherine St. Clair Santori, and Houston St. Clair, individually and doing business under the name Virginia Smokeless Coal Co. or under any other name; and respondent's officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of coal in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Carrying out any understanding, agreement, combination, or conspiracy among themselves, or with respondent association or the

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officers or members thereof, and from entering into any future understanding, agreement, combination, or conspiracy, for the purpose or with the effect of restricting, restraining, suppressing, or eliminating competition in, or monopolizing, the retail sale of coal in the trade area in and around Richmond, Va.

2. Agreeing or carrying out any agreement among themselves, or with respondent association or the officers or members thereof, or with any other cooperative agency, that respondents will not ship coal from mines located in States of the United States other than the State of Virginia, or coal from or through States other than the State of Virginia, to retail coal dealers in Richmond, Va., who are not members of said association, or to retailers in Richmond, Va., whose prices for coal in the trade area in and around said city do not conform to those agreed upon by the members of said association.

3. Using any other collective or collusive means or methods to effectuate any understanding, agreement, combination, or conspiracy for the purpose of or with the effect of restraining, restricting, suppressing, and eliminating competition in, or monopolizing, the importation from States other than the State of Virginia, of coal to be sold at retail in the trade area in and around Richmond, Va.

It is further ordered, That all of the respondents against whom this order is directed 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 respondents Bluefield Coal and Coke Co., a corporation; Cabin Creek Consolidated Sales Co., a corporation; Red Jacket Coal Sales Co., a corporation; and Wyatt Coal Sales Co., a corporation.

The respondent, George W. St. Clair, having died subsequent to the institution of this proceeding: *It is further ordered,* That this proceeding be, and it hereby is, dismissed as to said respondent.

Syllabus

IN THE MATTER OF

FANNIE P. FOX, TRADING AS SURE LABORATORIES.

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

Docket 3948. Complaint, Nov. 13, 1939—Decision, Jan. 26, 1942

Where an individual engaged in the manufacture and interstate sale of her "Sure" drug-containing preparation for use as a breath purifier; by advertisements in newspapers and periodicals and circulars, leaflets, pamphlets, and other advertising literature—

(a) Represented directly and indirectly that her said product was not a perfume but was a neutralizing agent which would neutralize all odors and remove every trace of offensive breath including odors from liquor, tobacco, onions, garlic, and other foods; and that by its use unpleasant breath odors, regardless of the cause, would be instantly destroyed and the user given a clean, sweet, unobjectionable breath;

The facts being that her said preparation would not affect or remove the cause of conditions responsible for unpleasant breath but action thereof was limited to temporarily covering up or masking the same; it had negligible antiseptic properties and would not inhibit the growth of bacteria in the mouth or be effective in destroying them; its essential quality was that of a perfume by reason of its content of aromatic volatile oils; and it was not a neutralizing agent or a breath purifier; and

(b) Represented that salesmen and distributors of her said preparation could establish a permanent and profitable business, setting forth, among other things, in her advertisements that "One man has averaged over \$300 profit weekly for the last sixty days";

The facts being that the maximum net earnings made by her salesmen in the ordinary course of business was \$7.50 a day or \$45.00 a week, they paying \$1.00 for a two-dozen container assortment on display cards and selling them to jobbers or wholesalers at \$1.28 and to retailers at \$1.60 each, and she based her estimate of the earnings of the particular salesman, upon whose performance aforesaid claim was based, upon the difference between the cost and resale price, with no consideration of expense incurred in making sales, and conceded that no other salesman or distributor had ever earned any comparable amount;

With the 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, by reason thereof, to purchase substantial quantities of the preparation in question:

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

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

Mr. Randolph W. Branch for the Commission.

Bussian & DeBolt, of Chicago, Ill., for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Fannie P. Fox, an individual, trading and doing business under the name of "Sure Laboratories," hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Fannie P. Fox, is an individual, trading and doing business under the name of "Sure Laboratories," with her office and principal place of business at 841 North Wabash Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for more than two years last past, has been, engaged in the business of manufacturing, selling, and distributing a certain preparation containing drugs known as "Sure" and recommended for use as a breath purifier. Respondent causes said preparation 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, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

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

which are likely to induce, directly or indirectly, the purchase of her said product in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as foresaid, are the following:

Just put a drop of "Sure" on your tongue, swirl it around in your mouth * * * and every trace of offensive breath is gone instantly! That's because "Sure" is a patented concentrated formula easy to use and pleasant to taste that scientifically neutralizes all odors.

"Sure" is different from any breath purifier you ever heard of * * * it is not a perfume * * * it works every time.

"Sure" is the new breath purifier that does away with breath odors from liquor, tobacco, garlic or other foods.

Removes offensive breath odors from onions, garlic, tobacco, cocktails, etc. Just one drop on your tongue and your breath will be sweet. Also removes odors from hands.

It is not only a breath purifier—it goes even further. It neutralizes food odors—not merely disguising them—leaving the mouth and breath sweet and clean and thus acting as a highly efficient oral hygiene.

You and we have always wanted something that sells to anyone and everyone at sight * * * we have found that very thing in the SURE formula * * *.

Anyone can make money with "Sure".

It is a sure seller and a big repeater * * *.

Start your big earnings the first day.

Big cash profits every day.

You can build a route of 50, 100, 200 stores almost overnight * * * enjoy a big income that is assured—week after week, all year round. It's the kind of business you can have * * *.

A permanent business with steady repeat sales is yours * * *.

One man has averaged over \$300 profit weekly for the last 60 days.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of said preparation, the effectiveness of its use, the ease with which it may be sold and the earnings or profits which may be attained by those who purchase it for resale, the respondent has represented and does now represent directly and indirectly, that her preparation "Sure" is not a perfume but is a neutralizing agent which will neutralize all odors and remove every trace of offensive breath; that it is a breath purifier that removes and does away with all breath odors, including odors from liquor, tobacco, onions, garlic, and other goods; that by its use unpleasant breath odors, regardless of cause, will be instantly removed and destroyed and the user given a clean, sweet, unobjectionable breath; that it will remove all odors from the hands; that those who purchase "Sure" for resale are assured of making big earnings or profits from the first day and every day, and of being able to establish a perma-

ment and profitable business, and that profits or earnings of \$300 per week or sums approximating said sum could be earned by ordinary salesmen or distributors of "Sure" under normal and usual business conditions.

PAR. 5. In truth and in fact, respondent's preparation "Sure" contains a mixture of aromatic volatile oils having a definite odor of its own and acts primarily as a perfume. This preparation does not act as a neutralizing agent and will not neutralize odors of the breath but instead its effect upon unpleasant breath is limited to masking breath odors to a greater or less degree. "Sure" is not a breath purifier and has no appreciable effect in destroying, counteracting or arresting the causes of unpleasant breath. It will not remove or destroy unpleasant breath odors or in all cases give the user of such preparation a clean, sweet, unobjectionable breath. This preparation when used on the hands will to some extent mask certain odors but has no other effect in removing such odors. Those who purchase "Sure" for resale are not assured of big earnings or profits from the very first day or every day; neither are they assured of establishing a permanent profitable business. Ordinary salesmen and distributors under normal and usual conditions of business cannot earn \$300 per week or sums reasonably approximating said sum, or sums which could be characterized as representing large earnings.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said preparation has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true and induces a portion of the purchasing public because of such erroneous and mistaken belief to purchase substantial quantities of said preparation.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 13 A. D. 1939, issued and subsequently served its complaint upon the respondent, Fannie P. Fox, an individual, trading as Sure Laboratories, charging her 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 said complaint were introduced by Randolph W. Branch, attorney for the Commission, and in opposition to the allegations of the complaint by John A. Bussian and Robert A. Bussian, attorneys for the respondent, before trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed 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, Fannie P. Fox, is an individual, trading and doing business under the name of Sure Laboratories, with her office and principal place of business at 841 North Wabash Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for more than 3 years last past has been, engaged in the manufacture and in the sale and distribution of a certain preparation containing drugs, known as "Sure" and recommended for use as a breath purifier. Respondent causes said preparation, when sold, to be transported from her 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 commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation, by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said preparation, by various means, for the purpose of inducing and which are likely to induce,

directly or indirectly, the purchase of her said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

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

Just put a drop of "Sure" on your tongue, swirl it around in your mouth * * * and every trace of offensive breath is gone instantly! That's because "Sure" is a patented concentrated formula easy to use and pleasant to taste that scientifically neutralizes all odors.

"Sure" is different from any breath purifier you ever heard of * * * it is not a perfume * * * It works every time.

"Sure" is the new breath purifier that does away with breath odors from liquor, tobacco, garlic, or other foods.

Removes offensive breath odors from onions, garlic, tobacco, cocktails, etc. Just one drop on your tongue and your breath will be sweet. Also removes odors from hands.

It is not only a breath purifier—it goes even further. It neutralizes food odors—not merely disguising them—leaving the mouth and breath sweet and clean and thus acting as a highly efficient oral hygiene.

You and we have always wanted something that sells to anyone and everyone at sight * * * we have found that very thing in the SURE formula * * *.

Anyone can make money with "Sure."

It is a sure seller and a big repeater * * *.

Start your big earnings the first day.

Big cash profits every day.

You can build a route of 50, 100, 200 stores almost overnight * * * enjoy a big income that is assured—week after week, all year round. It's the kind of business you can have * * *.

A permanent business with steady repeat sales is yours * * *.

One man has averaged over \$300 profit weekly for the last 60 days.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, which purport to be descriptive of said preparation and the effectiveness of its use, the respondent has represented, and does now represent, directly and indirectly, that her preparation "Sure" is not a perfume but is a neutralizing agent which will neutralize all odors and remove every trace of offensive breath; that it is a breath purifier that removes and does away with all breath odors, including odors from liquor, tobacco, onions, garlic, and other foods; and that by its use unpleasant breath odors, regardless of the cause, will be instantly removed and destroyed and the user given a clean, sweet, unobjectionable breath.

PAR. 5. There are various causes of unpleasant breath, some of which have their origin in the mouth. Those which are particularly associated with the mouth are odors from foods which have been eaten, particles of which, or the oils from which, lodge in the teeth and gums, and also odors caused from infection of the teeth or gums. In addition, there are many causes of unpleasant breath which are not directly connected with conditions of the mouth but which are due to nasal, sinus, or throat infections, stomach disorders, or odors given off through the lungs. The use of respondent's preparation will not affect or remove the cause of any of the above-described conditions of unpleasant breath, but, instead, its action is limited to temporarily covering up or masking such odors. Under conditions of use, this preparation has negligible antiseptic properties and will not inhibit the growth of bacteria or be effective in destroying bacteria in the mouth. The essential quality of respondent's preparation is that of a perfume, by reason of the existence of various aromatic volatile oils in the preparation, and its effectiveness upon unpleasant breath or breath odors is limited to covering up or masking such odors. This preparation is not a neutralizing agent or breath purifier and will not destroy or arrest the causes of unpleasant breath.

PAR. 6. Through the use of the statements and representations hereinabove set forth with reference to the possible earnings of salesmen and distributors, the respondent represents that such salesmen can establish a permanent and profitable business, with average net earnings of as high as \$300 per week.

Respondent's preparation is sold by agents and distributors to wholesalers, jobbers, and retailers, on display cards or in other assortments containing two dozen containers of respondent's product, which cards or assortments are sold to jobbers or wholesalers at the price of \$1.28 per assortment, and to retailers at the price of \$1.60 per assortment. The salesman or distributor pays \$1 for such assortment, which gives him a profit of 60 cents on each assortment when sold to retailers, and 28 cents profit when sold to jobbers or wholesalers.

PAR. 7. The respondent testified that one distributor who sold her preparation for a period of five months, averaged \$300 per week for the last two months of this period; that most of these orders were taken from wholesalers and jobbers; that respondent knew nothing of his method of doing business or whether or not he operated through salesmen employed by him; that such estimate of earnings was based upon the difference between the cost and resale price and did not take into consideration the expense of the representative in connection with the sales made; that no other salesman or distributor had ever earned

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any comparable amount; and that the sum of \$7.50 per day would be considered the best that might be expected by the average salesman.

PAR. 8. Based upon the testimony of the respondent, the Commission finds that the maximum net earnings made by respondent's salesmen in the ordinary course of business is approximately \$7.50 per day, or \$45 per week, and that the use of earnings of an isolated salesman, without information as to his methods of doing business or his expenses in connection with making of sales, is misleading, and has a tendency and capacity to cause prospective salesmen and distributors to believe that such amounts could be earned, net, by the average salesman in the ordinary and usual course of business.

PAR. 9. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations in advertisements disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead, and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of said preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, 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, report of the trial examiners upon the evidence and exceptions filed thereto, 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 said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Fannie P. Fox, an individual, trading and doing business under the name of Sure Laboratories, or trading under any other name, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of her prepara-

tion known as "Sure," 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 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 is a neutralizing agent or a breath purifier.

(b) That respondent's preparation will destroy or arrest the causes of unpleasant breath, or have any effect upon such causes.

(c) That respondent's preparation has any effect upon unpleasant breath odors other than that of a perfume in temporarily masking such breath odors.

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

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

(f) That any specified sum of money greatly in excess of the average earnings of other agents, salesmen, representatives, or distributors of respondent has been earned by any specified representative, unless such representation is immediately accompanied by a statement to the effect that such earnings are exceptional and unusual.

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 preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof and respective subdivisions thereof.

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

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

Docket 4629. Complaint, Nov. 12, 1941—Decision, Jan. 26, 1942

Where an individual engaged in the manufacture of women's hats from materials obtained from old and worn felt hats purchased by him, and which, after being cleaned, shaped and fitted with new trimmings had the appearance of new; and in the interstate sale and distribution of said products—

Sold his said hats with no label, marking or designation stamped thereon or attached thereto to indicate that they were in reality made from old and used hat bodies, to wholesale and retail dealers by whom they were resold to the purchasing public without disclosure of aforesaid fact;

With result that a substantial portion of such public was misled into believing that the products in question were manufactured entirely from new materials, and into purchase of substantial quantities thereof; and there was thereby placed in the hands of dealers means whereby they might similarly deceive 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. L. E. Creel, Jr., for the Commission.

Mr. Irving Block, of Chicago, Ill., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Frank Gorr, is an individual, trading as Victor Hat Co., and has his principal office and place of business at 153 North Wabash Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for several years last past, has been, engaged in the business of manufacturing women's hats from felt and other materials obtained from old, used, and second-hand hats, and of selling the same to retailers, jobbers, or wholesale dealers in the various States of the United States. Respondent causes said hats, when sold, to be transported from his place of business in the State of Illinois to

the aforesaid purchasers located in the various States of the United States other than the State of Illinois. Respondent maintains and at all times mentioned herein has maintained a course of trade in said hats in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent buys second-hand, old, worn, and previously used felt hats. The old, worn, and previously used felt hat bodies are cleaned and shaped and fitted with new trimmings and sold by respondent to dealers, who, in turn, sell said hats to the purchasing public.

PAR. 4. The aforesaid old, worn, and previously used hat bodies, after being manufactured into hats, as hereinabove described, have the appearance of new hats manufactured from felt and other materials which have never been worn or used. When articles which are manufactured from second-hand or used materials which have the appearance of being manufactured from new materials, are offered to the purchasing public, and such articles are not clearly and conspicuously labeled as being manufactured from used or second-hand materials, they are easily and readily accepted by members of the purchasing public as being manufactured entirely from new materials.

Said hats are sold to retailers and other dealers without any label, marking or designation stamped thereon or attached thereto, to indicate to the purchasing public or to the dealers that said hats are, in fact, manufactured from old, worn, and previously used hat bodies. Said hats are resold to the purchasing public without the fact being disclosed that they are manufactured from hat bodies and other materials which have been previously worn or used, and a substantial portion of the purchasing public is thereby misled to believe that they are, in fact, new hats manufactured entirely from new materials. As a result of this erroneous and mistaken understanding and belief, substantial portions of respondent's hats are purchased by members of the public.

PAR 5. Through the use of the aforesaid acts and practices, the respondent places in the hands of dealers the means and instrumentalities whereby said dealers may deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing hats manufactured from new materials, when, in fact, said hats are composed entirely or in part of old, second-hand, and previously used hat bodies.

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.

Findings

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REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 12, 1941, issued, and subsequently served its complaint in this proceeding upon respondent, Frank Gorr, individually, and trading as Victor Hat 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 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, Frank Gorr, is an individual, trading as Victor Hat Co., and has his principal office and place of business as 153 North Wabash Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for several years last past, has been, engaged in the business of manufacturing women's hats from felt and other materials obtained from old, used, and second-hand hats, and of selling the same to retailers, jobbers, or wholesale dealers in the various States of the United States. Respondent causes said hats, when sold, to be transported from his place of business in the State of Illinois to the aforesaid purchasers located in the various States of the United States other than the State of Illinois. Respondent maintains and at all times mentioned herein has maintained a course of trade in said hats in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent buys second-hand, old, worn, and previously used felt hats. The old, worn, and previously used felt hat bodies are cleaned and shaped and fitted with new trimmings and sold by respondent to dealers, who, in turn, sell said hats to the purchasing public.

PAR. 4. The aforesaid old, worn, and previously used hat bodies, after being manufactured into hats, as hereinabove described, have the appearance of new hats manufactured from felt and other materials which have never been worn or used. When articles which are manufactured from second-hand or used materials and which have the appearance of being manufactured from new materials, are offered to the purchasing public, and such articles are not clearly and conspicuously labeled as being manufactured from used or second-hand materials, they are easily and readily accepted by members of the purchasing public as being manufactured entirely from new materials.

Said hats are sold to retailers and other dealers without any label, marking, or designation stamped thereon or attached thereto, to indicate to the purchasing public or to the dealers that said hats are, in fact, manufactured from old, worn, and previously used hat bodies. Said hats are resold to the purchasing public without the fact being disclosed that they are manufactured from hat bodies and other materials which have been previously worn or used, and a substantial portion of the purchasing public is thereby misled to believe that they are, in fact, new hats manufactured entirely from new materials. As a result of this erroneous and mistaken understanding and belief, substantial portions of respondent's hats are purchased by members of the public.

PAR. 5. Through the use of the aforesaid acts and practices, the respondent places in the hands of dealers the means and instrumentalities whereby said dealers may deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing hats manufactured from new materials, when, in fact, said hats are composed entirely or in part of old, second-hand, and previously used hat bodies.

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

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

It is ordered, That the respondent, Frank Gorr, individually, and trading as Victor Hat 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 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 in some conspicuous place on the exposed surface of the inside of the hat in conspicuous and legible terms which cannot be removed or obliterated without mutilating the hat itself, a statement that said products are composed of second-hand or used materials, provided that if substantial bands, placed similarly to sweat bands in men's hats, are attached to said hats, then and in that event such statement may be stamped upon such bands, provided further, that said stampings are of such nature that they cannot be removed or obliterated without mutilating the band and the band itself cannot be removed without rendering the hat unserviceable.

2. Representing in any manner that hats made in whole or in part from old, used, or second-hand materials are new or are composed of new materials.

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

Syllabus

IN THE MATTER OF

OLD COLONY KNITTING MILLS, 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 4236. Complaint, Aug. 14, 1940—Decision, Jan. 27, 1942

Where a corporation engaged in the manufacture and interstate sale and distribution of knitted goods—

(a) Marked and labeled certain men's and women's sweaters as "Made of Imported Scotch-Shetland," etc., and as "* * * real Shetland Wool," relying in case of former upon representations made to it by seller of yarn it used therein, and discontinuing latter label after discussion with representatives of such concern; and

Where a corporate manufacturer of yarns—

(b) Labeled aforesaid yarns sold by it to knitted goods manufacturer above described as "Shetland B" and "Shetland F," and invoiced them to purchasers as "Shetland Blend B," "Shetland B," and "Shetland F";

Notwithstanding the fact such yarns and sweaters made therefrom were composed, in accordance with said letters "B" and "F," of about 75 percent English Hogget wool and 25 percent China Lamb wool, or of about 50 percent English Hogget wool, 40 percent Australian wool and 10 percent Kid Mohair, respectively, and did not contain, as long understood from word "Shetland," wool made of, or product made from wool of, that breed known as Shetland sheep grown on Shetland Islands or contiguous mainland of Scotland, which had become well known to purchasing public by reason of certain definite characteristics and for which there had developed a consumer preference over products known to be made from the simulated Shetland, which even experts found it very difficult, if not impossible, to distinguish from the genuine, more costly, and quite limited Shetland;

With effect of misleading and deceiving purchasers and prospective purchasers into the mistaken belief that the products thus labeled were made of genuine Shetland wool, of which in fact they contained none:

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

As respects present significance of word "Shetland" applied to wool or wool products, which has long meant the wool of, or made from the wool of, a breed of sheep known as Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland, with certain well known characteristics and which has come to enjoy a consumer preference for certain uses: notwithstanding efforts to induce the wool trade and purchasing public to accept the view that the term signifies only a type of wool or wool product having the distinctive characteristics of the real and more expensive Shetland wool, regardless of its source, such significance still represents the understanding and belief of a substantial portion of the trade in question and purchasing public.

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

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Mr. Donovan Divet for the Commission.

Kaplan & Linsky and *Mr. Samuel P. Kaplan*, of Boston, Mass., for Old Colony Knitting Mills, Inc.

Root, Clark, Buckner & Ballantine, of Washington, D. C., for Maine Spinning 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 Old Colony Knitting Mills, Inc., a corporation, and Maine Spinning Co., a corporation, hereinafter referred to as the respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Old Colony Knitting Mills, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Massachusetts, having its office and principal place of business at 222 North Street, Hingham, Mass. Respondent, Maine Spinning Co., is a corporation, organized and existing under and by virtue of the laws of the State of Maine, having its office and principal place of business at Skowhegan, Maine.

PAR. 2. Respondent, Maine Spinning Co., is now, and for several years last past, has been, engaged in the business of manufacturing, selling and distributing yarns. Respondent, Old Colony Knitting Mills, Inc., is now, and for several years last past has been, engaged in the business of manufacturing, selling, and distributing sweaters. The respondents sell their respective products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and cause said products, when sold, to be transported from their respective places of business, or from the place of origin of the shipments thereof, to purchasers thereof at their respective points of location in various States of the United States other than the States of Maine and Massachusetts and other than the States of the origin of said shipments. Respondents maintain, and at all times mentioned herein, have maintained, a course of trade in their respective 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 respective businesses, for the purpose of promoting the sale of their respective products, the respondents have each engaged in the practice of falsely representing the constituent fiber or material as well as the source of the fiber or material of which their said products are made. Said false represen-

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tations are made by respondent, Old Colony Knitting Mills, Inc., by means of labels attached to its said products. Said false representations are made by respondent, Maine Spinning Co., by means of letters, invoices, and other printed and written material circulated among purchasers.

PAR. 4. The word "Shetland" when applied to wool or garments, for many years has had, and still has in the minds of the purchasing and consuming public generally, a definite and specific meaning, to wit, wool which comes from a breed of sheep known as Shetland sheep, raised on the Shetland Islands, and on the contiguous mainland of Scotland. For many years there has been a preference on the part of a substantial number of the purchasing public for Shetland wool and yarn and fabrics made thereof.

PAR. 5. Among the products sold and distributed by respondent, Maine Spinning Co., as aforesaid, are certain yarns which it has described as "Shetland Blend B," "Shetland B," "Shetland F," and as "Shetland type yarns," and which it has represented as being made of stock imported from the British Isles. By the use of said statements and representations said respondent has represented and does now represent that said yarns are made of material imported from the British Isles, and are made in whole or in part of genuine Shetland wool.

Among those to whom said statements and representations are made and have been made by said respondent, Maine Spinning Co., as aforesaid, is respondent, Old Colony Knitting Mills, Inc. Said statements and representations are and have been made to said respondent in connection with the sale to it by respondent, Maine Spinning Co., of certain yarn which said Old Colony Knitting Mills, Inc., has used and does now use in the manufacture of the sweaters manufactured, sold, and distributed by it and labeled as hereinafter alleged.

Among the products manufactured, sold and distributed by respondent, Old Colony Knitting Mills, Inc., are certain sweaters manufactured by it from yarn purchased from respondent, Maine Spinning Co., which respondent Old Colony Knitting Mills, Inc., has variously labeled "Made of Imported Scotch-Shetland by Old Colony" and "Real Shetland Wool," as indicated by respondent, Maine Spinning Co., in selling said yarn to respondent, Old Colony Knitting Mills, Inc., thereby representing in the one case that said sweaters are manufactured from imported yarns made of a blend of Scotch wool and Shetland wool, and in the other case that they are manufactured from yarn made of genuine Shetland wool.

PAR. 6. The aforesaid representations are false and misleading. In truth and in fact the yarns sold and distributed by respondent, Maine Spinning Co., as aforesaid, are not made of material imported

from the British Isles, and are not made from genuine Shetland wool either in whole or in part. Said sweaters sold and distributed by respondent, Old Colony Knitting Mills, Inc., are not manufactured from Scotch and Shetland wool, nor do they contain either of said wools.

PAR. 7. The use by the respondents of the aforesaid methods of labeling and representing their respective products has had, and has, the tendency and capacity to, and does, mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true, and to induce them to purchase 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 14, 1940, issued and subsequently served its complaint upon respondents, Old Colony Knitting Mills, Inc., a corporation, and Maine Spinning Co., a corporation, charging them with violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced 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 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, Old Colony Knitting Mills, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Massachusetts, having its principal place of business at 222 North Street, Hingham, Mass. It is engaged in the manufacture,

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sale, and distribution of knitted goods, including men's and women's knitted sweaters.

Respondent, Maine Spinning Co., is a corporation, having its office and principal place of business at Skowhegan, Maine. It is engaged in the manufacture, sale, and distribution of yarn.

PAR. 2. In the course and conduct of their aforesaid businesses respondents sell their respective products to purchasers situated in various States of the United States and cause said products, when sold, to be transported from their respective places of business, or from the place of origin of the shipments thereof, to purchasers in various States of the United States other than the States of Maine and Massachusetts and other than the States of origin of said shipments.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their respective products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Among the products sold and distributed by respondent, Maine Spinning Co., as aforesaid, are certain yarns which it has labeled as "Shetland B" and "Shetland F" and which it has invoiced to purchasers as "Shetland Blend B," "Shetland B," and "Shetland F." The letters "B" and "F" are used as private marks by respondent, Maine Spinning Co., to indicate the composition of the particular yarn. "Shetland Blend B" and "Shetland B" are identical in composition and consist of about 75 percent English Hogget wool and 25 percent China lamb wool. "Shetland F" consists of about 50 percent English Hogget wool, 40 percent Australian wool, and 10 percent kid mohair. These yarns did not, and do not, contain any wool from Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland.

Respondent, Old Colony Knitting Mills, Inc., purchased from respondent, Maine Spinning Co., yarns marked and invoiced as aforesaid, and used such yarns in the manufacture of sweaters which it sold and distributed. The sweaters so manufactured were marked and labeled by respondent, Old Colony Knitting Mills, Inc., as:

Made of Imported
SCOTCH-SHETLAND
by Old Colony

and as

"Colony Club Sweater
Real Shetland Wool
Made Expressly for
SAKS at 34th Street

Respondent, Old Colony Knitting Mills, Inc., relied upon representations made by respondent, Maine Spinning Co., as to the nature of the

yarn in question in labeling certain of its products made from such yarn as "Made of Imported Scotch Shetland," but after discussion with representatives of the Maine Spinning Co. discontinued the use of its labeling of "Real Shetland Wool."

PAR. 4. The word "Shetland," when applied to wool or wool products, has for a great many years meant the wool of, or made from the wool of, a breed of sheep known as Shetland sheep, grown on the Shetland Islands or the contiguous mainland of Scotland. This wool and products made therefrom, because of certain definite characteristics of the wool, became well known to the purchasing public, and for certain uses a consumer preference therefor developed. The amount of Shetland wool available annually has been, and is, quite limited. It can, however, be so closely simulated by mixtures of wools grown in other portions of the world that even experts in the wool trade find it very difficult, if not impossible, to distinguish such mixtures simulating Shetland wool from genuine Shetland wool.

Wool products made from Shetland wool, as well as products made from simulated Shetland wool, have been, and are being, sold and distributed in the United States. Wool products made from Shetland wool command a higher price than similar products which are known to be made from simulated Shetland wool, and there is a preference on the part of members of the purchasing public for products made of genuine Shetland wool. It is usual in the trade, when there is doubt as to the kind of yarn contained in a sweater or other knitted product, to call upon the knitter for invoices of the yarn used in making the sweater or other knitted product.

There have been efforts to induce the wool trade and the purchasing public to accept the view that the term "Shetland" signifies only a type of wool or wool product having the distinctive characteristics of real Shetland wool regardless of the source or origin of the wool. For example, a large manufacturer of yarn advertised in a trade journal under date of September 23, 1938, in the form of "An open letter to the industry about Shetlands" in part as follows:

There are some facts about Shetlands which you should know if you are using this yarn or contemplate using it. Unlike Cashmeres and Angoras, Shetland is not clipped nor plucked from an animal bearing the name of Shetland. Instead Shetland is a blend of fibres deriving its name from sweaters knitted by women over a quarter of a century ago on the Shetland Isles. It is the characteristics of Shetland rather than an animal that gives Shetland yarn its name.

* * * * *

P. S. Years of patient experimentation are back of our successful Shetland. We made our first sample on October 30th, 1936.

The president of the company, which published the above advertisement, testified that some of his customers believed that Shetland yarn was made of wool from Shetland sheep and he wanted to be sure that none of his customers would think that the yarn which he was selling was made from the wool of Shetland sheep.

In October 1939, the Associated Wool Industries, having its office in New York City, published a glossary of wool and wool fabric terms intended as a guide for retail clerks and others. The statement as to the term "Shetland" contained in this publication is:

Originally fabric woven from the wool of the sheep in the Shetland Islands distinguished for its hairy nature, and fine but strong fiber. The term is now applied to fabrics made of wool of like characteristics. Shetlands are soft and a bit "mushy." The herringbone weave is common in shetland fabrics but the term "shetland" described the type of wool and not the weave.

PAR. 5. Some members of the wool trade assert that the word "Shetland," as applied to wool or products made therefrom, no longer signifies any specific geographic origin or definite source of the wool, but merely means that the wool is of a type having the appearance and characteristics of real Shetland wool. Similarly, to some members of the purchasing public the term "Shetland" signifies merely wool or wool products having the appearance and characteristics which they associate with the term "Shetland," and does not indicate any special geographic or other source or origin of the wool. On the contrary, some members of the wool trade and of the purchasing public understand and believe the term "Shetland" when applied to wool or wool products means the wool of, or made from the wool of, sheep grown on the Shetland Islands or the contiguous mainland of Scotland. From a consideration of the entire record the Commission concludes that the original meaning of the term "Shetland" as applied to wool and wool products has continued, and that it is the present understanding and belief of a substantial part of the wool trade and of the purchasing public that the term "Shetland" as applied to wool or wool products means the wool of, or made from the wool of, Shetland sheep grown on the Shetland Islands or the adjacent mainland of Scotland.

PAR. 6. The use by the respondents of the aforesaid marks, labels, and other representations concerning their respective products has had, and has, the capacity and tendency to, and does, mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that the products so marked, labeled, or represented are made of wool of Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland, when in truth and in fact said products contain no wool taken from Shetland sheep.

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CONCLUSION

The aforesaid acts and practices of the 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.

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 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 respondent, Old Colony Knitting Mills, Inc., a corporation, and respondent, Maine Spinning Co., a corporation, their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any yarn, garment, or fabric made of wool or simulating wool, do forthwith cease and desist from using the word "Shetland," either alone or in conjunction with any other word or words, to designate or describe any such yarn, garment, or fabric which is not the wool of, or made from the wool of, Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland.

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

It is further ordered, That the motion of respondent, Maine Spinning Co., to dismiss the complaint herein, or in the alternative to dismiss the complaint as to it, which motion was denied without prejudice to respondent's right to renew the same at the time of final argument and which motion was duly renewed, be, and the same hereby is, denied.

Complaint

IN THE MATTER OF

DO-RAY LAMP 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 4218. Complaint, Sept. 24, 1941¹—Decision, Feb. 3, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of fog lamps, auxillary driving lights and other accessories for use on automobiles and trucks; by means of circulars and advertisements in trade publications and statements on the containers—

Represented or implied that its "Bright Ray Crest Driving Lamp" provided new and unusual lighting safety when used on a motor vehicle, and developed 40,000 candlepower; would penetrate fog, snow, rain, or dust, regardless of their density, and would provide safe driving visibility of 1,500 feet under all conditions;

The facts being that many similar lamps provided the same safety under the same conditions and use; its said lamp developed substantially less than aforesaid candlepower, and would not penetrate fog, snow, rain, or dust to the extent claimed, or so as to assure visibility and safety under all conditions;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, and thereby causing it to purchase its said product:

Held, That its 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.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Clark Nichols for the Commission.

Mr. Norris Spector, of Chicago, Ill., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Do-Ray Lamp 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 amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Do-Ray Lamp Co., 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 located at

¹ Amended and supplemental.

1458 South Michigan Avenue, Chicago, Ill. Respondent is now, and for more than 2 years last past, has been engaged in the manufacture and sale of fog lamps, auxiliary driving lights, reflectors, flares, and various other accessories for use on automobiles and trucks. One of the lamps manufactured by the respondent is known as the "Bright Ray Crest Driving Lamp." Respondent causes said products, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof located in the various other States of the United States, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said 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 aforesaid business and for the purpose of inducing the purchase of its product "Bright Ray Crest Driving Lamp" respondent has made many statements and representations with respect to its product through the means of circulars and by advertisements placed in trade publications, all of which are circulated among prospective purchasers throughout the United States, and on the containers in which said lamps are packaged for sale. Among and typical of such statements and representations so used and disseminated as aforesaid are the following:

Now new car lighting safety on any car or truck with THE CREST, the aristocrat of driving lamps.

Develops 40 thousand candle power. Visibility 1,500 feet. Penetrates fog—no glare. Fits all cars— theft proof. Brass chrome plated.

Develops 40 thousand candle power—visible 1,500 feet—daylight brilliance—no glare—penetrates fog, snow, rain, or dust.

CREST DRIVING LAMP

Develops 40 Thousand Candle Power.

Visibility 1,500 feet.

Penetrates Fog—No Glare.

Through the use of the foregoing statements and representations and other of similar import and meaning, not specifically set out herein, all of which purport to be descriptive of respondent's said lamp and its effectiveness in use, respondent represents or implies that its said driving lamp provides new and unusual lighting safety when used on a motor vehicle; that said driving lamp develops 40,000 candlepower when used on a motor vehicle; that said lamp will penetrate fog, snow, rain, or dust regardless of their density; that when used on a motor vehicle it will penetrate fog, snow, rain, or dust, regardless of their density, to the extent that safe driving visibility of 1,500 feet is pro-

vided; that it will penetrate fog, snow, or dust to the extent that safe driving is assured under all conditions.

PAR. 3. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, said driving lamp does not provide new and unusual lighting safety when used on a motor vehicle. Many similar driving lamps provide the same safety under the same conditions and use. Said driving lamp, when used on a motor vehicle, does not develop 40,000 candlepower but substantially less than said amount. Respondent's said driving lamp will not penetrate fog, snow, rain, or dust regardless of their density. When used on a motor vehicle it will not penetrate fog, snow, rain or dust, regardless of their density, to the extent that safe driving visibility of 1,500 feet is provided. It will not penetrate fog, snow, rain, or dust to the extent that visibility and safety are assured under all conditions.

PAR. 4. The use by the respondent of the foregoing false and misleading and deceptive statements, representations, and implications respecting its said product as to candlepower, visibility, and penetration of fog, snow, rain, and dust 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 August 5, 1940, issued and subsequently served its complaint in this proceeding upon respondent Do-Ray Lamp Co., Inc., a corporation, charging it with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of respondent's answer to said complaint the Commission on September 24, 1941, issued and subsequently served upon respondent an amended and supplemental complaint in this proceeding charging violation of the aforesaid statute. Respondent filed an answer admitting all the material allegations of facts set forth in said amended and supplemental complaint and waiving all intervening procedure and further hearing as to said facts. Thereafter, this pro-

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Do-Ray Lamp Co., 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 located at 1458 South Michigan Avenue, Chicago, Ill. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture and sale of fog lamps, auxiliary driving lights, reflectors, flares, and various other accessories for use on automobiles and trucks. One of the lamps manufactured by the respondent is known as the "Bright Ray Crest Driving Lamp." Respondent causes said products, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said 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 aforesaid business and for the purpose of inducing the purchase of its product "Bright Ray Crest Driving Lamp," respondent has made many statements and representations with respect to its product through the means of circulars and by advertisements placed in trade publications, all of which are circulated among prospective purchasers throughout the United States, and on the containers in which said lamps are packaged for sale. Among and typical of such statements and representations so used and disseminated as aforesaid are the following:

Now new car lighting safety on any car or truck with THE CREST, the aristocrat of driving lamps.

Develops 40 thousand candlepower. Visibility 1,500 feet. Penetrates fog—no glare. Fits all cars—theft proof. Brass chrome plated.

Develops 40 thousand candlepower—visible 1,500 feet—daylight brilliance—no glare—penetrates fog, snow, rain, or dust.

CREST DRIVING LAMP

Develops 40 Thousand Candlepower.

Visibility 1,500 feet.

Penetrates Fog—No Glare.

Through the use of the foregoing statements and representations, and others, of similar import and meaning, not specifically set out herein, all of which purport to be descriptive of respondent's said lamp and its effectiveness in use, respondent represents or implies that its said driving lamp provides new and unusual lighting safety when used on a motor vehicle; that said driving lamp develops 40,000 candlepower when used on a motor vehicle; that said lamp will penetrate fog, snow, rain, or dust regardless of their density; that when used on a motor vehicle it will penetrate fog, snow, rain, or dust, regardless of their density, to the extent that safe driving visibility of 1,500 feet is provided; that it will penetrate fog, snow, rain, or dust to the extent that safe driving is assured under all conditions.

PAR. 3. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, said driving lamp does not provide new and unusual lighting safety when used on a motor vehicle. Many similar driving lamps provide the same safety under the same conditions and use. Said driving lamp, when used on a motor vehicle, does not develop 40,000 candlepower but substantially less than said amount. Respondent's said driving lamp will not penetrate fog, snow, rain, or dust regardless of their density. When used on a motor vehicle it will not penetrate fog, snow, rain, or dust, regardless of their density, to the extent that safe driving visibility of 1,500 feet is provided. It will not penetrate fog, snow, rain, or dust to the extent that visibility and safety are assured under all conditions.

PAR. 4. The use by the respondent of the foregoing false, misleading, and deceptive statements, representations, and implications respecting its said product as to candlepower, visibility, and penetration of fog, snow, rain, and dust 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 has caused, and causes, a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase said product.

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

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ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Do-Ray Lamp 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its "Bright Ray Crest Driving Lamp" for use on motor vehicles, or any substantially similar lamp, under the same or any other name, do forthwith cease and desist from representing, directly or by implication:

1. That said lamp, when used on a motor vehicle, provides new and unusual lighting safety.

2. That said lamp, when used on a motor vehicle, will develop 40,000 candlepower, or any other number of candlepower in excess of the number actually developed.

3. That said lamp, when used on a motor vehicle, will penetrate fog, rain, snow, or dust regardless of their density.

4. That said lamp, when used on a motor vehicle, will penetrate fog, snow, rain, or dust, regardless of their density, to the extent that safe driving visibility is provided for 1,500 feet, or for any other distance in excess of the actual distance for which safe driving visibility is provided.

5. That said lamp, when used on a motor vehicle, will penetrate fog, snow, rain, or dust to the extent that visibility and safety are assured under all conditions.

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

PARKE, AUSTIN & LIPSCOMB, INC., SMITHSONIAN INSTITUTE SERIES, INC., AND 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 4465. Complaint, Feb. 14, 1941—Decision, Feb. 3, 1942

Where a corporate publisher of books of an encyclopedic and historical nature, its wholly owned subsidiary, and three individuals who served both as general officers; following the entering into of a contract by said subsidiary with the Smithsonian Institution of Washington, D. C., whereby it agreed to engage in the publication, sale, and distribution exclusively of a 13-volume set of books compiled from data collected by said Institution in various scientific investigations, to be designated as "Smithsonian Scientific Series," manuscripts for which were to be furnished by said Institution upon certain terms, including payment to it of a royalty of 10 percent of gross sales, the copyrights, plates, manuscripts, etc., to remain said subsidiary's exclusive property—

- (a) Represented, directly and through salesmen and agents, to whom they issued a so-called "authorized presentation" setting out in detail the sales talk to be used for the purpose, that such salesmen were representatives of the Smithsonian Institution, that the books in question were published and sold by the Institution, the entire profit derived from the sale thereof accruing to it, and that sales were restricted to a small number of selected individuals in each community; and
- (b) Caused said Smithsonian Institution to issue to all purchasers of said "scientific series" a certificate under its seal and duly signed by its secretary certifying that the particular purchaser had been registered in its archives as a patron of series in question, in recognition of support of the Institution's program for the diffusion of knowledge among men; facsimiles of which certificates their salesmen exhibited to prospective purchasers;

Notwithstanding the fact sale and distribution of books in question was an ordinary commercial enterprise for profit; the small royalty aforesaid was the only benefit derived from sale thereof by said Institution, which did not publish said books, own or control the copyright, plates and other material thereof, or have any control over agents or salesmen, who were employees of aforesaid corporations and individuals; and purchasers had not been specially selected to act as patrons of said Institution, but the books were sold indiscriminately to the general public; and

- (c) Falsely and misleadingly represented, through use in corporate name of said subsidiary of words "Smithsonian Institution," that such corporation was part of or connected with the Smithsonian; thereby also accentuating other false and misleading representations made in the sale of their said books; With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that they were purchasing said "Smithsonian Scientific Series" directly from the Smithsonian Institution of Washington, D. C., long identified in the public mind as a nonprofit organization devoted

to scientific research and promotion of learning, which was to receive the entire profits therefrom, and that they had been specially selected to act as its patrons, as a result whereof they purchased substantial quantities of said publications, thereby diverting trade unfairly to said publishers from their competitors; and

Where said parent corporation and officers, engaged also in the publication and competitive interstate sale and distribution of a set of books designated "World Epochs," under contract with the United States Flag Association, whereby said set and other pamphlets and documents were to be sold in the name of and under the imprint of said association, which was to receive certain royalties, and later under agreement whereby said corporation was to act as the exclusive agent of said association for 10 percent of gross receipts, plus costs—

(d) Represented, directly and indirectly, that said association was the publisher of such books, and received the entire profits derived from the sale thereof for use in combatting anti-Americanism and subversive organizations and influences in the United States, and that proposal to purchase was not an ordinary commercial transaction, but a patriotic appeal to assist in such efforts; letters of identification upon the stationery of said association and signed by its President General, which were issued to their salesmen in furtherance of such plan, reciting that they were accredited regional directors of the association, calling on a matter of very serious national importance; and aforesaid corporation and individuals also causing said association to issue to all purchasers of "World Epochs" a certificate of life membership in the association; and

(e) Used, in endorsement of said publication, letters from United States Senators and other prominent men, which were in fact endorsements of the aims and purposes of the aforesaid association and written without knowledge that they were to be used as endorsements of any series of books; and continued such use even after objection had been made by the writers;

The facts being that sales of the books in question were made as an ordinary commercial enterprise for profit, only benefit derived from which by said association was the royalty involved, plus, later, reimbursement for costs and minor additions; series in question was not published by such association, which did not own or control the copyrights or plates, or have any control over the salesmen, who were employees of corporation and individuals concerned, with whom rested control of such matters as accounts and collections, and title to the publication, including copyrights, etc.; purchasers were not specially selected, but the books were sold to the general public, and life memberships were indiscriminately issued to all purchasing in amounts of \$25 or more; in some instances, such memberships being issued by the association to persons designated by sellers for the purpose of establishing initial contact;

With effect of causing purchasers of said "World Epochs" and other publications to believe that they were dealing directly with the United States Flag Association, organized under the laws of the District of Columbia in 1924 "in the interest of lofty Americanism, sturdy patriotism and good citizenship which shall make stronger and more secure the foundations of this Republic," and other patriotic objectives; that said books were published and sold by said association as above set forth and that prospective

purchasers had been specially selected to be made life members of the association because of previous achievements or standing in the community, as a result whereof they purchased substantial quantities of publications in question, whereby trade was unfairly diverted to said publishers from their competitors:

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

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

Mr. Jesse D. Kash for the Commission.

Marlow & Hines, 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 Parke, Austin & Lipscomb, Inc., a corporation, Smithsonian Institution Series, Inc., a corporation, and Alfred Monett, Robert A. Hogan, Jr., and Joseph M. McAndrews, 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. Respondents, Parke, Austin & Lipscomb, Inc., and Smithsonian Institution Series, Inc., are corporations organized, existing, and doing business, under and by virtue of the laws of the State of New York, with their offices and principal places of business located at 500 Fifth Avenue, New York, N. Y. Respondent, Smithsonian Institution Series, Inc., was organized by, and is a wholly owned subsidiary of, respondent Parke, Austin & Lipscomb, Inc., and its policies, practices, and methods are formulated, controlled, directed, and dominated by Parke, Austin & Lipscomb, Inc.

Respondent, Alfred Monett, is an individual, and is president of both of the corporate respondents, with his office and principal place of business at 500 Fifth Avenue, New York, N. Y.

Respondent, Robert A. Hogan, Jr., is an individual and is treasurer of respondent, Parke, Austin & Lipscomb, Inc., and secretary of respondent, Smithsonian Institution Series, Inc., with his office and principal place of business at 500 Fifth Avenue, New York, N. Y.

Respondent, Joseph M. McAndrews, is an individual and is secretary of respondent, Parke, Austin & Lipscomb, Inc., with his office and principal place of business at 500 Fifth Avenue, New York, N. Y.

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The individual respondents formulate, control, direct, and dominate the policies, practices, and methods of the corporate respondents.

PAR. 2. The respondents are now, and for more than 2 years last past, have been, engaged in the publication and in the sale and distribution of books, including, among others, a 12-volume set of books of an encyclopedic nature designated "Smithsonian Scientific Series." In the course and conduct of their business the respondents cause their books, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid the 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 of books of an encyclopedic nature in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. On or about December 14, 1926, the respondent, Smithsonian Institution Series, Inc., entered into an agreement or contract with the Smithsonian Institution of Washington, D. C., under the terms of which the said Smithsonian Institution furnished to respondent Smithsonian Institution Series, Inc., certain manuscripts and illustrations, which material was placed in book form by respondent Smithsonian Institution Series, Inc., and sold under said designation of "Smithsonian Scientific Series." Said agreement further provided that the Smithsonian Institution should receive a royalty of 10 percent on all gross sales of said books.

PAR. 5. In the course and conduct of their said business, and for the purpose of promoting the sale of said books, the respondents have made, and are making, many false and misleading statements and representations to prospective purchasers of such books, such statements and representations being made through respondents' salesmen and representatives and by other means. Among and typical of said statements and representations are the following:

That respondents' salesmen and representatives are in the employ of, or connected with, the Smithsonian Institution of Washington, D. C.; that said books are published and sold by the Smithsonian Institution; that the entire profit derived from the sale of said books accrues to the Smithsonian Institution; that the sale of said books is restricted to a comparatively small number of selected individuals in each community.

PAR. 6. The foregoing statements and representations so made by the respondents in connection with the sale of their books are grossly exaggerated, false and misleading. In truth and in fact, respondents' salesmen and representatives are not in the employ of, nor have they any connection with, the Smithsonian Institution. Said books are not published or sold by the Smithsonian Institution but are sold by the respondents as an ordinary commercial enterprise. The Smithsonian Institution does not receive the entire profit derived from the sale of said books, but in fact receives only the royalty of 10 percent 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.

The Smithsonian Institution of Washington, D. C., is now, and for many years last past has been, identified in the public mind as a non-profit organization devoted to scientific research and the promotion of learning. The use by the corporate respondent, Smithsonian Institution Series, Inc., of the words "Smithsonian Institution" as a part of its corporate name constitutes within itself a false and misleading representation that said respondent is a part of, or is connected with, the Smithsonian Institution of Washington, D. C. The use of said name by said respondent serves also to accentuate the other false and misleading representations made by the respondents in the sale of their said books.

PAR. 7. Another publication sold and distributed by the respondent, Parke, Austin & Lipscomb, Inc., and the individual respondents, in commerce as aforesaid, is a set of books of an encyclopedic nature designated "World Epochs." On or about August 27, 1938, said corporate respondent entered into an agreement or contract with the United States Flag Association of Washington, D. C., under which said Association agreed to cooperate with said corporate respondent in the sale of said books to the extent of issuing bulletins and letters recommending said books. In return for its cooperation in the sale of said books, said Association was to receive a royalty of 5 percent on gross collections on all units of books sold for \$79.50 or less and 10 percent on gross collections on units sold for more than \$79.50.

The United States Flag Association is a patriotic nonprofit organization which is engaged in conducting an educational program among the adult citizenry and school children of the United States for the purpose of cultivating and stimulating patriotism and national spirit.

PAR. 8. In the course and conduct of their business as aforesaid, and for the purpose of promoting the sale of said books, said respondents have made many false and misleading statements and representations to prospective purchasers, such statements and representations

being made through salesmen and representatives and by other means. Among and typical of said statements and representations are the following:

That respondents' salesmen and representatives are representatives of the United States Flag Association; that the United States Flag Association 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 association which will be used by the association in combatting anti-American and subversive organizations and influences in the United States; that said association maintains a lobby in the city of Washington for the purpose of combatting anti-American and subversive organizations and influences, and that the profits derived from the sale of said books will be used by the association to defray the expense of such lobbying activities.

The purchase of said books is presented by the respondents to the prospective purchaser not as an ordinary commercial transaction, but is presented under the guise of an appeal to the prospective purchaser, on grounds of patriotism, to assist in the efforts of the association to combat anti-American and subversive organizations and influences in the United States.

PAR. 9. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' salesmen and representatives are not representatives of the United States Flag Association, but are merely salesmen of the respondents. The United States Flag Association does not receive the entire profit derived from the sale of said books, nor does the purchase of said books constitute a contribution to said association. Said books are sold by the respondents as an ordinary commercial enterprise for profit, and the only benefit derived by the United States Flag Association from the sale of such books is the small royalty hereinabove mentioned. Said association does not conduct any lobbying activities.

A further practice on the part of the respondents in promoting the sale of said books is the wrongful use of letters from United States Senators and others prominent in American public life endorsing the aims and purposes of the United States Flag Association. Such letters are represented by the respondents as endorsements of said books, when in truth and in fact such letters have no reference to said books but relate only to the general aims and purposes of said association.

PAR. 10. The use by the respondents of said false and misleading statements and representations in connection with the sale of their products has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the er-

roneous and mistaken belief that such statements and representations are true, and into the purchase of substantial quantities of respondents' products 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 substantial injury has been done, and is now being done, by the respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 11. 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 February 14 A. D. 1941, issued and subsequently served its complaint upon the respondents, Parke, Austin & Lipscomb, Inc., a corporation; Smithsonian Institution Series, Inc., a corporation; Alfred Monett, individually and as an officer of Parke, Austin & Lipscomb, Inc., and Smithsonian Institution Series, Inc.; Robert A. Hogan, Jr., individually and as an officer of Parke, Austin & Lipscomb, Inc., and Smithsonian Institution Series, Inc.; and Joseph M. McAndrews, individually and as an officer of Parke, Austin & Lipscomb, Inc., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of said complaint were introduced by Jesse D. Kash, attorney for the Commission, and in opposition to the allegations of the complaint by Ernest W. Marlow and Richard Lincoln, attorneys for the respondents, before W. W. Sheppard, a trial examiner of the Commission therefore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed 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. Respondents, Parke, Austin & Lipscomb, Inc., and Smithsonian Institution Series, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York, with their offices and principal places of business located at 500 Fifth Avenue, New York, N. Y. Respondent Smithsonian Institution Series, Inc., was organized by, and is a wholly owned subsidiary of, Parke, Austin & Lipscomb, Inc., and its policies, practices, and methods are formulated, controlled, directed, and dominated by Parke, Austin & Lipscomb, Inc.

Respondent, Alfred Monett, is an individual and is president of both of the corporate respondents, with his office and principal place of business at 500 Fifth Avenue, New York, N. Y.

Respondent, Robert A. Hogan, Jr., is an individual and is treasurer of both of the corporate respondents, with his office and principal place of business at 500 Fifth Avenue, New York, N. Y.

Respondent, Joseph M. McAndrews, is an individual and is secretary of both of the corporate respondents, with his office and principal place of business at 500 Fifth Avenue, New York, N. Y.

The individual respondents, as officers of said corporate respondents, formulate, control, direct, and dominate the policies, practices, and methods of said corporate respondents.

PAR. 2. Respondents are now, and for more than 3 years last past have been engaged in the publication and in the sale and distribution of various books of an encyclopedic or historical nature, including, among others, a 13-volume set of books designated "Smithsonian Scientific Series." In addition, the corporate respondent, Parke, Austin & Lipscomb, Inc., and the individual respondents are also engaged in the publication and in the sale and distribution of a set of books known as "World Epochs." In the course and conduct of their business, the said respondents cause said books, 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 products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, the 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 of books of an encyclopedic or historical nature in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the early part of 1926 negotiations were entered into between the respondent, Parke, Austin & Lipscomb, Inc., and the Smithsonian Institution of Washington, D. C., for the purpose of having said respondent engage in the publication, sale, and distribution of a set of books compiled from data collected by the Smithsonian Institution in various scientific investigations. For the purpose of keeping the sale and distribution of this particular set of books separate and apart from the other publications sold and distributed by the respondent, Parke, Austin & Lipscomb, Inc., a new corporation was formed, known as Smithsonian Institution Series, Inc., which was, and is, a wholly owned subsidiary of the respondent, Parke, Austin & Lipscomb, Inc.

PAR. 5. Immediately after its organization, the respondent, Smithsonian Institution Series, Inc., on December 14, 1926, entered into a contract with the Smithsonian Institution of Washington, D. C., whereby said respondent agreed to engage in the publication, sale, and distribution, exclusively, of a set of books to be designated as "Smithsonian Scientific Series," manuscripts for which to be furnished by the Smithsonian Institution, subject to reimbursement for cost of preparation of such manuscripts of not to exceed \$2,500 per volume. This contract further provided for the payment of a royalty of 10 percent of gross sales. Said respondent further agreed to raise a fund of \$250,000 to be devoted exclusively to the financing, publication, and sale of said books, which were to be copyrighted in the name of the respondent, Smithsonian Scientific Series, Inc., all copyrights, plates, manuscripts, etc., to remain the exclusive property of said respondent. The funds required by the contract were deposited and the respondent proceeded with the publication, sale, and distribution of said books, exclusively. These books were sold at various prices ranging from \$59.50 to \$250 per set, depending upon binding and type of paper used.

PAR. 6. In the course and conduct of their said business and for the purpose of promoting the sale of said books, the corporate respondent, Smithsonian Institution Series, Inc., and the individual respondents, directly and through salesmen and agents, have made many false and misleading statements and representations to pro-

spective purchasers to the effect that respondents' salesmen and representatives were in the employ of, or connected with, the Smithsonian Institution of Washington, D. C.; that said books were published and sold by the Smithsonian Institution; that the entire profit derived from the sale of said books accrued to the Smithsonian Institution; and that the sale of said books was restricted to a comparatively small number of selected individuals in each community.

In furtherance of this form of misrepresentation, the said respondents prepared and issued to their various salesmen and representatives a so-called "Authorized Presentation," which set out in detail the method of approach and sales talk to be used in attempting to close a sale of these books with a prospective purchaser. This sales talk is so prepared and designed to lead prospective purchasers to believe that the salesman is a representative of the Smithsonian Institution of Washington, D. C.; that the entire profit derived from the sale of the books accrues to the Smithsonian Institution; and that they have been specially selected to be designated as patrons of the Smithsonian Institution. In furtherance of this plan, the said respondents cause the Smithsonian Institution of Washington, D. C., to issue to all purchasers of the said Smithsonian Scientific Series, a certificate under the seal of the Smithsonian Institution of Washington, D. C., signed by its secretary, certifying such purchaser as being registered in the archives of the Institution as a patron of the Smithsonian Scientific Series in recognition of support of the Institution's program for the diffusion of knowledge among men, facsimiles of which certificate are carried by the salesmen and exhibited to prospective purchasers.

PAR. 7. The acts and practices of the respondents as hereinbefore described are designed to and have the effect of causing purchasers and prospective purchasers to believe that they are purchasing said books designated as Smithsonian Scientific Series directly from the Smithsonian Institution of Washington, D. C.; that said books are published and sold by the Smithsonian Institution of Washington, D. C.; that the entire profits derived from the sale of said books accrue to the Smithsonian Institution of Washington, D. C.; and that they have been specially selected to act as patrons of the Smithsonian Institution of Washington, D. C.

PAR. 8. The sale and distribution by the respondents of the books designated as Smithsonian Scientific Series constitute an ordinary commercial enterprise for profit, and the only benefit derived by the Smithsonian Institution of Washington, D. C., from the sale of said books is the small royalty hereinabove described. The books are not published by the Smithsonian Institution of Washington,

D. C., nor are the copyrights, plates, and other material owned or controlled by the Smithsonian Institution. The Smithsonian Institution of Washington, D. C., does not select, nor does it have any control over, the agents or salesmen who sell said Smithsonian Scientific Series, but, instead, such agents and salesmen are employees of the respondents and subject to the supervision and control of the respondents. Purchasers and prospective purchasers have not been specially selected to act as patrons of the Smithsonian Institution of Washington, D. C., but, instead, said books are sold indiscriminately to the general public. The use of the so-called "patron certificate" is designed to and has the effect of furthering the representations that the prospective purchaser has been specially selected because of his standing in the community and that the prospective purchaser is dealing with the Smithsonian Institution on a basis different from an ordinary commercial transaction.

PAR. 9. The Smithsonian Institution of Washington, D. C., is now, and for many years last past has been, identified in the public mind as a nonprofit organization devoted to scientific research and the promotion of learning. The use by the corporate respondent Smithsonian Institution Series, Inc., of the words "Smithsonian Institution" as part of its corporate name, constitutes, within itself, a false and misleading representation that said respondent is part of, or is connected with, the Smithsonian Institution of Washington, D. C. The use of said name by said respondent serves also to accentuate the other false and misleading representations made by the respondents in the sale of their said books.

PAR. 10. In addition to the acts and practices hereinabove described, the corporate respondent, Parke, Austin & Lipscomb, Inc., and the individual respondents also engage in the publication and in the sale and distribution in commerce of a set of books of an encyclopedic or historical nature designated "World Epochs." On or about August 27, 1938, the corporate respondent, Parke, Austin & Lipscomb, Inc., entered into a contract with the United States Flag Association whereby said corporate respondent agreed to publish, sell, and distribute a set of books to be designated "World Epochs," together with other pamphlets and documents prepared by the United States Flag Association or otherwise, which sales were to be made in the name of, and under the imprint of, the United States Flag Association, with the understanding that the United States Flag Association be paid a royalty of 5 percent on gross collections on sales up to \$79.50 and 10 percent on gross collections on sales in excess of \$79.50. Subsequent thereto, on November 18, 1940, a new agreement was entered into between the said corporate respondent and the United States Flag Association whereby

the corporate respondent was to act as the exclusive agent of the United States Flag Association on a commission basis of 10 percent on gross receipts, plus reimbursement for costs. Prior to entering into the above-mentioned contracts with the United States Flag Association, the said corporate respondents had sold and distributed said series of books known as "World Epochs" under an arrangement with the Veterans of Foreign Wars National Home, under which arrangement a royalty was paid to the Veterans of Foreign Wars National Home for its endorsement of this work.

PAR. 11. The United States Flag Association was organized as a corporation under and by virtue of the laws of the District of Columbia on April 10, 1924, for the object and purpose, as expressed in its charter, of "in the interest of lofty Americanism, sturdy patriotism, and good citizenship, which shall make stronger and more secure the foundations of this republic established on the principles of freedom, equality, justice, and humanity, to bring into proper consideration and appreciative regard by the citizenry of the republic the flag of the United States as the visible, symbolic representation of our national sovereignty, ideals, traditions, and institutions."

PAR. 12. For the purpose of inducing the purchase of said set of books designated "World Epochs" and other pamphlets and publications sold under their agreement with the United States Flag Association, the respondents represented to purchasers and prospective purchasers directly and indirectly, that the United States Flag Association was the publisher of said set of books known as "World Epochs"; that it received the entire profit derived from the sale of said books, which proceeds were to be used by the Association in combating anti-Americanism and subversive organizations and influences in the United States; and that the proposal to purchase said books was not based upon an ordinary commercial transaction but was an appeal on the grounds of patriotism to assist in the efforts of the Association to combat anti-Americanism and subversive organizations and influences in the United States. In furtherance of this plan, respondents' salesmen were issued letters of identification upon the stationery of the United States Flag Association, signed by the President General of the Association, reciting that such salesmen were accredited Regional Directors of the United States Flag Association and that the purpose of their call was in connection with a matter of very serious national importance. The respondents also caused the United States Flag Association to issue to all purchasers of said "World Epochs" a certificate of life membership in the United States Flag Association.

PAR. 13. In addition to the acts and practices hereinbefore described, the respondents used as letters of endorsement of said publication

"World Epochs," letters from United States Senators and others prominent in American Life, which were, in fact, endorsements of the aims and purposes of the United States Flag Association and which were written without knowledge that such letters were to be used as endorsements of any series of books. In fact, the respondents continued to use a number of such letters even after objection had been made by the writers of such letters, to their use as an endorsement of the books being sold.

PAR. 14. The acts and practices of the respondents as hereinbefore described were designed to and had the effect of causing purchasers and prospective purchasers to believe that they were purchasing said books designated as "World Epochs" and other publications directly from the United States Flag Association; that said books were published and sold by the United States Flag Association; that the entire profits derived from the sale of said books accrued to the United States Flag Association; that all funds obtained from the sale of such books over and above actual publication expense were to be used in combating anti-Americanism and subversive organizations and influences in the United States; and that said prospective purchasers had been specially selected, because of previous achievements or standing in the community, to be made life members of the United States Flag Association.

PAR. 15. The entire plan of operation in connection with the sale of said set of books designated "World Epochs," and other pamphlets and publications connected therewith, was false and misleading. Prior to November 18, 1940, said books were sold by the respondents as an ordinary commercial enterprise for profit, and the only benefit derived by the United States Flag Association from the sale of such books was the small royalty hereinabove described. The series of books "World Epochs" was not published by the United States Flag Association, nor were the copyrights, plates, and other material owned or controlled by the United States Flag Association. The United States Flag Association did not select, nor did it have any control over, the agents or salesmen who sold said "World Epochs," but, instead, such agents and salesmen were employees of the respondents and subject to the supervision and control of the respondents. The designation of respondents' salesmen as "Regional Directors," over the signature of the president general of the United States Flag Association, was designed to, and did, mislead prospective purchasers into believing that they were dealing directly with the United States Flag Association on a patriotic basis which did not involve a commercial enterprise for profit.

The contract of November 18, 1940, while ostensibly shifting the respondent, Parke, Austin & Lipscomb, Inc., from publisher and owner

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to exclusive agent, did not materially change the status of the parties or remove the sale of these books from being an ordinary commercial enterprise for profit. The supervision and control of agents and salesmen continued in the respondents, subject only to the approval of the United States Flag Association. Complete control over accounts and their collection remained in the respondents, subject only to accounting as provided in the contract. The preparation and publication of the books sold under this arrangement continued to be handled by the respondents, subject to reimbursement from gross collections, and title to the publication "World Epochs," including copyrights, plates, etc., remained in the respondents and was not transferred to the United States Flag Association. Furthermore, the contract of November 18, 1940, provides for payment by the respondents to the United States Flag Association of a guaranteed percentage of gross sales, which percentages are the same as the royalties provided for in the original contract, with minor additions.

Purchasers and prospective purchasers have not been specially selected to be recipients of the books sold and distributed by the respondents under their contract with the United States Flag Association, but, instead, said books are sold indiscriminately to the general public. The use of the life membership certificates is designed to and has the effect of furthering the representation that the prospective purchaser has been specially selected because of his standing in the community and that said prospective purchaser is dealing with the United States Flag Association on a basis different from an ordinary commercial transaction, particularly since such life memberships were indiscriminately issued to all persons purchasing such publications in amounts of \$25 or more. In some instances life memberships in the so-called "Legion of the Flag" have been issued by the United States Flag Association to persons designated by the respondents, deliveries of which certificates were made by the respondents or their representatives for the purpose of establishing initial contact and accomplishing the sale of books by the respondents.

PAR. 16. The use by the respondents of the foregoing acts and practices in connection with the sale and offering for sale of the series of books designated "Smithsonian Scientific Series," has a tendency and capacity to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that they are purchasing said books designated as "Smithsonian Scientific Series" directly from the Smithsonian Institution of Washington, D. C., that the entire profits derived from the sale of said books accrue to the Smithsonian Institution of Washington, D. C., and that they have been specially selected to act as patrons of the Smithsonian Institution

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of Washington, D. C.; and the use by the respondents of the foregoing acts and practices in connection with the sale and offering for sale of the series of books designated "World Epochs," and other pamphlets, under contracts with the United States Flag Association has 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 they were dealing directly with the United States Flag Association, that all the profits derived from the sale of such books would be used to further the purposes of the United States Flag Association and to combat anti-Americanism and subversive organizations and influences in the United States, and that such transactions did not involve any commercial enterprise for profit. As a result of such erroneous and mistaken beliefs, a substantial portion of the purchasing public has purchased substantial quantities of respondents' publications designated "Smithsonian Scientific Series" and "World Epochs," and other publications, thereby diverting trade unfairly to the respondents from their competitors who are engaged in competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

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

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 W. W. Shepard, 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, 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 said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Parke, Austin & Lipscomb, Inc., a corporation, and Smithsonian Institution Series, Inc., a corporation, and their respective officers, agents, representatives, and employees, and respondents Alfred Monett, an individual, Robert A. Hogan, Jr.,

an individual, and Joseph M. McAndrews, an individual, 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 a set of books designated "Smithsonian Scientific Series," or other books, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that respondents' salesmen or representatives are in the employ of the Smithsonian Institution of Washington, D. C., or have any direct connection with said Smithsonian Institution.

2. Representing, directly, or indirectly, that the books sold and distributed by the respondents are published by the Smithsonian Institution of Washington, D. C., or that the entire profit or proceeds obtained from the sale of such books accrues to the Smithsonian Institution of Washington, D. C.

3. Representing, directly, or indirectly, that the sale of said books is restricted to a selected number of individuals in any community or that any individual has been selected to act as patron of the Smithsonian Institution of Washington, D. C.

4. The use of "patron certificates" of the Smithsonian Institution in such a way as to imply that a purchaser has been specially selected, because of prominence in the community, or for any other reason, or that such purchaser has contributed to a cause other than by the purchase of a set of books as an ordinary commercial transaction for profit.

5. The use of the words "Smithsonian Institution" in respondents' trade or corporate name, or in any other manner, to designate or describe an organization engaged in a commercial enterprise for profit, which is not a part of, or has no direct connection with, the Smithsonian Institution of Washington, D. C.

6. Representing, directly, or indirectly, that respondents are engaged in any enterprise other than that of a commercial enterprise for profit.

It is further ordered, That the respondents, Parke, Austin & Lipscomb, Inc., a corporation, and its officers, and Alfred Monett, an individual, Robert A. Hogan, Jr., an individual, and Joseph M. McAndrews, an individual, 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 a set of books designated "World Epochs," or other books, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Representing, directly, or indirectly, that any salesman or representative who is not directly responsible to the United States Flag Association or who is not working under the direct supervision and control of said Association, is in the employ of, or directly connected with, the United States Flag Association.

2. Representing, directly, or indirectly, that the entire profit or proceeds derived from the sale of said books accrues to the United States Flag Association.

3. Representing, directly, or indirectly, that respondents are engaged in any enterprise other than that of a commercial enterprise for profit, or that a purchaser of such books is, in effect, making a contribution to the United States Flag Association to be used by the Association in combating anti-Americanism and subversive organizations and influences in the United States.

4. The use of letters endorsing the aims and purpose of the United States Flag Association as endorsements of books sold and distributed by the respondents.

5. The use of life membership certificates in the United States Flag Association or other organizations in such a way as to imply that a purchaser has contributed to a cause other than by the purchase of a set of books as an ordinary commercial transaction for profit.

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. L. RAMSAY AND G. P. MASTERS, TRADING AS ROGERS
SILVERWARE EXCHANGE AND ROGERS REDEMPTION
BUREAU**

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

Docket 4094. Complaint, Apr. 22, 1940—Decision, Feb. 9, 1942

Where an individual, engaged in the competitive interstate sale and distribution to retail dealers of sales stimulation plans, under which the dealer contracted to purchase a designated number of said individual's gift cards at \$1 per 1,000, for distribution among his customers, based on their purchase of merchandise, and said individual agreed to redeem the cards by sending the customer a designated number of pieces of Wm. A. Rogers silverware, packed in units of six—

(a) Prominently displayed in his contract forms and in circulars and other advertising material, and in the specimen gift cards made use of by him and his agents, the legends "Wm. A. Rogers Silverware," "Rogers Silverware" and "Wm. A. Rogers, Ltd.," and his trade names "Rogers Silverware Exchange" and "Rogers Redemption Bureau," and set forth on said gift cards the statement that "Through a national advertising campaign sponsored by this organization you may receive any of the beautiful gifts listed in free schedule by saving these gift cards," and represented orally and through his said agents that he was connected with and a representative of Oneida, Ltd., manufacturer of Wm. A. Rogers silverware, and, by said sales stimulation plan, was conducting an advertising campaign for such concern;

When in fact he was not a part of or in any way connected with said Oneida, Ltd., manufacturer of said long favorably known silverware, and his said sales plan was initiated solely on his own behalf and to sell his said cards;

(b) Represented that he would distribute circulars and other advertising materials throughout the trade area served by the dealer, and thus assist the latter in putting plan in question into operation, and undertook, through provisions of contract in question, affirmed orally to dealers by himself and his agents, to supply to the dealer without cost a 26-piece display set of silverware with case, to remain the dealer's property, and to make cash refunds to dealer at the rate of \$1 for each 1,000 cards forwarded for redemption after 25 percent of the cards had been thus forwarded;

The facts being he made no such distribution of advertising material, did not render the dealer any other assistance in putting the plan into operation, in many instances wholly failed to supply the dealer with any display set of silverware, and did not make said cash refund; and

(c) Represented, through contract in question, affirmed orally to dealers, that he would send to dealer's customer forwarding a specified number of cards a complete unit of six of the designated pieces of silverware;

The facts being he failed in many instances to redeem gift cards with silverware; in many instances, upon receiving the designated number of cards for redemption, required that six times that number be forwarded for the unit

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in question; and couched contract provisions in question in ambiguous language, enabling him and his agents more easily to deceive prospective purchasers;

With effect of misleading and deceiving a substantial number of dealers and members of the purchasing public into the mistaken belief that aforesaid representations were true and into the purchase of substantial quantities of his said products, whereby trade therein was diverted unfairly to him from his competitors, to the injury of competition in commerce:

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

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 J. L. Ramsay, and G. P. Masters, individually, and trading as Rogers Silverware Exchange, and as Rogers Redemption Bureau, 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, J. L. Ramsay and G. P. Masters, are individuals trading as Rogers Silverware Exchange and as Rogers Redemption Bureau. The last-known place of business and post-office address of the respondents was 2611 Olive Street in the city of St. Louis, Mo. Respondents are now, and for more than 2 years last past have been, engaged in the sale and distribution of sales stimulation plans to retail dealers, such plans consisting of gift cards, advertising material, silverware and other merchandise.

Respondents cause their said gift cards, advertising material and merchandise when sold to be transported from their 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. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business respondents have been and are in substantial competition with other individuals and with firms and corporations also engaged in the business

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of selling and distributing sales stimulation plans and silverware and other merchandise of a similar nature 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, acting personally and also through agents, contact retail dealers and obtain from many of such dealers written contracts whereby the dealer agrees to purchase of respondents a designated number of respondent's gift cards at a price of \$4 per 1,000 cards. Under the terms of such contract such gift cards are to be distributed by the dealer among his customers as merchandise is purchased by such customers from the dealer, and the respondents agree to redeem such cards by sending to the customer a designated number of pieces of Wm. A. Rogers Silverware, such silverware being packed in units of 6 pieces. It is further provided in said contract that when 25 percent of said gift cards have been forwarded to respondents for redemption respondents will make a cash refund to the dealer at the rate of \$4 for each 1,000 cards forwarded for redemption. A further provision of the contract is that the respondents will supply to the dealer without cost a 26-piece set of silverware, together with case, for display purposes, such set to remain the property of the dealer.

In such contract and in the circulars and other advertising material, and in the specimen gift cards used by respondents and their agents in soliciting dealers, the legends "Wm. A. Rogers Silverware," "Rogers Silverware" and "Wm. A. Rogers, Ltd." are prominently displayed. Respondents' trade names "Rogers Silverware Exchange" and "Rogers Redemption Bureau" are also prominently and conspicuously displayed on all of such contracts, circulars, gift cards, and other advertising material. Such gift cards and the specimens thereof exhibited to dealers as aforesaid contain among other representations the following:

Through a national advertising campaign sponsored by this organization you may receive any of the beautiful gifts listed in free schedule by saving these gift cards.

All contract forms, advertising material and specimen gift cards exhibited to the dealer are the property of the respondents and are supplied to respondents' agents by the respondents.

PAR. 4. In addition to the representations set forth in said contract, advertising material and gift cards as aforesaid the respondents, acting personally or through agents, in the course and conduct of their business and for the purpose of inducing the purchase of their said products, make certain oral representations to prospective pur-

chasers with respect to their products. Among such representations are the following:

That respondents are connected with and are agents and representatives of Oneida, Ltd., the manufacturer of Wm. A. Rogers Silverware, and are conducting by means of said sales stimulation plan an advertising campaign for such concern; that respondents will distribute circulars and other advertising material throughout the trade area served by the dealer and thus assist the dealer in putting the sales stimulation plan into operation and effect; that the statements in the contract and in the advertising material with respect to the number of gift cards which must be forwarded to respondents to obtain certain designated pieces of silverware mean that the forwarding of the specified number of cards will entitle the sender to receive a complete unit of six of the designated pieces of silverware rather than only one piece of such silverware. Respondents and their agents also repeat orally to dealers the representations made in said written contract with respect to the supplying by the respondents to the dealer, without cost, of the display set of silverware and with respect to the cash refund to be made by respondents to the dealer.

PAR. 5. The representations made by respondents and their agents as set forth in paragraphs 3 and 4 are grossly exaggerated, false, and misleading. In truth and in fact, respondents are not agents or representatives of Oneida, Ltd., the manufacturer of Wm. A. Rogers Silverware, nor are they connected with said concern in any other manner. The sales stimulation plan of respondents is in no sense an advertising campaign on behalf of said concern, but is a plan initiated by respondents solely on their own behalf and for the purpose of selling respondents' so-called gift cards. Respondents do not distribute circulars or any other advertising material in the trade area served by the dealer purchasing respondents' cards, nor do respondents render the dealer any other assistance in putting the sales stimulation plan into operation and effect. In many instances respondents have wholly failed to supply the dealer with the designated 26-piece set of silverware or with any display set of silverware. Respondents do not make to dealers the cash refunds provided for in said contract.

In many instances respondents have failed to redeem said gift cards by forwarding to the person sending in said cards the designated pieces of silverware or any other pieces of silverware. In many other instances the respondents, upon receiving the designated number of cards for redemption, have not forwarded to the holder of such cards a unit of six pieces of silverware, but have required that six times the designated number of cards be forwarded for such unit of silverware.

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The provisions of the written contract with respect to the number of cards required for the obtaining of silverware are couched in ambiguous and deceptive language, which fact enables the respondents and their agents more easily to mislead and deceive prospective purchasers of said gift cards.

PAR. 6. The use by respondents of the trade names "Rogers Silverware Exchange" and "Rogers Redemption Bureau" constitutes within itself a false, deceptive, and misleading representation that respondents' business is a part of or is connected with the business of the said Oneida, Ltd., manufacturer of Wm. A. Rogers Silverware. The said silverware known as Wm. A. Rogers Silverware has for a long period of time enjoyed a good reputation and dealers and the purchasing public rely upon and have confidence in such silverware and the manufacturer thereof.

PAR. 7. The use by respondents of the false and misleading representations set forth herein, including the use of the trade names "Rogers Silverware Exchange" and "Rogers Redemption Bureau" 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 that respondents are connected with Oneida, Ltd., and into the purchase of substantial quantities of respondents' products. As a result, trade in such products has been diverted unfairly to respondents from their competitors. In consequence 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.

PAR. 8. 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 April 22, 1940, issued and subsequently served its complaint in this proceeding upon respondents, G. P. Masters and J. L. Ramsay, trading as Rogers Silverware Exchange and as Rogers Redemption Bureau, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

Thereafter, the respondent, J. L. Ramsay, 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. No answer was filed by the respondent, G. P. Masters, who was served by registered mail in May 1940. He has not been heard from since served and his present address and whereabouts are unknown. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer of respondent J. L. Ramsay 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. L. Ramsay, is an individual, who traded as Rogers Silverware Exchange and Rogers Redemption Bureau. The last-known place of business and post-office address of the respondent was 231 Blair Avenue, Newport News, Va. For some years prior to early in 1940 respondent was engaged in the sale and distribution of sales stimulation plans to retail dealers, such plans consisting of gift cards, advertising material, silverware, and other merchandise.

Respondent caused his said gift cards, advertising material, and merchandise when sold to be transported from his place of business in the State of Missouri to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent at all times mentioned herein maintained a course of trade in his 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 has been in substantial competition with other individuals and with firms and corporations also engaged in the business of selling and distributing sales stimulation plans and silverware and other merchandise of a similar nature 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 as aforesaid, respondent, acting personally and also through agents, contacted retail dealers and obtained from many of such dealers written contracts whereby the dealer agreed to purchase of respondent a designated number of respondent's gift cards at a price of \$4 per 1,000 cards. Under the terms of such contract such gift cards were to be distributed by the dealer among his customers as merchandise was

purchased by such customers from the dealer, and the respondent agreed to redeem such cards by sending to the customer a designated number of pieces of Wm. A. Rogers Silverware, such silverware being packed in units of 6 pieces. It was further provided in said contract that when 25 percent of said gift cards had been forwarded to respondent for redemption respondent would make a cash refund to the dealer at the rate of \$4 for each 1,000 cards forwarded for redemption. A further provision of the contract was that the respondent would supply to the dealer without cost a 26-piece set of silverware, together with case, for display purposes, such set to remain the property of the dealer.

In such contract and in the circulars and other advertising material, and in the specimen gift cards used by respondent and his agents in soliciting dealers, the legends "Wm. A. Rogers Silverware," "Rogers Silverware" and "Wm. A. Rogers, Ltd." were prominently displayed. Respondent's trade names "Rogers Silverware Exchange" and "Rogers Redemption Bureau" were also prominently and conspicuously displayed on all of such contracts, circulars, gift cards and other advertising material. Such gift cards and the specimens thereof exhibited to dealers as aforesaid contained among other representations the following:

Through a national advertising campaign sponsored by this organization you may receive any of the beautiful gifts listed in free schedule by saving these gift cards.

All contract forms, advertising material and specimen gift cards exhibited to the dealer were the property of the respondent and were supplied to respondent's agents by the respondent.

PAR. 4. In addition to the representations set forth in said contract, advertising material and gift cards as aforesaid, the respondent, acting personally or through agents, in the course and conduct of his business and for the purpose of inducing the purchase of his said products, made certain oral representations to prospective purchasers with respect to his products. Among such representations were the following:

That respondent was connected with and was an agent and representative of Oneida, Ltd., the manufacturer of Wm. A. Rogers Silverware, and was conducting by means of said sales stimulation plan an advertising campaign for such concern; that respondent would distribute circulars and other advertising material throughout the trade area served by the dealer and thus assist the dealer in putting the sales stimulation plan into operation and effect; that the statements in the contract and in the advertising material with respect to the

number of gift cards which must be forwarded to respondent to obtain certain designated pieces of silverware meant that the forwarding of the specified number of cards would entitle the sender to receive a complete unit of six of the designated pieces of silverware rather than only one piece of such silverware. Respondent and his agents also repeated orally to dealers the representations made in said written contract with respect to the supplying by the respondent to the dealer, without cost, of the display set of silverware and with respect to the cash refund to be made by respondent to the dealer.

PAR. 5. The representations made by respondent and his agents as set forth in paragraphs 3 and 4 were grossly exaggerated, false, and misleading. In truth and in fact, respondent was not an agent or representative of Oneida, Ltd., the manufacturer of Wm. A. Rogers Silverware, nor was he connected with said concern in any other manner. The sales stimulation plan of respondent was in no sense an advertising campaign on behalf of said concern, but was a plan initiated by respondent solely on his own behalf and for the purpose of selling respondent's so-called gift cards. Respondent did not distribute circulars or any other advertising material in the trade area served by the dealer purchasing respondent's cards, nor did respondent render the dealer any other assistance in putting the sales stimulation plan into operation and effect. In many instances respondent wholly failed to supply the dealer with the designated 26-piece set of silverware or with any display set of silverware. Respondent did not make to dealers the cash refunds provided for in said contract.

In many instances respondent failed to redeem said gift cards by forwarding to the person sending in said cards the designated pieces of silverware or any other pieces of silverware. In many other instances the respondent, upon receiving the designated number of cards for redemption, did not forward to the holder of such cards a unit of six pieces of silverware but required that six times the designated number of cards be forwarded for such unit of silverware. The provisions of the written contract with respect to the number of cards required for the obtaining of silverware were couched in ambiguous and deceptive language, which fact enabled the respondent and his agents more easily to mislead and deceive prospective purchasers of said gift cards.

PAR. 6. The use by respondent of the trade names "Rogers Silverware Exchange" and "Rogers Redemption Bureau" constituted within itself a false, deceptive, and misleading representation that respondent's business was a part of or was connected with the business of the said Oneida, Ltd., manufacturer of Wm. A. Rogers Silverware. The

said silverware known as Wm. A. Rogers Silverware has for a long period of time enjoyed a good reputation and dealers and the purchasing public rely upon and have confidence in such silverware and the manufacturer thereof.

PAR. 7. The use by respondent of the false and misleading representations set forth herein, including the use of the trade names "Rogers Silverware Exchange" and "Rogers Redemption Bureau" has had the tendency and capacity to and did mislead and deceive a substantial number of dealers and members of the purchasing public into the erroneous and mistaken belief that such representations were true and that respondent was connected with the Oneida, Ltd., and into the purchase of substantial quantities of respondent's products. As a result, trade in such products has been diverted unfairly to respondent from his competitors. In consequence injury has been done to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The Commission further finds that the public interest does not require the continuance of this proceeding against the respondent, G. P. Masters, individually, and that the same should be closed as to him, 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.

CONCLUSION

The aforesaid acts and practices of the respondent, J. L. Ramsay, trading as Rogers Silverware Exchange and Rogers Redemption Bureau, as herein found, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, J. L. Ramsay, individually and trading as Rogers Silverware Exchange and as Rogers Redemption

Bureau 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 silverware or sales promotional plans, including premium certificates, gift cards or coupons redeemable in silverware or other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through use of the word "Rogers," either alone or in connection with any other word or words, in a corporate or trade name, or through statements in advertising, or in any other manner, that respondent has an interest in, forms a part of, or has any connection with Oneida, Ltd., manufacturer of Wm. A. Rogers Silverware.

2. Representing that certificates, gift cards, or other similar device can be redeemed in silverware or other merchandise unless and until all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with such offer and there is no deception as to the services or other actions to be performed or the price to be paid in connection with obtaining such silverware or other articles of merchandise.

3. Representing that the purchase price for said certificates or gift cards will be refunded to the dealer purchasers thereof or that the respondent will supply to such dealer purchasers without charge display sets of silverware, to become the property of such dealers, unless and until such are the facts and unless all of the terms and conditions of such offer or offers are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with such offer or offers and there is no deception as to the services or other actions to be performed by the dealer purchasers in connection with obtaining such refund and display set of silverware.

4. Representing that the sales-stimulation plan offered by respondent is authorized by Oneida Limited, or that sales literature will be distributed by the respondent on behalf of purchasers of said sales-promotion plan, or that said purchasers will be assisted by the respondent in any other manner.

5. Representing that a complete set of silverware or any specific item of silverware can be acquired through the redemption of such certificates, gift cards or similar devices unless and until such is the fact.

6. Using any representations with respect to the number of certificates or gift cards required to be redeemed in order to obtain any specific merchandise, which representations do not clearly and accurately disclose the number of such certificates or gift cards actually required to obtain such merchandise.

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

It is further ordered, That this proceeding be, and the same hereby is, closed as to the respondent, G. P. Masters, individually, without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume trial thereof as to said respondent, in accordance with its regular procedure.

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IN THE MATTER OF

McK. EDWARDS

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

Docket 4317. Complaint, Sept 17, 1940—Decision, Feb. 9, 1942

Where an individual, engaged in interstate sale and distribution of his "McK. Edwards Eczema Remedy"; by means of advertisements in newspapers and periodicals of general circulation, and by pamphlets, circulars and other printed or written matter—

- (a) Represented that his said preparation constituted a cure or remedy for eczema, poison oak and poison ivy, and possessed substantial therapeutic value in the treatment of said conditions; and
- (b) Represented that eczema was caused by microbes in the skin, and that a cure might be effected by destroying such microbes through the external application of his said preparation, and that it was entirely safe and harmless, except in the case of infants;

The facts being that product in question, while it might constitute an effective treatment or remedy for eczema resulting from some varieties of fungus infections, had no therapeutic value for other types or in excess of affording relief in some cases from the symptoms of itching; and, except for such possible relief, had no therapeutic value in the treatment of poison oak or ivy; and

- (c) Failed to reveal facts material in the light of aforesaid representations with respect to the consequences which might result from use of the product under prescribed or usual conditions, in that by virtue of its unusually large content of salicylic acid, it might have an excoriating effect upon the skin and produce upon certain individuals an acute and painful rash, and thereby seriously aggravate certain types and conditions of eczema;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that his preparation possessed therapeutic properties which it did not in fact possess, and, except for infants, was in all cases safe and harmless; as a result whereof the purchasing public was induced to purchase substantial quantities thereof:

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. William C. Reeves*, trial examiner.

Mr. Charles S. Cox for the Commission.

Mr. John T. Raftis, of Colville, Wash., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that McK. Edwards, an individual, hereinafter referred to as respondent, has violated the

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

PARAGRAPH 1. Respondent, McK. Edwards, is an individual residing and maintaining a place of business at Valley, Wash. The respondent is now, and for more than 2 years last past has been, engaged in the business of selling and distributing a medicinal preparation designated as "McK. Edwards' Eczema Remedy."

In the course and conduct of his business, respondent causes said medicinal preparation, when sold, to be transported from his place of business in the State of Washington to the purchasers thereof located in various States of the United States other than the State of Washington, and in the District of Columbia. Respondent maintains, and at all times 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. 2. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails, and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of 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 United States mails, by advertisements in newspapers and periodicals having a general circulation, and in pamphlets, circulars, and other printed or written matter, are the following:

FOR ECZEMA SUFFERERS

If you or any of your friends have burning itching eczema, I have a remedy that will give positive relief in a very short time.

FOR GUARANTEED RELIEF OF ECZEMA, * * * fungus poison, write McK. Edwards, Valley, Washington.

* * * This remedy is very effective and will also relieve poison oak, poison ivy * * *

Symptoms: Eczema is caused by tiny microbes in the skin, and it is purely a skin disease, and with a powerful magnifying glass you can see the microbes

crawling, under the skin, but it is not infectious nor contagious in any way.

* * *

Treatment: Simply stay away from water and grease as much as possible. Use a little cotton swab, saturated with my remedy, over the affected parts five or six times daily, until new skin has formed and the old crusted skin has peeled off. Thereafter, apply only when itching occurs. Be very persistent, and do not neglect. It will burn some when first applied, but will very soon relieve the itching sensation, and this is the very important part. It is then that the Remedy does its work. Do not use this Remedy for tiny babies as the burn is too severe, but do not hesitate to use it for yourself. Where instructions are properly followed I have never known this Remedy to fail.

PAR. 3. Through the use of the foregoing representations, and others of similar import not specifically set out herein, the respondent represents and has represented that his said preparation constitutes a cure or remedy for eczema, poison oak and poison ivy, and that it possesses substantial therapeutic value in the treatment of such conditions; that eczema is caused by microbes in the skin and that a cure may be effected by destroying such microbes through the external application of respondent's preparation; that said preparation is entirely safe and harmless except in the case of infants.

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 eczema, poison oak, or poison ivy, nor does said preparation possess any therapeutic value in the treatment of any of such conditions. Eczema is not caused by microbes in the skin, but is an external or skin manifestation of some internal disorder of the body, and the application of respondent's preparation is wholly incapable of producing any beneficial effect upon such internal disorder.

Respondent's preparation is not safe or harmless, in that it contains an unusually high percentage of salicylic acid, and the frequent and repeated applications of the preparation to the skin, as directed by respondent, has the effect of dissolving and destroying the skin tissues. Moreover, the use of said preparation is highly irritating and painful in cases where the surface epithelium is denuded, raw, or inflamed.

PAR. 5. Further, the advertisements disseminated by the respondent, as aforesaid, constitute false advertisements for the reason that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in injury to the health of the user.

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 the respondent's preparation possesses properties which it does not in fact possess, and that said preparation is in all cases safe and harmless, when such is not the fact. As a result of such erroneous and mistaken belief, the purchasing public has been induced to and has purchased 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 September 17, 1940, issued and subsequently served its complaint upon respondent, McK. Edwards, an individual, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced 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 said complaint, the answer thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, 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

PARAGRAPHS 1. Respondent, McK. Edwards, is an individual, residing and maintaining a place of business at Valley, Wash. The respondent is now, and since early in 1938 has been, engaged in the offering for sale, sale, and distribution of a medicinal preparation designated as "McK. Edwards Eczema Remedy." In the course and

conduct of this business respondent causes said medicinal preparation, when sold, to be transported from his place of business in the State of Washington to purchasers thereof located in various States of the United States other than the State of Washington and in the District of Columbia. Respondent maintains, and has maintained, a course of trade in said medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning the said product by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated by the United States mails, by advertisements in newspapers and periodicals having a general circulation, and by pamphlets, circulars, and other printed or written matter, are the following:

FOR ECZEMA SUFFERERS

If you or any of your friends have burning itching eczema, I have a remedy that will give positive relief in a very short time.

* * * * *
 FOR GUARANTEED RELIEF OF ECZEMA * * * fungus poisoning, write McK. Edwards, Valley, Wash.

* * * * *
 This remedy is very effective, and will also relieve poison oak, poison ivy * * *.

* * * * *
 Symptoms: Eczema is caused by tiny microbes in the skin, and it is purely a skin disease, and with a powerful magnifying glass you can see the microbes crawling, under the skin, but it is not infectious nor contagious in any way. * * *

Treatment: Simply stay away from water and grease as much as possible. Use a little cotton swab, saturated with my remedy, over the affected parts five or six times daily, until new skin has formed, and the old crusted skin has peeled off. Thereafter, apply only when itching occurs. Be very persistent and do not neglect. It will burn some when first applied, but will very soon relieve the itching sensation, and this is the very important part, it is then that the remedy does its work. Do not use this remedy for tiny babies, as the

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burning is too severe, but do not hesitate to use it for yourself. Where instructions are properly followed, I have never known this remedy to fail.

* * * * *

I am offering you a proven remedy. I have healed up, and relieved, some of the worst kind of cases, and I have never known my remedy to fail. It will relieve you, too, if you will take advantage of this offer but all I can do is to make you a plain and fair offer, and I am sure that in your own opinion, that you would be willing to give the sum of \$5.00 to relieve your itching, burning eczema. I have already healed with one bottle of my Remedy eczema cases, for which the patient had spent over \$300, trying every other thing they could think of but got no results from them.

PAR. 3. By the use of the foregoing representations, and others of similar import not specifically set out herein, respondent has represented, and represents, that his said preparation constitutes a cure or remedy for eczema, poison oak, and poison ivy and that it possesses substantial therapeutic value in the treatment of such conditions; that eczema is caused by microbes in the skin and that a cure may be effected by destroying such microbes through the external application of respondent's preparation; and that said preparation is entirely safe and harmless except in the case of infants.

PAR. 4. Respondent's medicinal preparation designated as "McK. Edwards Eczema Remedy" is a solution of salicylic acid, alcohol, and water, containing a very small quantity of ethyl acetate. The proportion of salicylic acid in respondent's product varies somewhat from time to time, ranging between 10 and 15 percent, but the approximate proportion of salicylic acid is 13 percent; of ethyl acetate, three-tenths of 1 percent; and of alcohol, 67 percent.

Respondent's principal business is that of farming and sheep raising. In his youth respondent had a skin affection which at different times was treated with a salicylic acid solution by two different physicians. Respondent compounded or procured a salicylic acid solution prepared according to his recollection of the treatment previously given him and experimented with it on skin diseases of his sheep, later upon members of his family and neighbors, and finally, early in 1938, began advertising and marketing the product in the aforesaid manner.

The condition known as eczema may be due to one or more of a great variety of causes, some of which are not definitely known to the medical profession. The cause of eczema may be of an internal or systemic nature or of external origin. There are a number of different types of eczema, among which the most common are contact eczema caused by external irritation, allergic eczemas due to inherent individual idiosyncracies, fungus infections due to micro-organisms, and neurogenic eczemas due to nervous conditions. There is no single treat-

ment or preparation which constitutes a cure or remedy for all forms of eczema. Respondent's preparation may constitute an effective treatment or remedy for eczema resulting from some varieties of fungus infections. In all other cases of eczema, including those due to fungus infections not susceptible of successful treatment by respondent's preparation, it does not constitute a cure or remedy and has no therapeutic value in excess of affording relief in some cases from the symptom of itching. Respondent's preparation is not a cure or remedy for oak or ivy poison and has no therapeutic value in the treatment of such conditions in excess of possible affording relief from the burning or itching symptoms.

PAR. 5. The advertisements disseminated by the respondent as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, and material with respect to the consequences which may result from the use of respondent's product under the conditions prescribed in said advertisements or under such conditions as are customary and usual. Salicylic acid is frequently used in preparations for the treatment of certain types of skin affections or diseases, but customarily in much smaller proportion than is present in respondent's product. In proportions of 10 to 15 percent, as used in respondent's product, salicylic acid may have an excoriating effect upon the skin of the user, and upon certain individuals it may produce an acute and painful rash. The proportion of salicylic acid in respondent's product is such as to make it an irritant to the skin, and when used upon certain types and conditions of eczema may seriously aggravate the eczematous condition.

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 the respondent's preparation possesses therapeutic properties which it does not in fact possess, and that said preparation, except for infants, is in all cases safe and harmless, when such is not the fact. As a result of such erroneous and mistaken belief, the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondent's preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint 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 allegations 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 respondent, McK. Edwards, an individual, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of "McK. Edwards Eczema Remedy," 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, 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

(A) Which represents, directly or through inference, that said preparation

(a) Is a cure or remedy for all types of eczema, or for any type of eczema except such as may be due to fungus infection, or has any therapeutic value in the treatment of eczema (except that due to fungus infection) in excess of affording relief in some cases from the symptom of itching.

(b) Is a cure or remedy for poison ivy or poison oak, or is a competent or effective treatment for, or has any therapeutic value in, the treatment of such conditions in excess of affording temporary relief from the symptom of itching.

(B) Which fails to reveal that the use of said preparation may in some cases produce an excoriating effect upon the skin of the user; or may produce an acute and painful rash upon the skin of the user; or may, if used on certain types and conditions of eczema, seriously aggravate the eczematous condition: *Provided, however*, That such advertisement need contain only the statement, "Caution, use only as directed" if and when the directions for use wherever they appear on the label, in the labeling, or both, contain warnings to the above effect.

(2) Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce,

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as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement fails to reveal the dangerous consequences which may result from the use of said preparation as required in said paragraph 1 hereof.

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

Complaint

34 F. T. C.

IN THE MATTER OF

CLIFFORD S. DONNELL, TRADING AS QUEEN ANN
MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4652. Complaint, Dec. 4, 1941—Decision, Feb. 9, 1942*

Where an individual, engaged in interstate sale and distribution of a certain hair dye cosmetic, variously designated as "Queen Ann Hair Dye," "Queen Ann Hair Coloring," and "Queen Ann Liquid Hair Coloring"—

- (a) Represented, through advertisements in newspapers and by circulars and other advertising literature, and otherwise, that his said preparation would stop hair from growing gray, give gray hair a permanent coloring, and preserve the natural beauty of the hair and make it smooth and silky; and
- (b) Represented, as aforesaid, that it was an amazing new hair dye which could be applied in half the time usually required for other hair dyes, was quicker drying and caused the hair to hold its color longer than others, was used exclusively by better beauty shops, and endorsed by the State Beauty Commission of New Jersey; -

The facts being product in question was a coal-tar dye preparation similar to many other hair dyes, would not accomplish the various results above claimed therefor, and was not used exclusively by better beauty shops or endorsed by said Commission; and

- (c) Falsely represented, through his use of trade name including word "manufacturing," that he owned or controlled a manufacturing plant which made said preparation;

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, by reason thereof, to purchase his said product:

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

Mr. 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 Clifford S. Donnell, an individual, trading as Queen Ann Manufacturing Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect, as follows:

PARAGRAPH 1. Respondent, Clifford S. Donnell, is an individual, trading as Queen Ann Manufacturing Co., with his office and prin-

incipal place of business at 164 West Market Street, Newark, N. J., 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 hair dye cosmetic, variously designated as Queen Ann Hair Dye, Queen Ann Hair Coloring, and as Queen Ann Liquid Hair Coloring.

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 Jersey 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 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 the United States mails, by advertisements in newspapers, by circulars, and other advertising literature, are the following:

Gray hair—Get rid of it this quick easy way.

Used exclusively by better class beauty shops.

Queen Ann Liquid Hair Coloring makes dull, faded, gray hair a Smooth Silky Jet-Black—so natural that even your closest friends can't tell it was gray! Makes you look many years younger.

Endorsed by New Jersey State Beauty Commission.

Queen Ann Hair Dye Makes Gray Hair Vanish.

A Longer Lasting hair dye, removes all traces of gray hair in one application.

Gives permanent coloring and preserves the natural beauty of the hair.

Dye a head in half the time.

Queen Ann sets Much Quicker than any other dye.

Commissioner Christine M. Howell endorses Queen Ann Hair Coloring.

Astounding Results.

Surpasses All Other Dyes.

Quicker Drying.

Holds color longer.

Endorsed by leading beauticians of State.

Fastest Selling Hair Dye in America.

At last—here is a new, amazing hair coloring, which makes all gray, dull and faded hair disappear.

Now You Can End Gray Hair Quickly. Amazing, New, Queen Ann Hair Dye.

Amazing New Hair Dye Stops Gray Hair.

PAR. 4. By the use of the representations hereinafter set forth and other representations similar thereto, not specifically set out herein, the respondent has represented and does represent that his hair dye preparation, designated and advertised as Queen Ann Hair Dye, Queen Ann Hair Coloring, and as Queen Ann Liquid Hair Coloring will stop hair from growing gray and give gray hair a permanent coloring; that it will preserve the natural beauty of the hair and make it smooth and silky; that it is an amazing new hair dye; that it can be applied in half the time usually required to apply all other hair dyes; that it is quicker drying and causes the hair to hold its color longer than other hair dyes; and that it is used exclusively by better beauty shops and that it is endorsed by the State Beauty Commission of New Jersey.

Furthermore, respondent, by the use of the trade name, Queen Ann Manufacturing Co., represents that he owns or controls a manufacturing plant which manufactures said hair dye preparation.

PAR. 5. The aforesaid representations are grossly exaggerated, false, and misleading. The use of the aforesaid hair dye preparation will not stop hair from growing gray and will not give gray hair a permanent coloring. Said preparation will not preserve the natural beauty of the hair and make it smooth and silky. Said preparation cannot be applied in half the time required to apply other hair dyes and it will not dry quicker and cause the hair to hold its color longer than all other hair dyes. Said hair dye is not an amazing new hair dye but is a coal tar dye preparation similar to many other hair dye preparations. Said preparation is not used exclusively by better beauty shops and it has not been endorsed by the State Beauty Commission of New Jersey.

Furthermore, respondent does not own or control a manufacturing plant which manufactures said hair dye preparation.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his preparation, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are

true, and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase 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 4, 1941, issued, and on December 5, 1941, served its complaint in this proceeding upon respondent, Clifford S. Donnell, an individual, trading as Queen Ann Manufacturing Co., charging him with the use of unfair and deceptive acts or practices in commerce in violation of the provisions of said act.

On December 23, 1941, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Clifford S. Donnell is an individual, trading as Queen Ann Manufacturing Co., with his office and principal place of business at 164 West Market Street, Newark, N. J., 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 hair dye cosmetic, variously designated as Queen Ann Hair Dye, Queen Ann Hair Coloring, and as Queen Ann Liquid Hair Coloring.

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 Jersey 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 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 the United States mails, by advertisements in newspapers, by circulars, and other advertising literature, are the following:

Gray hair—Get rid of it this quick easy way.

Used exclusively by better class beauty shops.

Queen Ann Liquid Hair Coloring makes dull, faded, gray hair a smooth Silky Jet-Black—so natural that even your closest friends can't tell it was gray! Makes you look many years younger.

Endorsed by New Jersey State Beauty Commission.

Queen Ann Hair Dye Makes Gray Hair Vanish.

A Longer Lasting hair dye, removes all traces of gray hair in one application.

Gives permanent coloring and preserves the natural beauty of the hair.

Dye a head in half the time.

Queen Ann sets Much Quicker than any other dye.

Commissioner Christine M. Howell endorses Queen Ann Hair Coloring.

Astounding Results.

Surpasses All Other Dyes.

Quicker Drying.

Holds color longer.

Endorsed by leading beauticians of State.

Fastest Selling Hair Dye In America.

At last—here is a new, amazing hair coloring, which makes all gray, dull and faded hair disappear.

Now You Can End Gray Hair Quickly. Amazing, New, Queen Ann Hair Dye.

Amazing New Hair Dye Stops Gray Hair.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto, not specifically set out herein, the respondent has represented and does represent that his hair dye preparation, designated and advertised as Queen Ann Hair Dye, Queen Ann Hair Coloring, and as Queen Ann Liquid Hair Coloring will stop hair from growing gray and give gray hair a permanent coloring; that it will preserve the natural beauty of the hair and make it smooth and silky; that it is an amazing new hair dye; that it can be applied in half

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the time usually required to apply all other hair dyes; that it is quicker drying and causes the hair to hold its color longer than other hair dyes; and that it is used exclusively by better beauty shops and that it is endorsed by the State Beauty Commission of New Jersey.

Furthermore, respondent, by the use of the trade name, Queen Ann Manufacturing Co., represents that he owns or controls a manufacturing plant which manufactures said hair dye preparation.

PAR. 5. The aforesaid representations are grossly exaggerated, false, and misleading. The use of the aforesaid hair dye preparation will not stop hair from growing gray and will not give gray hair a permanent coloring. Said preparation will not preserve the natural beauty of the hair and make it smooth and silky. Said preparation cannot be applied in half the time required to apply other hair dyes and it will not dry quicker and cause the hair to hold its color longer than all other hair dyes. Said hair dye is not an amazing new hair dye but is a coal tar dye preparation similar to many other hair dye preparations. Said preparation is not used exclusively by better beauty shops and it has not been endorsed by the State Beauty Commission of New Jersey.

Furthermore, respondent does not own or control a manufacturing plant which manufactures said hair dye preparation.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his preparation, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and 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, Clifford S. Donnell, an individual, trading as Queen Ann Manufacturing Co., or trading under any other name or names, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of this hair dye cosmetic variously advertised as Queen Ann Hair Dye, Queen Ann Hair Coloring, and as Queen Ann Liquid Hair Coloring, or any other hair dye cosmetic or product of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that said preparation will stop hair from growing gray or give gray hair a permanent coloring; that it will preserve the natural beauty of the hair or make it smooth or silky; that it is an amazing new hair dye; that it can be applied in half the time required to apply other hair dyes; that it is quicker drying or causes the hair to hold its color longer than all other hair dyes; that it is used exclusively by better beauty shops; or that it is endorsed by the State Beauty Commission of New Jersey; or which advertisement contains the word "Manufacturing" or any other word of similar import as a part of respondent's trade name or otherwise represents that respondent owns or operates a manufacturing plant or manufactures the product sold by him.

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.

Syllabus

IN THE MATTER OF

JOHN J. SCHOCKET, TRADING AS CONSUMERS
MERCANTILE SERVICE

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

Docket 4242. Complaint, Aug. 20, 1940—Decision, Feb. 16, 1942

Where an individual, engaged in competitive interstate sale and distribution of cameras, silverware, broilers, fishing tackle, and other merchandise—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises or lottery schemes in sale and distribution of such merchandise to ultimate consumers, and distribution to agents or operators and purchasing public of push cards and circulars explaining his plan of selling such merchandise and allotting it as premiums or prizes to the operators of the cards and the public, a typical plan providing that the person selecting that one of 79 feminine names displayed on card corresponding with name concealed under master seal received choice of certain articles of merchandise illustrated on attached or accompanying folder, and amount of money paid, if any, for chance was dependent upon number concealed by the disk, upon which appeared the name selected; and thereby

Supplied to and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with such sales plans, involving chance to procure article at much less than normal retail price, and under which fact as to whether purchaser received an article of merchandise or nothing for amount of money paid, or article free, was determined wholly by lot, contrary to the established public policy of the Government of the United States and in violation of criminal laws, and in competition with many who, unwilling to use any method involving game of chance or 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 his merchandise in preference to that of his said competitors, whereby trade was unfairly diverted to him 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 acts and practices therein.

Before *Mr. W. W. Sheppard* and *Mr. Andrew B. Duvall*, trial examiners.

Mr. L. P. Allen, Jr., *Mr. J. V. Mishou* and *Mr. J. W. Brookfield, Jr.* for the Commission.

Mr. Arthur H. Schwab of Nash & Donnelly of Chicago, Ill., for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that John J. Schocket, individually and trading as Consumers Mercantile Service, 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, John J. Schocket, is an individual trading as Consumers Mercantile Service, with his principal office and place of business located at 64 West Randolph Street, Chicago, Ill. The respondent is now and for more than 1 year last past has been engaged in the sale and distribution of cameras, silverware, broilers, fishing tackle, clocks, pens, pencils, and other articles of merchandise. Respondent causes, and has caused said merchandise, when sold, to be transported from his aforesaid place of business in the State of Illinois to purchasers thereof, at their respective points of location, in various States of the United States other than 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 the respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business, respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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

Respondent distributes and has distributed to agents, operators, and the purchasing public certain literature and instructions, including among other things push cards, illustrations of his said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards

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and to the purchasing and consuming public. One of respondent's push cards bears 79 feminine names with ruled columns on the reserve side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 79 small partially perforated disks on the face of each of which is printed the word "push." Each of such disks is set over one of the aforesaid feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is 1 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 1 of the articles of merchandise illustrated on an attached or accompanying folder. The push card bears a legend or instructions as follows:

Do Not Remove Seal Until Entire Card is Sold
--

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 LUCKY
 WINNERS
 Person selecting name under seal receives choice
 of
 ONE
 of the articles shown on pages
 1-2-5 or 7

1 Cent to 25 Cents—Pay What You Draw. No
 Higher. Those Drawing Numbers Over 25 Pay
 Only 25¢—No More.

These Numbers Are
 ALL FREE

1-3-5-7-9-10
 11-12-13-14

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Sales of respondent's merchandise by means of said push card are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above-described legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid or an article of merchandise free is thus determined wholly by lot or chance.

Respondent furnishes, and has furnished, various other push cards accompanied by instructions and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance,

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gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said other push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the same push cards use the same in purchasing, selling and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 20 A. D. 1940, issued and subsequently served its complaint upon the respondent, John J. Schocket, an individual, trading as Consumers Mercantile Service, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint, testimony and other evidence in support of said complaint were introduced by L. P. Allen, Jr., J. V. Mishou, and J. W. Brookfield, attorneys for the Commission, and in opposition to the allegations of the complaint by Arthur H. Schwab, attorney for the respondent, before W. W. Sheppard and A. B. Duvall, 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 upon said complaint, testimony and other evidence, report of the trial examiners upon the evidence and exceptions filed 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, John J. Schocket, is an individual, trading as Consumers Mercantile Service, with his principal office and place of business located at 64 West Randolph Street, Chicago, Ill. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of cameras, silverware, broilers, fishing tackle, clocks, pens, pencils, and other articles of merchandise. Respondent causes, and has caused, said merchandise, when sold, to be transported from his aforesaid place of business in the State of Illinois to purchasers thereof 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 merchandise in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of his business, respondent is now, 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. 3. In the course and conduct of his business, respondent, in soliciting the sale of, and in selling and distributing, his merchandise, furnishes, and has furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes when said merchandise is sold and distributed to ultimate consumers thereof. The method or sales plan adopted and used by respondent was, and is, substantially as follows:

Respondent distributes, and has distributed, to agents, operators, and to the purchasing public, certain literature and instructions including, among other things, push cards, illustrations of his said merchandise, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears 79 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 79 small, partially perforated disks, on the face of each of which is printed the word "push." Each of such disks is set over one of the aforesaid feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives one of the articles of merchandise illustrated on an attached or accompanying folder. The push card bears a legend or instructions as follows:

10
LUCKY
LUCKY WINNERS
Person selecting name under seal receives choice
of
ONE
of the articles shown on pages
1-2-5 or 7

1 Cent to 25 Cents—Pay What You Draw. No Higher. Those Drawing Numbers Over 25 Pay Only 25¢—No More.

Do Not
Remove
Seal
Until
Entire
Card is
Sold

These Numbers Are
ALL FREE
1-3-5-7-9-10
11-12-13-14
Back
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Sales of respondent's merchandise by means of said push card are made in accordance with the above-described legend or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above-described legend or instructions. The fact as to whether a purchaser receives an article or merchandise or nothing for the amount of money paid, or an article of merchandise free, is thus determined wholly by lot or chance.

Respondent furnishes, and has furnished, various other push cards accompanied by instructions and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said other push cards, is the same as that hereinabove described, varying only in detail.

PAR. 4. The persons to whom respondent furnishes, and has furnished, said push cards, use the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others, the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method, is a practice of a sort which is contrary to the established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 5. The sale of said merchandise to the purchasing public in the manner above-described, involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above-described, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise 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

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States and in the District of Columbia, to respondent from his said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of 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, testimony and other evidence taken before W. W. Sheppard and A. B. Duvall, 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 in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, John J. Schocket, an individual, trading as Consumers Mercantile Service, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cameras, silverware, broilers, fishing tackle, clocks, pens, pencils, 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 agents or to distributors or to members of the purchasing public, push cards or other devices which are to be used or may be used in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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.

Complaint

IN THE MATTER OF

JOHN B. ARMSTRONG, M. D., TRADING AS PINK OINTMENT
COMPANY

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

Docket 4622. Complaint, Oct. 31, 1941—Decision, Feb. 16, 1942

Where an individual, engaged in interstate sale and distribution of his "Pink Ointment"; by advertisements disseminated through radio continuities, in which were included purported testimonial statements—

(a) Represented, directly and by implication, that his said preparation was a cure and remedy for eczema, poison ivy, ringworm, rash, itch, weed poisoning, cuts, burns, bruises, athlete's foot, all kinds of skin irritation, chigger bites, mosquito bites, prickly heat, sunburn, hives, dust poisoning, poison oak, and sore, tender, itching, and burning feet, and a competent and effective treatment therefor;

When in fact it had no therapeutic value in said ailments and conditions in excess of affording temporary local relief due to its counterirritant, antipruritic and analgesic properties, and its antiseptic effect; repeated or continued use whereof to secure such relief might become dangerous; and

(b) Failed to reveal facts material in the light of aforesaid representations, or with respect to consequences which might result from use of product under usual or prescribed conditions, in that it contained sufficient phenol to be dangerous to health, and use thereof might cause a necrosis of the skin and tissues, and systemic poisoning, including irritation of the kidneys, danger of which would be increased if skin to which it was applied was inflamed or broken;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such false representations were true, and with the tendency and capacity to induce such public, because of its mistaken 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 and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. Maurice C. Pearce for the Commission.

Williams & Elleman, of Topeka, Kans., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that John B. Armstrong, M. D., an individual, trading as Pink Ointment 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, John B. Armstrong, M. D., is an individual, trading under the name of Pink Ointment Co., and has his principal place of business located at 521 Kansas Avenue, Topeka, Kans. He is now, and for more than 1 year last past, has been engaged in the business of preparing and offering for sale and selling a medicinal preparation designated as "Pink Ointment."

Respondent causes said medicinal preparation when sold to be transported from his place of business in the State of Kansas to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times herein mentioned has maintained a course of trade in his said medicinal 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 aforesaid business, the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of advertisements concerning his said product by radio continuities, 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 radio continuities 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 the said advertisements disseminated and caused to be disseminated by radio continuities as hereinabove set out are the following:

About a year ago, I had a bad case of eczema on my hands and I used Pink Ointment to clear it up * * *. My son had a bad case of poison-ivy and he used the Pink Ointment and it cleared it up in no time at all.

* * * It is very effective, according to many reports, in the treatment of eczema, ringworm * * * rash and itch that has been caused by some outside source.

Pink Ointment is the only thing we ever used that helped our condition of weed poisoning.

For eczema * * *. cuts, burns, or bruises use Pink Ointment first and save yourself a lot of time and money.

It sure is the best ever for athlete's foot.

We have used Pink Ointment for all kinds of skin irritation. It is by far the best to be had on the market today.

Another danger that should be overcome is this—children get chigger bites, mosquito bites and poison-ivy—and prickly heat, then they scratch the skin's surface and as a result they develop a serious infection. The way to overcome

this is to keep Pink Ointment in the medicine cabinet and use it as directed. Pink Ointment is recommended in the treatment of sunburn, itch, hives, rash, prickly heat, poison-ivy, weed poisoning, dust poisoning, poison-oak, and sore, tender, itching, and burning feet.

PAR. 3. 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 remedial, curative and therapeutic properties of respondent's preparation, respondent has represented and does now represent directly and by implication that his preparation is a cure and remedy for eczema, poison-ivy, ringworm, rash, itch, weed poisoning, cuts, burns, bruises, athlete's foot, all kinds of skin irritation, chigger bites, mosquito bites, prickly heat, sunburn, hives, dust poisoning, poison-oak, and sore, tender, itching, and burning feet, and that it is a competent and effective treatment therefor.

PAR. 4. The foregoing statements and representations disseminated as aforesaid are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a cure or remedy for eczema, poison-ivy, ringworm, rash, itch, weed poisoning, cuts, burns, bruises, athlete's foot, all kinds of skin irritation, chigger bites, mosquito bites, prickly heat, sunburn, hives, dust poisoning, poison-oak, and sore, tender, itching, and burning feet, nor is it a competent or effective treatment therefor. Furthermore, said preparation has no therapeutic value in excess of its antiseptic effect, and its effect in affording temporary, local relief due to its counter-irritant, anti-pruritic, and analgesic properties. Its use in order to secure such relief may be dangerous, and its repeated or continued use will increase such danger.

PAR. 5. The respondent's advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, said preparation contains phenol in sufficient quantities to be dangerous to the health of the user. Its use may cause necrosis of the skin and tissues, and systemic poisoning, including irritation of the kidneys. The danger of such injury will be increased if the skin to which it is applied is inflamed or broken.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements, representations, and advertisements disseminated as aforesaid with respect to the preparation "Pink Oint-

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ment" has had and now has the capacity of 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 has the tendency and capacity to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief to purchase substantial quantities of respondent's said preparation.

PAR. 7. The aforesaid acts and practices of 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 October 31, 1941, issued and subsequently served its complaint in this proceeding upon respondent, John B. Armstrong, M. D., an individual, trading as Pink Ointment Company, 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, John B. Armstrong, M. D., is an individual, trading under the name of Pink Ointment Co., and has his principal place of business located at 521 Kansas Avenue, Topeka, Kans. He is now, and for more than one year last past, has been engaged in the business of preparing and offering for sale and selling a medicinal preparation designated as "Pink Ointment."

Respondent causes said medicinal preparation when sold to be transported from his place of business in the State of Kansas to the

purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times herein mentioned has maintained a course of trade in his 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, the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of advertisements concerning his product by radio continuities, in commerce as commerce is defined in the Federal Trade Commission Act, and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his product by radio continuities for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his product in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in the advertisements disseminated and caused to be disseminated by radio continuities as hereinabove set out are the following:

About a year ago, I had a bad case of eczema on my hands and I used Pink Ointment to clear it up. * * * My son had a bad case of poison-ivy and he used the Pink Ointment and it cleared it up in no time at all.

* * * it is very effective, according to many reports, in the treatment of eczema, ringworm * * * rash and itch that has been caused by some outside source.

Pink Ointment is the only thing we ever used that helped our condition of weed poisoning.

For eczema * * *. cuts, burns, or bruises use Pink Ointment first and save yourself a lot of time and money.

It sure is the best ever for athlete's foot.

We have used Pink Ointment for all kinds of skin irritation. It is by far the best to be had on the market today.

Another danger that should be overcome is this—children get chigger bites, mosquito bites and poison-ivy—and prickly heat, then they scratch the skin's surface and as a result they develop a serious infection. The way to overcome this is to keep Pink Ointment in the medicine cabinet and use it as directed. Pink Ointment is recommended in the treatment of sunburn, itch, hives, rash, prickly heat, poison-ivy, weed poisoning, dust poisoning, poison-oak and sore, tender, itching and burning feet.

PAR. 3. 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 remedial, curative and therapeutic properties of respondent's preparation, respondent has represented and does now represent directly and by implication that his preparation is a cure and remedy for eczema.

poison-ivy, ringworm, rash, itch, weed poisoning, cuts, burns, bruises, athlete's foot, all kinds of skin irritation, chigger bites, mosquito bites, prickly heat, sunburn, hives, dust poisoning, poison-oak, and sore, tender, itching, and burning feet, and that it is a competent and effective treatment therefor.

PAR. 4. The foregoing statements and representations disseminated as aforesaid are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a cure or remedy for eczema, poison-ivy, ringworm, rash, itch, weed poisoning, cuts, burns, bruises, athlete's foot, all kinds of skin irritation, chigger bites, mosquito bites, prickly heat, sunburn, hives, dust poisoning, poison-oak, and sore, tender, itching, and burning feet, nor is it a competent or effective treatment therefor. Furthermore, his preparation has no therapeutic value in excess of its antiseptic effect, and its effect in affording temporary, local relief due to its counterirritant, antipruritic and analgesic properties. Its use in order to secure such relief may be dangerous, and its repeated or continued use will increase such danger.

PAR. 5. The respondent's advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in such advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondent's preparation contains phenol in sufficient quantities to be dangerous to the health of the user. Its use may cause necrosis of the skin and tissues, and systematic poisoning, including irritation of the kidneys. The danger of such injury will be increased if the skin to which it is applied is inflamed or broken.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations and advertisements disseminated as aforesaid with respect to the preparation "Pink Ointment" 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 has the tendency and capacity to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief to purchase substantial quantities of respondent's preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That John B. Armstrong, M. D., an individual, trading as Pink Ointment 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 product, Pink Ointment, or any other product containing the same or similar ingredients, 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 (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 his preparation "Pink Ointment" is a cure or remedy for eczema, poison-ivy, ringworm, rash, itch, weed-poisoning, cuts, burns, bruises, athlete's foot, all kinds of skin irritations, chigger bites, mosquito bites, prickly heat, sunburn, hives, dust-poisoning, poison-oak, or sore, tender, itching, or burning feet, or that said preparation is a competent or effective treatment for such diseases and conditions or that it has any therapeutic value in excess of its antiseptic effect and its effect in affording temporary, local relief due to its counter-irritant, anti-pruritic, and analgesic properties; or which advertisement fails to reveal that the use of said preparation may cause necrosis of the skin and tissues and systemic poisoning, including irritation of the kidneys, and that the danger of such injury will be increased if the skin to which it is applied is inflamed

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or broken, provided, however, that if the directions for use, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain a warning of the potential dangers in the use of said preparation as hereinabove set forth, such advertisement need contain only the cautionary statement: CAUTION, USE ONLY AS DIRECTED.

2. Disseminating, or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fails to reveal the affirmative cautionary statement required in paragraph 1 hereof.

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

Complaint

IN THE MATTER OF

BATTLE CREEK DRUGS, INC., AND CONSOLIDATED
ROYAL CHEMICAL CORP., TRADING AS CONSOLIDATED
DRUG TRADE PRODUCTS, AND AS BONKORA COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4541. Complaint, July 17, 1941—Decision, Feb. 17, 1942

Where a corporation and its exclusive sales agent engaged in interstate sale and distribution of former's "BonKora" preparation, offered as a reducing agent and obesity treatment; by advertisements in newspapers, periodicals, pamphlets, circulars and other advertising literature of general circulation, and by radio broadcasts—

(a) Represented, directly and by implication, that said "BonKora" was a popular cocktail preparation which would relieve obesity and reduce excess weight without the aid of a starvation diet, reducing measurements of designated parts of the body, such as hips, waist and bust, and which contained no dangerous drugs and might safely be taken repetitiously;

The facts being said product, a saline cathartic containing magnesium sulphate and buckthorn and cascara bark, would not accomplish the results claimed therefor, and might be used with safety only for the temporary evacuation of the bowels; repetitious use might result in dependence upon a laxative; contrary to being harmless, use thereof by one suffering from nausea, vomiting, abdominal pains or other symptoms of appendicitis was dangerous; and

(b) Failed to reveal facts material in light of such representations, in that, while said advertisements referred to the "delicious foods as shown in the BonKora package," and cautionary warning appeared on package in close proximity to such list, said advertisements failed to warn or apprise reader as to dangerous possibility involved in use of preparation, or specifically to direct reader's attention to cautionary statement referred to;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, and thereby causing it to purchase their said "BonKora":

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 I. Rooney for the Commission.

Rosen, Francis & Cleveland and *Mr. Roland J. Dooley*, 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 Battle Creek Drugs, Inc., a corporation, and Consolidated Royal Chemical Corporation, a

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corporation, trading and doing business as Consolidated Drug Trade Products, and as BonKora 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 respondent, Battle Creek Drugs, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, and maintaining its principal office and place of business in the First National Bank Building in the city of Battle Creek, State of Michigan. The respondent, Consolidated Royal Chemical Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and maintaining its principal office and place of business at 544 South Wells Street, in the city of Chicago, State of Illinois. The respondent, Consolidated Royal Chemical Corporation, is trading and doing business under the name Consolidated Drug Trade Products and also under the name BonKora Co.

PAR. 2. The respondents are now, and for more than 3 years last past have been, engaged in the business of selling and distributing a drug preparation designated "BonKora," which preparation has been offered for sale and sold by respondents, as a reducing agent and as a treatment for obesity. The respondent Battle Creek Drugs, Inc., causes said preparation to be made up or manufactured for it in Detroit, Mich., according to the said respondent's formula. The said respondent then causes said product to be transported from Detroit, Mich., to its exclusive sales agent, in Chicago, Ill., the respondent, Consolidated Royal Chemical Corporation, trading as Consolidated Drug Trade Products. The respondents have caused and now cause, said preparation, when sold, to be transported from the place of business of respondent Consolidated Royal Chemical Corporation in Chicago, Ill., to purchasers thereof located in various States of the United States other than the State of Illinois, and in the District of Columbia. The respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce among and between the several States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, 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 and by various other means in commerce, as commerce is defined

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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 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, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinbefore set forth, by the United States mails, by advertisements in newspapers and periodicals, by pamphlets, circulars and other advertising literature of general circulation, and by broadcasts from radio stations with sufficient power to convey the programs emanating therefrom into the various States of the United States, are the following:

Did This New

ORANGE JUICE

and

BONKORA COCKTAIL WAY

To Help Eliminate Wastes

from the Digestive System

And eating Her Fill of the

Delicious Foods as Shown in

the BonKora Package

MAKE HER

Lose 45 Pounds Excess Fat?

* * * the thing one finds many a fashionable New Yorker drinking everywhere you go these days is a BonKora Cocktail, made from Orange Juice and BonKora.

Its rage seems to have started when it became noised about that a registered nurse, who could no longer work on account of her weak, fatty condition, lost 45 pounds and 10 inches off her hips with the result that she was able to go back to work again mainly by resorting to this pungent BonKora Cocktail method.

No Dangerous Drugs; No Thyroid;

No Dinitrophenol

No Starvation

Drinking a glassful of chilled Orange Juice mixed with a tablespoonful of BonKora, two times a day, and eating their fill of the delicious foods, as shown in the BonKora package, it is claimed, has made many people lose from 7 to 67 pounds, and has made their waist and bust measurements go down from 3 to 11 inches.

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Don't delay. Test the BonKora and Orange Juice Addition to Your Reducing Program. Today! Buy a bottle of BonKora at any drug or department store today, under the maker's guarantee of satisfaction or your money back.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other similar statements and representations not specifically set out herein, which purport to be descriptive of the therapeutic value of respondents' preparation "BonKora" and of the benefits to be derived from its use, the respondents represent, directly and by implication, that said "BonKora" is a popular cocktail preparation; that it is preparation which, if taken as directed, will relieve obesity and reduce excess fat without the aid of a starvation diet; that the use of said preparation will reduce fat from designated parts of the body, such as the hips, waist and bust and reduce the measurements of such parts of the body; and that said preparation contains no dangerous drugs and may be taken repetitiously with safety.

PAR. 5. The foregoing advertisements and representations, and others similar thereto but not specifically set out herein, are grossly exaggerated, false, and misleading.

In truth and in fact respondents' preparation "BonKora" is not a popular cocktail preparation. It is not a preparation which, if taken as directed, will relieve obesity and excess fat without the aid of a starvation diet. The use of said preparation will not reduce fat from designated parts of the body, such as the hips, waist, and bust and will not reduce the measurements of such parts of the body. Said preparation does contain drugs which may be dangerous under certain conditions or if used repetitiously.

PAR. 6. The respondents' advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact said preparation "BonKora" is a saline cathartic containing magnesium sulphate, supplemented by the laxative action of buckthorn bark and cascara bark, and may be used with safety only for the temporary evacuation of the bowels. Its repetitious use may be habit-forming in that the user may become dependent upon a laxative for the evacuation of the bowels. Furthermore, said advertisements are false and misleading in that they represent "BonKora" as a harmless cocktail preparation, whereas its use, by one suffering from

nausea, vomiting, abdominal pains, or other symptoms of appendicitis, is dangerous.

PAR. 7. The use by said respondents of the foregoing false, deceptive and misleading representations and advertisements, 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 representations and advertisements are true, and has caused, and now causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' preparation "BonKora."

PAR. 8. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 17, 1941, issued and thereafter served its complaint in this proceeding upon said respondents, Battle Creek Drugs, Inc., and Consolidated Royal Chemical Corporation, trading as Consolidated Drug Trade Products and as BonKora Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 6, 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 respondent Battle Creek Drugs, Inc., and its counsel, Rosen, Francis and Cleveland and by respondent Consolidated Royal Chemical Corporation by James Hirshfield, its president, 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 inter-

est 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, Battle Creek Drugs, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, and maintaining its principal office and place of business in the First National Bank Building, in the city of Battle Creek, State of Michigan. The respondent, Consolidated Royal Chemical Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and maintaining its principal office and place of business at 544 South Wells Street, in the City of Chicago, State of Illinois. The respondent, Consolidated Royal Chemical Corporation, is trading and doing business under the name Consolidated Drug Trade Products and also under the name BonKora Co.

PAR. 2. The respondent, Consolidated Royal Chemical Corporation, is now, and for more than three years last past, has been engaged in the business of selling and distributing a drug preparation designated "BonKora," which preparation has been offered for sale and sold by said respondent, Consolidated Royal Chemical Corporation, as a reducing agent and as a treatment for obesity. The said respondent, Battle Creek Drugs, Inc., until May 17, 1940, caused said preparation to be made up or manufactured for it in Detroit, Mich., according to said respondent's formula. The said respondent, Battle Creek Drugs, Inc., until the said May 17, 1940, then caused said product to be transported from Detroit, Mich., to its exclusive sales agent in Chicago, Ill., the respondent, Consolidated Royal Chemical Corporation, trading as Consolidated Drug Trade Products. The respondents, until said May 17, 1940, have caused, and since said date the said respondent, Consolidated Royal Chemical Corporation, now causes, said preparation when sold, to be transported from the place of business of respondent, Consolidated Royal Chemical Corporation, in Chicago, Ill., to purchasers thereof located in various States of the United States other than the State of Illinois, and in the District of Columbia. The respondents have maintained a course of trade in said preparation in commerce among and between the several States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated, and have caused the dissemination of, advertisements concerning their said preparation by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents

have also disseminated, and have caused the dissemination of, advertisements concerning their said preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the misleading and deceptive statements and representations contained in said advertisements, disseminated and caused to be disseminated, as hereinbefore set forth, by the United States mails, by advertisements in newspapers and periodicals, by pamphlets, circulars, and other advertising literature of general circulation, and by broadcasts from radio stations with sufficient power to convey the programs emanating therefrom into the various States of the United States, are the following:

"Did This New
ORANGE JUICE
and
BONKORA COCKTAIL
WAY

To Help Eliminate Wastes from the Digestive System And eating Her Fill of the Delicious Foods as Shown in the BonKora Package

MAKE HER

Lose 45 pounds Excess Fat? * * * the thing one finds many a fashionable New Yorker drinking everywhere you go these days is a BonKora Cocktail, made from Orange Juice and BonKora. Its rage seems to have started when it became noised about that a registered nurse, who could no longer work on account of her weak, fatty condition, lost 45 pounds and 10 inches off her hips with the result that she was able to go back to work again mainly by resorting to this pungent BonKora Cocktail method.

No Dangerous Drugs; No Thyroid; No Dinitrophenol—No Starvation

Drinking a glassful of chilled Orange Juice mixed with a tablespoonful of BonKora, two times a day, and eating their fill of the delicious foods, as shown in the BonKora package, it is claimed, has made many people lose from 7 to 67 pounds, and has made their waist and bust measurements go down from 3 to 11 inches. Don't delay. Test the BonKora and Orange Juice Addition to Your Reducing Program. Today! Buy a bottle of BonKora at any drug or department store today, under the maker's guarantee of satisfaction or your money back.

PAR. 4. Through the use of the statements and representations hereinabove set forth which purport to be descriptive of the therapeutic value of respondents' preparation "BonKora" and of the benefits to be derived from its use, the respondents represented directly and by implication, that said "BonKora" is a popular cocktail prepa-

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ration; that it is a preparation which, if taken as directed, will relieve obesity and reduce excess fat without the aid of a starvation diet; that the use of said preparation will reduce fat from designated parts of the body, such as the hips, waist, and bust and reduce the measurements of such parts of the body; and that said preparation contains no dangerous drugs and may be taken repetitiously with safety.

PAR 5. The foregoing advertisements and representations are grossly exaggerated and misleading.

Respondents' preparation "BonKora" is not a popular cocktail preparation. It is not a preparation which, if taken as directed, will relieve obesity and excess fat without the aid of a starvation diet. The use of said preparation will not reduce fat from designated parts of the body such as the hips, waist, and bust and will not reduce the measurements of such parts of the body. Said preparation does contain drugs which may be dangerous under certain conditions or if used repetitiously.

PAR. 6. The respondents' advertisements disseminated as aforesaid constitute misleading advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

Although the respondents' advertisements make reference to "the delicious foods as shown in the BonKora package" and a cautionary warning appears on the package in close proximity to such list referred to in respondents' advertisements, such advertisements contain no adequate or sufficient warning to apprise the reader thereof of the dangerous possibility involved in the use of said preparation or to specifically direct the reader's attention to the cautionary statement on the package.

The preparation "BonKora" is a saline cathartic containing magnesium sulphate, supplemented by the laxative action of buckthorn bark and cascara bark, and may be used with safety only for the temporary evacuation of the bowels. Its repetitious use may be habit-forming in that the user may become dependent upon a laxative for the evacuation of the bowels. Furthermore, said advertisements are false and misleading in that they represent "BonKora" as a harmless cocktail preparation, whereas its use, by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, is dangerous.

PAR. 7. The use by said respondents of the foregoing deceptive and misleading representations and advertisements 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 and advertisements are true, and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' preparation "BonKora."

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 by counsel for respondents 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 respondents herein 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 said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Battle Creek Drugs, Inc., a corporation, and Consolidated Royal Chemical Corporation, a corporation, trading as Consolidated Drug Trade Products, and as BonKora Co., or under any other name, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their product now named BonKora or any other product containing the same or similar ingredients, 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 (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 their preparation "BonKora" is a popular cocktail preparation; that it is a preparation which, if taken as directed, will relieve or

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overcome obesity or reduce excess fat without dieting; that the use of said preparation will reduce fat from designated parts of the body such as the hips, waist and bust and reduce the measurements of such parts of the body; that said preparation contains no dangerous drugs and may be taken repetitiously with safety; or which advertisement fails to reveal that said preparation should not be used by persons suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, provided, however, that if the directions for use, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain a warning of the potential dangers in the use of said preparation as hereinabove set forth, such advertisement need contain only the cautionary statement: CAUTION, Use only as directed.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fails to reveal the affirmative cautionary statement required in paragraph 1 hereof.

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

Syllabus

IN THE MATTER OF
THE HARDWOOD 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 3418. Complaint, June 15, 1938¹—Decision, Feb. 20, 1942*

Where a substantial number of corporations, associated in an unincorporated organization or institute, engaged in the manufacture and interstate sale and distribution of hardwood lumber and its products; producing about 37 percent of the hardwood lumber produced in Wisconsin and Michigan, and a larger percentage of that produced in Northern Wisconsin and Northern Michigan, and, prior to acts and practices below set forth, in active and substantial competition with each other and with other manufacturers and dealers;

In pursuance of a plan to establish and maintain a system of minimum prices governing the sale of their products, and following the entering into of agreements with an individual of long experience and standing in the industry, who thereafter became manager and secretary of their said association, and pursuant to which they undertook to submit to him for his distribution among the members full details as to their respective sales and prices and related matters, and to give to him or his agent access to their records and files, and such assistance as he might request in said connection; acting in concert and cooperation with one another and with their said organization or institute—

- (a) Discussed at their meetings called by said individual from time to time, among other matters pertaining to the hardwood lumber market, available supply and demand, prices quoted and received by members and other sellers, future price quotations, and whether current quotations in price lists compiled and issued by said secretary should be changed to accord with participants' views as to prices which could be obtained;
- (b) Followed, usually, in preparing their own price lists for distribution, the new price list prepared by said secretary who was in effect their joint agent in reconciling differences of opinion, and whose list represented a meeting of their minds as to the minimum prices they should seek; and, in the case of some, prepared no separate lists, but merely inserted their own names on his list, and distributed among their salesmen copies thereof;
- (c) Placed in the hands not only of their customers but also of other manufacturers and sellers such list, which, in some instances, specified that lower prices should not be quoted or charged, and which said secretary, in addition to supplying trade journals therewith, furnished to a Minneapolis printing concern which, adding certain minor material, published it as its "Standard Price List";
- (d) Adhered to and maintained the prices set by said Standard Price List as a minimum for their quotations, and frequently a minimum for their actual sales transactions, and through said secretary questioned those who departed therefrom;

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- (e) Established a system of uniform "delivered" prices, published in itemized price lists, through using the same f. o. b. quotation at a common point, and basing freight calculations on fiction that all shipments originated there; as an incident to which it charged and received larger net amounts from buyers located at points nearer the place of production than from more distant buyers, with the result that net price returns to manufacturers and shippers varied, depending upon whether the actual freight rate from the mill to destination was greater or less than the rate from the basing point to such destination;
- (f) Used a system of uniform or standardized weights which were set forth in aforesaid "Standard Price List" to obviate the effect upon delivered prices of variations in weight between shipments of lumber supposed to contain the same number of board feet, due primarily to the degree of dryness and grain of the lumber and the way in which it was sawed;
- (g) Did not, in calculating delivered prices, restrict themselves to the use of the applicable freight rate from basing point to destination, but in some instances agreed upon and incorporated in their delivered price quotations other arbitrary freight rate factors, designating certain market areas as price zones and using uniform delivered price quotations for all shipments moving to any point in such zones, despite the fact that the actual freight rates from any given place of shipment to various destinations therein varied substantially; and from time to time changed and increased such arbitrary freight factors;
- (h) Cooperated with each other and with others in formulating, adopting, and using uniform business practices, terms, and conditions of sale, including discounts and other wholesalers' allowances, for the purpose, and with the effect, of producing uniformity in price quotations; and
- (i) Followed practice, usually, or quoting prices, terms and conditions of sale f. o. b. point of production only when they were equal to a base price plus a freight rate factor from a basing point to the delivery point:

Tendency, capacity and effect of which understanding, combination, and conspiracy, and acts done in furtherance thereof, were to suppress, restrain, eliminate, and lessen competition in sale of hardwood lumber and production thereof in commerce, and to increase prices thereof to purchasers and users of such commodities, and unreasonably to restrict and restrain trade therein:
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.

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

Mr. Merle P. Lyon and *Mr. Everette MacIntyre* for the Commission.

Mr. John Walsh and *Mr. Louis A. Spiess*, of Washington, D. C., and *Mr. Edward J. Dempsey*, of Oshkosh, Wis., for respondents.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the respondents named herein have violated the provisions of said act, and it appearing to the

Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, The Hardwood Institute, hereinafter for convenience referred to as the Institute, is an unincorporated trade association, the membership of which consists of twenty-four manufacturers and producers of hardwood lumber. These members, hereinafter named and described, produce approximately 60 percent of the hardwood lumber produced in northern Wisconsin and northern Michigan. Approximately 10 percent of all the hardwood lumber produced in the United States is produced in northern Wisconsin and northern Michigan. These members supply approximately 20 percent of the hardwood lumber sold on the Chicago market, which is one of the principal hardwood markets in the United States.

The respondent, A. L. Osborn, is manager and secretary of the Institute, and manages and directs its activities from his office in the First National Bank Building, Oshkosh, Wis., which is also the office and principal place of business of the Institute.

The respondent, The Antrim Iron Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Grand Rapids, Mich.

The respondent, The Bay de Noquet Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Nahma, Mich.

The respondent, The Boniface Gorman Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business at 176 West Adams Street, Chicago, Ill.

The respondent, The Brownlee Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business at Hawks and Burke Streets, Detroit, Mich.

The respondent, The Edward Hines Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 77 West Washington Street, Chicago, Ill.

The respondent, William Boniface Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Neenah, Wis.

The respondent, Holt Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin,

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with its principal office and place of business in the city of Oconto, Wis.

The respondent, Kinzel Lumber Co., 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 in the city of Merrill, Wis.

The respondent, Marathon Paper Mills Co., 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 in the city of Wausau, Wis.

The respondent, Menominee & Bay Shore Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Soperton, Wis.

The respondent, Northwestern Cooperage & Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Gladstone, Mich.

The respondent, The Oconto Co., 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 in the city of Oconto, Wis.

The respondent, The Rib Lake Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the city of Rib Lake, Wis.

The respondent, The Underwood Veneer Co., 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 in the city of Wausau, Wis.

The respondent, The Von Platen and Fox Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Iron Mountain, Mich.

The respondent, The M. J. Wallrich Land & Lumber Co., 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 in the city of Shawano, Wis.

The respondent, Weidman Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Trout Creek, Mich.

The respondent, Roddis Lumber & Veneer Co., 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 in the city of Marshfield, Wis.

The respondent, Sawyer-Goodman Co., 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 in the city of Marinette, Wis.

The respondent, I. Stephenson Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Wells, Mich.

The respondent, Thunder Lake Lumber Co., 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 in the city of Rhinelander, Wis.

The respondent, The Wisconsin Land & Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Hermansville, Mich.

The respondent, The Yawkey-Bissel Co., 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 in the city of White Lake, Wis.

The respondent, The Yawkey-Alexander Lumber Co., 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 at Schofield, Wis.

The aforesaid 24 corporations, hereinafter for convenience referred to as respondent members, are now or have been members of the said respondent Hardwood Institute. The membership of said respondent Institute varies from time to time as the result of the dropping out of old and the addition of new members, and they constitute a class so numerous and fluctuating that it is impracticable at any given time to name as parties respondent and bring before the Commission each and all of said members without manifest inconvenience and delay, and the respondent members named are made parties respondent individually and separately, and as representatives of each and all other members as a class.

The members of said respondent Hardwood Institute are all engaged as dealers and manufacturers in the business of producing, buying, selling and distributing to wholesalers, contractors, builders, dealers, jobbers, furniture manufacturers, consumers, and other purchasers, hardwood lumber, lumber products, building material, and supplies.

PAR. 2. The members of said Institute, in the course and conduct of their business, sell their hardwood lumber, after same has been manufactured by them in their respective mills, largely to furniture manufacturers, and similar users of hardwood lumber, and cause such lumber to be shipped and transported to warehouses and places of business and to customers located in States other than the State where said lumber has been produced, and in States other than the State where the respective shipments originate. In the course and conduct of the business of the members of said Institute, as hereinabove described, respondents have been and are engaged in trade and commerce between and among the several States of the United States and in the District of Columbia, and in the production, sale, and distribution of hardwood lumber, lumber products, building materials, and supplies.

Before the adoption of the understandings, agreements, combinations, and conspiracies hereinafter alleged, respondent members of said Institute were in active and substantial competition with each other and with other manufacturers, nonmembers, and other dealers in making, or seeking to make, sales of lumber and building materials in commerce between, among, in, and with the several States of the United States and in the District of Columbia, and, but for the facts hereinafter alleged, such active and substantial competition would have continued to the present time.

PAR. 3. The said members of said Institute constitute a large and important part of the producers of and dealers in hardwood lumber and building materials in the States of Wisconsin and Michigan, and constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in lumber and building materials within, to, and from the States of Wisconsin and Michigan. Said members as allied and banded together in said Institute, are enabled thereby to more effectively exercise control and influence over such trade and commerce for the promotion and enhancement of their own volume of trade and profits.

Respondent Hardwood Institute was organized on or about February 1, 1928, for the purpose of eliminating price competition among its members and of fixing and maintaining stabilized and identical delivered prices at each given destination of hardwood lumber produced and manufactured in the States of Wisconsin and Michigan; and subsequent thereto the respondent members of said Institute, acting through and by means of respondent Institute, and respondent A. L. Osborn, as its manager and secretary, entered into and there-

after carried out understandings, agreements, combinations, and conspiracies as hereinafter more particularly set out, for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating price competition in the production and manufacture of hardwood lumber and building materials and the sale thereof in trade and commerce between, among, in, and with the several States of the United States and in the District of Columbia.

PAR. 4. The members of said Institute are banded and allied together to carry into effect the program and practices hereinbelow described and to enhance and promote the volume of trade, business, and profits of said respondent members. The said Institute, A. L. Osborn, individually and as manager and secretary of said Institute, and its respondent members hereinbefore more particularly set out, have agreed, conspired, combined, and confederated together and with others, and are agreeing, conspiring, combining, and confederating together and with others, and have united in and are uniting in, and have pursued, and are pursuing, a common and concerted course of action and undertaking among themselves and with others:

1. To fix and maintain the price of hardwood lumber manufactured and sold by members of the Institute; by means of

(a) Daily reports made to the secretary of the Institute by the respondent members thereof on forms supplied by the Institute.

(b) The tabulation thereof by the secretary of the Institute.

(c) The issuance semiweekly of confidential reports to the respondent members by the secretary of the Institute showing the base prices received by each respondent member for each individual item of lumber sold during the period of the reports, and comparing same with so-called established list prices.

(d) The holding of informal meetings of members of the Institute at the call of the secretary at irregular intervals, approximately once a month, for the purpose of discussing prices, market trends, and other matters concerning the lumber industry and of arriving at agreements relative thereto by members of the Institute.

(e) The preparation and publication of a monthly base price list by the secretary of the Institute subsequent to the said monthly meeting of the members thereof, which price list is distributed only to the members of the Institute, and is reprinted by them on their own stationery and becomes the list of base prices at which the various members of the Institute are required to sell their lumber.

(f) The promulgation of the base prices fixed by the Institute to the general public by means of anonymous price lists sent by the secretary of the Institute to the Broughton Publishing Co. at Minneapolis,

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Minn., and printed independently by the latter company and distributed generally by it throughout the United States as being the established list base prices of the hardwood lumber industry.

(g) Coercion, pressure, and publicity brought to bear on all members of the lumber industry and particularly on members of the Institute to abide by and follow the base prices as set forth in the said price lists in the sale of lumber and lumber products.

2. To divert business and trade in lumber and building materials from dealers and manufacturers who are noncooperative or nonmembers of said Institute, for the purpose of enabling or assisting the members of said Institute to appropriate and acquire the patronage and trade of such noncooperative or nonmember dealers and manufacturers, and to monopolize such trade and business in members of said Institute.

PAR. 5. The said Hardwood Institute and its members, and A. L. Osborn, in his individual capacity as well as in his capacity as manager and secretary of said Institute, have agreed, combined, confederated, and conspired together for the purpose and with the intent of carrying out the aforesaid program; and they have been and are now engaged in carrying into effect and maintaining said program and the said agreement, combination, confederation, conspiracy, and undertaking as set forth in paragraph 4 of this complaint. For the purpose of effecting and carrying out the said program and said agreement, combination, federation, conspiracy, and undertaking the Institute, its secretary, and its respondent members, among other things, have done and are doing the following:

(a) Exacted and procured promises and agreements from each member of said Institute to the effect that such members will support, adhere to, and enforce the foregoing program of respondents as set forth in paragraph 4 hereof.

(b) Used and continue to use, in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats of boycott, and other united action against other manufacturers, producers, and dealers to induce and require them, and to attempt so to induce and require them, to agree and conform to and to support and enforce the said program of said Institute.

(c) Held meetings of members, officers, and directors of said Institute to devise means of exerting influence, pressure, coercion, or other means of inducing, coercing, and requiring manufacturers, producers, distributors, and others engaged in said lumber industry to abide by, and adhere to, said program.

(d) Agreed to fix and maintain, and do fix and maintain, uniform base prices for their products.

(e) Agreed to fix and maintain, and do fix and maintain, minimum base prices for said products.

(f) Agreed to fix and maintain, and do fix and maintain, uniform maximum discounts which are allowed in the sale of said products.

(g) Agreed to fix and maintain, and do fix and maintain, uniform terms and conditions, including but without limitation, brokerage fees, freight, and other allowances, in the sale of said products.

(h) Agreed to file, and do file, with the secretary of respondent Institute, daily reports showing the base prices received by respondent members in the sale of said products, including discounts and the terms and conditions of all sales at which said members will and do sell said products.

(i) Agreed to use and engage in, and have used and engaged in, other cooperative concerted acts and practices, coercive methods and policies, in promoting, establishing, and carrying out said understandings, agreements, combinations, and conspiracies of said respondent members, acting through and by means of respondent Institute, its members, officers, and agents, for the purpose of suppressing and preventing competition and restricting and restraining the sale of hardwood lumber and building materials in trade and commerce between, among, in and with the several States of the United States.

(j) The respondent Institute collects from and disseminates among the respondent members information as to prices, discounts, and terms and conditions of sale, and other information used and useful in carrying out said undertaking. Said respondent members and the respondent Institute and its secretary have adopted and agreed upon detailed rules and regulations designed and intended to prevent deviation on the part of respondent members from the prices, discounts, and terms and conditions of sale announced by such members.

PAR. 6. Each of said respondents has acted and is now acting in concert and in cooperation with one or more of the other respondents and with the respondent Institute in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 7. The capacity, tendency, and effect of said agreement, combination, conspiracy, confederation, and undertaking, and the said acts and practices of respondents, as set forth in paragraphs 4 and 5 hereof, have been, and are:

(a) To monopolize, in the members of said Institute in the States of Wisconsin and Michigan, the business of dealing in and distributing hardwood lumber and building materials.

(b) To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the said hardwood lumber and building mate-

rials trade and industry, and to deprive the purchasing and consuming public of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said trade and industry; and otherwise to operate as a restraint upon, and a detriment to, the freedom of fair and legitimate competition in such trade and industry.

(c) To substantially increase the cost to purchasers of such hardwood lumber and building materials, and consequently to increase the cost of furniture and the cost of construction, repair, maintenance, and remodeling of homes, dwellings, buildings, highways, and all kinds of construction and building works.

(d) To oppress, eliminate, and discriminate against nonmembers of said Institute who are or have been engaged in selling, distributing, manufacturing, or using hardwood lumber and building materials.

(e) To obstruct, hamper, and interfere with the normal and natural flow of trade and commerce in hardwood lumber and building materials in, to, and from the States of Wisconsin and Michigan, and to injure competitors of the members of said Institute.

PAR. 8. The acts and practices of the respondents as herein alleged are all to the prejudice of the public; have a tendency to and have hindered and prevented price competition between and among said member respondents in the sale of hardwood lumber and building materials in commerce between, among, in and with the several States of the United States and in the District of Columbia; have placed in respondents the power to control and enhance prices; have increased the prices of hardwood lumber and building materials to the purchasers and users thereof, have tended to create in the respondents a monopoly in the sale of hardwood lumber and building materials in said commerce; have unreasonably restricted and restrained trade in said commerce in hardwood lumber and building materials, 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 15, 1938, issued and subsequently served its amended 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 filing of the respondents' answers to said complaint, 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 said complaint by attorneys for the respondents, before Robert S. Hall, trial examiner of the Commission theretofore duly designated by it, which testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for hearing before the Commission on said amended complaint and the answers thereto, 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 Commission having duly considered the matter, on May 23, 1941, directed that the proceeding be reopened for the purpose of taking such further testimony and other evidence as might be offered in support of and in opposition to the allegations of said complaint. Thereafter a stipulation as to certain facts was entered into between W. T. Kelley, Chief Counsel for the Commission, and Edward J. Dempsey, attorney for the respondents (except respondents A. L. Osborn, Kinzel Lumber Co., Menominee & Bay Shore Lumber Co., and Northwestern Cooperage & Lumber Co.), which provided, among other things, that, subject to the approval of the Commission, such statement of facts might be made a part of the record herein and might be taken as facts in this proceeding and in lieu of further testimony in support of or in opposition to the charges stated in the complaint, and that the Commission might proceed upon the entire record, including said statement of stipulated facts, to make its report, stating its findings as to the facts (including inferences which it might draw from the entire record, the admissions made by representatives of the respondents in the pleadings and as otherwise disclosed by the record and by said statement of stipulated facts), and its conclusion based thereon, and might enter its order disposing of the proceeding without the presentation of further argument or the filing of additional briefs.

Thereafter the proceeding regularly came on for final hearing before the Commission on said amended complaint, answers, testimony and other evidence, and stipulation, 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. Respondent, the Hardwood Institute, hereinafter for convenience referred to as the Institute, is an unincorporated trade

association, the membership of which at the time of the issuance of the amended complaint on June 15, 1938, consisted of 22 manufacturers and producers of hardwood lumber. Such members, hereinafter named and described, produced during the year 1937 approximately 37 percent of the hardwood lumber produced in Wisconsin and Michigan, and during the same year they produced a larger percentage of the hardwood lumber produced in northern Wisconsin and northern Michigan.

Respondent, A. L. Osborn, was on June 15, 1938, and for a period of several years prior thereto had been, manager and secretary of the Institute. Until his death on April 19, 1940, he managed and directed its activities from his office in the First National Bank Building in Oshkosh, Wis., which also served as the office and principal place of business of the Institute.

Respondent, the Antrim Iron Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business, in the city of Grand Rapids, Mich.

Respondent, the Bay de Noquet Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Nahma, Mich.

Respondent, the Bonifas Gorman Co. (referred to in the complaint as the Boniface Gorman Co.), is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business at 176 West Adams Street, Chicago, Ill.

Respondent, the Brownlee Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business at Hawks and Burke Streets, Detroit, Mich.

Respondent, the Edward Hines Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 77 West Washington Street, Chicago, Ill.

Respondent, William Bonifas Lumber Co. (referred to in the complaint as William Boniface Lumber Co.), is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Neeah, Wis.

Respondent, Holt Lumber Co., 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 in the city of Oconto, Wis.

Respondent, Kinzel Lumber Co., was, prior to April 19, 1939, 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 in the city of Merrill, Wis. On April 19, 1939, it was duly dissolved in accordance with law.

Respondent, Marathon Paper Mills Co., 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 in the city of Wausau, Wis.

Respondent, Menominee & Bay Shore Lumber Co., was, prior to October 6, 1941, a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Soperton, Wis. On October 6, 1941, it was duly dissolved in accordance with law.

Respondent, Northwestern Cooperage & Lumber Co., was, prior to August 26, 1937, a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Gladstone, Mich. On August 26, 1937, it was duly dissolved in accordance with law.

Respondent, the Oconto Co., 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 in the city of Oconto, Wis.

Respondent, the Rib Lake Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the city of Rib Lake, Wis.

Respondent, the Underwood Veneer Co., 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 in the city of Wausau, Wis.

Respondent, the Von Platen & Fox Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Iron Mountain, Mich.

Respondent, the M. J. Wallrich Land & Lumber Co., 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 in the city of Shawano, Wis.

Respondent, Weidman Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Trout Creek, Mich.

Respondent, Roddis Lumber & Veneer Co., 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 in the city of Marshfield, Wis.

Respondent, Sawyer-Goodman Co., 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 in the city of Marinette, Wis.

Respondent, I. Stephenson Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Wells, Mich.

Respondent, Thunder Lake Lumber Co., 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 in the city of Rhineland, Wis.

Respondent, the Wisconsin Land & Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Hermansville, Mich.

Respondent, the Yawkey-Bissel Co., 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 in the city of White Lake, Wis.

Respondent, the Yawkey-Alexander Lumber Co., 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 at Schofield, Wis.

PAR. 2. The aforesaid 24 corporations, hereinafter for convenience referred to as respondent members, for a period of several years prior to the date of the issuance of the amended complaint in this case, June 15, 1938, had maintained membership in the respondent Hardwood Institute. On June 15, 1938, 22 of these corporations maintained membership in the Institute, the Northwestern Cooperage & Lumber Co., and the M. J. Wallrich Land & Lumber Co. having ceased manufacturing and selling lumber prior thereto. Since that date the following respondent members have ceased manufacturing hardwood lumber because their timber holdings were exhausted: The Brownlee Lumber Co., Holt Lumber Co., Kinzel Lumber Co., Menominee & Bay Shore Lumber Co., Weidman Lumber Co., and the Sawyer-Goodman Co.

The other members of the respondent Institute are all engaged as manufacturers in the business of producing, selling, and distributing to wholesalers, contractors, builders, dealers, jobbers, furniture manu-

facturers, consumers, and other purchasers, hardwood lumber, and the products thereof. In the course and conduct of their business they sell hardwood lumber, after it has been manufactured by them in their respective mills, to furniture manufacturers and similar users of hardwood lumber, and cause such lumber and the products thereof to be shipped and transported to warehouses and places of business and to customers located in States other than the State where said lumber has been produced, and in States other than the State where the respective shipments originate.

In the course and conduct of their business all of the respondent members are now or have been engaged in trade and commerce between and among the several States of the United States and in the District of Columbia in the production, sale, and distribution of hardwood lumber and the products thereof.

PAR. 3. Until the adoption of the understanding, agreement, combination, and conspiracy hereinafter described, respondent members were inactive and substantial competition with each other and with other manufacturers and dealers in making or seeking to make sales of hardwood lumber and the products thereof in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 4. The Hardwood Institute had its beginning in the early part of 1928, when a committee representing a group of hardwood lumber manufacturers proposed to respondent, A. L. Osborn, that he assume the task of tabulating and compiling information with respect to the hardwood lumber market and supplying such information to the members of the group. Osborn had had many years of experience in the hardwood lumber industry and was widely recognized throughout the industry as possessing unusual knowledge and ability with respect to the production and marketing of lumber. The committee's negotiations with Osborn resulted in an agreement to which some 30 manufacturers subscribed at that time. Under the plan of operation agreed upon each manufacturer was to report to Osborn daily all of its sales of lumber, and Osborn was to compile these reports into general sales bulletins which were to be supplied by Osborn to all of the manufacturers entering into the agreement. Osborn was to receive as compensation for his services 8 cents for each thousand feet of lumber sold by the manufacturers. The written form of agreement adopted was as follows:

The undersigned agrees with A. L. Osborn that it will hereafter report without exception all of its orders for hardwood lumber to him daily in full detail on the order blank hereto attached and made a part hereof, or on an equivalent form giving the same information.

Findings

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The undersigned assents to these orders being tabulated to show the price received on sales made by the undersigned for each individual item and hereby assents to such prices being incorporated in a report to be issued semiweekly to other firms signing a concurrent agreement with the following exception:

If the undersigned feels in certain isolated cases that it has good and sufficient reason for not desiring a particular order to be shown in the aforesaid semiweekly report, it shall advise A. L. Osborn of that fact and the said A. L. Osborn will confer with the undersigned on the propriety of not showing said sale in said report, and he shall not publish the same without the consent of the undersigned.

The undersigned hereby assents to A. L. Osborn or his agent having access to its records, files, papers, and correspondence pertaining to orders taken by it for hardwood lumber and agrees to give him or his agent such assistance as may be requested in the examination of said records and files.

The undersigned assents to the information it furnishes as mentioned above being duplicated in said semiweekly reports and furnished to those who make agreements similar to this with A. L. Osborn, said information to be held in confidence by those who make such agreements and/or their sales managers.

The undersigned reserves the right to cancel this agreement on ten (10) days' notice to A. L. Osborn.

Between February 1, 1928, and November 1, 1933, all of the respondent members, except William Bonifas Lumber Co., entered into this agreement. While the William Bonifas Lumber Co. never executed the written form of agreement, it did, during the period from the abandonment of the NRA Code to June 15, 1938, report its sales to Osborn and otherwise utilized the services of Osborn in the same manner and to the same extent as did the other respondent members.

So far as the record discloses, there was never any formal adoption by respondents of the name Hardwood Institute to designate their organization and activities. Within some 2 or 3 years, however, the name had come into fairly general use among respondents and in the industry generally.

PAR. 5. In accordance with their agreement the respondent members have opened their books of account and other records for examination by Osborn and have made daily reports to him covering all of their sales. Such reports were usually made on blank forms prepared by Osborn, although in some instances certain of the respondents have simply sent Osborn copies of their invoices. These reports showed in detail each separate sale, giving the name of the purchaser; the items, sizes, and quantities of the lumber involved, the terms and conditions of sale, and the price at which the lumber was sold. Upon receipt of the reports Osborn proceeded to incorporate the information contained therein in general sales bulletins which were distributed to the respondent members and other sellers of hardwood lumber and the products thereof. The frequency of issuance of these bulletins depended upon market conditions. If the market was active and the

volume of sales large, a bulletin might be issued every second day. If, however, there was little activity in the market, as much as a week might elapse between bulletins. The bulletins showed the grade of the lumber sold, the name of the manufacturer reporting the order, whether the purchaser was a wholesaler, retailer, consumer, etc., any commission or concession allowed the purchaser, the destination of the shipment, the freight rate from the mill to destination, the freight rate from Wausau, Wis., to destination, the delivered price received and the current delivered list price, figured from Wausau, irrespective of the location of the point from which it was proposed that shipments be made. Adjoining columns showed the difference, if any, between the delivered price received and the list price on such lumber as shown by the Institute's current delivered price list. Through the reporting and exchanging of information in this manner the respondent members were able to secure a collective comparison among themselves of the prices obtained by the various respondent members for their products, and each respondent member was enabled to compare such prices with its own price quotations.

PAR. 6. Meetings of the members of the Institute were called by Osborn from time to time, usually every month or every 6 weeks, depending upon the activity of the market. While the meetings were usually open only to members of the Institute, occasionally Osborn would invite outsiders to attend. Aside from Osborn, who was regarded by the members as the Institute's manager and secretary, and who presided at the meetings, the Institute had no officers. No minutes or other records of the meetings were kept.

At these meetings the respondents discussed, considered and arrived at common understandings among themselves, upon which they later acted, with respect to various matters pertaining to the hardwood lumber market, including, among others: (a) The supply of hardwood lumber available and the market demand therefor; (b) the prices which had been and were being quoted and received by respondent members and other sellers of hardwood lumber for their products; (c) prospective or future price quotations under consideration by respondent members and other sellers of hardwood lumber; (d) questions raised by respondent members and respondent Osborn as to the prices which could and should be obtained in the future for the various items, sizes, and quantities of hardwood lumber and the products thereof; and (e) whether the current price quotations contained in price lists previously compiled and issued by respondent Osborn should be changed to accord with respondents' views as to the prices which could be obtained in the future.

Using the information obtained at these meetings, Osborn would proceed to prepare and supply to the respondent members a new list of prices on the various kinds and grades of lumber sold by them. He was regarded by respondent members as an expert analyst of the hardwood lumber market, and was in effect the joint agent of respondent members for the purpose of reconciling differences of opinion among respondent members with respect to prices and determining the prices which should appear in the next list. The price list prepared by Osborn represented a meeting of respondents' minds as to the minimum prices to be sought by respondent members for their products. In preparing their own price lists for distribution among their salesmen and customers, respondent members usually followed the Osborn list in all material respects. In fact, some of the respondent members prepared no price lists of their own but merely adopted the Osborn list, imprinting their own name on copies of the Osborn list and distributing such copies among their salesmen.

Osborn also supplied copies of his price list to the American Lumberman, a trade journal, and the Chicago Journal of Commerce, for publication by them. A copy was also regularly supplied by him to A. L. Broughton & Co., a printing concern in Minneapolis, Minn., which published the price list, with certain minor material added thereto, under the name "Broughton's Standard Price List." The respondent members, after discussion and consideration among themselves, have not only adopted and used such "standard" price list and placed it in the hands of their customers, but have also placed such list in the hands of other manufacturers and sellers of hardwood lumber, who proceeded to use the list. In this manner the respondents have caused the Osborn list to be circulated generally throughout the hardwood lumber industry and to be used by members of the industry in Wisconsin and Michigan who were not connected with the Institute. The so-called standard price list specified in some instances that prices or charges less than those contained in the list should not be quoted or charged.

In the sale of their products the respondent members have followed the practice of adhering to and maintaining the prices set by the standard price list as a minimum for their quotations, and frequently as a minimum for their actual sales transactions. For example, the sales reports made by the respondent members to Osborn during the period from January 1 to January 31, 1937, show that out of 1,108 items reported, 487 or 44 percent were sold at the exact standard list price, 416 or 37 percent were sold at prices above the standard list price, and 205 items or 19 percent were sold at prices less than the standard

list price. It thus appears that of all of the sales reported during that period 81 percent were at prices equalling or exceeding the standard list prices.

PAR. 7. A further circumstance bearing upon the point that the Osborn price list represented a common understanding and agreement among the respondent members is that members who failed to maintain the prices shown on the list were subjected to questioning by Osborn with respect to such departures. An example of this is a letter addressed by Osborn to the sales manager of one of the respondent members which read as follows:

My attention has been called to your sale to the Northern Furniture Co. of 4/4 #2 Common and Better Soft Maple.

I have been asked whether this is the usual run of #2 Common and Better or not. Inasmuch as this calls for \$42.25 on #2 Common and Better Soft Maple, I will be glad to have your say as to what you will ship.

Replying to this letter the sales manager of the respondent member wrote Osborn as follows:

Wish to advise that our Soft Maple is not as good as the ordinary run. We don't get very much Soft Maple: at the most our cut would be not to exceed 100,000 ft. of No. 2 and Better per year. The lumber does run quite narrow, also contains about 40% No. 2 Common, 20% FAS and the balance No. 1 Common and Selects. We don't get enough of it to sort the different grades out, which necessitates our selling it No. 2 and Better, and as it is not a very good run of stock we have always had to make a very low price on same to move it.

PAR. 8. In further pursuance of their plan to establish and maintain a system of minimum prices governing the sale of their products, the respondent members have by concerted and cooperative action arrived at and promulgated schedules of delivered prices on their products. The freight or transportation charges on lumber from the mill to the purchaser constitutes one of the largest of the items making up the cost of the lumber delivered to the purchaser. Even though a group of manufacturers might establish uniform prices for lumber at their mills, the ultimate delivered cost to a given purchaser would vary widely, if, as in the present case, the mills of the sellers were located at different points. To overcome this difficulty the respondent members established a system of "delivered" prices, which purported to include the freight as well as the f. o. b. price at the mill. Uniformity in these delivered prices was achieved by respondents through the use of Wausau, Wis., as a basing point; that is, as the point from which the freight was calculated, irrespective of the fact that the mills of most of the respondent members were not located in Wausau, Wis., but were located at various other points in Wisconsin and in Michigan, and had different freight rates to given destinations. Moreover, some of the respondent members

made shipments by water at lower rates than those on which their delivered price quotations were calculated. By using the same f. o. b. base quotation at a common point, namely, Wausau, Wis., and basing the freight calculation on the fiction that all shipments originated at Wausau, the respondent members obtained a uniformity of delivered prices which otherwise would have been impossible. As an incident to their calculations of delivered price quotations in that manner, the respondents have among themselves discussed and followed the practice of asking, charging, and receiving larger net sums and amounts for hardwood lumber and the products thereof from buyers located at points nearer the place of production than from other buyers at points more distant from the place of production.

There frequently are substantial variations in weight between shipments of lumber which are supposed to contain the same number of board feet, these variations being due primarily to the degree of dryness of the lumber, the grain of the lumber, and the way in which the lumber is sawed, that is, whether it is sawed evenly or unevenly. To obviate the effect of these variations in weight upon delivered prices the respondent members have used a system of uniform or standardized weights, the weight schedules being set forth in the Broughton Standard Price List.

This system of delivered prices and fixed schedules of weights was in common use among the respondent members. After discussion and consideration among themselves the respondent members adopted and made use of detailed and itemized price lists of hardwood lumber and the products thereof, calculated f. o. b. Wausau as a basing point, such lists being published by representative respondents or by co-operating publishers from information supplied by respondent Osborn or other representatives of respondents. One of such lists, the Broughton Standard Price List, which was in fact the Osborn list, carried a foreword that:

This book contains F. O. B. Wausau prices of Northern Hardwoods on date of issue.

Also Table of Weights, Millwork Charges, and Delivery Table showing proper amounts to Add to Rough F. O. B. prices for Rough or Mill Worked stock from 4¢ to 47¢ rates inclusive, and will save much time in deciding Delivered prices. The Mill Work Charges are figured in with the Freight Charges and to obtain Delivered Prices add amount shown in proper Rough or Millwork and Rate column.

The use of a common basing point results in varying net price returns to manufacturers and shippers, depending upon whether the actual freight rate from the mill to the destination of the shipment

is greater or less than the rate from the basing point to the destination of the shipment. In those cases where the rate from mill to destination is higher than the rate from the basing point to destination the shipper nets less than the base price. Conversely, in those cases where the rate from mill to destination is less than the rate from the basing point to destination the shipper nets more than the base price. The substantial character of these freight rate differentials is apparent from the following testimony of respondent Osborn:

There are quite a number of mills south of the Wausau group, including two mills at Oconto, one large mill in New London, or was until recently, a large mill at New London, Tigertown, Shawano, Milwaukee, and Marshfield, who to the large consuming markets, have rates running from 1¢ to 4¢ better than the Wausau group. New London, for instance, takes 8¢ or 9¢ rate to Sheboygan, the rate from Wausau would be 13¢ I believe. The rate from New London to Oshkosh, a very large consuming market, would be 7¢, from Wausau 13¢.

Thus on a shipment to Oshkosh, Wis., a mill located at New London, Wis., would have a freight rate advantage of 6¢ per hundredweight over a mill located at Wausau, Wis. Using the standard weight of 4,000 pounds per 1,000 feet as set forth in the Broughton price list, the net price advantage to the New London mill would be \$2.40 per 1,000 feet, but by quoting delivered prices on the Wausau base, that shipper would refrain from quoting less than mills or shippers with freight disadvantages.

In calculating delivered prices the respondents have not in all cases restricted themselves to the use of the applicable freight rate from Wausau, Wis., to the point of destination of the shipment, but have in some instances agreed upon and incorporated in their delivered price quotations certain other arbitrary freight rate factors. Certain market areas have been designated by respondents as comprising particular price zones, and uniform delivered price quotations have been used by respondents for all shipments moving to any point in such zones, despite the fact that the actual freight rates from any given place of shipment to the various destinations in such zones varied substantially. One of the zones so designated by respondents comprised the Lower Peninsula of Michigan. From time to time the respondents, after discussion among themselves, changed and increased the arbitrary freight factor used in the compilation of such delivered price lists and quotations.

PAR. 9. In addition to the use of uniform delivered price quotations the respondent members have also cooperated with each other and with other sellers of hardwood lumber and the products thereof in formulating, adopting and using uniform business practices, terms,

and conditions of sale, including discounts and other amounts to be allowed wholesalers, retailers, and other tradesmen, for the purpose and with the effect of producing uniformity in price quotations.

PAR. 10. The respondents usually followed the practice of quoting prices, terms, and conditions of sale f. o. b. mill or point of production only when such prices, terms and conditions were determined under, dependent upon or related to base price or a method or system of making delivered price quotations, so that such f. o. b. mill quotations were equal to a base price plus a freight rate factor from some basing point to the delivery point.

PAR. 11. Each of the respondent members has acted in concert and in cooperation with one or more of the other respondent members and with the respondent Institute in doing the foregoing acts and things in furtherance of the understanding, agreement, combination, and conspiracy herein described.

PAR. 12. The Commission finds that the understanding, agreement, combination, and conspiracy entered into by the respondents, including respondents' use of the methods set forth herein, and their acts done pursuant thereto and in furtherance thereof, as herein described, had and have the tendency and capacity to suppress, restrain, eliminate, and lessen competition, and did substantially suppress, restrain, eliminate, and lessen competition in the sale of hardwood lumber and the products thereof in commerce between and among the several States of the United States and in the District of Columbia. Such understanding, agreement, combination, and conspiracy and the acts done pursuant thereto and in furtherance thereof also had and have the tendency and capacity to increase the prices of hardwood lumber and the products thereof to the purchasers and users of such commodities, and unreasonably to restrict and restrain trade in hardwood lumber and the products thereof in commerce between and among the several States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public 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 amended complaint of the Commission, the answers of

respondents, testimony and other evidence taken before Robert S. Hall, a trial examiner of the Commission, theretofore duly designated by it, in support of and in opposition to the allegations of said complaint, and a stipulation as to certain facts entered into between Edward J. Dempsey, attorney for the respondents (except respondents A. L. Osborn, Kinzel Lumber Co., Menominee & Bay Shore Lumber Co. and Northwestern Cooperaage & Lumber Co., and W. T. Kelley, chief counsel for the Commission, which provided, among other things, that the Commission might proceed upon the entire record, including such statement of stipulated facts, to make its report, stating its findings as to the facts (including inferences which it might draw from the entire record, the admissions made by representatives of the respondents in the pleadings and as otherwise disclosed by the record, and by such statement of stipulated facts), and its conclusion based thereon, and might enter its order disposing of the proceeding without the presentation of further argument or the filing of additional briefs, 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, the Hardwood Institute, an unincorporated association, and the Antrim Iron Co., the Bay de Noquet Co., the Bonifas Gorman Co., the Brownlee Co., the Edward Hines Lumber Co., William Bonifas Lumber Co., Holt Lumber Co., Marathon Paper Mills Co., the Oconto Co., the Rib Lake Lumber Co., the Underwood Veneer Co., the Von Platen & Fox Co., the M. J. Wallrich Land & Lumber Co., Weidinan Lumber Co., Roddis Lumber & Veneer Co., Sawyer-Goodman Co., I. Stephenson Co., Thunder Lake Lumber Co., the Wisconsin Land & Lumber Co., the Yawkey-Bissel Co., and the Yawkey-Alexander Lumber Co., corporations, both separately and as representatives of each other, and said respondents' officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce among and between the several States of the United States and in the District of Columbia, of hardwood lumber or products thereof, do forthwith cease and desist from:

1. Entering into, carrying out, or aiding or abetting in the carrying out, or the continuing of any agreement, understanding, combination, or conspiracy or cooperation or concert of action (to produce harmonious individual action) 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 eliminating competition in price.

2. Doing and performing, by cooperative or concerted action, or agreement, or understanding, between and among any two or more of said respondents, or between any one or more of said respondents, and any other person, partnerships, or corporations, the following acts, practices, or things:

(a) Fixing, establishing, or maintaining prices, terms, or conditions of sale, or promising or attempting to adhere to prices, terms, and conditions of sale of hardwood lumber or products thereof so fixed.

(b) Adopting, maintaining, or using a method or system for calculating and quoting prices predicated upon the use of figures f. o. b. Wausau, Wis., or any other basing point, plus freight therefrom, for the purpose or with the effect of matching or making the same the delivered price quotations of any two or more sellers of hardwood lumber or the products thereof at any given destination.

(c) Preparing, calculating, or circulating a compilation or compilations of delivery charges, freight factors, or so-called freight rates for use by sellers of hardwood lumber or products thereof for the purpose or with the effect of making or aiding in making the same delivered price quotations on the part of any two or more sellers of hardwood lumber or the products thereof at any given destination.

(d) Quoting prices, terms, and conditions of sale determined under a method or system of basing point—delivered price—quotations for the purpose or with the effect of matching or making the delivered price quotations of any two or more sellers of hardwood lumber or the products thereof the same at any given destination; or quoting prices, terms, or conditions of sale f. o. b. point of production or shipment that are dependent on, related to, or determined by such method or system.

(e) Treating buyers and users of hardwood lumber and the products thereof in an unfair or discriminatory manner or differently by systematically demanding, charging, accepting, or receiving, as an incident to the use of any basing-point method or system or any freight equalization method or system of delivered price quoting, larger mill net sums and amounts for products equal in quality and quantity from buyers and users located at or near the respective places of production of the respondents, than from other buyers and users more distantly located freight-wise from such respective places of production or shipment, for the purpose or with the effect of matching or making the same the delivered price quotations on the part of any two or more sellers of hardwood lumber and the products thereof at any given destination.

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(f) Reporting, filing, or exchanging among themselves, or with other competing sellers of hardwood lumber or the products thereof, base or other price lists, or adhering or agreeing to adhere to any extent to the prices quoted or included in such lists, or collaborating among themselves or with other competing sellers concerning any price quotations included in such lists; Provided, this subparagraph (f) shall not be construed as a prohibition against a seller giving to a customer price lists on items involved in sales by such seller to such customer.

(g) The opening of books or other records for examination by a common agent, or the reporting, filing, or exchanging among themselves or with others through a common agent or otherwise, information regarding the sales of any individual seller of hardwood lumber or products thereof, including the prices at which such sales are made, for the purpose or with the effect of securing a collective or cooperative comparison, through a common agent or otherwise, of the prices therein with the price quotations previously announced by any seller of hardwood lumber or products thereof.

(h) Filing or exchanging among themselves or with others, through a common agent or otherwise, statistical or other intimate details of sales made by any one seller of hardwood lumber or products thereof for the purpose or with the effect of aiding or abetting in eliminating or restraining competition in the sale of hardwood lumber or the products thereof;

(i) Formulating, adopting, or using price quotations, business practices, terms, or conditions of sale, including discounts or other amounts to be allowed wholesalers, retailers, or other tradesmen, for the purpose or with the effect of producing uniformity in such quotations, business practices, terms, and conditions of sale and discounts among competitors in their sale of or offers to sell hardwood lumber or the products thereof.

(j) Discussing or collaborating in the course of meetings or otherwise, among themselves or with others, or cooperating among themselves or with others, for the purpose or with the effect of continuing or carrying out or aiding in the continuing or the carrying out of any of the methods or practices specified and set forth in the immediately preceding subparagraphs lettered (a) to (i) inclusive.

3. Reporting, filing, or exchanging, among themselves or with other competing sellers of hardwood lumber or the products thereof, base or other price lists; provided this paragraph 3 shall not be construed as a prohibition against a seller giving to a customer price lists on items involved in sales by such seller to such customer.

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4. Opening of books or other records for examination by a common agent, or reporting, filing, or exchanging among themselves or with others through a common agent or otherwise, information regarding the sales of any individual seller of hardwood lumber or products thereof, including the prices at which such sales are made, for the purpose or with the effect of securing a collective or cooperative comparison, through a common agent or otherwise, of prices with price quotations previously announced by any seller of hardwood lumber or products thereof.

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.

The respondent corporations Kinzel Lumber Co., Menominee & Bay Shore Lumber Co., and Northwestern Cooperage & Lumber Co., having been dissolved, *It is further ordered*, that this proceeding be, and it hereby is, dismissed as to said respondents.

The individual respondent, A. L. Osborn, having died subsequent to the institution of this proceeding, *It is further ordered*, that this proceeding be, and it hereby is, dismissed as to said respondent.

Syllabus

IN THE MATTER OF

CLARENCE B. COUNCIL, TRADING AS STATISTICAL RESEARCH BUREAU, AND METALS AND MINERALS RESEARCH BUREAU.

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

Docket 3572. Complaint, Dec. 14, 1940¹—Decision, Feb. 24, 1942

Where an individual, engaged in the compilation and interstate sale and distribution of a publication known as "The Mining Manual," in competition with a concern which compiled and published its "The Mines Register" of information concerning mining and mining companies—

(a) Represented, through statements published and circulated to subscribers of "The Mines Register" and to others, that his said "Manual" was published periodically throughout the year, thereby giving complete and up-to-date information concerning various companies and their activities, and was superior to said competitive "Register," that latter was not an authentic and high-grade publication, and that information and material therein contained were out of date;

When as a matter of fact his own publication comprised only the first 200 pages of a perpetual manual which he never completed, and of which section 1 of part 1 did not appear for nearly a year after the making of his said representations, to be followed eight months later by section 2, and in the following year by section 3, the last; and said "Mines Register," published from time to time, gave as complete information as was obtainable concerning mining companies, organizations, equipment, etc., and was considered to be authentic, reliable, and up-to-date;

(b) Represented, directly and by implication, through circular letters, that he had been engaged in publishing books of mining information since 1925, and that his said "Manual" was generally recognized as of preeminent merit, constituting a standard reference work, and the only up-to-date information service on mines published, containing all the information with respect to mining companies contained in the aforesaid "Register," and ready for immediate delivery;

The facts being he had not been engaged in business as claimed; his said "Manual" was not generally recognized as a standard reference work, or the only one publishing up-to-date information service on mines; and said "Register" contained mining information not included in his "Manual," no part of which was ready for delivery until almost a year later, as noted above;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true; that said "Register" was not authentic, reliable and up-to-date, and that his "Manual" was a superior product, whereby purchasing public was

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induced to buy his publication in preference to said "Register" and others, and trade was thereby 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.

Before *Mr. Charles P. Vincini*, *Mr. Edward E. Beardon* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Randolph W. Branch for the Commission.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Clarence B. Council, individually, and trading as Statistical Research Bureau, and as Metals and Minerals Research Bureau, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Clarence B. Council, is an individual, who for some time prior to October 1, 1937, conducted a business under the trade name of Statistical Research Bureau, at Room 523, 315 Montgomery Street, San Francisco, Calif. Since that date respondent has been, and is now, conducting said business under the trade name of Metals and Minerals Research Bureau, at Room 300 Flatiron Building, 9 Sutter Street, San Francisco, Calif. For several years last past the respondent has been engaged in the business of compiling and publishing, and in selling and distributing in commerce as herein set out a publication known as The Mining Manual. The purpose of said publication is to disseminate to the subscribers thereto certain mining information and to acquaint them with information relative to the activities of mining companies. The respondent, operating under either one or the other of said trade names, causes said publication, when sold, to be distributed by mail and otherwise from his places of business in San Francisco, Calif., to various purchasers and subscribers located at points in the various States of the United States other than California. Respondent thus maintains, and has maintained for more than one year last past, a course of trade and commerce in said publication between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has been, and is now, in competition with other individuals,

and with firms and corporations, likewise engaged in compiling and publishing, and in selling and distributing publications of a similar nature and character, or designed and intended for similar usage, in commerce among and between the various States of the United States and in the District of Columbia who do not unfairly disparage the competing publications of their competitors.

PAR. 3. Among the respondent's aforesaid competitors is the Atlas Publishing Co., Inc., a corporation, having its principal place of business in the city of New York, State of New York. This concern compiles, publishes, sells, and distributes to subscribers located throughout the various States of the United States and in the District of Columbia, a book or publication known as the Mines Register. This publication is designed for the purpose of, and does, disseminate to subscribers thereto intelligence and information with respect to mining, mining companies, and their activities in general.

PAR. 4. In the course and conduct of his business, and for the purpose of inducing the purchase of his publication, the Mining Manual, in preference to the publication the Mines Register, the respondent has published and circulated to subscribers and prospective subscribers of the publication known as the Mines Register, and to others located throughout the various States of the United States, many false and misleading statements with respect to the value, completeness, and thoroughness of said competitive publication, the Mines Register.

PAR. 5. Included in and embraced in said circular letters or other such written, printed, or typed matter so distributed by the respondent, as aforesaid, have been and are false, misleading, and derogatory statements as follows:

Should you, by chance, be contemplating paying \$25 for The Mines Register, which may possibly be published by the end of the year, we want to tell you that The Mining Manual will bring you all the information on the mining companies it will contain and in addition a more complete, up-to-date and later coverage of the mines in the United States. We urge you to save the \$15 difference.

NOTICE—To Subscribers to THE MINES REGISTER:

We understand you have subscribed for a copy of the above book expected to be published later this year.

We know from experience that it is impossible to publish up-to-date and complete information on the mines in a single volume. That more than 50% of the data is out-of-date by the time such a book is off the press. The present activity in the mining industry is too great to expect otherwise.

Why pay \$25 and wait for old, out-of-date information when you can obtain now the very latest data in The Mining Manual. And the Mining Manual keeps bringing you this late, authentic data throughout the year. It keeps you abreast of the developments in the only way possible, by publishing in sections.

Furthermore it only costs you \$10, if you use the enclosed special order form at once.

Send your order today as this offer is limited.

As you know, books like *The Mines Register* are far too often consulted to find little or no information on the subject desired, in fact, inquiry privileges are necessary to give any service a practical and real business value.

PAR. 6. Through the use of the aforesaid false and misleading statements and representations above set out, and others similar thereto, the respondent has unfairly disparaged his competitor, the Atlas Publishing Co., Inc., and its publication, the *Mines Register*. In truth and in fact, the aforesaid publication, the *Mines Register*, is an authentic, reliable, high-grade publication, containing informative and up-to-date information covered in a practical and thorough manner. The information with respect to mining companies and mining operations contained in said publication is not out of date or of no value.

PAR. 7. The aforesaid false representations and implications so made and used by the respondent in connection with the sale of his publication in said commerce have the tendency and capacity to, and do, mislead and deceive subscribers and prospective subscribers to the publication, the *Mines Register*, as well as others, into the false and erroneous beliefs that said representations and implications are true; that said publication, the *Mines Register*, is not an authentic, reliable and high-grade publication, containing informative and up-to-date matter, covered in a practical and thorough manner; that the information and material therein contained is out of date and that respondent's publication, the *Mining Manual*, is superior to the competitive publication, the *Mines Register*, in the respects herein alleged, and into the purchase of respondent's said publication in preference to and in lieu of the publication compiled, sold and distributed by its aforesaid competitor. As a result of the aforesaid mistaken and erroneous beliefs on the part of subscribers and prospective subscribers to the competitive publication, the *Mines Register*, and on the part of other members of the purchasing public, all induced as aforesaid, trade has been diverted unfairly to the respondent from such competitor. As a 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.

PAR. 8. In the course and conduct of his business, and for the purpose of inducing the purchase of his publication, the *Mining Manual*, respondent made and caused to be made, by means of circular letters addressed to persons located in various States of the United States other than the State of California, representations and claims concern-

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ing the length of time he had been engaged in the business of publishing such books, the high public regard in which the Mining Manual was held in comparison with all other similar works, the scope of the information contained therein and the readiness of the book for delivery.

Among and typical of the said representations and claims so made are those contained in the first and the fourth from the last of the subparagraphs quoted in paragraph 5 hereof and the following:

Established 1925.

The standard reference work on mines and mining companies in the United States.

The Only Up-To-Date Information service on Mines Published.

* * * we are very anxious that you have a copy of this new large book * * *.

The said statements appear in connection with a depiction of a book of substantial bulk, upon whose cover appears "The Mining Manual."

PAR. 9. Through the use of the aforesaid statements, and others of similar import and meaning, respondent has represented, directly and by implication, that he has been engaged in publishing books of mining information since 1925; that the Mining Manual is generally recognized as a work of preeminent merit; that the said book contained all of the information with respect to mining companies contained in a similar book known as the Mines Register, and that the said Mining Manual was ready for immediate delivery to purchasers.

PAR. 10. The aforesaid claims and representations so made and disseminated by respondent are misleading and untrue. In truth and in fact, respondent has not been engaged in the business of publishing such books since 1925. The Mining Manual is not generally recognized as a work of preeminent merit in its field. The Mines Register contains information on mines and mining companies which is not included in the Mining Manual. The Mining Manual was not ready for immediate delivery to purchasers at the time when the statement last quoted in paragraph 8 hereof was disseminated as aforesaid.

PAR. 11. The use by respondent of the representations as set forth herein in connection with the offering for sale and sale of his publication, the Mining Manual, has had the tendency and capacity to mislead purchasers and prospective purchasers into the erroneous and mistaken belief that such claims and representations are true, and to induce them to purchase the said book on account thereof.

As a result thereof, trade has been unfairly diverted to respondent from respondent's competitors who do not resort to such false and deceptive representations. As a consequence thereof, injury has been done by respondent to competition in commerce between and among various States of the United States and in the District of Columbia.

PAR. 12. The above acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 31, 1938, issued and subsequently served its complaint upon the respondent, Clarence B. Council, individually, and trading as Statistical Research Bureau, and Metals and Minerals Research Bureau, charging him with the use of unfair methods of competition in commerce in violation of the provisions of the said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of said complaint were introduced by R. J. Martin, John R. Philips, Jr., and D. T. Puckett, attorneys for the Commission, and in opposition to the allegations of the complaint by Harold E. Haven, 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.

Subsequent thereto, on motion of counsel for the Commission, the Federal Trade Commission, on December 14, A. D. 1940, entered its order amending the complaint filed herein and further ordering that evidence taken in support of, and in opposition to, the complaint be adopted as evidence in support of, and in opposition to, the complaint as amended; and on December 14, 1940, the Commission issued and subsequently served its amended complaint upon said respondent.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon said amended complaint, testimony and other evidence, report of the trial examiners upon the evidence, and brief in support of the complaint (no brief having been filed by the 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. Clarence B. Council, is an individual who, for some time prior to October 1, 1937, conducted a business under the trade name of "Statistical Research Bureau," at Room 523, 315 Montgomery Street, San Francisco, Calif. Subsequent to said date, said respondent conducted his said business under the trade name of "Metals and Minerals Research Bureau," at Room 300, Flatiron Building, 9 Sutter Street, San Francisco, Calif.

PAR. 2. For several years last past, respondent has been engaged in compiling and publishing, and in selling and distributing, a publication known as "The Mining Manual," in commerce among and between the various States of the United States. The purpose of said publication was to disseminate to subscribers thereto, certain mining information, and to acquaint them with information relative to the activities of mining companies. Respondent caused said publication, when sold, to be transported from his place of business in San Francisco, State of California, to purchasers thereof and subscribers thereto 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 publication in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, respondent has been in competition with other individuals and with firms and corporations likewise engaged in compiling and publishing, and in selling and distributing, publications of a similar nature and character, or designed and intended for similar usage, in commerce among and between the various States of the United States.

PAR. 4. Among the respondent's aforesaid competitors is the Atlas Publishing Company, Inc., a corporation having its principal place of business in the city of New York, State of New York. This concern compiles, publishes, sells, and distributes to purchasers and subscribers located throughout the various States of the United States and in the District of Columbia, a book or publication known as "The Mines Register." This publication is designed for the purpose of, and does, disseminate to subscribers thereto, intelligence and information with respect to mining, mining companies, and their activities in general.

PAR. 5. In the course and conduct of his business and for the purpose of inducing the purchase of his publication "The Mining Manual" in preference to the publication "The Mines Register," respondent has published and circulated to subscribers and prospective subscribers of

the publication known as "The Mines Register," and to others located throughout the various States of the United States, many false and misleading statements with respect to the value, completeness, and thoroughness of said competitive publication "The Mines Register" and the comparative merits of respondent's publication "The Mining Manual."

Among and typical of such representations are the following:

Should you, by chance, be contemplating paying \$25 for The Mines Register, which may possibly be published by the end of the year, we want to tell you that the Mining Manual will bring you all the information on the mining companies it will contain and in addition a more complete, up-to-date and later coverage of the mines in the United States. We urge you to save the \$15 difference.

NOTE.—To Subscribers to THE MINES REGISTER:

We understand you have subscribed for a copy of the above book expected to be published later this year.

We know from experience that it is impossible to publish up-to-date and complete information on the mines in a single volume. That more than 50% of the data is out-of-date by the time such a book is off the press. The present activity in the mining industry is too great to expect otherwise.

Why pay \$25 and wait for old, out-of-date information when you can obtain now the very latest data in The Mining Manual. And the Mining Manual keeps bringing you this late, authentic data throughout the year. It keeps you abreast of the developments in the only way possible, by publishing in sections.

* * * * *

As you know, books like The Mines Register are far too often consulted to find little or no information on the subject desired, in fact, inquiry privileges are necessary to give any service a practical and real business value.

PAR. 6. Through the use of the aforesaid false and misleading statements and representations, and others similar thereto, the respondent represented that his publication "The Mining Manual" is published periodically throughout the year, thereby giving complete and up-to-date information concerning various mining companies and their activities; that "The Mines Register," published by the Atlas Publishing Co., Inc., was not an authentic, reliable, high-grade publication containing information and up-to-date matter covered in a practical and thorough manner; that the information and material therein contained were out of date; and that "The Mining Manual" was superior to said competitive publication, "The Mines Register."

PAR. 7. In truth and in fact, respondent's publication "The Mining Manual" was not published periodically, and although such representations as to publication were made by the respondent in the early part of 1936, no issue was published during the year 1936, and it was not until February or March, 1937, that part 1, section 1, of said publication was issued and distributed. There were no further issues of said publication until November 1937, when respondent issued what was designated as part 1, section 2 of said publication. In 1938,

part 1, section 3, was issued. The three sections described do not constitute the entire publication but only the first 200 pages of a perpetual manual which was never completed by the respondent. Consequently, said "The Mining Manual" did not furnish subscribers with complete or up-to-date information or furnish a service comparable to "The Mines Register." "The Mines Register" is a publication which is published from time to time, giving as complete information as is obtainable concerning various mining companies, organizations, equipment, etc., and is considered as being an authentic, reliable publication containing up-to-date matter. The use of the statements and representations made by the respondent with reference to "The Mines Register" constituted an unfair disparagement of his competitor the Atlas Publishing Co., Inc., and its publication "The Mines Register."

PAR. 8. In addition to the statements and representations hereinabove described, the respondent has made, and caused to be made, by means of circular letters addressed to persons located in various States of the United States, representations and claims concerning the length of time that he had been engaged in the business of publishing "The Mining Manual," the high public regard in which "The Mining Manual" is held in comparison to all other similar works, the scope of information contained therein, and the readiness of the book for delivery. Among and typical of the many representations and claims so made are the following:

Should you, by chance, be contemplating paying \$25 for The Mines Register, which may possibly be published by the end of the year, we want to tell you that The Mining Manual will bring you all the information on the mining companies it will contain and in addition a more complete, up-to-date and later coverage of the mines in the United States.

Established 1925.

A standard reference work on mines and mining companies in the United States.

The only up-to-date information service on mines published.

* * * We are very anxious that you have a copy of this new, large book. (The latter statement appears in connection with a depiction of a book of substantial bulk, upon the cover of which appears, "The Mining Manual.")

PAR. 9. Through the use of the aforesaid statements, and others of similar import and meaning, respondent has represented, directly and by implication, that he has been engaged in publishing books of mining information since 1925; that "The Mining Manual" is generally recognized as a work of preeminent merit and constitutes a standard reference work and is the only up-to-date information service on mines published; that the said book contains all information with respect to mining companies contained in the book known as

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"The Mines Register"; and that "The Mining Manual" was ready for immediate delivery to purchasers.

PAR. 10. The aforesaid claims and representations disseminated by respondent are misleading and untrue. In truth and in fact, respondent has not been engaged in the business of publishing such books since 1925, and "The Mining Manual" is not generally recognized as a work of preeminent merit in its field. It is not a standard reference work and is not the only up-to-date information service on mines published. "The Mines Register" contains information on mines and mining companies which is not included in "The Mining Manual." "The Mining Manual" was not ready for immediate delivery to purchasers; in fact, no part of said Manual was delivered until almost a year after such representation was made.

PAR. 11. The use by the respondent of the false and misleading statements and representations hereinabove set forth, including those with reference to "The Mines Register," its comparative value to "The Mining Manual," and the scope and value of "The Mining Manual," has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations and statements are true, that "The Mines Register" is not an authentic, reliable, and high-grade publication containing informative and up-to-date matter, and that "The Mining Manual" is a superior publication. As a result of such erroneous and mistaken belief, the purchasing public has been induced to purchase respondent's publication in preference to "The Mines Register" and other publications, thereby diverting trade unfairly to the respondent from his competitors who are engaged in 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 amended complaint of the Commission, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said amended complaint and in opposition thereto, report of the trial

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examiners upon the evidence, and brief filed in support of the amended 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, Clarence B. Council, an individual, trading as Statistical Research Bureau, and as Metals and Minerals Research Bureau, or under any other trade name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of his publication known as "The Mining Manual," or any other similar publication known as "The Mining Manual," or any other similar publication, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Making, or causing to be made, in any form or manner, any false or disparaging statements with reference to the authenticity, reliability, or present value of the publication known as "The Mines Register," published by the Atlas Publishing Company, Inc., or any other competitive publication furnishing similar information or service.

2. Representing, directly or indirectly, that the information contained in respondent's publication "The Mining Manual" is more authentic or reliable, or has greater present value, than the publication "The Mines Register," or any other competitive publication furnishing similar information or service.

3. Representing, directly or indirectly, that respondent can furnish authentic, reliable, and up-to-date information through and by means of his publication "The Mining Manual," or any other similar publication, when the facilities for the issuance of such publication are not immediately available to the respondent.

4. Misrepresenting, in any manner, the nature, extent, or value of respondent's publication "The Mining Manual," or any other publication, or the length of time in which said respondent has been engaged in business.

5. Representing, directly or indirectly, that respondent's publication "The Mining Manual," or any similar publication, is a standard reference work on mines and mining companies in the United States, or that it supplies the only up-to-date information service on mines published.

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

MASTERKRAFT GUILD WEAVERS, INC., ASIA MOHI COMPANY, LTD., AND C. JAMES GARFALO, PRESIDENT OF MASTERKRAFT GUILD WEAVERS, INC. AND ASIA MOHI COMPANY, LTD.

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

Docket 4237. Complaint, Aug. 15, 1940—Decision, Feb. 24, 1942

Where one of two corporations, under common control by an individual who was president and principal stockholder of both, engaged in interstate sale and distribution of rugs in substantial competition with others, including many who do not misrepresent their products or business status, or furnish their dealer customers with means for deceiving the public—

- (a) Made use, in invoices, catalogues, and price lists addressed to dealers, and on labels attached to rugs, of words "Hong Kong" and "Canton" to designate certain rugs which closely resembled Chinese Orientals, and of words "Mahah," "Numdah," "Kirma," "Orienta," and "Bagdad" to designate rugs which closely resembled Orientals;

Notwithstanding fact said rugs were not, as thus indicated, true Chinese Oriental or Oriental rugs made by hand in China or the Orient, of pleasing texture and beautiful design, with pile of wool or silk and wool, threads of which were individually knotted in a special manner; but, while so closely resembling such rugs as to be indistinguishable therefrom by a large portion of the purchasing public, were made on power looms in Italy or Belgium, of cotton;

With result that said various rugs were readily accepted as being Chinese Oriental, Oriental, and true Indian "Numdah" rugs, notwithstanding fact that, pursuant to the United States Customs laws, they also bore labels indicating country of origin, which, being wholly inconsistent with other labels showing aforesaid names, could not properly qualify latter; and

- (b) Represented and implied that certain of their rugs were reproductions and copies, except as to material, of true Oriental, Chinese Oriental and Indian Numdah rugs, through furnishing to dealers catalogues and price lists containing such statements (along with such words as "Suez," "Orienta," "Bagdad," "Canton," etc.) as "The all rayon Oriental reproduction," "Cotton Oriental reproduction," "Cotton Chinese reproduction," "High pile cotton Numdah reproductions," etc.; and that others were true Oriental Mahal and Kirman rugs in all but material, through such statements, in connection with such names as "Mahah" and "Kirma," as "Heavy cotton Oriental" and "High quality cotton Oriental;"

Notwithstanding fact said rugs, as hereinbefore indicated, merely simulated Oriental, Chinese Oriental, or Numdah rugs, and particularly as respects last two, did not have the structure or characteristics of the true Kirman and Mahal rugs, even though differences in material be disregarded;

- (c) Furnished to dealers purchasing their said cotton European rugs advertising copy which was intended to be, and was, inserted by them in news-

papers and other publications of general circulation, containing statements falsely representing and implying that rugs in question were in all respects reproductions and copies of true Orientals, through such typical statements as "9 x 12 Oriental Reproductions;" and

Where aforesaid corporation and second corporate concern above referred to, engaged, prior to its acquisition of tangible assets of the other, in rug designing merely, but thereafter in designing, selling and distributing such products—

(d) Made use of names "Chatham," "Dixie," and "New Cape Colony" to designate hooked rugs made in Japan, in invoices and catalogues supplied to dealers, and in advertisements and other publications of general circulation, and on labels attached to rugs;

Thereby implying that such rugs were made in the United States, notwithstanding presence thereon of other labels displaying country of origin pursuant to the customs laws, which were wholly inconsistent with those naming the rugs, and could not properly qualify latter; and

(e) Represented that certain of the rugs sold by them were made by said second corporate concern, through such statements in magazine advertisements, catalogues, price lists, invoices and labels, as "See these creations of the Masterkraft Guild Weavers," "In one of the greatest advertising schedules ever sponsored by any producer of hooked rugs, etc.," and "Masterkraft Guild Weavers * * * was organized to specialize in the design and manufacture of hooked rugs. Beginning as a small group of skilled weavers working * * * to revive the ancient art of fine rug making, the Guild Weavers have grown to be the largest body of craftsmen engaged in this activity today;" and

Where said second concern—

(f) Represented itself to be an association of weavers, established for mutual aid in carrying out a common purpose, through use of the words "Guild Weavers" in its corporate name, on letterheads and invoices, in advertising and otherwise;

The facts being that—while rugs in question were, at different periods, produced by weavers having an interest in their respective associations, organized by said president of the two corporations herein concerned, who was further responsible for arrangements under which the individual weavers worked and were compensated, including such matters as design and supervision—individual weavers did not function through corporations immediately herein involved, but through their own organizations from which corporations here immediately concerned purchased the rugs, and such corporations were not, under said facts, either manufacturers or weavers, nor was second corporate concern a guild; and

Where corporation first referred to—

(g) Represented that certain of its rugs had been approved and accepted by a disinterested independent agency qualified to pass judgment on such matters, through such statements on labels attached thereto as "Approved and accepted by American Bureau of Home Standards;"

The facts being said Bureau was not disinterested or independent, but was originally created and operated by aforesaid president and controlling stockholder of the two corporations involved, and later by an individual under his control and guidance, and had thereafter become nonexistent; and

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(h) Made use, in catalogues, price lists, invoices and labels, of name "Wool-Tex" to designate certain of its rugs made of cotton rolls or tubes filled with waste wool, thereby implying falsely that such rugs were composed wholly of wool;

Tendency and capacity of which acts and practices, not engaged in by many competitors, were to mislead and deceive a substantial portion of the purchasing public with respect to rugs of said corporations and individual, and business status thereof, and to cause it to purchase substantial quantities of their said products as a result of such belief thus engendered; whereby substantial trade was diverted from competitors to them:

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

Mr. Randolph W. Branch for the Commission.

Mr. David Easton, 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 Masterkraft Guild Weavers, Inc., a corporation, Asia Mohi Co., Ltd., a corporation, and C. James Garofalo, individually, and as president, of Masterkraft Guild Weavers, Inc., and Asia Mohi Co., Ltd., 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, C. James Garofalo, is an individual who is now, and at all times mentioned herein has been, president and a principal stockholder both of respondent, Masterkraft Guild Weavers, Inc., and of respondent Asia Mohi Co., Ltd., and in control of the management policies and operation of said corporations, particularly in respect to the acts and practices herein alleged.

Respondents, Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., are corporations organized and existing under the laws of the State of New York. On or about July 1, 1939, respondent, Masterkraft Guild Weavers, Inc. acquired all the tangible assets of respondent Asia Mohi Co., Ltd.

The said respondents maintain offices and principal places of business at 295 Fifth Avenue, city and State of New York.

PAR. 2. Respondent, Masterkraft Guild Weavers, Inc., is now, and has been, for more than 2 years last past, engaged in the business of designing, selling, and distributing rugs; from 1937 to on or about July 1, 1939, the selling and distributing phases of its business were

conducted in association with respondent, Asia Mohi Co., Ltd. In the course and conduct of their businesses, respondents sold said rugs to various wholesale and retail dealers and caused them, when sold, to be transported from their 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, Masterkraft Guild Weavers, Inc., maintains, and at all times mentioned herein has maintained, and respondent, Asia Mohi Co., Ltd., from 1937 to on or about July 1, 1939, maintained, a course of trade in said rugs in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondent, Masterkraft Guild Weavers, Inc., is now, and has been at all times mentioned herein, and respondent, Asia Mohi Co., Ltd., was, during the period mentioned above, 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 their business status, or the facts as to their "acceptance" or "approval" by a disinterested, independent agency or organization qualified to pass judgment on such matters, and who do not furnish their dealer-customers with means or instrumentalities for deceiving the public.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient, or more particularly in certain parts of south-western Asia, by hand, of pleasing texture and original and beautiful design and having a pile of wool or silk and wool, the threads of which are individually knotted in a special manner. Such rugs are usually designated by names which are indicative of the Orient and Oriental origin and manufacture. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Chinese Oriental rugs to be rugs made in China, by hand, in the same manner and possessing the same qualities and characteristics as the Oriental rug. Both Oriental and Chinese Oriental rugs have been for many years, and still are, held in great public esteem because of their texture, beauty, durability, and other qualities, and by reason thereof there is a decided preference on the part of many of the purchasing public for such rugs.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of said rugs, respondents, Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., have engaged in the practice of describing and designating certain of their rugs, which closely resemble Chinese Oriental rugs in appearance, by the names of "Hong Kong" and "Canton," which are cities in China. The use of said names has the tendency and capacity to, and does in fact, induce the mistaken and erroneous belief that the rugs so designated are made in China, by hand, and are in all respects, including materials, true Chinese Oriental rugs.

In like manner, said respondents have engaged in the practices of describing and designating certain of their rugs, which closely resemble Oriental rugs in appearance, by the names of "Mahah," "Kirma," "Numda," "Orienta," and "Bagdad." There are true Oriental rugs known as "Mahal" and "Kirman" and felted woolen rugs made in India known as "Numdah." "Bagdad" is a city in the Orient, and "Orienta," "Mahah," and "Kirma" simulate, respectively, the words "Oriental," "Mahal," and "Kirman."

The use by respondents of the said designations has the tendency and capacity to, and does in fact, induce the mistaken and erroneous belief that respondents' "Kirma" and "Mahah" rugs are true Oriental "Kirman" and "Mahal" rugs; that respondents' "Numda" rugs are the true Indian "Numdah," and that respondents' "Orienta" and "Bagdad" rugs are made in the Orient, by hand, and are in all respects, including materials, true Oriental rugs.

Respondents have used said names to designate said rugs in invoices, catalogs and price lists addressed to dealers, and in otherwise referring to the same in the sale thereof to dealers. To certain of said rugs are firmly attached labels upon which one or another of said names appears, which are plainly discernible to members of the purchasing public when such rugs are displayed for sale by retail dealers.

PAR. 6. In truth and in fact, respondents' said "Hong Kong," "Mahah," and "Bagdad" rugs are made in Italy, and their "Canton," "Kirma," "Numda," and "Orienta" rugs in Belgium, of cotton, and on power looms. The "Hong Kong" and "Canton" rugs do not have the structure or all the characteristics of the true Chinese Oriental rug, the individual threads are not knotted in the distinctive manner of the true Chinese Oriental rug, and they are made from different materials. Respondents' "Mahah" and "Kirma" rugs are not true Oriental "Mahal" or "Kirman" rugs, and neither they nor respondents' "Bagdad" and "Orienta" rugs have the structure or all the characteristics of true Oriental rugs, nor are they made from the same

materials. Respondents' "Numda" rugs are not the true Indian "Numdah" rugs, do not have the structure or all the characteristics of the true "Numdah" rug, and are made of different materials. A large portion of the purchasing public is unable, so close is the resemblance in appearance, to distinguish respondents' "Hong Kong" and "Canton" rugs from true Chinese Orientals, respondents' "Mahah," "Kirma," "Bagdad," and "Orienta" rugs from true Orientals, or respondents' "Numda" from the true Indian "Numdah," and in consequence respondents' said rugs are readily accepted as being genuine Chinese Oriental, Oriental and "Numdah" rugs.

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the purchase of said rugs, respondents, Masterkraft Guild Weavers, Inc., and Asia Mohi Co., Ltd., have engaged in the practice of furnishing to dealers and prospective dealers in their rugs, catalogs and price lists containing many misleading statements which represent and imply that certain of the said rugs are reproductions and copies, except as to material, of true Oriental, Chinese Oriental, and Indian "Numdah" rugs. Among and typical of such statements, are the following:

- Suez—the all rayon Oriental reproduction.
- Orienta—cotton Oriental reproduction.
- Bagdad—extra heavy cotton Oriental reproduction.
- Kirma—cotton Oriental reproduction.
- Canton—extra heavy cotton Chinese reproduction.
- Numda—high pile cotton Numdah reproduction.
- Mahah—heavy cotton Oriental reproduction.

In truth and in fact, said rugs are not in structure or method of manufacture exact copies or reproductions of Orientals, Chinese Oriental, or "Numdah" rugs, but merely simulate them in appearance.

Said catalogs and price lists also contain misleading statements which represent and imply that certain of said rugs are true Oriental "Mahal" and "Kirman" rugs in all respects except for material. Among and typical of such statements, are the following:

- Mahah—heavy cotton Oriental.
- Kirma—high quality cotton Oriental.

In truth and in fact, said rugs are not made in the Orient. True "Mahal" and "Kirman" Oriental rugs are not made of cotton and respondents' said rugs do not have the structure or characteristics of the true Kirman and Mahal rugs, even though differences in material are disregarded.

In like manner, respondents have engaged in the practice of furnishing to dealers buying certain of their cotton rugs made in Europe, as aforesaid, advertising copy which is intended to be, and is, in-

serted by such dealers in newspapers and other publications of general circulation among the purchasing public. Such advertisements contain misleading statements which represent and imply that said rugs are in all respect reproductions and copies of true Oriental rugs. Among and typical of such statements, is the following:

9 x 12 Oriental reproductions.

In truth and in fact, said rugs are not exact copies or reproductions of true Orientals in material, structure, characteristics, or method of manufacture, but merely simulate them in appearance.

PAR. 8. The manufacture of hooked rugs has been carried on in this country since early in its Colonial history, and was one of the earliest forms of artistic expression of the early settlers. Hooked rugs always have been, and still are, generally regarded as being a distinctively American product.

PAR. 9. In the course and conduct of their business, and for the purpose of inducing the purchase of certain of their rugs, respondents, Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., have engaged in the practice of describing and designating certain of their hooked rugs by the names "Chatham," "Dixie," "New Cape Colony," and "Old Cabin." Such names carry so definite an American connotation as to have the tendency and capacity to, and do, induce the mistaken and erroneous belief that the rugs so designated were made in the United States. Respondents used said names to designate said rugs in invoices, in catalogs supplied to dealers and prospective dealers, and in advertisements in magazines and other publications of general circulation among the purchasing public. Respondents also caused labels, each bearing one of the said names, to be securely attached to each of the said rugs so as to be plainly discernible to members of the purchasing public when such rugs are displayed for sale by retail dealers.

In truth and in fact, the rugs designated as "Chatham," "Dixie," and "New Cape Colony" were made in Japan and those designated "Old Cabin" were made in Belgium.

PAR. 10. In the course and conduct of their business, and for the purpose of inducing the purchase of said rugs, respondents, Asia Mohi Co. Inc., and Masterkraft Guild Weavers, Inc., have engaged in the practice of representing, directly and by implication, that certain of the rugs sold by them were manufactured by respondent Masterkraft Guild Weavers, Inc. Such representations have been made by means of statements in advertisements inserted in magazines and

other periodicals of general circulation, in catalogs and price lists furnished to dealers and prospective dealers in such rugs, in invoices and on labels securely attached to such rugs so as to be plainly discernible to members of the purchasing public when such rugs are displayed for sale by retail dealers. Among and typical of such statements are the following:

See these creations of the Masterkraft Guild Weavers today!

The Masterkraft Guild Weavers.

Masterkraft Guild Weavers, 285 Fifth Avenue, New York, N. Y.

Please send me a copy of "The Romance of Hooked Rugs."

Masterkraft magazine advertising will work for you throughout 1939.

In one of the greatest advertising schedules ever sponsored by any producer of hooked rugs, Masterkraft Guild Weavers program calls for more than 60 advertisements during 1939.

Masterkraft Guild Weavers, a production unit of Asia Mohi Co., Ltd., was organized to specialize in the design and manufacture of hooked rugs. Beginning as a small group of skilled weavers working under the direction of C. James Garofalo to revive the ancient art of fine rug making, the Guild Weavers have grown to be the largest body of craftsmen engaged in this activity today.

In truth and in fact, Masterkraft Guild Weavers, Inc., neither owns, operates nor controls, nor at any time mentioned herein has owned, operated or controlled, any establishment where rugs are made, and all the rugs sold by it are and were manufactured by others in foreign countries. It is not and never was an organization of skilled weavers, and its only function in the production of rugs has been in designing them.

PAR. 11. In the course and conduct of its business and in furtherance thereof, respondent, Masterkraft Guild Weavers, Inc., has represented, and now represents, itself to be an association of weavers established for mutual aid in carrying out a common purpose. This representation is made through the use of the words "Weavers Guild," in its corporate name, on its letterheads and invoices, in its advertising, and through other means.

In truth and in fact said respondent is not such an association of weavers, but is a privately incorporated commercial enterprise of which respondent, C. James Garofalo, is the principal stockholder.

PAR. 12. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of said rugs, respondents, Asia Mohi, Co., Ltd., and Masterkraft Guild Weavers, Inc., have engaged in the practice of representing that certain of their rugs have been approved and accepted by a disinterested, independent

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agency or organization qualified to pass judgment on such matters. Such representations have been made by means of statements on labels attached to such rugs as aforesaid, of which the following is typical:

Approved
and
Accepted

American Bureau of Home Standards

In truth and in fact, the American Bureau of Home Standards, was not a disinterested, independent agency. It was originally created and operated by respondent, C. James Garofalo, and was later operated by an individual under the control and guidance of said Garofalo. It is now, and for some time past has been, non-existent and inoperative.

PAR. 13. In the course and conduct of their business, and for the purpose of inducing the purchase of said rugs, respondents, Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., have engaged in the practice of describing and designating certain of their said rugs by the name "Wool-Tex." The use of said name has the capacity and tendency to, and does, induce the mistaken and erroneous belief that the rugs so designated are composed wholly of wool. Such representations have been made by means of statements in catalogs and price lists furnished to dealers and prospective dealers in such rugs, in invoices and in labels securely attached to such rugs, so as to be plainly discernible to members of the purchasing public, when such rugs are displayed for sale by retail dealers.

In truth and in fact, said rugs are made out of cotton rolls or tubes filled with waste wool.

PAR. 14. The use by respondents of the designations and representations, as set forth herein, in connection with the offering for sale and sale of their said rugs, has had, and now has, the tendency and capacity to, and does, mislead purchasers and prospective purchasers thereof, into the erroneous and mistaken belief that such representations and designations are true and correct, and to induce them to purchase said rugs on account thereof. Respondents' said acts and practices place in the hands of retail dealers, who purchase said rugs and resell the same to the purchasing public, means and instrumentalities of misleading and deceiving the public in the particulars aforesaid.

As a result of respondents' said acts and practices, trade has been unfairly diverted to respondents from their 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 respondents to competition in commerce among and between various States of the United States and in the District of Columbia.

PAR. 15. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 15, 1940 issued and subsequently served its complaint in this proceeding upon the respondents, Masterkraft Guild Weavers, Inc., a corporation; Asia Mohi Co., Ltd., a corporation; and C. James Garofalo, individually, and as president of Masterkraft Guild Weavers, Inc., and Asia Mohi 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 September 6, 1940, the respondents filed their answer to the complaint. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts 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 Commission may proceed upon such statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from the stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer and stipulation, the stipulation having been approved and accepted by the Commission and entered of 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 this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, C. James Garofalo, is an individual, who is now, and at all times mentioned herein has been, president and a principal stockholder both of respondent Masterkraft Guild Weavers, Inc., and of respondent Asia Mohi Co., Ltd., and in control of the management, policies, and operation of said corporations, particularly in respect to the acts and practices herein described.

Respondents, Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., are corporations organized and existing under the laws of the State of New York. Prior to about July 1, 1939, respondent, Masterkraft Guild Weavers, Inc., merely designed rugs and actually did no business, but on or about that date it acquired all the tangible assets of respondent, Asia Mohi Co., Ltd., which at that time ceased doing business, although its corporate existence has not been terminated.

The said respondents, Garofalo, and Masterkraft Guild Weavers, Inc., maintain offices and principal places of business at 295 Fifth Avenue, city and State of New York, at which address the business of respondent Asia Mohi Co., Ltd., was formerly conducted.

PAR. 2. Respondent, Masterkraft Guild Weavers, Inc., is now, and has been since about July 1, 1939, engaged in the business of designing, selling and distributing rugs. From 1935 to on or about July 1, 1939, respondent, Asia Mohi Co., Ltd., was engaged in the business of selling and distributing rugs, some of which were manufactured by Masterkraft Guild Weavers Association, of Japan, as set forth in paragraph 10 hereof.

In the course and conduct of their businesses, respondents sold said rugs to various wholesale and retail dealers and caused them, when sold, to be transported from their 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, Masterkraft Guild Weavers, Inc., maintains, and since July 1, 1939, has maintained, and respondent, Asia Mohi Co., Ltd., from 1935 to on or about July 1, 1939, maintained a course of trade in their rugs in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said businesses, respondent, Masterkraft Guild Weavers, Inc., is now, and has been at all

times since about July 1, 1939, and respondent, Asia Mohi Co., Ltd., was, during the period mentioned above, in substantial competition with other corporations and with firms, partnerships, and individuals also 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 their business status, or the facts as to their "acceptance" or "approval" by a disinterested, independent agency or organization qualified to pass judgment on such matters, and who do not furnish their dealer-customers with means or instrumentalities for deceiving the public.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient, or more particularly in certain parts of southwestern Asia, by hand, of pleasing texture and original and beautiful design and having a pile of wool or silk and wool, the threads of which are individually knotted in a special manner. Such rugs are usually designated by names which are indicative of the Orient and Oriental origin and manufacture. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Chinese Oriental rugs to be rugs made in China, by hand, in a similar manner and possessing similar characteristics to the Oriental rug. Both Oriental and Chinese Oriental rugs have been for many years, and still are, held in great public esteem because of their texture, beauty, durability, and other qualities, and by reason thereof there is a substantial demand on the part of the purchasing public for such rugs.

PAR. 5. In the course and conduct of its business, respondent, Asia Mohi Co., Ltd. has engaged in the practice of describing and designating certain of its rugs, which closely resembled Chinese Oriental rugs in appearance, by the names of "Hong Kong" and "Canton," which are cities in China.

The use of said names has had the tendency and capacity to, and did in fact, induce the mistaken and erroneous belief that the rugs so designated were made in China, by hand, and were in all respects true Chinese Oriental rugs.

In like manner, said respondent has engaged in the practice of describing and designating certain of its rugs, which closely resembled Oriental rugs in appearance, by the names of "Mahah," "Numda," "Kirma," "Orienta," and "Bagdad." There are true Oriental rugs known as "Mahal" and "Kirman" and felted woolen rugs made in

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India known as "Numdah." Bagdad is a city in the Orient, and "Orienta," "Mahah," and "Kirma" simulate, respectively, the words "Oriental," "Mahal," and "Kirman."

The use by respondent of the said designations has had the tendency and capacity to, and did in fact, induce the mistaken and erroneous belief that respondent's "Kirma" and "Mahah" rugs were true Oriental "Kirman" and "Mahal" rugs; that respondent's "Numda" rugs were the true Indian "Numdah," and that respondent's "Orienta" and "Bagdad" rugs were made in the Orient, by hand, and were in all respects true Oriental rugs.

Respondent has used said names to designate said rugs in invoices, catalogs and price lists addressed to dealers. To the rugs designated as "Kirma" were firmly attached labels approximately $2\frac{1}{2}$ inches by 2 inches upon which the words "Kirma" in capital letters approximately $\frac{3}{16}$ inch in height, and "Made in Belgium" in capital letters approximately $\frac{2}{16}$ inch in height, appeared.

To the rugs designated as "Hong Kong" were attached in close proximity to one another, two labels, approximately $2\frac{3}{4}$ inches by $\frac{9}{16}$ inch and $1\frac{3}{4}$ inches by $\frac{5}{8}$ inch. Upon the former appeared the words "Hong Kong" in capital letters approximately $\frac{5}{32}$ inch in height, and upon the latter the words "Made in Italy" in capital and small letters, approximately $\frac{5}{32}$ inch and $\frac{4}{32}$ inch respectively, in height. To each of the other rugs was firmly attached a label showing the country of its origin as required by the customs laws of the United States.

PAR. 6. In truth and in fact, respondent's said "Hong Kong," "Mahah," and "Bagdad" rugs were made in Italy, and its "Canton," "Kirma," "Numda," and "Orienta" rugs in Belgium, of cotton, and on power looms, and to each rug was securely attached a label indicating the country of its origin, pursuant to the customs laws of the United States. The "Hong Kong" and "Canton" rugs did not have the structure or all the characteristics of the true Chinese Oriental rug, the individual threads were not knotted in the distinctive manner of the true Chinese Oriental rug, and they were made from different materials. Respondent's "Mahah" and "Kirma" rugs were not true Oriental "Mahal" or "Kirman" rugs, and neither they nor respondent's "Bagdad" and "Orienta" rugs had the structure or all the characteristics of true Oriental rugs, nor were they made from the same materials. Respondent's "Numda" rugs were not the true Indian "Numdah" rugs, did not have the structure or all the characteristics of the true "Numdah" rug, and were made of different materials. A large portion of the purchasing public was unable, so close was the resemblance in appearance, to distinguish respondent's

ent's "Hong Kong" and "Canton" rugs from true Chinese Orientals, respondent's "Mahah," "Kirma," "Bagdad," and "Orienta" rugs from true Orientals, or respondent's "Numda" from the true Indian "Numdah," and in consequence respondent's said rugs were readily accepted as being genuine Chinese Oriental, Oriental and "Numdah" rugs.

The Commission therefore finds that the practice of said respondent in attaching to its rugs labels showing the country of origin thereof was insufficient to prevent such erroneous impression on the part of the purchasing public. These labels, being wholly inconsistent with the labels showing the names of the rugs, cannot properly qualify such labels.

PAR. 7. In the course and conduct of its business, respondent, Asia Mohi Co., Ltd., has also engaged in the practice of furnishing to dealers and prospective dealers in its rugs, catalogs and price lists containing many statements which represented and implied that certain of the said rugs were reproductions and copies, except as to material, of true Oriental, Chinese Oriental, and Indian "Numdah" rugs. Among and typical of such statements were the following:

- Suez—the all rayon Oriental reproduction.
- Orienta—Cotton Oriental reproduction.
- Bagdad—extra heavy cotton Oriental reproduction.
- Kirma—cotton Oriental reproduction.
- Canton—extra heavy cotton Chinese reproduction.
- Numda—high pile cotton Numdah reproduction.
- Mahah—heavy cotton Oriental reproduction.

In truth and in fact, said rugs were not in structure or method of manufacture exact copies or reproductions of Oriental, Chinese Oriental, or "Numdah" rugs, but merely simulated them in appearance.

Said catalogs and price lists also contained statements which represented and implied that certain of said rugs were true Oriental "Mahal" and "Kirman" rugs in all respects except for material. Among and typical of such statements were the following:

- Mahah—heavy cotton Oriental.
- Kirma—high quality cotton Oriental.

In truth and in fact, said rugs were not made in the Orient. True "Mahal" and "Kirman" Oriental rugs are not made of cotton, and respondent's said rugs did not have the structure or characteristics of the true Kirman and Mahal rugs, even though differences in material be disregarded.

In like manner, respondent, Asia Mohi Co., Ltd., has engaged in the practice of furnishing to dealers buying certain of their cotton

rugs made in Europe, as aforesaid, advertising copy which was intended to be, and was, inserted by such dealers in newspapers and other publications of general circulation among the purchasing public. Such advertisements contained statements which represented and implied that said rugs were in all respects reproductions and copies of true Oriental rugs. Among and typical of such statements was the following:

9 x 12 Oriental reproductions.

In truth and in fact, said rugs were not exact copies or reproductions of true Orientals in material, structure, characteristics, or method of manufacture, but merely simulated them in appearance.

PAR. 8. In the course and conduct of their business respondents Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., have engaged in the practice of describing and designating certain hooked rugs by the names "Chatham," "Dixie," and "New Cape Colony." Such names carry an American connotation sufficient to have the tendency and capacity to, and do, induce the mistaken and erroneous belief that the rugs so designated were made in the United States. Respondents used said names to designate said rugs in invoices, in catalogs supplied to dealers and prospective dealers, and in advertisements in magazines and other publications of general circulation among the purchasing public. Respondents also caused labels, each bearing one of the said names, to be securely attached to each of the said rugs so as to be plainly discernible to members of the purchasing public when such rugs were displayed for sale by retail dealers.

In truth and in fact, the rugs designated as "Chatham," "Dixie," and "New Cape Colony" were made in Japan. To each rug was securely attached a label indicating its country of origin pursuant to the customs laws of the United States. The Commission finds however that such labels were insufficient to prevent the erroneous impression on the part of the purchasing public with respect to the origin of such rugs. These labels, being wholly inconsistent with the labels showing the names of the rugs, cannot properly qualify such labels.

PAR. 9. In the course and conduct of their business, respondents, Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., have also engaged in the practice of representing, directly and by implication, that certain of the rugs sold by them were manufactured by respondent, Masterkraft Guild Weavers, Inc. Such representations have been made by means of statements in advertisements inserted in magazines and other periodicals of general circulation, in catalogs and price lists furnished to dealers and prospective dealers in such

rugs, in invoices and on labels securely attached to such rugs so as to be plainly discernible to members of the purchasing public when such rugs are displayed for sale by retail dealers. Among and typical of such statements are the following:

See these creations of the Masterkraft Guild Weavers today!

The Masterkraft Guild Weavers.

Masterkraft Guild Weavers, 285 Fifth Avenue, New York, N. Y.

Please send me a copy of "The Romance of Hooked Rugs."

Masterkraft magazine advertising will work for you throughout 1939. In one of the greatest advertising schedules ever sponsored by any producer of hooked rugs, Masterkraft Guild Weavers program calls for more than 60 advertisements during 1939.

"Masterkraft Guild Weavers, a production unit of Asia Mohi Co., Ltd., was organized to specialize in the design and manufacture of hooked rugs. Beginning as a small group of skilled weavers working under the direction of C. James Garofalo to revive the ancient art of fine rug making, the Guild Weavers have grown to be the largest body of craftsmen engaged in this activity today."

In the course and conduct of its business and in furtherance, thereof, respondent, Masterkraft Guild Weavers, Inc. has represented, and now represents, itself to be an association of weavers established for mutual aid in carrying out a common purpose. This representation is made through the use of the words "Guild Weavers" in its corporate name, on its letterheads and invoices, in its advertising, and through other means.

PAR. 10. Masterkraft Guild Weavers, Inc., is a private commercial enterprise, incorporated in 1937. Respondent, Garofalo, is its president and active controlling stockholder. From 1934 until 1939, respondent, Asia Mohi Co., Ltd., with which Garofalo was associated as stated herein, was engaged in the sale and distribution of various rugs imported from Europe and hooked rugs imported from Japan. The Japanese hooked rugs were made by a group of Japanese weavers organized under the name of Masterkraft Guild Weavers Association.

The connection of respondents, Garofalo, Asia Mohi Co., Ltd., and Masterkraft Guild Weavers, Inc., with any organization having any cooperative features is set forth below.

In 1934 Mr. Garofalo went to Japan, and there organized a number of Japanese weavers of hooked rugs under the name of Masterkraft Guild Weavers Association. This association supplied the individual weavers with the materials, designs, and other specifications for the rugs to be produced, the designs and specifications having been prepared by Mr. Garofalo and supplied to the Association by Asia Mohi Co., Ltd. The completed rugs were purchased from the Association and imported into the United States by Asia Mohi Co., Ltd.

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The prices paid the Association had been previously fixed by Mr. Garofalo, through Asia Mohi Co., Ltd. Of the proceeds received by the Association, the weavers received a sum per foot for their labor, also fixed by Mr. Garofalo, and in addition had a right of participation in the profits, if any, of the Association. The whole plan was devised by Mr. Garofalo with the purpose of creating for himself, or his concern, a well controlled source of supply of rugs for sale in the United States.

After the arrival of the rugs in the United States, they were sold by Asia Mohi Co., Ltd. at whatever prices it chose to fix, and advertised as products of Masterkraft Guild Weavers.

In the summer of 1939 various difficulties arose with the Japanese connection. As a result of them and the increasing prejudice against Japanese goods, all connection with the Japanese concern was terminated.

In July 1940, a corporation known as Treasure Chest Mutual, Inc., was organized under the laws of North Carolina. It had \$10,000 of 6 percent preferred stock, which is held by Mr. Garofalo and two associates. The proceeds of this stock, in cash or kind, furnished the working capital of the organization. The common stock is held by rug weavers of the locality, and the few salaried employees of the corporation, one share each and no more. Garofalo has one share. Its method of operation is as set forth below.

All the hooked rugs produced by the various weaver members, who number approximately 150, are designed by Mr. Garofalo, and are made under his supervision in the qualities and quantities designated by him. Mr. Garofalo fixes the price which Masterkraft Guild Weavers, Inc., will pay the Chest for each rug. This price, based upon the cost of materials, the overhead of the Chest, and a price per foot for weaving, is adjusted by Mr. Garofalo from time to time, based upon business conditions in the industry.

The member who wants to make a rug obtains the materials, design, and other essentials from the Chest, and delivers the completed rug, or in some instances, parts of rugs which are assembled thereafter with other parts, to the Chest. Masterkraft Guild Weavers, Inc. pays the Chest for all rugs produced. The Chest pays to the weaver the agreed price per foot for his labor and retains the balance, included in which is the cost of materials advanced and overhead, and the balance, if any, is profit which goes to the Chest. In these profits the individual members have a right of participation per capita, subject to the prior claim of the 6% preferred stock. Rugs which are woven through the Chest are sold only to Masterkraft Guild Weavers, Inc.

Masterkraft Guild Weavers, Inc. is not itself an association of skilled weavers, established for mutual aid in carrying out a common purpose. It has acted, and acts, as a distributor, through which the products of Treasure Chest Mutual, Inc. are sold. In its capacity of distributor it is wholly independent of Treasure Chest Mutual, Inc.

Between the time when the Japanese connection was terminated in 1939, and the organization of Treasure Chest Mutual, Inc., respondent Garofalo had a similar arrangement with an organization, generally cooperative in character, known as Treasure Chest, located at Asheville, N. C. Through this organization he obtained hooked rugs. Treasure Chest marketed a variety of articles, including hooked rugs and its source of supply of hooked rugs was taken over by Masterkraft Guild Weavers, Inc. under the same sort of arrangement as now exists with Treasure Chest Mutual, Inc. These sources were, in July 1940, reorganized as Treasure Chest Mutual, Inc., described above.

The foregoing sets forth the extent of the participation of Masterkraft Guild Weavers, Inc. in the manufacture of the rugs referred to herein.

Mr. Garofalo enjoys the confidence of the Chest and its members, is the principal manager, and in consequence is allowed to fix the price that he or Masterkraft Guild Weavers, Inc. will pay the Chest for the rugs, and to fix the price per foot that the weavers are to receive. He also fixes the prices at which Masterkraft Guild Weavers, Inc. resells these rugs. Some of the actual weaving is done in the weavers' homes and some is done at an assembly plant operated by the Chest.

The Commission finds that the foregoing facts do not constitute respondent, Masterkraft Guild Weavers, Inc., manufacturers or weavers of rugs; that said respondent is not a guild, and that the use by said respondent of the words "Guild" and "Weavers", either separately or in conjunction with each other in said respondent's corporate name is misleading to the purchasing public.

PAR. 11. In the course and conduct of its business as aforesaid, respondent, Asia Mohi Co., Ltd., has engaged in the practice of representing that certain of its rugs have been approved and accepted by a disinterested, independent agency, or organization qualified to pass judgment on such matters. Such representations have been made by means of statements on labels attached to such rugs as aforesaid, of which the following is typical:

Approved
and
Accepted

American Bureau of Home Standards

In truth and in fact, the American Bureau of Home Standards was not a distinterested, independent agency. It was originally created and operated by respondent, C. James Garofalo, and was later operated by an individual under the control and guidance of said Garofalo. It is now, and for some time past has been, nonexistent and inoperative.

PAR. 12. In the course and conduct of its business, respondent, Asia Mohi Co., Ltd., has also engaged in the practice of describing and designating certain of its said rugs by the name "Wool-Tex." The use of said name has had the capacity and tendency to, and did, induce the mistaken and erroneous belief that the rugs so designated were composed wholly of wool. Such representations have been made by means of statements in catalogs and price lists furnished to dealers and prospective dealers in such rugs, in invoices and in labels securely attached to such rugs, so as to be plainly discernible to members of the purchasing public, when such rugs were displayed for sale by retail dealers. In truth and in fact, said rugs were made out of cotton rolls or tubes filled with waste wool.

PAR. 13. The Commission 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 the nature, character, origin, and endorsement of respondents' products and with respect to respondents' business status, and to cause such portion of the public to purchase substantial quantities of respondents' products as a result of the erroneous and mistaken belief so engendered. In consequence thereof substantial trade has been diverted to respondents from their competitors, many of whom do not engage in such acts and practices.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and a stipulation as to the facts entered into between the respondents and Richard P. Whiteley, Assistant Chief Counsel for the Com-

mission, which provides that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon, and an order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Asia Mohi Co., Ltd., a corporation, Masterkraft Guild Weavers, Inc., a corporation, their officers, and C. James Garofalo, individually, and as an officer of said corporations, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondents' rugs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

1. Using the names "Chatham," "Dixie," or "New Cape Colony," or any other distinctively American name, to designate or describe rugs which are not in fact made in the United States.

2. Using the word "Weavers" as a part of the corporate or trade name of respondent, Masterkraft Guild Weavers, Inc., or otherwise representing that respondent, Masterkraft Guild Weavers, Inc., manufactures the rugs sold by respondents.

It is further ordered, That respondents, Asia Mohi Co., Ltd., its officers, and C. James Garofalo, individually, and as an officer of said corporation, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondents' rugs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

1. Using the words "Hong Kong" or "Canton," or any other word indicative of Chinese origin, to designate or describe rugs which are not in fact made in China and which do not possess all of the essential characteristics of Chinese Oriental rugs.

2. Using the word "Mahah," "Numda," "Kirma," "Oriental," "Orienta," or "Bagdad," or any other word indicative of the Orient, to designate or describe rugs which are not in fact made in the Orient and which do not possess all of the essential characteristics of Oriental rugs.

3. Using the word "reproduction," or any other word of similar import, to designate or describe rugs which are not in fact reproductions in all respects of the type named, including material.

4. Using the term "Wool-Tex," or any other term of similar import, to designate or describe rugs which are not composed wholly of wool.

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5. Representing that respondents' rugs have been "approved" or "accepted" by the "American Bureau of Home Standards"; or representing that respondents' rugs have been approved or accepted by any agency or organization unless such is the fact, and unless the purported agency or organization is a disinterested, independent body qualified to pass judgment on such matters.

It is further ordered, That respondents, Masterkraft Guild Weavers, Inc., its officers, and C. James Garofalo, individually, and as an officer of said corporation, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondents' rugs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "Guild," or any other word of similar import, as a part of the corporate or trade name of respondent, Masterkraft Guild Weavers, Inc., or otherwise representing that said respondent is a guild.

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

Complaint

IN THE MATTER OF

HUGH C. MITCHUM AND CARL B. TUCKER, TRADING AS
SOUTHERN CANDY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 4266. Complaint, Aug. 26, 1940—Decision, Feb. 24, 1942

Where two individuals, engaged in the manufacture and interstate sale and distribution of candy so packed as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, a typical assortment including 40 uniform candy bars for which purchasers paid from 1 cent to 5 cents, depending upon particular number secured by chance from the accompanying push card—

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 sale of a chance to procure candy bars 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 products, contrary to an established public policy of the United States Government, and in competition with many who, unwilling to use methods involving chance or contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said plan and were thereby induced to buy and sell their candy in preference to that of aforesaid competitors, from whom trade was thereby unfairly diverted to them, to the substantial 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 their competitors, and constitute 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. Fred Henderson Hasty, of Charlotte, N. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Hugh C. Mitchum and Carl B. Tucker, individually, and trading as Southern Candy Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Hugh C. Mitchum and Carl B. Tucker, are individuals trading as Southern Candy Co., with their principal

office and place of business located at 219 North Graham Street, Charlotte, N. C. Respondents are now, and for more than 3 years last past have been, engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers and retail dealers. Respondents cause, and have caused, said products when sold to be transported from their place of business in the city of Charlotte, N. C., to purchasers thereof at their respective points of location in various States of the United States other than North Carolina. There is now, and for more than 3 years last past has been, a course of trade by respondents in said candy in commerce between and among various States of the United States. In the course and conduct of said business respondents are, and have been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

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

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

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

PAR. 3. Retail dealers who, directly or indirectly, purchase respondents' said candy, expose and sell the same to the purchasing public, in accordance with the sales plan aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their candy and the sale of said candy by and through the use thereof, and by the aid of said sales plan

or method, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 26, 1940, issued and thereafter served its complaint in this proceeding upon respondents, Hugh C. Mitchum and Carl B. Tucker, individually, and trading as Southern Candy Co., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint, the case was set down for the taking of testimony on December 3, 1940; however, due to the illness of a witness

subpoenaed to testify at the instance of the Commission at that time, no testimony was taken. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the counsel for the respondent on behalf of the respondents and W. T. Kelley, chief counsel for the Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto and that the 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, and enter its order disposing of the proceeding as to them without the presentation of further testimony, argument, filing of briefs, or other intervening procedure. Counsel for the respondents also expressly waived the filing of a report upon the evidence by the trial examiner.

Thereafter this proceeding regularly came on for final hearing before the Commission on the complaint 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, finds that this proceeding is in the interest 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, Hugh C. Mitchum and Carl B. Tucker, are individuals, trading as Southern Candy Co., with their principal office and place of business located at 219 North Graham Street, Charlotte, N. C. Respondents are now, and for more than 3 years last past have been, engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers. Respondents cause, and have caused, said products when sold to be transported from their place of business in the city of Charlotte, N. C., to purchasers thereof at their respective points of location in various States of the United States other than North Carolina. There is now, and for more than 3 years last past has been, a course of trade by respondents in said candy in commerce between and among various States of the United States. In the course and conduct of said business respondents are, and have been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

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

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

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

PAR. 3. Retail dealers who, directly or indirectly, purchase respondents' said candy, expose and sell the same to the purchasing public, in accordance with the sales plan aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their candy and the sale of said candy by and through the use thereof, and by the aid of said sales plan or method, is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of candy to the purchasing public by the method or plan hereinabove found involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy in competition with respondents, as above found, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their candy and in the element of chance involved therein, and are thereby induced to buy and sell respondents' candy in preference to candy of said competitors of respondents who do not use the same or equiva-

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lent methods. The use of said method by respondents because of said game of chance has a tendency and capacity to, and does, unfairly divert trade in commerce between and among various States of the United States to respondents from their said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being and has been done by respondents to competition in commerce between and among various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are to the prejudice and injury of the public and of respondents' competitors, and constitute unfair 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 a stipulation as to the facts entered into by counsel for the respondents in behalf of the respondents and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without adducing further evidence or without other intervening procedure the Commission may issue and serve upon the respondents its 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 Hugh C. Mitchum and Carl B. Tucker, individually, and trading as Southern Candy Co., or trading under any other name, their representatives, agents, and employees directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of candy or any other merchandise in commerce as "commerce" is defined by 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 are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme;

2. Supplying to or placing in the hands of others push or pull cards, punch boards, or other lottery devices, either with assortments of candy or with other merchandise, or separately, which said push

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or pull cards, punch boards, or other lottery devices are to be used, or may be used, in selling or distributing such candy or other merchandise.

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.

Complaint

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IN THE MATTER OF

LITTLE ROCK TENT & AWNING COMPANY, TRADING AS
TUF-NUT GARMENT MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4481. Complaint, Apr. 4, 1941—Decision, Feb. 24, 1942*

Where a corporation, which was engaged in the manufacture and competitive interstate sale and distribution of its "Tuf-Nut" work garments to wholesalers, jobbers, and retailers, and which, during a recent 8-month period sold about 1½ million pants, shirts, and overalls and awarded about 1,000 suits or garments as below described—

Sold its said products through use of a scheme which involved a lottery in the sale and distribution thereof to consumers, it furnishing dealers with a display poster card explaining their plan, pursuant to which purchasers became entitled to "Join the Khaki Suit Club," and that one of the 60 provided for whose number corresponded to that under the poster's master seal, received a "Tuf-Nut Khaki Suit" consisting of matching shirt and pants; and thereby

Supplied to and placed in the hands of others means of conducting a lottery in the sale of its products, through use of aforesaid sales plan by retail dealers who exposed and sold its garments to the purchasing public in accordance with game of chance to procure suit or other garment without cost, contrary to the established policy of the United States Government, and in competition with many who do not use methods involving chance;

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 its garments in preference to those of its aforesaid competitors, with tendency and capacity thereby to divert trade unfairly 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 acts and practices therein.

Before *Mr. William C. Reeves* and *Mr. Lewis C. Russell*, trial examiners.

Mr. J. W. Brookfield, Jr., for the Commission.

House, Moses & Holmes, of Little Rock, Ark., 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 Little Rock Tent & Awning Co., a corporation, trading as Tuf-Nut Garment Manufacturing Co., hereinafter referred to as respondent has violated the pro-

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visions of said act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Little Rock Tent & Awning Co., is a corporation, also trading as Tuf-Nut Garment Manufacturing Co., with its office and principal place of business located at Third and Commerce Streets, Little Rock, Ark. Respondent is now and for more than 1 year last past has been engaged in the manufacture of work garments and in the sale and distribution thereof under the trade name "Tuf-Nut" to wholesale dealers, jobbers, and retail dealers, located at various points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said garments, when sold, to be transported from its principal place of business in the city of Little Rock, Ark., to purchasers thereof at their respective points of location in various States of the United States other than Arkansas, 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 garments 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 work garments in commerce 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 garments to dealers by means of a method involving the use of a lottery scheme when such garments are sold and distributed to the consumers thereof. Said method of sale consists in furnishing dealers who purchase respondent's garments with a display poster bearing the following legend:

FREE TUF-NUT KHAKI SUIT

(The Mark of Quality)

JOIN THE KHAKI SUIT CLUB

Tuf-Nut	_____	T F	_____	Tuf-Nut
Khaki	_____	U	_____	Khaki
Sult	_____	N T	_____	Sult

All You Have To Do

Just register your name FREE with each Tuf-Nut garment you purchase. If you buy five Tuf-Nut garments you will still get to register your name five

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times. When this card is filled out with names your Tuf-Nut dealer will break open the Tuf-Nut label in the lower corner and check the hidden number against the name that is registered opposite that number below. If you pick the lucky number you will receive absolutely FREE a Tuf-Nut Khaki Suit (shirt and pants to match).

Name	Address	Name	Address
1	-----	31	-----
2	-----	32	-----
3	-----	33	-----
4 etc.	-----	34 etc.	-----
30	-----	60	-----

THE HIDDEN LUCKY NUMBER

Register your name for each Tuf-Nut garment you purchase.

The LUCKY NUMBER wins a Tuf-Nut Khaki Suit FREE.

T F

If you are the winner you will be notified by U your Tuf-Nut dealer.

N T

The dealers to whom the said poster is furnished display the same to the purchasing public. The card contains 60 blank spaces for registration of the names of purchasers of respondent's garments and each space is accompanied by a number, the numbers running consecutively from 1 to 60. Each purchaser of a garment makes a choice of a number and writes his name in the blank opposite such number selected. On the poster is a master seal under which is concealed a number. When the card is completely filled with the names of purchasers, the master seal is broken, revealing a number from 1 to 60 and the purchaser whose name is registered opposite the number corresponding with the number found under the master seal is entitled to receive for his award a Tuf-Nut Khaki Suit (shirt and pants to match) without additional charge. The number printed under the master seal is effectively concealed from purchasers and prospective purchasers until all of the numbers on the poster have been chosen. The said Tuf-Nut Khaki Suit is thus awarded to the purchaser of other of respondent's garments wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's garments directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting a lottery in the sale of its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its garments and the sale of said garments by and through the use thereof and by the aid of said sales plan or

method is a practice of a sort which is contrary to an established policy of the government of the United States.

PAR. 4. The sale of said garments to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a suit of other garments without cost. Many persons, firms, and corporations who sell and distribute work garments or similar merchandise in competition with respondent as above alleged are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method 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 garments and in the element of chance involved therein and are thereby induced to buy and sell respondent's garments in preference to garments 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 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.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 4, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Little Rock Tent & Awning Co., a corporation, trading as Tuf-Nut Garment Manufacturing Co., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 24, 1941, respondent filed its answer in this proceeding. A hearing was held in this matter on October 1, 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 in lieu of testimony in support of the charges stated in the

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complaint, or in opposition thereto, and which stipulation further provided that the Commission may proceed upon said statement of facts and written briefs, without oral argument, to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding. Respondent expressly waived the filing of a trial examiner's report upon the evidence.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer, testimony and other evidence in the form of a stipulation as to the facts upon the record, 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, Little Rock Tent & Awning Co., is a corporation, also trading as Tuf-Nut Garment Manufacturing Co., with its office and principal place of business located at Third and Commerce Streets, Little Rock, Ark. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture of work garments, and in the sale and distribution thereof under the trade name "Tuf-Nut," to wholesale dealers, jobbers, and retail dealers located in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said garments, when sold, to be transported from its principal place of business in the City of Little Rock, State of Arkansas, 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 such garments in commerce 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, respondent is now, and has been, in competition with other corporations, and with partnerships and individuals, engaged in the sale and distribution of work garments 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 sells, and has sold, its garments to dealers by means of a method involving the use of a lottery scheme when such garments are sold and distributed to the consumers thereof. Said method of sale consists in

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furnishing dealers who purchase respondent's garments with a display poster bearing the following legend:

FREE TUF-NUT KHAKE SUIT

(The Mark of Quality)

JOIN THE KHAKE SUIT CLUB

Tuf-Nut

		T F			Tuf-Nut
Khaki	Absolutely	FREE	U	Absolutely	Free
			N T		Khaki
Suit					Suit

All You Have To Do

Just register your name FREE with each Tuf-Nut garment you purchase. If you buy five Tuf-Nut garments you will still get to register your name five times. When this card is filled out with names your Tuf-Nut dealer will break open the Tuf-Nut label in the lower corner and check the hidden number against the name that is registered opposite that number below. If you pick the lucky number you will receive absolutely FREE a Tuf-Nut Khaki Suit (shirt and pants to match.)

Name	Address	Name	Address
1 _____	_____	31 _____	_____
2 _____	_____	32 _____	_____
3 _____	_____	33 _____	_____
4 etc. _____	_____	34 etc. _____	_____
30 _____	_____	60 _____	_____

THE HIDDEN LUCKY NUMBER

Register your name for each Tuf-Nut garment you purchase.

The LUCKY NUMBER wins a Tuf-Nut Khaki Suit FREE.

T F

If you are the winner you will be notified U by your Tuf-Nut dealer.

N T

The dealers to whom said poster is furnished display the same to the purchasing public. The card contains 60 blank spaces for registration of the names of purchasers of respondent's garments, and each space is accompanied by a number, the numbers running consecutively from 1 to 60. Each purchaser of a garment makes a choice of a number and writes his name in the blank opposite such number selected. On the poster is a master seal, under which is concealed a number. When the card is completely filled with the names of the purchasers, the master seal is broken, revealing a number from 1 to 60, and the purchaser whose name is registered opposite the number corresponding with the number found under the master seal, is entitled to receive for his reward a Tuf-Nut Khaki Suit consisting of shirt and pants to match, without additional charge. The number printed under the master seal is effectively concealed from the purchasers and prospec-

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tive purchasers until all of the numbers on the poster have been chosen. The said Tuf-Nut Khaki Suit is thus awarded to the purchaser of other of respondent's garments wholly by lot or chance.

PAR. 4. Retail dealers who purchase respondent's garments, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting a lottery in the sale of its products in accordance with the sales plan hereinabove described. The use by the respondent of said sales plan or method in the sale of its garments, and the sale of said garments 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 the established policy of the Government of the United States.

PAR. 5. The sale of said garments to the purchasing public in the manner above described, involves a game of chance or the sale of a chance to procure a suit or other garment without cost. Many persons, firms, and corporations who sell and distribute work garments or similar merchandise in competition with the respondent in commerce among and between the various States of the United States do not use said method or any similar method involving a game of chance or the sale of a chance to win something by chance. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of its garments and in the element of chance involved therein, and are thereby induced to buy respondent's garments in preference to the garments 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 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 competitors who do not use the same or equivalent methods.

PAR. 6. During the period from January 1, 1941, to October 1, 1941, respondent has sold approximately 1½ million pants, shirts, and overalls and has awarded, under the plan of merchandising described herein, approximately 1,000 free suits or garments.

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, answer of the respondent, stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent upon the record, 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 said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Little Rock Tent & Awning Co., a corporation, trading under the name of Tuf-Nut Garment Manufacturing 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, and distribution of work garments, 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, retail dealers or others, display posters or any other sales plans or devices which are to be used, or may be used, in the sale or distribution of work garments or any other merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. 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

PACIFIC FRUIT & PRODUCE COMPANY, WALLA WALLA
GARDENERS' 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 4487. Complaint, Apr. 16, 1941—Decision, Feb 24, 1942*

Where three corporations, two partners and a cooperative association, engaged, among other things, in shipping broad- or flat-leaf spinach from their respective packing houses at Walla Walla, Wash., particularly to jobbers for resale in Chicago and surrounding area in which such spinach, during the shipping season, from early September to late November, normally met no substantial competition—and prior to 1939, and but for acts and practices below set forth, in competition with one another and others in such shipment and sale, as were brokers and jobbers, below referred to, in purchase thereof;

Following a meeting in Chicago of the Chicago manager of a Minneapolis broker, the manager of aforesaid Walla Walla cooperative association, and the sales manager of one of four Chicago jobbers—

- (a) Entered into and carried out agreement to sell such broadleaf spinach only through aforesaid broker, with shipments to be allotted to said shippers on basis of sales of previous years; and

Where such shippers and four Chicago jobbers handling such product, following discussions and correspondence with aforesaid broker's Chicago manager—

- (b) Entered into and carried out agreement to the effect that the purchase and sale of product in question in the Chicago market would be prorated among the four jobbers concerned; and

Where said four jobbers—

- (c) Entered into and abided by agreement that they would purchase such Walla Walla spinach only from aforesaid shippers through said Minneapolis broker, and would rotate cars or portions thereof on the basis of previous years' purchases; and

Where aforesaid shippers, jobbers and brokers—

- (d) Entered into and abided by agreement that any request for purchase of spinach received by said shippers from any dealer other than jobbers herein concerned would be referred to said broker, who would advise such other jobbers or dealers that there were no cars of such spinach available; and

Where aforesaid jobbers, pursuant to such agreement, combination and conspiracy, and in furtherance thereof—

- (e) Established and maintained a fixed resale price at which such broadleaf spinach should be sold in the Chicago market;

With the result that said acts and practices, all to the prejudice and injury of the public, had a tendency to, and did actually, hinder and prevent price competition between and among said shippers, jobbers and brokers in the purchase and sale of fresh broadleaf spinach in commerce, and placed in them the power to control and enhance the prices of said commodity;

increased and fixed the prices thereof paid by purchasers, and consequently the prices paid by the public; created in said shippers, jobbers and brokers a substantial monopoly in the dealings in such commodity in commerce; and unreasonably restrained commerce in product in question:

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. William C. Reeves* and *Mr. W. W. Sheppard*, trial examiners.

Mr. Wm. T. Chantland and *Mr. Everett F. Haycraft* for the Commission.

Mr. Howard W. Sanders of Ryan, Askren & Mathewson, of Seattle, Wash., for Pacific Fruit & Produce Co.

Mr. Marvin Evans, of Walla Walla, Wash., for Walla Walla Gardeners' Association.

Mr. John F. Watson of Pedigo, Watson & Gose, of Walla Walla, Wash., for Mojonnier & Sons, Inc.

Mr. William E. Berney, of Walla Walla, Wash., for Walla Walla Produce Co.

Mr. Ewing M. Stephens, of Walla Walla, Wash., for Valley Fruit Co.

Mr. Seward R. Moore, of Minneapolis, Minn., for C. H. Robinson Co. and Robert M. Steinberg.

Gottlieb & Schwartz, of Chicago, Ill., for LaMantia Brothers Arrigo Co., Mark Owen & Co., P. & M. Distributing Co. and Applebaum-Missner Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the corporations, partnerships, firms and individuals named in the caption hereof, hereinafter more particularly described and referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Pacific Fruit & Produce Co., sometimes hereinafter referred to as a respondent shipper, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with one of its principal offices and place of business and shipping plants at Walla Walla, Wash. Said respondent now is, and for several years last past has been, engaged

in the business of brokers, jobbers, and shippers and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondent, Walla Walla Gardeners' Association, sometimes hereinafter referred to as a respondent shipper, is a cooperative association 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 in Walla Walla, Wash. Said respondent now is, and for several years last past has been, engaged in the business of brokers, jobbers, and shippers and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondent, Mojonnier & Sons, Inc., sometimes hereinafter referred to as a respondent shipper, 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 in Walla Walla, Wash. Said respondent now is, and for several years last past has been, engaged in the business of brokers, jobbers, and shippers and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondent, Walla Walla Produce Co., sometimes hereinafter referred to as a respondent shipper, 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 in Walla Walla, Wash. Said respondent now is, and for several years last past has been, engaged in the business of brokers, jobbers, and shippers and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondents, Ewing M. Stephens and Eugene Tausich, are copartners trading as Valley Fruit Co., sometimes hereinafter referred to as a respondent shipper, with their principal office and place of business in Walla Walla, Wash. Said copartners are now, and for several years last past have been, engaged in the business of brokers, jobbers, and shippers and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondent, C. H. Robinson Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Dakota, sometimes hereinafter referred to as a respondent broker, with its principal office and place of business at 430 Oak Grove Avenue, Minneapolis, Minn. Said respondent now is, and for several years last past has been, engaged in the business of brokers, jobbers, and shippers and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondent, LaMantia Bros. Arrigo Co., sometimes hereinafter referred to as a respondent jobber, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 28-32 South Water Market, Chicago, Ill. Said respondent now is, and for several years last past has been, engaged in the business of brokers, jobbers, dealers, and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondents, Owen T. Hill and Robert S. Hill, are copartners trading as Mark Owen & Co., sometimes hereinafter referred to as a respondent jobber, with their principal office and place of business at 33 South Water Market, Chicago, Ill. Said copartners now are, and for several years last past have been, engaged in the business of brokers, jobbers, dealers, and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondents, John Plennert and John Mahoney, are copartners trading as P. & M. Distributing Co., sometimes hereinafter referred to as a respondent jobber, with their principal office and place of business at 8 South Water Market, Chicago, Ill. Said copartners now are, and for several years last past have been, engaged in the business of brokers, jobbers, dealers, and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondents, Arthur Applebaum and Maurice J. Missner, are copartners trading as Applebaum-Missner Co., sometimes hereinafter referred to as a respondent jobber, with their principal office and place of business at 13 South Water Market, Chicago, Ill. Said copartners now are, and for several years last past have been, engaged in the business of brokers, jobbers, dealers, and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondent, Robert M. Steinberg, sometimes hereinafter referred to as respondent Steinberg, is, and for the last several years has been, manager of the Chicago branch of respondent broker C. H. Robinson Co., with his office and place of business at 1425 South Racine Avenue, Chicago, Ill. Said respondent, as manager of respondent broker, C. H. Robinson Co., has for the last several years past actively directed the said business of said respondent broker in Chicago.

PAR. 2. In the course and conduct of their said businesses said respondent shippers have shipped fresh broadleaf spinach and other fresh vegetables and fresh fruits from their respective packing houses in the State of Washington to the purchasers thereof located in the States other than the State of Washington, and particularly to customers, including respondent jobbers, for resale to dealers in and

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consumers of said products in the city of Chicago, State of Illinois, and surrounding area, hereinafter referred to as the Chicago market, and there has for many years last past and now is a continuous current of interstate trade and commerce in said products between and among the several States of the United States.

PAR. 3. Broadleaf spinach is a distinct variety of spinach grown almost exclusively in the region around Walla Walla, Wash., and is packed and handled by only the respondent shippers. The bulk of this type of spinach is sold direct to canners but substantial quantities are shipped fresh to Chicago market where a sale for this particular type of spinach is readily found. Prior to the 1939 shipping season for fresh broadleaf spinach, which began in September and ended in the early part of November, said product was regularly shipped by the respondent shippers to numerous jobbers in the Chicago market including respondent jobbers through a number of brokers including the respondent broker, C. H. Robinson Co.

Said respondent shippers had been for some time prior to the beginning of the 1939 shipping season in competition in the sale of fresh broadleaf spinach between each other and with other shippers in said commerce, and would now be in free and open competition with one another in said commerce but for the agreements, practices and methods as hereinafter set out.

Said respondent jobbers had been for some time prior to the beginning of the 1939 shipping season in competition with one another and with other jobbers and dealers in the purchase of fresh broadleaf spinach from the producers and shippers thereof located in the State of Washington, and in the resale thereof to customers located in the Chicago market, and would now be in competition with the others but for the agreements, practices and methods hereinafter set out.

PAR. 4. On or about September 1, 1939, said respondents entered into and thereafter carried out and are still carrying out an understanding, agreement, combination and conspiracy to monopolize trade and commerce in fresh broadleaf spinach between and among the several States of the United States and to suppress, hinder and lessen competition in the purchase, sale and distribution of said product in said commerce. Pursuant to said agreement, understanding, combination and conspiracy and in furtherance thereof said respondents have done and do among others, the following acts and things:

(a) Respondent jobbers fixed the resale prices at which fresh broadleaf spinach purchased by them from respondent shippers through respondent broker should be sold in the Chicago market.

(b) Respondent jobbers aided and assisted by respondent broker and respondent Steinberg, entered into an agreement with respondent shippers whereby respondent shippers agreed to ship and thereafter did ship all of their pack of fresh broadleaf spinach to the respondent jobbers exclusively through the respondent broker.

(c) Respondent shippers agreed upon and fixed the prices paid for broadleaf spinach to the growers.

(d) Respondent shippers agreed to and did prorate the tonnage of fresh broadleaf spinach throughout the season, all handled through respondent broker, to the respondent jobbers.

(e) The respondent jobbers agreed to and did purchase all of their requirements of fresh broadleaf spinach for the Chicago market from the respondent shippers through the respondent broker.

(f) Respondent Steinberg actively aided and assisted in negotiating the said agreement between respondent jobbers and shippers, and cooperated in enforcing said agreement.

PAR. 5. Said agreement, understanding, combination and conspiracy and the things done thereunder and pursuant thereto and in furtherance thereof as hereinbefore alleged, have had and do have the capacity, tendency and effect of:

(a) Unduly restricting and restraining competition in the purchase and sale of fresh broadleaf spinach in commerce between and among the several States of the United States, particularly between the State of Washington and the State of Illinois.

(b) Enabling the respondents to control and substantially monopolize the business of buying, selling and distributing fresh broadleaf spinach in interstate commerce.

(c) Preventing competitors of respondent jobbers from purchasing fresh broadleaf spinach from respondent shippers, the sole source of supply of said product, to their injury and detriment.

(d) The enhancement of the retail price of fresh broadleaf spinach to the dealers and to the public in the city of Chicago and surrounding area.

PAR. 6. The agreements, combination and conspiracy and acts described in the foregoing paragraphs have continued to the present.

PAR. 7. The acts and practices of respondents as aforealleged are all to the prejudice of the public and have a dangerous tendency to hinder, and have actually hindered and prevented, price competition between and among respondents in the purchase and sale of fresh broadleaf spinach in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices of said commodity; have in-

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creased and fixed the prices of said commodity paid by purchasers thereof, and consequently the prices paid by the public; have created in said respondents a substantial monopoly in the dealings in said commodity in commerce throughout the several States of the United States; have unreasonably restrained such commerce in fresh broad-leaf spinach, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 16 A. D. 1941, issued and subsequently served its complaint upon the respondents, Pacific Fruit & Produce Co., a corporation; Walla Walla Gardners' Association, a cooperative association; Mojonnier & Sons, Inc., a corporation; Walla Walla Produce Co., a corporation; Ewing M. Stephens and Eugene Tausich, copartners, trading as Valley Fruit Co.; C. H. Robinson Co., a corporation; LaMantia Brothers Arrigo Co., a corporation; Owen T. Hill and Robert S. Hill, copartners, trading as Mark Owen & Co.; John Plennert and John Mahoney, copartners, trading as P. & M. Distributing Co.; Arthur Applebaum and Maurice J. Missner, copartners, trading as Applebaum-Missner Co.; and Robert M. Steinberg, individually and as manager of the Chicago branch of C. H. Robinson 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' answers thereto, testimony, and other evidence in support of said complaint were introduced by Everett F. Haycraft, attorney for the Commission, and in opposition to the allegations of the complaint by Howard W. Sanders, Marvin Evans, John F. Watson, Ewing M. Stephens, William E. Berney, S. R. Moore, David L. Bazelon, and Martin J. Harris, attorneys for the respondents, before William C. Reeves and W. W. Sheppard, 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 upon said complaint, answers thereto, testimony, and other evidence, report of the trial examiners upon the evidence and exceptions filed 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, Pacific Fruit & Produce Co., sometimes hereinafter referred to as a respondent shipper, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with one of its principal offices, and place of business and shipping plants, at Walla Walla, Wash. Said respondent is now, and for several years last past has been, engaged in the business of brokers, jobbers, shippers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondent, Walla Walla Gardners' Association, sometimes hereinafter referred to as a respondent shipper, is a cooperative association 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 in Walla Walla, Wash. Said respondent is now, and for several years last past has been, engaged in the business of brokers, jobbers, shippers, and distributors, in commerce of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondent, Mojonnier & Sons, Inc., sometimes hereinafter referred to as a respondent shipper, 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 in Walla Walla, Wash. Said respondent is now, and for several years last past has been, engaged in the business of brokers, jobbers, shippers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondent, Walla Walla Produce Co., sometimes hereinafter referred to as a respondent shipper, 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 in Walla Walla, Wash. Said respondent is now, and for several years last past has been, engaged in the business of brokers, jobbers, shippers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondents, Ewing M. Stephens and Eugene Tausich, are co-partners trading as Valley Fruit Co., sometimes referred to as a respondent shipper, with their principal office and place of business in Walla Walla, Wash. Said co-partners are now, and for several years

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last past have been, engaged in the business of brokers, jobbers, shippers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondent, C. H. Robinson Co., sometimes hereinafter referred to as a respondent broker, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of South Dakota, with its principal office and place of business at 430 Oak Grove Avenue, Minneapolis, Minn. Said respondent is now, and for several years last past has been, engaged in the business of brokers, jobbers, shippers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondent, LaMantia Brothers Arrigo Co., sometimes hereinafter referred to as a respondent jobber, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 28-32 South Water Market, Chicago, Ill. Said respondent is now, and for several years last past has been, engaged in the business of brokers, jobbers, dealers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondents, Owen T. Hill and Robert S. Hill, are copartners trading as Mark Owen & Co., sometimes hereinafter referred to as a respondent jobber, with their principal office and place of business at 33 South Water Market, Chicago, Ill. Said copartners are now, and for several years last past have been, engaged in the business of brokers, jobbers, dealers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondents, John Plennert and John Mahoney, are copartners trading as P. & M. Distributing Co., sometimes hereinafter referred to as a respondent jobber, with their principal office and place of business at 8 South Water Market, Chicago, Ill. Said copartners are now, and for several years last past have been, engaged in the business of brokers, jobbers, dealers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondents, Arthur Applebaum and Maurice J. Missner, up until November 1940, were copartners trading as Applebaum-Missner Co., sometimes hereinafter referred to as a respondent jobber, with their principal office and place of business at 13 South Water Market, Chicago, Ill. In November 1940 Maurice J. Missner died, leaving Arthur Applebaum as his surviving partner. For several years prior to November 1940, said copartners were engaged in the business of brokers, jobbers, dealers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondent, Robert M. Steinberg, an individual, is now, and for the last several years has been, manager of the Chicago branch of respondent broker C. H. Robinson Co., with his office and place of business at 1425 South Racine Avenue, Chicago, Ill. Said respondent, as manager of respondent broker C. H. Robinson Co., has, for the last several years past, actively directed the business of said respondent broker in Chicago.

PAR. 2. In the course and conduct of their said businesses, said respondent shippers have shipped various fresh fruits and fresh vegetables, including broadleaf spinach, from their respective packing houses in the State of Washington to the purchasers thereof located in various other States of the United States, and particularly to customers, including respondent jobbers, for resale to dealers in, and consumers of, said products in the city of Chicago, State of Illinois, and surrounding areas.

All of said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their businesses, the respondent shippers are engaged in the sale and distribution of a distinct type of spinach known to the trade as Walla Walla or Washington spinach, which is of the broadleaf or flatleaf variety of spinach. During the shipping season, which is from the early part of September to the latter part of November, this product has a ready market in the Chicago area. There are other areas which supply the Chicago market with broadleaf or flatleaf variety of spinach. These are chiefly Michigan, Illinois, Indiana, and Ohio, which are considered in the Chicago area, and Texas. Under normal weather conditions, the season for spinach in the Chicago area is practically closed by the early part of September, and the season for Texas spinach does not begin until around December. Consequently, the Walla Walla spinach does not meet any substantial competition in the Chicago market during its season, except possible overlapping at the beginning and end of the season during normal weather conditions. There are times, however, when the weather conditions continue abnormally warm in the Chicago area in the fall season, resulting in greater quantities of spinach being shipped into Chicago from that area.

The broadleaf spinach received from the Chicago area, and also that received from Texas, is customarily shipped into the Chicago market in bushel baskets and packed in such a way as to cause loss by deterioration of the product. The shippers in Walla Walla,

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however, due to the necessity of transporting their spinach for considerable distance, have adopted the practice of carefully grading all spinach shipped, so that on inspection it shows "U. S. Grade 1." In addition, the spinach is carefully packed in twenty-pound boxes lined with paper, with ice placed in the center, and after being packed in freight cars, such cars are carefully top-iced. As a result of this treatment, the Walla Walla spinach reaches the Chicago market in good condition, with little or no shrinkage or loss from deterioration, and, by reason of this fact, this spinach commands a higher price on the Chicago market than the spinach received from the other localities mentioned.

PAR. 4. Prior to 1939 the shippers located in the Walla Walla district sold their spinach either direct to jobbers in the Chicago district or through various brokers. Among the brokers who dealt in Walla Walla spinach were C. H. Robinson Co., Riley McFarland Co., McCaffrey Brothers Co., and Chandler-Allen Co. Among the jobbers in the Chicago area who purchased either direct from the shippers in the Walla Walla district or the brokers above mentioned were LaMantia Brothers Arrigo Co., Mark Owen & Co., P. & M. Distributing Co., Applebaum-Missner Co., Cooney & Korshak, Schoenburg, Price & Co., and others. In making such sales, the spinach was offered through brokers, or direct for sale, at a price in line with what was thought to be the market and what the buyers would pay.

PAR. 5. In the sale and distribution of said Walla Walla spinach to the Chicago district, the respondent shippers, prior to 1939, were in competition between each other and with other shippers in commerce among and between the various States of the United States, and would now be in free and open competition with one another in said commerce but for the agreements, practices, and methods as hereinafter set forth.

Prior to 1939 the respondent jobbers were in competition with one another and with other jobbers and dealers in the purchase of said fresh broadleaf spinach from the producers and shippers thereof located in the State of Washington and in the resale thereof to customers located in the Chicago market, and would now be in competition with the others but for the agreements, practices, and methods hereinafter set out.

PAR. 6. In the early part of February 1939 Robert M. Steinberg, manager of the Chicago branch of respondent C. H. Robinson Co. J. J. Mahar, manager of respondent Walla Walla Gardeners' Association, and Anton Ernst, sales manager of respondent Applebaum-

Missner Co., held a meeting in Chicago, for the purpose of discussing and arranging for an agreement or combination between certain shippers of broadleaf spinach located in the Walla Walla district and certain jobbers located in the Chicago area, under which arrangement the shippers were to sell only through the respondent C. H. Robinson Co., as broker, to certain selected jobbers in the Chicago area, shipments by the shippers to be prorated among such shippers, and the spinach received in the Chicago market to be prorated among the selected jobbers.

PAR. 7. Subsequent thereto, after various meetings held by the shippers, the respondent shippers agreed to sell said broadleaf spinach only through the respondent broker C. H. Robinson Co., shipments to be allotted to the shippers on the basis of sales of previous years, and on August 25, 1939, J. J. Mahar, manager of respondent Walla Walla Gardeners' Association, advised R. M. Steinberg, manager of respondent, C. H. Robinson Co., by letter, of the conclusion of this arrangement among the shippers and that the proration among the respondent shippers would be as follows: Walla Walla Gardeners' Association, 50 percent; Mojonner & Sons, Inc., 22 percent; Pacific Fruit & Produce Co., 16 percent; Walla Walla Produce Co., 11 percent; and Valley Fruit Co., 1 percent.

PAR. 8. In like manner, after discussions between R. M. Steinberg and various jobbers, and also correspondence between various jobbers and certain of the respondent shippers, it was agreed that the purchase and sale in the Chicago market would be handled by four jobbers in the Chicago area, these four jobbers being the respondent jobbers Applebaum-Missner Co., LaMantia Bros. Arrigo Co., Mark Owen & Co., and P. & M. Distributing Co. It was agreed among such respondent jobbers that they would purchase Walla Walla broadleaf spinach only from the respondent shippers, through the respondent broker C. H. Robinson Co., and would rotate the cars or portions of cars in such manner as might be considered equitable by such respondent jobbers, based upon purchases of previous years. It was further agreed between the respondent shippers, the respondent jobbers, and the respondent broker that any requests for the purchase of spinach received by the respondent shippers from any jobber or dealer other than the respondent jobbers would be referred to respondent broker C. H. Robinson Co. and that said respondent broker would advise such jobbers or dealers that there were no cars of broadleaf spinach from the Walla Walla district available.

This agreement or understanding was maintained during the 1939 season and continued during the 1940 season, with only a slight

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change in proration of shipments by the respondent shippers, reducing respondents Mojonner & Sons, Inc., and Pacific Fruit & Produce Co. 1 percent and increasing respondent, Valley Fruit Co. 2 percent.

PAR. 9. Pursuant to this agreement, understanding, combination and conspiracy, and in furtherance thereof, the respondent shippers shipped approximately 100 cars during the 1939 season through respondent broker C. H. Robinson, exclusively, which cars were distributed exclusively to the respondent jobbers. Due to unfavorable weather conditions during the 1940 season, only 25 cars of spinach were shipped pursuant to this arrangement and agreement. Although requests for shipments were received by jobbers other than the respondent jobbers, including Cooney & Korshak and Schoenburg, Price & Co., shipments to said jobbers were refused by the respondent shippers, and they were referred to the respondent broker, who either ignored such requests or advised that there were no cars available. During the 1939 and 1940 seasons, the respondent shippers prorated the tonnage of fresh broadleaf spinach in accordance with their agreement and shipped exclusively through respondent broker to the respondent jobbers, exclusively. The respondent jobbers purchased all of their requirements of fresh broadleaf spinach for the Chicago market during the 1939 and 1940 seasons from the respondent shippers through the respondent broker. During said seasons of 1939 and 1940 the respondent shippers supplied all of the fresh broadleaf spinach shipped from the Walla Walla district of Washington to the Chicago market.

PAR. 10. In addition, the respondent jobbers, pursuant to said agreement, understanding, combination, and conspiracy, and in furtherance thereof, did establish and maintain a fixed resale price at which said fresh broadleaf spinach purchased by them from the respondent shippers should be sold in the Chicago market. From September 19 to September 30, 1939, this resale price ranged from \$1.15 to \$1.40 per 20-pound box. From October 2 to October 14, 1939, the price ranged from \$1.15 to \$1.20, with some sales on October 10, 11, and 12 at \$1 to \$1.10, due to market conditions. From October 16 to October 30, 1939, the price was \$1.25 per box, with two exceptions of \$1.15 on October 20 and October 30. From November 1 to November 20, 1939, the price was maintained at \$1.25 per box, and from November 21 to November 30, 1939, at \$1.50 per box.

The prices received by the shippers during the 1939 season ranged from 65 cents to 55 cents per box f. o. b. Walla Walla. The first few cars in the 1939 season were priced at 65 cents per box. The remaining shipments for September were priced at 60 cents per box. Around October 1 the price per box was reduced to 55 cents, with the

understanding that the price would be increased as conditions improved. Although the resale price of the jobbers to retail dealers increased to \$1.50 per box in November 1939 the price to the shippers remained at 55 cents per box for the remainder of the season. After deducting expenses of boxes and commission, the prices received during the same period by the growers of spinach who sold through the respondent Walla Walla Gardeners' Association were 32 cents per box from September 1 to September 16, 26.6 cents from September 18 to September 30, and 22.1 cents for the remainder of the season. The prices paid by the other respondent shippers were approximately the same.

PAR. 11. A comparative effect of this agreement, understanding, combination and conspiracy on the resale price may be obtained from comparison of the price of Walla Walla spinach with Seattle and Sumner spinach, both of which are of the same grade and variety, and both of which are similarly packed. The Seattle and Sumner spinach season overlaps the Walla Walla spinach for a short period at the beginning of the Walla Walla season. Comparative figures are as follows:

	Walla Walla	Seattle and Sumner
Tuesday, Sept. 19, 1939-----	\$1.40	\$1.00-\$1.10
Wednesday, Sept. 20, 1939-----	1.25	1.00
Thursday, Sept. 21, 1939-----	1.30	.85- 1.00
Friday, Sept. 22, 1939-----	1.25-1.30	.75- 1.00
Saturday, Sept. 23, 1939-----	1.30	.75- 1.00
Tuesday, Sept. 26, 1939-----	1.25-1.20	.75- .85
Wednesday, Sept. 27, 1939-----	1.25	.50- .85
Thursday, Sept. 28, 1939-----	1.25	.75
Friday, Sept. 29, 1939-----	1.15	.50- .75
Saturday, Sept. 30, 1939-----	1.15	1.15

PAR. 12. Said agreement, understanding, combination, and conspiracy, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove described, have had, and now have, the capacity, tendency, and effect of—

(a) Unduly restricting and restraining competition in the purchase and sale of fresh broadleaf spinach in commerce among and between the various States of the United States, particularly between the State of Washington and the State of Illinois;

(b) Enabling the respondents to control and substantially monopolize the business of buying, selling, and distributing fresh broadleaf spinach in commerce among and between the various States of the United States, particularly between the State of Washington and the State of Illinois;

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(c) Preventing competitors of respondent jobbers from purchasing fresh broadleaf spinach from respondent shippers, the sole source of supply of said product, to their injury and detriment; and

(d) Enhancing the retail price of fresh broadleaf spinach to the dealers and to the public in the city of Chicago and the surrounding area.

PAR. 13. The acts and practices of the respondents, as aforesaid, are all to the prejudice and injury of the public and have a tendency to hinder, and have actually hindered and prevented, price competition between and among the respondents in the purchase and sale of fresh broadleaf spinach in commerce among and between the various States of the United States; have placed in respondents the power to control and enhance the prices of said commodity; have increased and fixed the prices of said commodity paid by purchasers thereof, and consequently the prices paid by the public; have created in said respondents a substantial monopoly in the dealings in said commodity in commerce among and between the various States of the United States; and have unreasonably restrained such commerce in fresh broadleaf spinach.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, testimony and other evidence taken before William C. Reeves and W. W. Sheppard, 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 in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents, Pacific Fruit & Produce Co., a corporation; Walla Walla Gardeners' Association, a cooperative association; Mojonier & Sons, Inc., a corporation; Walla Walla

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Produce Co., a corporation; C. H. Robinson Co., a corporation; and LaMantia Bros. Arrigo Co., a corporation; and their respective officers, agents, representatives, and employees; and Ewing M. Stephens and Eugene Tausich, copartners trading as Valley Fruit Co.; Owen T. Hill and Robert S. Hill, copartners, trading as Mark Owen & Co.; John Plennert and John Mahoney, copartners trading as P. & M. Distributing Co.; Arthur Applebaum, surviving partner of copartnership composed of Arthur Applebaum and Maurice J. Missner, trading as Applebaum-Missner Co.; and Robert M. Steinberg, an individual and manager of the Chicago branch of C. H. Robinson Co.; and their respective agents, representatives, and employees, or any two or more of said respondents, with or without the cooperation of others not party hereto, in connection with the offering for sale, sale, and distribution of broadleaf spinach or other produce in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, continuing, or carrying out, or directing, instigating, or cooperating in any common course of action, mutual agreement, combination, or conspiracy which is designed to, or has the capacity, tendency, or effect of, restricting, restraining, suppressing, or eliminating competition in, or monopolizing the trade in, broadleaf spinach or other produce in commerce among and between the several States of the United States, and particularly that produced in the Walla Walla district of the State of Washington and sold in the trade area in and around the city of Chicago in the State of Illinois.

2. Entering into, continuing, or carrying out, or directing, instigating, or cooperating in, any common course of action, mutual agreement, combination, or conspiracy which is designed to, or has the capacity, tendency, or effect of—

(a) Restricting the sale and purchase of broadleaf spinach or other produce, to selected shippers and jobbers.

(b) Determining, controlling, or limiting the number of jobbers or wholesalers who shall purchase or offer said broadleaf spinach or other produce for sale in any designated area or market.

(c) Causing all purchases and sales of broadleaf spinach and other produce to be made through C. H. Robinson Co. or any other designated broker or brokers.

(d) Preventing jobbers and wholesalers not parties to such agreement, from purchasing from selected shippers of broadleaf spinach and other produce from the Walla Walla district of the State of Washington.

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(e) Fixing, maintaining, manipulating, or enhancing the price of broadleaf spinach or other produce, to dealers or to the public in the city of Chicago and surrounding area, or any other district.

3. Curtailing, restricting, or regulating the amount of broadleaf spinach or other produce to be shipped into the Chicago market, or any other designated area, from the Walla Walla district of the State of Washington.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondent Maurice J. Missner, deceased.

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

WESTERN CHEMICALS, INC., MAFFETT SALES CORPORATION, BARTELL DRUG COMPANY, AND FRANK L. WILSON, N. B. WILSON, AND REUEL K. YOUNT

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

Docket 3735. Complaint, Mar. 9, 1939—Decision, Mar. 2, 1942

Where two corporations, engaged in interstate sale and distribution of their "Alcoban" treatment for alcoholism, to be given in alcoholic drinks or other liquids, or in soft foods; three individuals who were their controlling officers, directors and stockholders; and a third corporation, engaged in the retail drug business; by advertisements of said product, through the mails and in newspapers and periodicals of wide circulation—

(a) Represented, directly and by implication, that their said "Alcoban" constituted a competent and effective treatment for alcoholism which might be used with safety and without danger of ill effects, through such statements, among others, as "Has aided thousands addicted to the excess use of alcohol," "A doctor's prescription used for years for those addicted to the excessive use of alcohol * * * now offered to the public as Alcoban * * *. Aids the sufferer to overcome the craving for liquor and to build up his resistance," "Contains no narcotics or habit-forming drugs," "* * * leaves no ill effects upon any organ of the body," and "Can be given secretly in alcoholic liquors, other liquids or food * * *";

The facts being that, while nausea induced thereby may cause patient to lose his taste for alcohol, the effect is only temporary; correct treatment of alcoholism, according to the medical consensus, is directed to ascertainment and removal of causes responsible for individual's resort to alcohol and building up his general condition and powers of resistance; active ingredients of product possess substantial capacities for harm in that emetine, used in substantial quantities, produces toxic effects, while ephedrine, in older people, may increase blood pressure sufficiently to injure cerebral vessels, and pilocarpine, in repeated doses, may affect heart action to a marked extent and result in edema of the lungs; and unsupervised use thereof in dosage and over period of time prescribed is dangerous, particularly so in view of the usually low level of physical resistance of alcoholics; and

(b) Failed to reveal that use of their said product under usual or prescribed conditions might result in serious injury to health, as above indicated;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and into the purchase of substantial quantities of said preparation because 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.

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As respects the question as to whether or not the toxic properties of certain drugs contained in a preparation offered for the treatment of alcoholism to a certain extent off-set or neutralize one another by their respective counteraction, as asserted, for example, in the action of the stimulant ephedrine in counterbalancing the depressant effects of pilocarpine: any such neutralizing effect was only temporary, and the substantial preponderance of the expert testimony, contrary to sellers' contention, was to the effect that the harmful potentialities of the various ingredients contained therein were not materially affected by their combination into one preparation.

In regard to the evidential value of experiments performed on rats, cats and monkeys, for their bearing on possible toxic and dangerous properties of a preparation offered for alcoholism: it appeared that the experiments were conducted primarily for the purpose of ascertaining the lethal dose rather than the effect of the preparation on the various organs, such as the heart and lungs; results tended to substantiate testimony to the effect that preparation did possess toxic and dangerous properties, and were insufficient to meet expert testimony supporting conclusion that preparation did indeed have such properties.

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

Mr. Gerard A. Rault and *Mr. DeWitt T. Puckett* for the Commission.

Rosen, Francis & Cleveland, 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 Western Chemicals, Inc., Maffett Sales Corporation, Bartell Drug Co., corporations, and Frank L. Wilson, N. B. Wilson, and Reuel K. Yount, 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, Western Chemicals, Inc., is a corporation organized and created under the laws of the State of Washington, with its office and principal place of business located at 1417 Fourth Avenue, Seattle, Wash.

Respondent, Maffett Sales Corporation, is a corporation organized and created under the laws of the State of Washington, with its office and principal place of business located at 1417 Fourth Avenue, Seattle, Wash.

Respondent, Bartell Drug Co., is a corporation organized and created under the laws of the State of Washington, with its principal

office and place of business located at 1906 Boren Avenue, Seattle, Wash.

Respondent, Frank L. Wilson, is an individual and is president of corporate respondents, Western Chemicals, Inc., and Maffett Sales Corporation. His principal office and place of business is located at 1417 Fourth Avenue, Seattle, Wash.

Respondent, N. B. Wilson is an individual and is vice president of corporate respondent, Western Chemicals, Inc., and Maffett Sales Corporation. Her office and principal place of business is located at 1417 Fourth Avenue, Seattle, Wash.

Respondent, Reuel K. Yount, is an individual and is secretary-treasurer of the corporate respondents. His office and principal place of business is located at 1417 Fourth Avenue, Seattle, Wash.

PAR. 2. Respondent, Western Chemicals, Inc., is engaged in the business of distributing a medical preparation sold under the trade name of "Alcoban" between and among various States of the United States and the District of Columbia.

Respondent, Maffett Sales Corporation, is engaged in the business of selling said medical preparation, Alcoban, to retail dealers located in various States of the United States and the District of Columbia.

Respondent, Bartell Drug Co., is engaged in the retail drug business in the city of Seattle, Wash., and sells, among other drugs, the preparation known as Alcoban.

PAR. 3. The corporate respondents and the individual respondents hereinabove named have acted together and in cooperation with each other in carrying out the acts and practices herein alleged.

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 drug, 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 drug; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said drug, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said drug in commerce, as commerce is defined in the Federal Trade Commission Act.

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Among, and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Excessive drinking—try Alcoban. Alcoban has aided thousands addicted to the excess use of alcohol * * *.

A doctor's prescription used for years for those addicted to the excessive use of alcohol. It is now offered to the public as Alcoban * * *. Aids the sufferer to overcome the craving for liquor and to build up his resistance.

Alcoban contains no narcotics or habit-forming drugs. It leaves no ill effects upon any organ of the body.

The representations hereinbefore set out and other representations similar thereto but not set out herein appearing in respondents' advertisements are false, misleading and untrue. This preparation is not a competent, safe, nor scientific treatment for alcoholism. Its use may have ill effects upon the human body. Said advertisements of respondents are also false in that they fail to reveal that the use of this product, under the conditions prescribed in said advertisements, and under such conditions as are customary and usual, may result in the serious illness and in some cases the death of the user.

The true facts are that the preparation Alcoban contains the following active ingredients:

Emetine hydrochloride.
Ephedrine hydrochloride.
Pilocarpine hydrochloride.

Each of these drugs is in itself potent and harmful, and when combined with the others as in this preparation results in a compound which may have marked toxic, and in some cases fatal, effects upon the human system.

PAR. 5. The use by the respondents of the foregoing false, deceptive and misleading statements and representations with respect to the product Alcoban, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondents' preparation containing injurious drugs.

PAR. 6. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 9, 1939, issued and thereafter served its complaint in this proceeding upon the respondents, Western Chemicals, Inc., a corporation; Maffett Sales Corporation, a corporation; Bartell Drug Co., a corporation; and Frank L. Wilson, N. B. Wilson, and Reuel K. Yount, 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 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, and in opposition thereto by attorneys 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, answer, testimony and other evidence, report of the trial examiners upon the evidence and the exceptions to such report, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Western Chemicals, Inc., is a corporation organized and existing under the laws of the State of Washington. While the corporation has not been legally dissolved, it ceased active business operations in January 1939, having previously transferred all of its assets to respondent Maffett Sales Corporation. During the period of its business activities it maintained its office and principal place of business at 1417 Fourth Avenue, Seattle, Wash.

Respondent, Maffett Sales Corporation, is a corporation organized and existing under the laws of the State of Washington, with its office and principal place of business located at 1417 Fourth Avenue, Seattle, Wash.

Respondent, Bartell Drug Co., is a corporation organized and existing under the laws of the State of Washington, with its office and

principal place of business located at 1906 Boren Avenue, Seattle, Wash.

Respondent, Frank L. Wilson, an individual, is president of respondents, Western Chemicals, Inc., and Maffett Sales Corporation, his office being located at 1417 Fourth Avenue, Seattle, Wash.

Respondent, N. B. Wilson, an individual, is vice president of respondents, Western Chemicals, Inc., and Maffett Sales Corporation, her office being located at 1417 Fourth Avenue, Seattle, Wash.

Respondent, Reuel K. Yount, an individual, is secretary-treasurer of respondents, Western Chemicals, Inc., and Maffett Sales Corporation, his office being located at 1417 Fourth Avenue, Seattle, Wash.

The individual respondents are also directors and stockholders of respondents, Western Chemicals, Inc., and Maffett Sales Corporation, and formulate the policies and direct and control the business practices and methods of the two corporations.

PAR. 2. For several years immediately preceding January 1939 respondent, Western Chemicals, Inc., was engaged in the sale and distribution in commerce among and between the several States of the United States and in the District of Columbia, of a medicinal preparation known as Alcoban and intended as a treatment for alcoholism.

Respondent, Maffett Sales Corporation, is now, and for more than 3 years last past has been, engaged in the sale and distribution, in commerce among and between the several States of the United States and in the District of Columbia, of this same medicinal preparation.

Both of these respondents maintain or have maintained a course of trade in their medicinal preparation in commerce among and between the several States of the United States and in the District of Columbia.

Respondent, Bartell Drug Co., is engaged in the retail drug business in the city of Seattle, Wash., and sells the preparation Alcoban as well as numerous other drugs.

PAR. 3. In the course and conduct of their businesses the respondents, acting in cooperation with each other, have advertised their preparation Alcoban through the United States mails, and by means of advertisements inserted in newspapers and periodicals having wide circulation among and between numerous States of the United States and in the District of Columbia. All of these advertisements were for the purpose of inducing or were likely to induce, directly or indirectly, the purchase of respondents' preparation in commerce, as commerce is defined in the Federal Trade Commission Act.

Among the statements and representations appearing in advertisements disseminated and caused to be disseminated in this manner by

respondents, Western Chemicals, Inc., and Maffett Sales Corporation, were the following:

Excessive drinking—try Alcoban. Alcoban has aided thousands addicted to the excess use of alcohol * * *.

A doctor's prescription used for years for those addicted to the excessive use of alcohol. It is now offered to the public as Alcoban * * *. Aids the sufferer to overcome the craving for liquor and the build up his resistance.

Alcoban contains no narcotics or habit-forming drugs. It leaves no ill effects upon any organ of the body.

Respondent Bartell Drug Co. has disseminated, in addition to the first advertisement quoted above, the following advertisements:

Liquor Habit—Alcoban has aided thousands; a doctor's prescription used for years. The nationally advertised aid for excessive drinking.

Liquor Habit. Alcoban has aided many addicted to the excessive use of alcohol. It can be given secretly in alcoholic liquors, other liquids or food. Praised from coast to coast.

PAR. 4. Through the use of these advertisements and others of a similar nature the respondents have represented, directly or by implication, that their preparation Alcoban constitutes a competent and effective treatment for alcoholism, and that it may be used with safety and without danger of ill effects upon the body.

PAR. 5. The preparation Alcoban is sold in capsules and each capsule contains:

Emetine hydrochloride, $\frac{1}{8}$ grain.

Ephedrine hydrochloride, $\frac{1}{8}$ grain.

Pilocarpine hydrochloride, $\frac{1}{8}$ grain.

Milk sugar in quantity sufficient to complete a No. 3 capsule.

The preparation is intended to be given in alcoholic drinks or in other liquids such as coffee, tea, soup, milk, or water, or in soft food. The pertinent portions of respondents' directions for the use of the preparation are as follows:

A. When ALCOBAN can be given in separate Alcoholic Drinks:

1. Open 1 capsule and empty contents into one drink of alcoholic liquor. Repeat every 10 minutes until 3 capsules have been given. By this time you should see desired results, which are sweating or vomiting, or both.

2. This shows ALCOBAN is starting to do its work, and from then on you should expect vomiting to occur in from 5 to 15 minutes after each drink containing ALCOBAN.

3. After taking from two to four capsules in the manner described above, it is to be expected that the drinker will not be able to retain the liquor he has drunk, but, if possible, persuade him to have another drink and another, each containing Alcoban, until he cannot take another drink.

4. IMPORTANT. If you do not see either sweating or vomiting within one-half hour, after the 3rd capsule is given, then continue the treatment and

give the contents of 2 capsules in each drink, 10 minutes apart, until 3 doses have been given. When person drinks again, repeat the treatment as directed above.

5. The more freely alcoholic drinks are taken when ALCOBAN is being given, the more effect the treatment should have.

B. When ALCOBAN can be put into the bottle of Alcoholic Liquor:

6. Let the drinker drink from the bottle as freely as he wishes.

7. Table of MINIMUM amounts to be put into bottle: In 1 pint of beer put the powder of 2 capsules. In 1 quart of beer put the powder of 4 capsules. In 1 pint of wine or "hard" liquor put powder of 6 capsules. In 1 quart of wine or "hard" liquor put powder of 12 capsules.

8. If this is not enough ALCOBAN to cause sweating and vomiting in 15 or 20 minutes, then double the amount of ALCOBAN when you continue the treatment.

(Giving ALCOBAN according to paragraphs A or B should give best and quickest results.)

C. When ALCOBAN cannot be given in Alcoholic Liquor but can be given when Person is intoxicated; or even near the Time when he will drink Alcohol:

(This means 15 minutes before drinking alcoholic liquor or one-half hour after.)

9. In this case give the contents of 1 capsule of ALCOBAN in coffee, tea, soup, milk, water, or soft food and repeat if possible 10 minutes apart until 3 capsules have been given.

10. Then wait one-half hour for proper results. If vomiting does not occur, then double the dose, and give the contents of 2 capsules in each cup of liquid, until 3 doses are given. Repeat this program with single or double dose, as necessary, each time possible when person is intoxicated.

PAR. 6. Emetine, as the name implies, is an emetic. It induces nausea and causes emesis or vomiting. It is a gastrointestinal irritant and when used in substantial quantities produces toxic effects in the system.

Ephedrine is frequently used in the treatment of respiratory disorders. It has a stimulating effect upon the heart and the circulation as well as the nervous system and tends to produce a nervous excitability. In the case of older persons the drug may increase the blood pressure sufficiently to injure the cerebral vessels.

Pilocarpine acts as a depressant on the heart and circulation as well as on the respiratory system. When given in repeated doses and retained in the body it may affect the heart action to a marked extent. It is occasionally used by physicians to produce sweating and also to stimulate the kidneys and increase the flow of urine. One of the principal dangers from the use of pilocarpine is that it may result in edema of the lungs.

PAR. 7. The theory upon which respondents assert the effectiveness of their preparation as a treatment for alcoholism is that the nausea and vomiting caused by the preparation have a psychological

effect upon the patient and cause him to form an aversion toward alcohol. Respondents urge that if the preparation is used over a substantial period of time this aversion to alcoholic beverages becomes so strong that the very thought of drinking such beverages causes a sensation of nausea, with the result that the patient comes to abstain from the use of alcohol. A further value asserted by the respondents for the preparation is that the pilocarpine content causes sweating and that thus a portion of the alcohol in the system is removed.

A number of outstanding authorities in the field of medicine and pharmacology were introduced as witnesses at the instance of the Commission, and these witnesses were a unit in their opinion that Alcoban is not a competent or effective treatment for alcoholism. The nausea induced by the preparation may cause the user to lose his taste for alcohol, but the effect is only temporary. There is no basis upon which to assume that the patient will abstain from the use of alcohol after the feeling of nausea has passed.

Neither the preparation Alcoban nor any of its ingredients is recognized by the medical profession as a treatment for the liquor habit. The consensus among physicians is that the treatment of alcoholism must be approached primarily from the psychological angle. The causes which prompt an individual to resort to alcohol must be ascertained and these causes must, if possible, be removed. The fundamental objective is to create in the individual a genuine desire and determination to abstain from the excessive use of liquor. Attention is also given by physicians to the general physical condition of the user, and an effort is made through the regulation of the diet and otherwise to build up the patient's general condition and powers of resistance.

The expert testimony further shows that respondents' preparation is not safe for use by the lay public. As indicated above, the active ingredients of the preparation are recognized by physicians and pharmacologists as possessing substantial capacities for harm to various organs of the body, and these drugs are administered by physicians with caution. The unsupervised use of the drugs by the public in the dosage and over the period of time prescribed by respondents is dangerous, and this is particularly true in view of the fact that the general physical resistance of persons addicted to the excessive use of alcohol is usually at a low level.

The expert testimony introduced by respondents recognizes in the main that each of the drugs contained in the preparation possesses toxic properties, but it is insisted that as a result of combining the

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drugs into one preparation the toxic properties of each drug are to a substantial measure offset or neutralized by the counteraction of the other ingredients. For example, it is contended that the ephedrine in the preparation, by reason of its properties as a stimulant, has the effect of counterbalancing the depressant effects of the pilocarpine. The record shows, however, that any neutralizing effect which the ephedrine may have upon the pilocarpine is only temporary. The substantial preponderance of the expert testimony in the record is to the effect that the harmful potentialities of the various ingredients in the preparation are not materially affected by combining the ingredients into one preparation.

In addition to the testimony of expert witnesses the respondents also offered in evidence the results of certain experiments performed on animals—rats, cats, and monkeys, some of which had been given alcohol until they were intoxicated. While the amounts of the preparation required to cause death to the animals were substantially larger than the amounts which ordinarily would be consumed by a user of the preparation, the results of the experiments tend to substantiate the testimony offered by the Commission to the effect that the preparation possesses toxic and dangerous properties. Moreover, the experiments were conducted primarily for the purpose of ascertaining the lethal dose, rather than the effect of the preparation on the various organs of the body such as the heart and lungs. After giving full consideration to all of the evidence offered by respondents, including the expert testimony and the results of the experiments, the Commission is of the opinion that the evidence is insufficient to meet the expert testimony introduced at the instance of the Commission.

PAR. 8. The Commission therefore finds that respondents' preparation does not constitute a competent or effective treatment for alcoholism; that it cannot be used with safety and without danger of ill effects upon the body; and that the representations made by the respondents, as set forth in paragraphs 3 and 4 hereof, are misleading and deceptive and constitute false advertisements. Respondents' advertisements are false for the further reason that they fail to reveal that the use of respondents' preparation 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. 9. The Commission further finds that the use by the respondents of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public

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into the erroneous and mistaken belief that respondents' preparation possesses therapeutic properties which it does not in fact possess, and that the preparation is 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' preparation 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 commerce within the intent and meaning of the Federal Trade Commission Act.

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 and in opposition to the allegations of the complaint, report of the trial examiners upon the evidence and the exceptions to such report, 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, Western Chemicals, Inc., a corporation; Maffett Sales Corporation, a corporation; Bartell Drug Co., a corporation; and their officers, and Frank L. Wilson, N. B. Wilson, and Reuel K. Yount, individuals, 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 respondents' preparation "Alcoban" 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 by implication, that said preparation constitutes a competent or effective treatment for alcoholism; or that said preparation may be used with safety or without danger

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of ill effects upon the body; or which advertisement fails to reveal that the use of said preparation may produce toxic conditions in the body, and may result in serious injury to the nerves, heart and lungs.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fails to reveal that the use of said preparation may produce toxic conditions in the body, and may result in serious injury to the nerves, heart, and lungs.

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.

Complaint

IN THE MATTER OF
PARFUMS RONNI, INC.

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

Docket 4569. Complaint, Aug. 14, 1941—Decision, Mar. 2, 1942

Where a corporation, engaged in interstate sale and distribution of a cosmetic preparation for the eyelashes variously designated as "Ronni Mascara," "Ronni Cream Mascara," "Mascara by Ronni," and "Mascara"; by advertisements disseminated through the mails and otherwise—

Falsely represented, directly and by implication, that its said product would not smudge or run, and was waterproof and tearproof;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and into the purchase of substantial quantities of said preparation because of such mistaken belief:

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

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

Mr. R. P. Bellinger for the Commission.

Berlin & Hellman, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Parfums Ronni, 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, Parfums Ronni, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at 18 West Twentieth Street, New York, N. Y.

PAR. 2. Respondent is now and for more than one year last past has been engaged in the business of selling and distributing a cosmetic preparation variously designated as "Ronni Mascara," "Ronni Cream Mascara," "Mascara by Ronni" and "Mascara."

Respondent causes said preparation, when sold, to be transported from its place of business in the State of New York to purchasers

thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated by respondent as aforesaid, are the following:

"Ronni Mascara—Smudge proof, Tearproof, Waterproof, Runproof."

PAR. 4. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent represents, directly and by implication, that its cosmetic preparation variously designated as "Ronni Mascara," "Ronni Cream Mascara," "Mascara by Ronni" and "Mascara," will neither smudge nor run, and that it is waterproof and tearproof.

PAR. 5. The foregoing representations and advertisements are grossly exaggerated, false and misleading. In truth and in fact the respondent's said preparation is not smudge proof nor runproof, neither is it waterproof or tearproof.

PAR. 6. The use by respondent of the foregoing false, deceptive, misleading and exaggerated advertisements and representations with respect to said preparation has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said advertisements and representations are true, and into the purchase of substantial quantities of respondent's said preparation because of such erroneous and mistaken belief.

PAR. 7. 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 August 14, 1941, issued and subsequently served its complaint in this proceeding upon respondent, Parfums Ronni, Inc., a corporation, charging the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint (no answer having been filed by respondent), testimony, and other evidence in support of the allegations of said complaint were introduced by an attorney for the Commission before an examiner of the Commission theretofore duly designated by it (respondent having been represented at said hearing by one of its officers), 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, 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 make this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Parfums Ronni, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business at 18 West Twentieth Street, New York, N. Y.

PAR. 2. Respondent is now, and for a number of years last past has been, engaged in selling and distributing a cosmetic preparation variously designated as "Ronni Mascara," "Ronni Cream Mascara," "Mascara by Ronni," and "Mascara." Respondent causes said preparation, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business respondent, by means of the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said cosmetic preparation; and respondent, by various means, has also disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said cosmetic preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated by respondent, as aforesaid, are statements and representations that said cosmetic preparation is "tearproof," "waterproof," "runproof," and "smudge proof."

PAR. 4. By the use of the statements set forth in the preceding paragraph, respondent has represented directly and by implication that its preparation designed for application to the eyelashes, and variously designated as aforesaid, will not smudge or run and that it is waterproof and tearproof.

PAR. 5. The cosmetic preparation variously designated by respondent as "Ronni Mascara," "Ronni Cream Mascara," "Mascara by Ronni," and "Mascara" is manufactured for it by another concern and delivered to respondent in bulk form. Said preparation consists of stearic acid, triethanolamine, lanolin, ozocerite, carnauba, perfume, coloring, and hot water. In the use for which it is intended, respondent's said preparation is not proof against smudging or running, nor is it waterproof or tearproof.

PAR. 6. The use by respondent of the aforesaid false, deceptive, misleading, and exaggerated advertisements and representations with respect to its aforesaid preparation has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said advertisements and representations are true, and into the purchase of substantial quantities of respondent's said preparation because of such erroneous and mistaken belief.

CONCLUSION

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

Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony, and other evidence in support of the allegations of said complaint taken before an examiner of the Commission theretofore duly designated by it, and report of 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 respondent, Parfums Ronni, 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 the cosmetic preparation variously designated as "Ronni Mascara," "Ronni Cream Mascara," "Mascara by Ronni," and "Mascara," or any other cosmetic preparation which is substantially similar in composition, or possesses substantially similar properties, whether sold under the same name or any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, 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 represents, directly or through inference, that respondent's said cosmetic preparation is "smudge proof," or "waterproof," or "run-proof," or "tearproof" by the use of any of the terms stated or by the use of any other words or terms of similar import or meaning.

2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said cosmetic preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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

Complaint

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IN THE MATTER OF

H. M. WILLIAMS, TRADING AS WILLIAMS CANDY
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4252. Complaint Aug. 21, 1940—Decision, Mar. 3, 1942*

Where an individual, engaged in manufacture and competitive sale and distribution 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 consumers, a typical assortment consisting of 40 uniform bars, together with a push card for use in their sale under a plan in accordance with which purchaser's payment ranged from 1 cent to 5 cents as determined by number secured by chance;

Sold such assortments to distributors, to members of the purchasing public for resale, and to retailers, by whom they were exposed and sold in accordance with aforesaid sales plan involving a game of chance to procure candy bars 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 his products, contrary to an established 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 the result that many persons were attracted by said plan and the element of chance involved therein, and were thereby induced to buy and sell his candy in preference to products of aforesaid competitors, from whom substantial trade was thereby diverted to him;

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

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

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.

Mr. H. L. Taylor and *Mr. Thaddeus A. Adams*, of Charlotte, N. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that H. M. Williams, individually and trading as Williams 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, H. M. Williams, is an individual trading as Williams Candy Co., with his principal office and place of business located at 2819 Monroe Road, Charlotte, N. C. Respondent is now and for more than 1 year last past has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused said products, when sold, to be transported from his place of business in the city of Charlotte, N. C., to purchasers thereof at their respective points of location in the various States of the United States other than the State of North Carolina. There is now and has been for more than 1 year last past a course of trade by respondent in said candy in commerce between and among various States of the United States. In the course and conduct of said business respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

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

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

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

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said candy, expose and sell the same to the purchasing public

in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his candy and the sale of said candy by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 21, 1940, issued and thereafter served its complaint in this proceeding upon the respondent, H. M. Williams, individually and trading as Williams Candy Co.,

charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of 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 attorneys for the Commission, and in opposition to the allegations of the complaint 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 complaint, the answer thereto, testimony and other evidence, report of the trial examiners upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, H. M. Williams, is an individual trading as Williams Candy Co., with his office and place of business located at 2819 Monroe Road, Charlotte, N. C. For some 5 years last past respondent has been engaged in the manufacture and in the sale and distribution of candy to distributors and retail dealers, and to members of the purchasing public who in turn resell such candy to other members of the public.

Respondent causes, and has caused, his products, when sold, to be transported from his place of business in the State of North Carolina to the purchasers thereof located in various other States of the United States. Respondent has for some 5 years last past maintained a course of trade in his products in commerce among and between the various States of the United States.

PAR. 2. At all times mentioned herein respondent has been in active competition with other individuals, and with corporations and partnerships, engaged in the sale and distribution of candy in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his business as described above, respondent has sold to distributors and retail dealers, and to members of the purchasing public, for resale, certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when such candy was sold and dis-

tributed to the consumers thereof. One of these assortments, which was typical of the plan or method used by respondent, was as follows:

This assortment was composed of a number of bars of candy of uniform size and shape, together with a device commonly called a push-card. The push-card had 4 partially perforated disks, on the face of each of which was printed the word "Push". Concealed within the disks were numbers ranging from "1" to "5", inclusive. When the disks were pushed or separated from the card a number was disclosed. Purchasers pushing the disks paid for a bar of candy the number of cents corresponding to the figure concealed within the disk pushed. For example, a purchaser who pushed a disk disclosing the figure 2 paid 2 cents for a bar of candy, while a purchaser pushing a disk disclosing the number 5 paid 5 cents for a bar of candy. The numbers within the disks were effectively concealed from purchasers and prospective purchasers until the disk had been pushed or separated from the card. The prices paid for the bars of candy were thus determined wholly by lot or chance.

PAR. 4. Retail dealers and other purchasers of respondent's candy exposed and sold such candy to the purchasing public in accordance with the sales plan described above. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of his products in accordance with such sales plan. The use by the respondent of such sales plan or method in the sale of his candy and the sale of such candy through the use and with the aid of such sales plan, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 5. The sale of candy to the purchasing public by the plan or method herein described involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail price thereof. Many of respondent's competitors are and have been unwilling to adopt and use this 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 were attracted by the sales plan or method employed by respondent in the sale and distribution of his candy, and by the element of chance involved therein, and were thereby induced to buy and sell respondent's candy in preference to the products of respondent's competitors who do not use such methods. The use by respondent of the sales plan or method herein described had the tendency and capacity to, and did, divert substantial trade to the respondent from his competitors who do not use such methods.

CONCLUSION

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

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 the allegations of the complaint and in opposition thereto, report of the trial examiners upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested), and the Commission having 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, H. M. Williams, individually and trading as Williams Candy Co., or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Supplying to or placing in the hands of others push- or pull-cards, punchboards or other lottery devices, either with candy or other merchandise or separately, with said push- or pull-cards, punchboards or other lottery devices are to be used, or may be used, in selling or distributing respondent's 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 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

LOGAN-CACHE KNITTING MILLS

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

Docket 4075. Complaint, Mar. 30, 1940—Decision, Mar. 9, 1942

Where a corporation chartered in 1926 and engaged in the manufacture and interstate sale and distribution, through house-to-house solicitors, and through its retail stores, of women's knitted suits, dresses and sweaters, made to the individual's measurements, and in thus selling such products through its subsidiary organized in 1934 as Logan Sportswear Co., under registered trade name "Loganknit," to which it had given wide publicity and had featured in periodical and radio advertising campaigns at large expense, so that said trade name "Loganknit" had become widely known, particularly in the western States, and its knitted garments become known to the public as "Loganknits"; and

Thereafter a competitive corporation, organized in 1937, and engaged as Logan-Cache Knitting Mills, in soliciting orders through house-to-house canvassers for women's knitted garments made to the individual's measure—

- (a) Passed off as "Loganknits" its said products, and represented that it was the manufacturer of "Loganknits," through direct representations of its salesmen and through artifice and use of half-truths and other misleading and deceptive statements and expressions;

With result that in numerous instances members of the public purchased its said products in the mistaken belief that they were purchasing the genuine products thus named; and

- (b) Used such expressions in advertising and on its letterheads and otherwise as "Established in 1890," "The Old Reliable Since 1890," and "Pioneer Knitters of the West";

The facts being that its founder in 1935 purchased the assets of the Cache Knitting Works—which, while organized in 1890, with place of business in Logan, Utah, had discontinued operations in 1932—and operated such business under said name until its dissolution in 1937, when it organized the corporation here in question, which facts did not support its contention that it was the successor of said Cache Knitting Works and thus entitled to represent itself as having been established in 1890 or being the pioneer knitters of the West; individual acquiring aforesaid assets was in no way connected with said older concern which, as aforesaid, had not been engaged in active business for three or four years, so that in no event could corporation here involved be considered as having started business earlier than 1935; a number of knitting mills were established and in active operation in Logan prior to that time; and it was not, as claimed, an old, established concern such as preferred by a substantial portion of the purchasing public as, in its belief, offering purchasers certain definite advantages;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the identity of its products and its

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business status, and to cause purchase of its products by reason thereof, whereby substantial trade was diverted to it from its competitors:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. W. M. King and *Mr. D. E. Hoopengarner* for the Commission.

Mr. Melvin C. Harris and *Mr. Ernest T. Young*, of Logan, Utah, 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 Logan-Cache Knitting Mills, 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, Logan-Cache Knitting Mills, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located in the city of Logan, State of Utah.

PAR. 2. Respondent corporation was chartered in December 1937, and is the successor of Logan Woolen Mills, a Utah corporation chartered in April 1937. Respondent is now, and has been, since the date of its original incorporation, engaged in the manufacture, sale and distribution of ladies' knitted suits, dresses, and sweaters, and in a lesser degree, in the sale and distribution of underwear, woolen shirts, cassocks, blankets, and various other kinds of merchandise. Little advertising is done by respondent, sales being solicited and made by salesmen who canvass from house to house, taking orders for merchandise direct from the purchasing public. For the most part, respondent's garments are made for particular persons from individual measurements made by its salesmen. Orders taken by such salesmen are mailed to respondent and such garments are made in its factory in Logan, Utah, and when completed are sent direct by parcel post to the purchasers located in various States of the United States. There is now, and has been at all times since the organization of respondent, a constant current of trade and commerce in said merchandise between and among various States of the United States.

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PAR. 3. In the course and conduct of its said business respondent is now, and has been since its organization, in substantial competition with other corporations, firms and individuals, likewise engaged in the business of selling and distributing similar merchandise, in commerce, among and between the various States of the United States.

PAR. 4. Among the competitors of respondent referred to in paragraph 3 hereof is the Logan Knitting Mills & Garment Co., a Utah corporation, which has its factory and principal place of business also located at Logan, Utah. Said corporation was originally chartered under the name of Logan Garment Co. in 1926; in July 1937, the corporate name was changed to Logan Garment and Knitting Co. and subsequently in the same year was again changed to Logan Knitting Mills & Garment Co., and since that time has been operating under said last mentioned name. Said company sells, generally speaking, the same kinds of merchandise as respondent and in the same manner; that is, through salesmen who canvass from house to house, taking orders upon individual measurements of purchasers. In addition, this company sells its merchandise through a chain of retail stores owned and operated by it, some of which are located in States other than the State of Utah. By means of extensive radio advertising, by insertion of large quantities of advertising matter in newspapers and periodicals, by the distribution of numerous pamphlets and booklets, and by the general excellency of its merchandise, said company has built up and maintained a wide reputation and extensive good will among purchasers of its merchandise and said merchandise has become and is well and favorably known to the public and particularly to the public in the western States of the United States.

PAR. 5. Logan Sportswear Co. is a corporation organized in 1934 under the laws of the State of Utah and is a subsidiary of the said Logan Knitting Mills & Garment Co. On December 31, 1935, the said Logan Sportswear Co. registered with the United States Patent Office the trade-mark "Loganknits" and thereupon granted to the Logan Knitting Mills & Garment Co. the exclusive right to use said trade-mark in labeling, advertising, and identifying its merchandise sold in its direct mail order business throughout the United States. Since the time of acquiring the right to use the said trade-mark, the said Logan Knitting Mills & Garment Co. has featured said trade-mark "Loganknits" in all forms of its advertising and said trade-mark has become definitely associated in the minds of the general public with said company's merchandise.

PAR. 6. The name adopted and used by the respondent, Logan-Cache Knitting Mills, so closely imitates and simulates the name of

its competitor, Logan Knitting Mills & Garment Co., and its trade-mark "Loganknits," that its use confuses, misleads, and deceives purchasers and prospective purchasers of knitted wear into the erroneous and mistaken belief that the respondent is the manufacturer of the well and favorably known line of knitted wear sold under the trade-mark "Loganknits" and that by purchasing the knitted wear of respondent they are securing the product of Logan Knitting Mills & Garment Co. Respondent has furthered the mistaken and erroneous belief, created by the use of its corporate name, by inserting in advertising media circulated among prospective purchasers of knitted wear statements containing the words "Logan Knits" in simulation of said trade-mark. Typical of these advertisements is the following:

THE LOGAN CACHE KNITTING MILLS

Manufacturers Logan Knits

Established in 1890

Logan, Utah.

Manufacturers of exclusive styles in ladies suits and dresses. Write for illustrations and sample materials.

Good Territory Open for Aggressive Men with Sales Ability.

Respondent has also furthered this erroneous and mistaken belief through representations made by its salesmen when calling on prospective purchasers of its products. Respondent's salesmen, both by direct and positive statements and by artifice and concealment of the truth, represent that they are selling products manufactured by Logan Knitting Mills & Garment Co., and that the products offered for sale by them are genuine "Loganknit" manufactured by said company.

PAR. 7. There exists in the minds of a substantial portion of the purchasing public a well-founded belief that certain definite advantages are afforded a purchaser of products and merchandise from an old established concern. With the intent and purpose of capitalizing and taking advantage of this belief, respondent by means of letters written to customers and prospective customers, by the use of letter-heads, newspaper advertisements, and by labels attached to certain of its merchandise falsely represents that it was established in 1890; that it is "The Old Reliable"; "The Old Reliable Since 1890" and that it is "Pioneer Knitters of the West." In truth and in fact, all of said statements and representations are false and untrue, since the business of respondent was not started until 1936 and the company not incorporated until 1937, and many other knitting mills were organized and engaged in business prior to the time respondent was organized and so engaged.

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PAR. 8. The acts and practices of the respondent in adopting and using the name "Logan-Cache Knitting Mills" and in making and using the statements and representations in connection with the sale and distribution of its products in said commerce as aforesaid have the tendency and capacity to and do cause many members of the public to purchase its said products under the mistaken and erroneous belief that respondent's said products are the well and favorably known products of Logan Knitting Mills & Garment Co., and under the mistaken and erroneous belief that they are dealing with a well-known and long-established firm, whereby trade in said commerce is unfairly diverted to the respondent from its competitors who do not engage in such acts and practices in connection with the sale and distribution of their respective products in said commerce.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 30, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Logan-Cache Knitting Mills, 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 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 attorneys for the Commission, and in opposition to the allegations of the complaint by the 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 the complaint, the answer thereto, testimony and other 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. The respondent, Logan-Cache Knitting Mills, is a corporation organized and doing business under the laws of the State of Utah, with its principal office and place of business located in the city of Logan, Utah.

PAR. 2. Respondent is engaged in the manufacture and in the sale and distribution of women's knitted wear, including suits, dresses, and sweaters. Sales are solicited by respondent through traveling salesmen who make house to house calls on prospective purchasers. Orders obtained by such salesmen are mailed to respondent, and the garments ordered are made to order by respondent from individual measurements taken by such salesmen. When the garments are completed by respondent they are shipped from respondent's factory in Logan, Utah, direct to the purchasers, many of whom are located in various States of the United States other than the State of Utah. Respondent maintains and has maintained a course of trade in its products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its business respondent is, and has been, in substantial competition with other corporations and with firms and individuals engaged in the sale and distribution of similar merchandise in commerce among and between the various States of the United States.

PAR. 4. Among such competitors of respondent is the Logan Knitting Mills & Garment Co., a Utah corporation, which has its factory and principal place of business located in Logan, Utah. This corporation was originally chartered under the name of Logan Garment Co. in 1926 and operated under this name until about July 7, 1937, when its name was changed to Logan Garment & Knitting Co. On August 9, 1937, the name of the corporation was again changed to Logan Knitting Mills & Garment Co., and the corporation has continued to operate under that name down to the present time. This company manufactures and sells the same type of merchandise as that sold by respondent and solicits its sales in the same manner, that is, through salesmen who canvass from house to house and take orders upon individual measurements of purchasers. In addition, however, to this sales method, the company also operates a number of retail stores, some of which are located in States other than the State of Utah.

The Logan Knitting Mills & Garment Co. has a subsidiary known as Logan Sportswear Co., a corporation organized in 1934 under the laws of the State of Utah. In December 1935 the Logan Sportswear Co.

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registered with the United States Patent Office the trade name "Loganknit" and granted to the parent corporation, Logan Knitting Mills & Garment Co., the right to use this trade name in labeling, advertising and identifying the knitted wear sold by the Logan Knitting Mills & Garment Co.

PAR. 5. In 1890 a corporation known as Cache Knitting Works was organized under the laws of the State of Utah, and this corporation had its place of business in Logan, Utah. The corporation continued in business until 1932, when it discontinued operations. In 1935 E. J. Wilson, the founder of the respondent corporation, purchased the assets of the Cache Knitting Works and operated the business under that name until 1937. Upon the dissolution of the corporation in 1937, Wilson organized a new corporation known as Logan Knitting Mills, the name of which was changed a few months later to Logan Woolen Mills, and shortly thereafter again changed to Logan-Cache Knitting Mills, under which name respondent is now operating.

PAR. 6. Upon acquiring the right to the use of the trade name "Loganknit," the Logan Knitting Mills & Garment Co. proceeded to give wide publicity to the name and to feature it in the company's advertising campaigns. Large sums have been expended by the company for advertising purposes, the advertising having been conducted by means of radio broadcasts and also by means of advertisements inserted in periodicals having wide circulation throughout the United States. As a result of these advertising campaigns the trade name "Loganknit" has become widely known throughout certain sections of the United States, particularly in the western States, and has become associated in the minds of many members of the public with the knitted garments manufactured and sold by the Logan Knitting Mills & Garment Co. These garments are known to such portion of the public as "Loganknits."

PAR. 7. In the course and conduct of its business and for the purpose of furthering the sale of its products, the respondent, Logan-Cache Knitting Mills, has engaged in the practice of passing off its own products as Loganknits and of representing itself as the manufacturer of Loganknits. In a substantial number of instances respondent's salesmen have made the direct representation to prospective purchasers that the products offered for sale by such salesmen were Loganknits. In many other instances, while there was no direct representation to this effect, the respondent's salesmen have by artifice and the use of half-truths and the other misleading and deceptive statements and expressions implied that respondent's products were Loganknits. The record discloses numerous instances in which members of the public have purchased respondent's products under the erroneous and mis-

taken belief, caused or contributed to by respondent through its salesmen, that they were purchasing Loganknits.

PAR. 8. The respondent has also engaged in the practice of misrepresenting its business status, such representations being made through the use by respondent in its advertising and on its letterheads and otherwise of the legends, "Established in 1890," "The Old Reliable Since 1890," and "Pioneer Knitters of the West." Respondent contends that it is the successor of the Cache Knitting Works and that as such successor it is entitled to make such representations. While as stated above, E. J. Wilson, the founder of the respondent corporation, did in 1935 acquire the assets of the Cache Knitting Works, the respondent is not in fact the successor of such concern in any such sense as would entitle it to represent itself as having been established in 1890 or as being the pioneer knitters of the West. At the time E. J. Wilson acquired the assets of the Cache Knitting Works he was not connected in any way with such concern but was connected with an entirely separate business organization. Moreover, at the time Wilson acquired the assets of the Cache Knitting Works this concern was not engaged in active business operations and had not been so engaged for some 3 or 4 years. In no event can the respondent corporation be considered as having started business earlier than 1935. There are a number of knitting mills in Logan, Utah, which were established and were in active operation prior to the time at which respondent was organized.

There exists in the minds of a substantial portion of the purchasing public a belief that certain definite advantages are to be obtained by purchasing merchandise from an old established concern, and there is a preference on the part of such members of the public for purchasing from such concerns.

PAR. 9. The Commission finds further that the acts and practices of the respondent as herein described have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the identity of respondent's products and with respect to respondent's business status, and the tendency and capacity to cause such portion of the public to purchase respondent's products as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been diverted to the respondent from its competitors.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice of the public and of respondent's competi-

tors, and constitute unfair methods 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 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 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Logan-Cache Knitting Mills, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondent's knitted wear in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Loganknit" or "Loganknits" to designate or describe respondent's products, or otherwise representing, directly or by implication, that respondent's products are "Loganknits" or are the products of the Logan Knitting Mills & Garment Co., of Logan, Utah;

2. Representing, directly or indirectly, that respondent is the same company as said Logan Knitting Mills & Garment Co., or that respondent is in any manner associated or connected with said company;

3. Representing, directly or indirectly, that respondent was established in 1890, or that it is the "Pioneer Knitters of the West," or that respondent was organized or established at any time prior to 1935.

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

HEROLIN COMPANY, INC., AND BERT H. RUBIN

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

Docket 4399. Complaint, Dec. 4, 1940—Decision, Mar. 9, 1942

Where a corporation and its president-treasurer, who administered its business policies, engaged in interstate sale and distribution of various cosmetics and medicinal preparations, toilet articles, and related items, and also of certain "curios" and "charms"; by advertisements in newspapers, circulars, leaflets, pamphlets, price lists, and other media—

(a) Represented that their "Original Herolin Beautifier Hair Dressing" (formerly designated as "Herolin Double-Strength Quinine Hair Grower" and otherwise), penetrated to the roots of the hair, revived hair cells and caused hair to grow, furnish necessary oils and nourishment to hair, and would prevent dandruff and other scalp ailments, and that their "Hair Gloss and Temple Oil" combined the properties of hair grower, brilliantine, and pressing oil, promoted the growth of hair around the temples and prevented burning hair or scalp with hot combs and irons;

The facts being former was nothing more than a perfumed emollient, the quinine and betanaphthol contents of which were too small to have any appreciable counterirritant or stimulant effect; and both preparations were without therapeutic value in treatment of hair or scalp and would not accomplish results claimed therefor;

(b) Represented that their "Tetter Salve" would clear up all common skin or scalp of all infections or diseases or stop falling hair;

The facts being that while preparation in question, in some cases, might be effective in clearing the skin of ringworm and some forms of itch, it would not cure eczema, tetter, or other skin ailments due to systemic factors, it had no therapeutic value in treatment of dandruff in excess of softening dandruff scales and facilitating removal thereof, and would not clear the scalp of all infections or diseases or stop falling hair;

(c) Represented that their "Nayko Tablets" would relieve menstrual pains, and cure and relieve headaches, backaches, nausea, neuralgia, colds, and similar ailments; and that their "Herolin Female Tonic" was a uterine and sedative preparation that would cure female irregularity, and relieve suppressed, painful, and excessive menstruation and other similar female disorders;

The facts being that former preparation had little, if any, therapeutic value and in dosage recommended was incapable of any sedative action; and, while the latter had the therapeutic properties of a laxative and an alcoholic depressant, neither would cure or relieve the conditions claimed;

(d) Represented that their "Moonbeam Pills" would relieve constipation, cure sick headaches and nausea, and were very beneficial in the treatment of disorders of the liver; and that their "Moonbeam Tonic" would cure constipation, headache, biliousness, dizziness, and back pains, and would correct and cure most systemic disorders of the stomach, kidneys, and liver;

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The facts being that while both preparations had laxative properties, they were not cures or remedies for constipation, and had no therapeutic value in the treatment of the other ailments mentioned, in excess of affording temporary relief when such conditions were due to constipation, and were without value in treatment of any disorders of the stomach, kidneys, or liver;

(e) Represented that their "Blood Tonic" built blood and was valuable in the treatment of boils, pimples, sores, skin infections, dizziness, and troubles arising from poor circulation and disordered conditions of the blood stream;

The facts being it would not accomplish such results, and was without therapeutic value in treatment or cure of conditions above set forth; and was not, as indicated by name, a blood tonic;

(f) Represented that their "Healing Oil," formerly designated "Rattlesnake Oil," possessed the power of penetrating through the skin to the muscles and joints and was a cure or remedy for rheumatism, lumbago, muscle cramps, sore muscles, sprains, stiff joints, neuralgia, and lame back, and constituted a competent and effective treatment therefor;

The facts being that said oil would not penetrate the skin, and was not a remedy or effective treatment for the ailments above set forth, and did not, as indicated by name, contain healing ingredients;

(g) Represented that their "Croup Salve" would cure head and chest colds, croup, inflammation, and congestion of the respiratory tract;

The facts being that while use of said preparation, a mildly semivolatile counter-irritant emollient, might afford soothing temporary relief for discomforts of congested respiratory passages, it did not constitute a cure for head or chest colds;

(h) Failed to reveal facts material in the light of representations in advertisements in question as respects said "Blood Tonic," in that indiscriminate use thereof, due to its bichloride of mercury content, might result in subacute or chronic mercury poisoning, while, by virtue of potassium iodide content, such indiscriminate use might induce toxic thyroid activity in goiter cases and reactivate latent tuberculosis;

(i) Failed to reveal, similarly, facts material in light of representations in question with respect to its said "Healing Oil," indiscriminate use of which strong irritant with its oil of mustard, oil of sassafras, ether and gasoline content, might cause severe dermatitis; and

(j) Falsely represented that their so-called curios and charms, consisting of such varied articles as incense, powders, oil, lodestones, horseshoes, and bones, and referred to as "Lucky Charm Mystic Curios," "Lucky Charm Mon Jon Incense," "Magnetic Lodestone in Love Oil," "Adam and Eve Roots in Love Oil," "High John the Conqueror Root in Love Oil," and "Lucky Charm Love Powder Sachet," had mystic and supernatural powers to drive off and guard against evil spirits, bring the wearer or user good luck, love, money, and success in love and marriage, and that they charmed and attracted others; and

Where said corporation and individual, engaged as aforesaid—

(k) Represented, through use on letterheads and advertising material of the words "manufacturer" and "manufacturing chemists," that they were manufacturers of their products, and chemists who operated the laboratory for origination of their formulae and compounding their cosmetics and medicinal preparations therefrom;

When in fact they were not chemists, did not own, control or operate any chemical laboratory, and made only about 5 percent of their products for export to foreign countries; and

(1) Represented to prospective agents and purchasers in their advertising material that they would supply other articles free with certain combinations of merchandise, when in fact the price of the so-called "free" merchandise was included in that paid for the combination offered;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public with respect to their products and prices thereof, and their business status, thereby causing it to purchase substantial quantities of their products as a result:

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

Mr. Harry 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 Herolin Co., Inc.—a corporation and Bert H. Rubin—individually and as president of Herolin 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, Herolin Co., Inc., is a corporation organized under the laws of the State of Georgia with its principal place of business located at 201 Mitchell Street, Southwest, Atlanta, Ga.

Respondent, Bert H. Rubin, is an individual and is president and treasurer of Herolin Co., Inc. This respondent, acting in his individual capacity, for his own interest and as president of Herolin Co., Inc., determines, directs and administers the business policies, and is personally and actively engaged in controlling, conducting, and operating the business activities of the aforesaid corporation at its place of business aforesaid as 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 various cosmetics and medicinal preparations, "Mystic Charms," toilet articles and related items, mainly under the trade name of "Herolin," and some items under the trade names "Duke" and "Lady Constance," in commerce

among and between the various States of the United States. Respondents cause said products when sold to be transported from their place of business in the State of Georgia to purchasers thereof located in various other States of the United States. At all times mentioned herein respondents have maintained a course of trade in said products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business respondents have disseminated, and are now disseminating and have caused, and are now causing, the dissemination of, false advertisements concerning their said 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, by advertisements in newspapers and by circulars, leaflets, enclosures, pamphlets, price lists, and other media, are the following:

1. That respondents' preparation "Original Herolin Beautifier Hair Dressing," formerly designated by respondent as "Herolin Quinine Hair Dressing" and sometimes designated by respondents as "Herolin Double-Strength Quinine Hair Grower," "Herolin, the Super-Fine Hair Dressing with Quinine Added" and "Herolin Hair Dressing With Real Quinine and Betanaphthol" is a preparation that penetrates to the roots of the hair; revives hair cells and causes hair to grow; that it furnishes necessary oils and nourishment to the hair and that it will prevent dandruff and other scalp ailments.

2. That respondents' preparation "Herolin Hair Gloss and Temple Oil," sometimes designated by respondents as "Herolin Hair Gloss and Temple Oil Brilliantine Temple Gloss Pressing Oil" is a preparation combining the properties of hair grower, brilliantine and pressing oil; that it promotes the growth of hair around the temples and prevents burning hair or scalp with hot combs and irons.

3. That respondents' preparation "Herolin Tetter Salve" is a preparation that will clear up all common skin or scalp diseases, and infections, such as tetter, itchy scalp, dandruff and falling hair.

4. That respondents' preparation "Herolin Nayko Tablets" is a preparation that will relieve women from the pains suffered during the menstruation period; it will cure and relieve headaches, backaches, nausea, neuralgia, colds, and similar ailments.

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5. That respondents' preparation "Herolin Female Tonic" is a uterine and sedative preparation that will cure chronic functional irregularity of the female reproductive organs; it will relieve suppressed, painful, and excessive menstruation and other similar female disorders.

6. That respondents' preparation "Herolin Moonbeam Pills" is a preparation that will relieve constipation, cure sick headaches, nausea, and is very beneficial in the treatment of disorders of the liver.

7. That respondents' preparation "Herolin Moonbeam Tonic" is a preparation that will cure constipation, headache, biliousness, dizziness and back pains; and that it will correct and cure most systemic disorders of the stomach, kidneys, and liver.

8. That respondents' preparation "Herolin Blood Tonic" is a preparation that builds blood and is valuable in the treatment of boils, pimples, sores, skin infections, dizziness, and troubles arising from poor circulation and disordered conditions of the blood stream.

9. That respondents' preparation "Herolin Healing Oil," formerly designated by respondents as "Rattlesnake Oil," is a preparation possessing the power of penetration through the skin to the muscles and joints and is a cure or remedy for rheumatism, lumbago, muscle cramps, sore muscles, sprains, stiff joints, neuralgia, and lame back, and constitutes a competent and effective external treatment therefor.

10. That respondents' preparation "Herolin Croup Salve" is a preparation that will cure head and chest colds, croup, inflammation, and congestion of the respiratory tract.

11. That respondents' items "Lucky Charm Mystic Curios," "Lucky Charm Moon Jon Incense," "Magnetic Lodestone in Love Oil," "Adam and Eve Roots in Love Oil," "High John the Conqueror Root in Love Oil," "Lucky Charm Love Powder Sachet," are items that have mystic and supernatural powers to drive off and guard against evil spirits; to bring to the wearer or user good luck, love, money, and success in marriage and in love; they will charm, attract, draw, and hold in love, romance, and marriage.

PAR. 4. The aforesaid representations and claims, as well as others of similar import which have not been specifically set out herein, are grossly exaggerated, misleading, and untrue, and constitute false advertising in that the respondents represent that some of their items possess supernatural powers and that other various preparations are cures or remedies for, or competent treatments of, various diseases and ailments for which said preparations have little or no therapeutic value.

In truth and in fact respondents' preparation "Original Herolin Beautifier Hair Dressing," formerly and sometimes designated as aforesaid, is nothing more than a perfumed emollient, the quinine and betanaphthol contents of which are so small that no appreciable local counterirritating or circulatory stimulation would result from its use.

This preparation, under whatever name it may be designated, has no therapeutic value in the treatment of the hair or scalp. It will

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not penetrate to the roots of the hair, revive hair cells, or cause hair to grow. It will not furnish necessary oils or nourishment to the hair. It has no value in the treatment or prevention of dandruff or other scalp ailments.

Respondents' "Herolin Hair Gloss and Temple Oil," sometimes otherwise designated by respondents as aforesaid, is nothing more than an oily emollient that has no therapeutic value in the treatment of either the hair or the scalp. It will not promote the growth of hair around the temples. It will not prevent hot combs or hot irons from burning the hair or scalp.

Respondents' preparation "Herolin Tetter Salve" is a combination of counterirritant, fungicidal, and emollient principles that may promote local healing and afford some temporary relief from the symptoms of itching associated with many skin disorders; it has no therapeutic value in the treatment of dandruff in excess of softening dandruff scales and facilitating the removal thereof. It may in some cases be effective in clearing the skin of ringworm and some forms of itch. It will not cure eczema, tetter, or other skin infections and ailments due to systemic factors. It will not clear the scalp of all infections or diseases or stop falling hair.

Respondents' preparation "Herolin Nayko Tablets" have little if any therapeutic value and in the dosage recommended is incapable of providing any sedative action. It will not stop the pains associated with menstruation. It will not cure or relieve headaches, backaches, nausea, neuralgia, or colds.

Respondents' preparation "Herolin Female Tonic" has the therapeutic properties of a laxative and an alcoholic depressant. It will not afford relief during the menstruation period from suppressed painful or excessive menstruation. This preparation will not cure or remove the cause of female disorders due to functional female trouble of the reproductive organ or have any therapeutic value in the treatment of such disorders.

Respondents' preparation "Herolin Moonbeam Pills" has laxative properties.

It is not a cure or remedy for constipation and is not a competent or effective treatment therefor in excess of furnishing temporary relief from such conditions. It has no therapeutic value in the treatment of disorders of the liver. It is not a cure or remedy for sick headaches or nausea, and does not constitute a competent or effective treatment therefor in excess of affording temporary relief when such conditions are due to constipation.

Respondents' preparation "Herolin Moonbeam Tonic" is a bitter saline laxative possessing little of any diuretic action. It is not a

cure or remedy for constipation and is not a competent or effective treatment therefor in excess of furnishing temporary relief from such conditions. It has no therapeutic value in the treatment of headaches, biliousness, dizziness, or back pains in excess of affording temporary relief when such conditions are due to constipation. Said preparation has no value in the treatment of any systemic disorder of the stomach, kidney, or liver.

Respondents' preparation "Herolin Blood Tonic" will not build blood. It has no therapeutic value in the treatment or cure of boils, pimples, sores, skin infection, dizziness or any other trouble arising from or occasioned by poor circulation or poor blood. The name is false and misleading as it will not supply any substance that will overcome blood deficiency. It is not a blood tonic.

Respondents' preparation "Herolin Healing Oil" is a volatile irritant capable of causing severe dermatitis. It will not penetrate the skin. It is not a cure or remedy for rheumatism, lumbago, muscle cramps, sore muscles, sprains, stiff joints, neuralgia or lame back, and does not constitute a competent or effective treatment therefor. The name is false and misleading as it contains no healing ingredients.

In truth and in fact respondents' preparation "Herolin Croup Salve" is a mildly semivolatile counterirritant emollient, the use of which may afford soothing temporary relief for discomforts of congested respiratory passages but does not constitute a cure or remedy for head or chest colds.

Respondents' items "Lucky Charm Mystic Curios," "Lucky Charm Mon Jon Incense," "Magnetic Lodestone In Love Oil," "Adam and Eve Roots In Love Oil," "High John the Conqueror Root In Love Oil," "Lucky Charm Love Powder Sachet," possess none of the supernatural or mystic powers claimed for them by respondents; they will not drive off or guard against evil spirits; they will not bring to the wearer or user good luck, love, money or success in marriage or love; they will not charm, attract, draw or hold in love, romance or marriage; they are valueless and possess none of the virtues indicated in respondent's advertisements.

PAR. 5. Respondents' items "Lucky Charm Mystic Curios," "Lucky Charm Mon Jon Incense," "Magnetic Lodestone in Love Oil," "Adam and Eve Roots In Love Oil," "High John the Conqueror Root in Love Oil," "Lucky Charm Love Powder Sachet," due to their names and because of the mystic and supernatural qualities attributed to them by respondents, have and make a definite appeal to that section of the buying public whose emotional nature is easily fired by superstition. Many types of individuals belong to this group of the buying public. Respondents' items find a ready customer among members of this

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group who are induced to purchase an item that is worthless. These items of respondents, because of the false and misleading statements made by respondents in reference to their qualities and powers, appeal to the ignorant and the superstitious and, because of this appeal, have a tendency to and they do, aid in the development of this type of character.

PAR. 6. In addition to the false and misleading statements hereinabove set forth, the respondents are also engaged in the dissemination of 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:

(a) That the use of respondent's preparation "Herolin Blood Tonic" under the conditions prescribed in said advertisements or under such conditions as are customary or usual may cause subacute or chronic mercury poisoning and that this preparation should not be used by persons having either active or quiescent tuberculosis or goiter.

(b) That the use of respondents' preparation "Herolin Healing Oil" under the conditions prescribed in said advertisements or under such conditions as are customary or usual may cause severe dermatitis and that said preparation is highly inflammable and should be kept away from heat or fire.

By reason of the existence of bichloride of mercury and potassium iodide in respondents' preparation "Herolin Blood Tonic," the use of the preparation would be definitely harmful in two ways:

(a) Although bichloride of mercury may be eliminated with relative rapidity there is a tendency towards excretory decline and the establishment of absorption depots in the system. Therefore, in the main, indiscriminate use of the preparation may result in subacute or chronic mercury poisoning.

(b) By reason of the potassium iodide content of the preparation, the use of it is harmful to users who have pulmonary tuberculosis, either active or quiescent. The indiscriminate use of this preparation may, therefore, result in inducing toxic thyroid activity or reactivate latent tuberculosis.

By reason of the presence of oil of mustard, oil of sassafras, ether and gasoline, in respondents' preparation "Herolin Healing Oil," this preparation is highly inflammable and may be explosive and it is also a strong irritant. The indiscriminate use of this preparation may cause severe dermatitis. The careless handling of the preparation around open flames, lights, or other hot objects may cause serious and irreparable injury to the user.

PAR. 7. In addition to the false and misleading statements hereinabove set forth, respondents by the use of the word "manufacturer" and the use of the phrase "creators of guaranteed beauty aids" on their letterheads and the use of the phrase "manufacturing chemists" on some of their printed matter, have represented and are now representing that they are:

(a) *Manufacturers*—owning, controlling or operating a plant or factory for the manufacture of their products;

(b) *Creators*—That by chemical research or otherwise they formulate new and not heretofore known beauty aids; and

(c) *Chemists*—owning, controlling or operating a chemical laboratory for the creation and the compounding of formulae from which their cosmetic and medical preparations are manufactured.

Respondents are not now and they never have been manufacturers, creators or chemists. They do not now own, control or operate, directly or indirectly, any plant or factory for the manufacture of these products, or any laboratory for, or employ any chemist for research work in, the creation or compounding of any formula or formulae for the manufacture of their cosmetic and medicinal preparations.

PAR. 8. Respondents in the course and conduct of their business and for the purpose of inducing the purchase of many of their products, have set forth in printed circulars and form letters distributed through the mails and by other media, various offers and combination offers under several designations, purporting to be introductory and get-acquainted offers to new agents and money savers to other purchasers, all offers purporting to carry free items of respondents' products and some in addition thereto carrying other free merchandise.

Respondents' so-called introductory and get-acquainted offers to new agents, however designated, are not and never have been restricted and limited to new purchasers. On the contrary, such offers have been and are now available to any and all purchasers.

The products and article of merchandise which the respondents represent are given free or without charge are not free in any instance. The prices of the so-called "free" goods, under whatever name designated, are included in the price of the other items of respondents' offer. The price paid by the purchaser is the regular price which would be paid for the combination offered, including the so-called "free" goods.

PAR. 9. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations and others of a

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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 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' 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 December 4, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Herolin Company, Inc., a corporation, and Bert H. Rubin, individually and as president of the corporate respondent, 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 the complaint and the filing of respondents' answer thereto, a hearing was held before a trial examiner of the Commission therefore duly designated by it, during the course of which testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission. Thereafter, during the course of the hearing, a stipulation was entered into between the attorney for the Commission and the attorney for the respondents, wherein it was stipulated and agreed that the allegations of fact contained in the complaint (with certain exceptions) were admitted by the respondents to be true, and that the Commission might proceed without further hearings or other procedure to make its findings as to such facts and its conclusion based thereon, and might proceed also to issue its order based upon such findings and conclusion. Subsequent to the execution of said stipulation and during the course of said hearing, testimony and other evidence in support of the matters excepted from said stipulation were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondents, and such testimony and other evidence, together with the testimony and other evidence originally introduced, and the stipulation entered into between the attorneys, 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, stipulation, 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 duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Herolin Co., Inc. is a corporation organized under the laws of the State of Georgia, with its principal place of business located at 201 Mitchell Street, SW, Atlanta, Ga.

Respondent, Bert H. Rubin, is an individual and is president and treasurer of respondent, Herolin Co., Inc. He directs and administers the business policies of the corporation and also participates personally and actively in the business activities of the corporation.

PAR. 2. The respondents are now, and for a number of years last past have been, engaged in the sale and distribution of various cosmetics and medicinal preparations, toilet articles and related items, and also certain articles designated by respondents as "curios" and "charms." Respondents' products are generally sold under the trade name "Herolin."

In the course and conduct of their business the respondents cause and have caused their products, when sold, to be transported from their place of business in the State of Georgia to purchasers thereof located in various other States of the United States. Respondents maintain, and have maintained, a course of trade in their products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business, the respondents have disseminated and have caused the dissemination of various advertisements concerning their 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 have caused the dissemination of advertisements concerning their products by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their products in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in such advertisements, disseminated and caused to be disseminated

as set forth above, by the United States mails, by advertisements in newspapers, and by circulars, leaflets, pamphlets, price lists, and other media, are the following:

1. That respondents' preparation "Original Herolin Beautifier Hair Dressing," formerly designated by respondents as "Herolin Double-Strength Quinine Hair Grower," "Heroline, the Super-Fine Hair Dressing with Quinine Added" and "Herolin Hair Dressing With Real Quinine and Betanaphthol," penetrates to the roots of the hair; revives hair cells and causes hair to grow; that it furnishes necessary oils and nourishment to the hair and that it will prevent dandruff and other scalp ailments.

2. That respondents' preparation "Herolin Hair Gloss and Temple Oil," sometimes designated by respondents as "Herolin Hair Gloss and Temple Oil Brilliantine Temple Gloss Pressing Oil," is a preparation combining the properties of hair grower, brilliantine and pressing oil; that it promotes the growth of hair around the temples and prevents burning hair or scalp with hot combs and irons.

3. That respondents' preparation "Herolin Tetter Salve" will clear up all common skin or scalp diseases and infections, such as tetter, dandruff, and falling hair.

4. That respondents' preparation "Herolin Nayko Tablets" will relieve women from the pains suffered during the menstruation period; that it will cure and relieve headaches, backaches, nausea, neuralgia, colds, and similar ailments.

5. That respondents' preparation "Herolin Female Tonic" is a uterine and sedative preparation that will cure chronic functional irregularity of the female reproductive organs; that it will relieve suppressed, painful, and excessive menstruation and other similar female disorders.

6. That respondents' preparation "Herolin Moonbeam Pills" will relieve constipation, cure sick headaches and nausea, and that it is very beneficial in the treatment of disorders of the liver.

7. That respondents' preparation "Herolin Moonbeam Tonic" will cure constipation, headache, biliousness, dizziness, and back pains; and that it will correct and cure most systemic disorders of the stomach, kidneys, and liver.

8. That respondent's preparation "Herolin Blood Tonic" builds blood and is valuable in the treatment of boils, pimples, sores, skin infections, dizziness, and troubles arising from poor circulation and disordered conditions of the blood stream.

9. That respondents' preparation "Herolin Healing Oil," formerly designated by respondents as "Rattlesnake Oil," possesses the power of penetration through the skin to the muscles and joints and is a cure or remedy for rheumatism, lumbago, muscle cramps, sore muscles, sprains, stiff joints, neuralgia, and lame back, and constitutes a competent and effective treatment therefor.

10. That respondents' preparation "Herolin Croup Salve" will cure head and chest colds, croup, inflammation and congestion of the respiratory tract.

PAR. 4. The Commission finds that respondents' preparation Original Herolin Beautifier Hair Dressing is in fact nothing more than a perfumed emollient, the quinine and betanaphthol contents of which are so small that no appreciable local counterirritating or circulatory stimulation would result from its use. This preparation has no therapeutic value in the treatment of the hair or scalp. It

will not penetrate to the roots of the hair, revive hair cells or cause hair to grow. It will not furnish necessary oils or nourishment to the hair. It has no value in the treatment or prevention of dandruff or other scalp ailments.

Respondents' Herolin Hair Gloss and Temple Oil is nothing more than an oily emollient that has no therapeutic value in the treatment of either the hair or the scalp. It will not promote the growth of hair around the temples. It will not prevent hot combs or hot irons from burning the hair or scalp.

Respondents' preparation Herolin Tetter Salve is a combination of counterirritant, fungicidal, and emollient principles that may promote local healing and afford some temporary relief from the symptoms of itching associated with many skin disorders. It has no therapeutic value in the treatment of dandruff in excess of softening dandruff scales and facilitating the removal thereof. It may in some cases be effective in clearing the skin of ringworm and some forms of itch. It will not cure eczema, tetter, or other skin infections and ailments due to systemic factors. It will not clear the scalp of all infections or diseases or stop falling hair.

Respondents' preparation Herolin Nayko Tablets has little if any therapeutic value and in the dosage recommended is incapable of providing any sedative action. It will not stop the pains associated with menstruation. It will not cure or relieve headaches, backaches, nausea, neuralgia, or colds.

Respondents' preparation Herolin Female Tonic has the therapeutic properties of a laxative and an alcoholic depressant. It will not afford relief during the menstruation period from suppressed, painful, or excessive menstruation. This preparation will not cure or remove the cause of female disorders due to functional female trouble of the reproductive organs, or have any therapeutic value in the treatment of such disorders.

Respondents' preparation Herolin Moonbeam Pills has laxative properties. It is not a cure or remedy for constipation and is not a competent or effective treatment therefor in excess of furnishing temporary relief from such condition. It has no therapeutic value in the treatment of disorders of the liver. It is not a cure or remedy for sick headaches or nausea, and does not constitute a competent or effective treatment therefor in excess of affording temporary relief when such conditions are due to constipation.

Respondents' preparation Herolin Moonbeam Tonic is a bitter saline laxative possessing little if any diuretic action. It is not a cure or remedy for constipation and is not a competent or effective treatment therefor in excess of furnishing temporary relief from

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such condition. It has no therapeutic value in the treatment of headaches, biliousness, dizziness, or back pains in excess of affording temporary relief when such conditions are due to constipation. The preparation has no value in the treatment of any systemic disorder of the stomach, kidneys, or liver.

Respondents' preparation Herolin Blood Tonic will not build blood. It has no therapeutic value in the treatment or cure of boils, pimples, sores, skin infection, dizziness or any other trouble arising from or occasioned by poor circulation or poor blood. The name is false and misleading as the preparation will not supply any substance that will overcome blood deficiency. It is not a blood tonic.

Respondents' preparation Herolin Healing Oil is a volatile irritant capable of causing severe dermatitis. It will not penetrate the skin. It is not a cure or remedy for rheumatism, lumbago, muscle cramps, sore muscles, sprains, stiff joints, neuralgia, or lame back, and does not constitute a competent or effective treatment therefor. The name is false and misleading as the preparation contains no healing ingredients.

Respondents' preparation Herolin Croup Salve is a mildly semi-volatile counterirritant emollient, the use of which may afford soothing temporary relief for discomforts of congested respiratory passages but does not constitute a cure or remedy for head or chest colds.

PAR. 5. The Commission therefore finds that the representations made by respondents with respect to their preparations as set forth above are false, misleading, and deceptive, and constitute false advertisements. The advertisements with respect to the preparations Herolin Blood Tonic and Herolin Healing Oil are false 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 these preparations under the conditions prescribed in the advertisements, or under such conditions as are customary or usual, may result in injury to the health of the user.

The preparation Herolin Blood Tonic contains bichloride of mercury. While ordinarily bichloride of mercury may be eliminated from the system with relative rapidity, there is a tendency toward excretory decline and the establishment of absorption depots in the system. The indiscriminate use of this preparation may therefore result in subacute or chronic mercury poisoning.

This preparation also contains potassium iodide, and the use of the preparation is harmful to users who have goiter or pulmonary tuberculosis in either the active or quiescent stage. The indiscriminate use of

the preparation in such cases may result in inducing toxic thyroid activity and may reactivate latent tuberculosis.

The preparation Herolin Healing Oil contains oil of mustard, oil of sassafras, ether and gasoline, and is a strong irritant. The indiscriminate use of the preparation may cause severe dermatitis.

PAR. 6. The articles designated by respondents as "curios" and "charms" consist of numerous and varied articles such as incense, powders, oil, lodestones, horseshoes, and bones. Among the names given by respondents to these articles are "Lucky Charm Mystic Curios," "Lucky Charm Mon Jon Incense," "Magnetic Lodestone In Love Oil," "Adam and Eve Roots in Love Oil," "High John the Conqueror Root in Love Oil," and "Lucky Charm Love Powder Sachet." In connection with the sale and distribution of these articles, respondents represent that they have mystic and supernatural powers to drive off and guard against evil spirits; to bring to the wearer or user good luck, love, money and success in love and marriage; and that they charm and attract others. These representations are false in their entirety. The articles in question are valueless and possess none of the powers or virtues indicated in respondents' advertisements.

PAR. 7. The respondents have also used on their letterheads and on certain of their advertising material the legends, "manufacturer" and "manufacturing chemists." Through the use of these legends the respondents have represented that they are the manufacturers of the products sold by them, and also that they are chemists and own, control or operate a chemical laboratory for the origination and compounding of formulas from which their cosmetics and medicinal preparations are manufactured.

Respondents are not in fact chemists and do not own, control, or operate any chemical laboratory. While respondents manufacture that portion of their products which is exported to foreign countries, this portion now constitutes only about 5 percent of respondents' total volume of business. The reason given by respondents for manufacturing the products which are exported is that by manufacturing such products they are able to effect certain savings in the way of federal excise taxes. The Commission finds that the use by respondents of the legend "chemists" in connection with their trade name is misleading and deceptive; and also that such use of the legend "manufacturer" is misleading and deceptive unless the application of such legend be restricted to that portion of respondents' products which is exported to foreign countries.

PAR. 8. In their advertising material the respondents also represent to prospective agents and other prospective purchasers that upon the

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purchase from respondents of certain combinations of merchandise, the respondents supply certain other articles of merchandise "free" to such agents and purchasers. In fact, the merchandise designated by respondents as "free" is in no sense free or without charge, but the price of such merchandise is included in the price paid by the purchaser for the combination offered.

PAR. 9. The Commission finds further that the use by respondents of the false and misleading representations and advertisements herein described has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the properties, value and safety of respondents' products, and with respect to respondents' business status and the prices of their products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' products 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 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 a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, stipulation entered into between the attorney for the Commission and the attorney for respondents, 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, Herolin Co., Inc., a corporation, and its officers, and Bert H. Rubin, individually and as president of said corporation, and respondents' 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 and cosmetic preparations hereinafter named, 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 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 respondents' preparation "Original Herolin Beautifier Hair Dressing" penetrates to the roots of the hair; that it revives hair cells or causes hair to grow; that it furnishes necessary oils or nourishment to the hair; or that it prevents dandruff or other scalp ailments.

(b) That respondents' preparation "Herolin Hair Gloss and Temple Oil" combines the properties of hair grower, brilliantine, and pressing oil; that it promotes the growth of hair; or that it prevents hot combs or irons from burning the hair or scalp.

(c) That respondents' preparation "Herolin Tetter Salve" will stop falling hair; that it possesses any therapeutic value in the treatment of dandruff in excess of softening dandruff scales and facilitating the removal thereof; or that it constitutes a cure for eczema, tetter or other skin infections or ailments due to systemic factors.

(d) That respondents' preparation "Herolin Nayko Tablets" will relieve women from the pains suffered during the menstruation period; or that it will cure or relieve headaches, backaches, nausea, neuralgia, or colds.

(e) That respondents' preparation "Herolin Female Tonic" will cure, or have any therapeutic value in the treatment of, chronic functional irregularity of the female reproductive organs; or that it will relieve suppressed, painful, or excessive menstruation.

(f) That respondents' preparation "Herolin Moonbeam Pills" possesses any therapeutic value in the treatment of disorders of the liver; or that it constitutes a cure for sick headaches or nausea, or possesses any therapeutic value in the treatment thereof in excess of affording temporary relief when such conditions are due to constipation.

(g) That respondents' preparation "Herolin Moonbeam Tonic" will correct or cure systemic disorders of the stomach, kidneys or liver; that it will cure constipation, or is a competent or effective treatment therefor in excess of furnishing temporary relief; or that it constitutes a cure for headaches, biliousness, dizziness, or back pains, or possesses any therapeutic value in the treatment thereof in excess of affording temporary relief when such conditions are due to constipation.

(h) That respondents' preparation "Herolin Croup Salve" constitutes a cure for head or chest colds, croup, or inflammation or

congestion of the respiratory tract, or that it possesses any therapeutic value in the treatment thereof in excess of affording soothing temporary relief from the discomforts associated with such conditions.

(i) That respondents' preparation "Herolin Blood Tonic" will build blood, or that it has any therapeutic value in the treatment of boils, pimples, sores, skin infections, dizziness, or any troubles arising from disordered conditions of the blood stream or from poor circulation; or which advertisement uses the words "Blood Tonic" as a part of the name of said preparation or otherwise represents that said preparation is a blood tonic; or which advertisement fails to reveal that the continued use of said preparation may result in chronic mercury poisoning, and that said preparation should not be used by those having tuberculosis or goiter; provided, however, that such advertisement need contain only the statement, "Caution: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a warning to the above effect.

(j) That respondents' preparation "Herolin Healing Oil" is capable of penetrating the skin to the muscles or joints; or that it constitutes a cure or remedy or a competent or effective treatment for rheumatism, lumbago, muscle cramps, sore muscles, sprains, stiff joints, neuralgia, or lame back; or which advertisement uses the word "Healing" as a part of the name of said preparation or otherwise represents that said preparation possesses healing properties; or which advertisement fails to contain a warning against the repeated application of said preparation to the same place; provided, however, that such advertisement need contain only the statement, "Caution: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a warning to the above effect;

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement with respect to said preparations Herolin Blood Tonic and Herolin Healing Oil fails to comply with the affirmative requirements set forth in subparagraphs (i) and (j) above;

It is further ordered, That the respondents and their officers, agents, representatives 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 respondents' so-called "curios" and "charms," including incense, powders, oils, lodestones, horseshoes, and bones, or any other articles, do forthwith cease and desist from;

Representing that said articles possess any mystic or supernatural powers; that they will bring to the wearer or user good luck, love, money, or success in love and marriage; or that they will charm or attract others;

It is further ordered, That the respondents and their officers, agents, representatives, 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 respondents' medicinal and cosmetic preparations and so-called curios and charms, do forthwith cease and desist from:

1. Using the word "Chemists," or any other word of similar import, to designate or describe respondents' business, or otherwise representing that respondents are chemists, or that they own, control or operate a chemical laboratory.

2. Using the unqualified word "manufacturer," or any other word of similar import, to designate or describe respondents' business, or otherwise representing that respondents manufacture all of the products sold by them; provided, however, that this provision shall not be construed to prohibit the use of such term when its application is expressly restricted to that portion of respondents' products which is exported to foreign countries and which is in fact manufactured by respondents.

3. Using the word "free," or any other word of similar import, to designate or describe any articles of merchandise which are not in fact given free and without charge, or otherwise representing that any merchandise is given free or without charge when such is not the fact.

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

IN THE MATTER OF
INTERNATIONAL PARTS CORPORATION

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

Docket 4513. Complaint, May 29, 1941—Decision, Mar. 9, 1942

Where a corporation, engaged in competitive interstate sale and distribution of replacement automobile mufflers—

- (a) Represented, directly or by implication, that the occupant of an automobile equipped with a muffler, the seams of which were spot-welded, locked or crimped, was in danger of injury from carbon monoxide gas as a result of leakage of exhaust gas, and that such danger was avoided through the use of a muffler with continuous electric-welded seams, through such statements on cartons and tags attached to its said product (together with a depiction of a police officer) as "WARNING! To Protect Yourself Against Leaking Carbon Monoxide Gas Be Sure Your Muffler is Made With Continuous ELECTRIC-WELDED SEAMS Throughout * * * Not Locked, Crimped or Spot-Welded—Your Safeguard is An INTERNATIONAL";
- The facts being that in the customary operation of an automobile there is little or no danger of such poisoning as a result of such leakage, regardless of how its muffler seams are closed; and its said products in such respect had no practical advantage over other types, some of which in fact were equipped with small drainage holes; and
- (b) Represented that the finish on its mufflers afforded permanent protection against rust or corrosion, through use of statement "Finest Quality Metallic Finish Prevents Rust and Corrosion" in advertising circulars;

The facts being that while the finish used thereon, consisting of powdered metal suspended in a varnish-like binder, might prevent rust and corrosion for a limited time, it did not afford permanent protection, as implied;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public into the belief that there was substantial danger of injury from use of mufflers with locked, crimped or spot-welded seams, and that by use of muffler here in question such danger was removed; and that finish on said mufflers afforded protection against rust and corrosion; whereby such public was induced to purchase its products, and trade was diverted unfairly to it from competitors:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Donovan Divet 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 International Parts Corporation, a corporation, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, International Parts Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Illinois and having its office and principal place of business at 1814 South Michigan Avenue, Chicago, Ill.

PAR. 2. The respondent is now and for more than two years last past has been engaged in the sale and distribution of replacement mufflers for use on automobiles. 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 the city of Chicago, State of Illinois, to purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois and in the District of Columbia. Respondent maintains, and at all times mentioned herein, has maintained, a course of trade in its products in commerce among and between the various States of the United States and in the District of Columbia.

Various corporations, associations, partnerships and persons who do not engage in the methods used by the respondent, as hereinafter alleged, are engaged, and at all times herein mentioned, have been engaged, in offering for sale and selling both new and replacement mufflers, including locked-seam, crimped, and spot-welded mufflers, in commerce among and between the several States of the United States and in the District of Columbia. Respondent, in the course and conduct of its said business, is in substantial competition with such corporations, associations, partnerships and persons so engaged in offering for sale and selling said products in said commerce.

PAR. 3. In the course and conduct of its said business in said commerce, for the purpose of promoting the sale of its said products, the respondent for more than two years last past, has engaged in the practice of making false representations as to the merits of its said mufflers. Said false representations are, and have been, made by means of statements inserted in catalogs, pamphlets, circulars and other printed matter distributed among customers and prospective customers.

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PAR. 4. Among the false and misleading representations so made and distributed concerning respondent's said replacement mufflers are the following:

Electric welded seams throughout—not locked, crimped or spot-welded.

Double shell construction for added strength and quiet operation, exclusive feature.

Finest quality metallic finish prevents rust and corrosion.

They increase gas mileage.

Warning! To protect yourself against leaking carbon monoxide gas, be sure your muffler is made with continuous electric-welded seams throughout, not locked, crimped or spot-welded.

As a part of the advertising material used and distributed by respondent, the respondent displays a cross-section representation of one of its said mufflers, in which said representation a cross-section of a baffle plate in said muffler appears. Said representation of said baffle plate is connected by an arrow pointing to said baffle plate with the following words: "New engineering achievement."

By the use of said advertisements, representations, picturizations and others of similar import and meaning not herein specifically set forth and described, the respondent represents that its said mufflers are not spot-welded; that the baffle plates in its said mufflers are a new engineering achievement; that by reason of the double shell construction of respondent's said mufflers, said mufflers are more efficient than those offered for sale by other manufacturers and vendors of mufflers; that respondent's said mufflers are coated with a metallic finish which permanently prevents rust and corrosion; that the use of respondent's said mufflers gives increased gas mileage; that the occupant of a car equipped with a locked-seam, crimped or spot-welded muffler is in danger of injury from carbon monoxide gas through leakage of exhaust gases through the seam.

PAR. 5. The aforesaid representations are false and misleading. In truth and in fact respondent's mufflers are spot-welded; the baffle plates used in respondent's said mufflers are not a new engineering achievement; the double shelled feature of respondent's said mufflers is not exclusive but has long been used by other persons and companies selling mufflers and the said double shelled feature of respondent's said mufflers does not render them more efficient than mufflers ordinarily offered for sale by some of respondent's said competitors; the finish used on respondent's said mufflers will not prevent rust and corrosion permanently; the use of respondent's said mufflers does not result in increased gas mileage; the occupants of a car equipped with a locked-seam, crimped or spot-welded muffler are in no danger from carbon monoxide gas escaping from openings of the

seam in the muffler for such methods of manufacture produce seams equally as effective as the method used by respondent in preventing the escape of exhaust gases; furthermore, the escape of exhaust gases through a defect in the seam of the muffler on a car would not place the occupants thereof in danger of injury from carbon monoxide gas.

PAR. 6. The use by the respondent of the aforesaid representations has had and now has the tendency and capacity to mislead and has misled purchasers and prospective purchasers thereof, into the erroneous and mistaken belief that said representations are true, and to induce them to purchase substantial quantities of respondent's said products, and unfairly to divert trade in said commerce to respondent from its said competitors to the injury of said competitors and of the public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 29th day of May, 1941, issued and thereafter served its complaint in this proceeding upon the respondent, International Parts 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 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 Donovan Divet, attorney for the Commission, and in opposition to the allegations of the complaint by Jacobson, Merrick, Nierman & Silbert, attorneys 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 the complaint, the respondent's answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of the complaint and in opposition thereto, 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, International Parts Corporation, is a corporation organized and existing under the laws of the State of Illinois, with its office and principal place of business located at 1814 South Michigan Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for some four years last past has been, engaged in the sale and distribution of replacement mufflers for use on automobiles. Respondent sells its products to dealers and members of the purchasing public, and causes its products, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its 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 is now, and at all times mentioned herein has been, in substantial competition with other corporations and with individuals 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 both new and replacement mufflers for automobiles.

PAR. 4. The respondent, in the course and conduct of its business, and for the purpose of promoting the sale of its mufflers, has advertised such mufflers in various ways, including the use of labels which are affixed to the cartons in which the mufflers are displayed and offered for sale to the public, and tags which are attached to the mufflers themselves. On these labels and tags appears a picturization of a police officer, together with the following legend:

WARNING!
To Protect Yourself
Against
Leaking Carbon
Monoxide Gas
Be Sure
Your Muffler
Is Made With
Continuous
ELECTRIC-WELDED SEAMS
Throughout
* * * Not Locked, Crimped or Spot-Welded
Your
Safeguard INTERNATIONAL
is An

PAR. 5. Through the use of these representations and others of a similar nature the respondent represents, directly or by implication, that the occupant of an automobile equipped with a muffler the seams of which are spot-welded, locked or crimped, is in danger of injury from carbon monoxide gas as a result of the leakage of exhaust gases through the seams of the muffler, and that this danger is avoided through the use of a muffler which has continuous electric-welded seams.

PAR. 6. A continuous electric weld of metallic material is usually made by a continuous process, with no break either in the operation of the welding machine or in the weld itself. A spot weld, as the term implies, is one in which the material is welded in spots only. The mufflers sold by respondent are manufactured for it by another concern, and the welding of the seams of the mufflers is done through the use of a type of machine which is ordinarily used for spot-welding. Respondent insists, however, that although the welding may be done by means of a spot-welding machine, the result in the case of respondent's mufflers is a continuous electric weld of the entire seam because the spots where the material is welded are made to overlap and the result is a complete welding of the entire seam of the muffler.

Some of respondent's competitors sell mufflers which have continuous electric welded seams throughout. Others sell mufflers which are spot-welded, and still others sell mufflers which are not welded at all but on which the seams are fastened together by means of locking or crimping.

The evidence shows that in the customary and usual operation of an automobile there is little or no danger of carbon monoxide gas poisoning as a result of the leakage of exhaust gases from the muffler, and this is true irrespective of the manner in which the seams of the muffler are closed. No well-made muffler, whether its seams are closed by a continuous electric weld, by spot-welding, or by locking or crimping, is a source of danger insofar as the gases escaping therefrom are concerned. In this respect respondent's mufflers have no practical advantage over mufflers of other types. In fact, certain automobiles are equipped by the manufacturer with mufflers which have small drain holes in the bottom for the purpose of permitting water to drain out of the muffler, and it is not an infrequent occurrence for dealers and users of automobiles to punch small holes in their mufflers for draining purposes. The Commission therefore finds that the representations made by respondent as set forth above are misleading and deceptive, that they assume the presence of a danger which does not in fact exist.

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PAR. 7. In promoting the sale of its mufflers, the respondent also distributes among prospective purchasers certain advertising circulars which contain, among other representations with respect to its mufflers, the following:

Finest Quality Metallic Finish
Prevents Rust and Corrosion.

The finish used for respondent's mufflers is powdered metal which is held or suspended in some kind of binder similar to varnish. While the finish may serve to prevent rust and corrosion for a limited period of time, it does not afford permanent protection against such conditions. The Commission finds that as used by respondent the word "Prevents" implies permanency, and that respondent's representation is therefore misleading to the public.

PAR. 8. The Commission further finds that the use by the respondent of these misleading and deceptive representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that there is substantial danger of injury from the use of mufflers which have locked, crimped or spot-welded seams and that by using respondent's muffler such danger is removed; also that the finish on respondent's mufflers afford permanent protection against rust and corrosion. As a result of the erroneous and mistaken beliefs so engendered by respondent's representations, a substantial portion of the purchasing public has been induced to purchase respondent's products rather than the products of respondent's competitors, and in consequence substantial trade has been diverted to the respondent from its competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, 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 in opposition thereto, report of the trial examiner upon the evidence and the exceptions to

such report, briefs in support of the complaint and in opposition thereto, 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, International Parts Corporation, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondent's automobile mufflers in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the use on an automobile of a muffler having seams which are spot-welded, locked or crimped results in greater danger of carbon monoxide gas poisoning to the occupant of such automobile than does the use of a muffler having continuous electric-welded seams;

2. Representing, through the use of the unqualified word "Prevents," or any other unqualified word of similar import, or by any other means, that the finish on respondent's mufflers affords permanent protection against rust or corrosion.

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

Complaint

IN THE MATTER OF

PRATT FOOD COMPANY

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

Docket 4599. Complaint, Sept. 29, 1941—Decision, Mar. 9, 1942

Where a corporation, engaged in interstate sale and distribution of its "Pratt's Inhalant" and "Pratt's Poultry Regulator;" by advertisements in periodicals, circulars, leaflets, pamphlets, and other advertising literature—

- (a) Falsely represented that its said "Inhalant" poultry preparation constituted a competent and effective treatment for colds in fowls, helped prevent serious respiratory diseases in chickens, and was germ killing, antiseptic and healing, preventing serious outbreaks of diseases, and killing germs in the air; and
- (b) Falsely represented that the use of its said "Poultry Regulator" would start hens producing more eggs in fifteen days; when in fact it would not accomplish such result within said or any period of time;

With effect of misleading and deceiving a substantial portion of the purchasing public into mistaken belief that such statements were true, and of inducing it, because of such mistaken belief, to purchase substantial quantities 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.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act the Federal Trade Commission, having reason to believe that Pratt Food 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, Pratt Food Co., is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 124-130 Walnut Street, Philadelphia, Pa.

PAR. 2. Respondent is now and for more than one year last past has been engaged in the sale and distribution in commerce between and among the various States of the United States and in the District

of Columbia of certain medicinal preparations for chickens designated "Pratt's Inhalant" and "Pratt's Poultry Regulator." Respondent causes said preparations when sold to be transported from its aforesaid place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent at all times mentioned herein has maintained a course of trade in said preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, 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; 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 periodicals and circulars, and by leaflets, pamphlets and other advertising literature, all of general circulation, are the following:

New WATER SOLUBLE Inhalant Gives Better Control of Colds helps prevent serious respiratory diseases.

Its germ-killing, antiseptic and healing medicines are held in a base that mixes readily with these secretions.

Pratt's Inhalant not only causes infected material to be expelled by coughing and sneezing, but unlike ordinary poultry inhalants, Pratt's germ-killing, antiseptic and healing medicines are enabled to give a greater measure of relief.

Prevents serious disease outbreaks.

Kills Germs in Air.

* * * * *

We Guarantee this famous old reliable Pratt's Poultry Regulator to start more eggs coming in just 15 short days * * * or we refund your money.

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 its said poultry preparation "Pratt's Inhalant" constitutes a competent and effective treatment for colds in fowl and helps prevent serious respiratory diseases in chick-

ens; that it is germ killing, antiseptic and healing; that it prevents serious disease outbreaks in chickens; and that it will kill germs in the air. Respondent further represents that the use of its poultry preparation "Pratt's Poultry Regulator" will start hens producing more eggs within a short period of time.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact respondent's poultry preparation "Pratt's Inhalant" does not constitute a competent or effective treatment for colds in fowl, or does it help prevent serious respiratory diseases in chickens. It is not germ killing, nor is it antiseptic or healing. It will not prevent serious disease outbreaks in chickens nor will it kill germs in the air. The use of "Pratt's Poultry Regulator" will not start hens producing more eggs within a short period of time.

PAR. 6. The use by the respondent of the aforesaid false, deceptive and misleading statements, representations and advertisements disseminated as aforesaid with respect to its said preparations has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true and induces a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase substantial quantities of respondent's said products.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 29, 1941, issued and subsequently served its complaint in this proceeding upon respondent, Pratt Food Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. The 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 Pratt Food Co., is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 124-130 Walnut Street, Philadelphia, Pa.

PAR. 2. Respondent is now and for more than one year last past has been engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of certain medicinal preparations for chickens designated "Pratt's Inhalant" and "Pratt's Poultry Regulator." Respondent causes said preparations when sold to be transported from its aforesaid place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent at all times mentioned herein has maintained a course of trade in said preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its products, by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act and respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false 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 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 respondent's false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in periodicals and circulars, and by leaflets, pamphlets and other advertising literature, all of general circulation, are the following:

NEW WATER SOLUBLE Inhalant Gives Better Control of Colds helps prevent serious respiratory diseases.

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Its germ-killing, antiseptic and healing medicines are held in a base that mixes readily with these secretions.

Pratt's Inhalant not only causes infected material to be expelled by coughing and sneezing, but unlike ordinary poultry inhalants, Pratt's germ-killing, antiseptic and healing medicines are enabled to give a greater measure of relief.

Prevents serious disease outbreaks.

Kills Germs in Air.

* * * * *
 We Guarantee this famous old reliable Pratt's Poultry Regulator to start more eggs coming in just 15 short days * * * or we refund your money.

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 its poultry preparation "Pratt's Inhalant" constitutes a competent and effective treatment for colds in fowl and helps prevent serious respiratory diseases in chickens; that it is germ killing, antiseptic and healing; that it prevents serious disease outbreaks in chickens; and that it will kill germs in the air. Respondent further represents that the use of its poultry preparation "Pratt's Poultry Regulator" will start hens producing more eggs within 15 days.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact respondent's poultry preparation "Pratt's Inhalant" does not constitute a competent or effective treatment for colds in fowl, nor does it help prevent serious respiratory diseases in chickens. It is not a germicide, nor is it antiseptic or healing when used under the conditions prescribed in said advertisements. It will not prevent serious disease outbreaks in chickens. The use of "Pratt's Poultry Regulator" will not start all hens producing more eggs within 15 days or within any other period of time.

PAR. 6. The use by the respondent of the aforesaid false, deceptive and misleading statements, representations and advertisements disseminated as aforesaid with respect to its preparations 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 mistaken and erroneous belief, to purchase substantial quantities of respondent's products.

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Order

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 waives all intervening procedure and further hearing as to the said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Pratt Food Co., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its medicinal preparations for chickens designated "Pratt's Inhalant" and "Pratt's Poultry Regulator," 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 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:

(1) That respondent's preparation "Pratt's Inhalant" constitutes a competent or effective treatment for colds in fowl.

(2) That "Pratt's Inhalant" helps prevent serious respiratory diseases in chickens.

(3) That "Pratt's Inhalant" is a germicide or has antiseptic and healing properties.

(4) That "Pratt's Inhalant" prevents serious outbreaks of disease in chickens.

(5) That respondent's preparation "Pratt's Poultry Regulator" will start all hens producing more eggs within 15 days or within any other period of time.

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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 shall, within 60 days after service upon it of this order, 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

SAMUEL MARTIN, TRADING AS SAMUEL MARTIN, LTD.

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

Docket 4660. Complaint, Dec. 18, 1941—Decision, Mar. 9, 1942

Where an individual, engaged in Seattle, Wash., in the interstate sale and distribution to retailers and to the general public of men's clothing and blankets—

(a) Represented that he was an English limited company, with principal place of business in London, and that the men's clothing offered and sold by him was made by such company in its factory in Leeds and imported by it and stored in a warehouse at the address given, through use of words "London," "Limited," and "Ltd." in connection with his trade name, and through such statements in connection therewith as "English Top Coats and Lounge Suits, U. S. Warehouse—Seattle, Wash.," and "Pacific Coast Warehouse, 600 Textile Tower, Seattle, Washington, U. S. A.," along with picture of a three-story factory building bearing said trade name above the words "Factory in Leeds, England," on stationery and invoices, in newspaper advertisements, and on labels attached to his garments;

When in fact he was not an English concern, but an individual doing business under the trade name indicated, with no place of business in London; little, if any, of his clothing was made by him, or in Leeds or any place in England, for which there is a preference on the part of a substantial portion of the purchasing public; and the location given was not a warehouse, but his only place of business in which some of the garments sold by him were made;

(b) Represented that his blankets were products of the Hudson Bay Company through designating them as "Imported Hudson Bay Blankets" and "Hudson Bay Blanket" in newspaper advertisements and on invoices or otherwise;

When in fact the blankets in question were not those widely sold, favorably known and preferred blankets long sold and distributed by the Hudson Bay Co., advertised, labeled and designated "Hudson's Bay 'Point' Blanket," and known generally as "Hudson Bay Blanket";

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, and thereby causing it to purchase substantial quantities of his products, and with result also of placing in the hands of retailers means with which to mislead and deceive 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. James I. Rooney for the Commission.

Complaint

34 F. T. C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Samuel Martin, 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, Samuel Martin, is an individual trading and doing business under the name of Samuel Martin, Ltd., with his principal office and place of business located at 600 Textile Tower, Seattle, Wash.

PAR. 2. Said respondent is now and for more than one year last past has been engaged in the sale and distribution of men's clothing and blankets to retailers for resale and to the general public. Respondent causes said merchandise, when sold, to be shipped from his place of business in Seattle, Wash., to the purchasers thereof, who are located at points in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said merchandise in commerce 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 and for the purpose of inducing the purchase of his men's clothing, respondent has made many false, misleading, and deceptive statements and representations respecting his business status and the origin and place of manufacture of merchandise, on stationery and invoices and in advertisements inserted in newspapers, all of which are disseminated and circulated among the purchasing public and on labels attached to said garments. Among and typical of the representations so made by the respondent are the following:

SAMUEL MARTIN, LTD.
SAMUEL MARTIN, LIMITED
SAMUEL MARTIN, LTD., LONDON
SAMUEL MARTIN, LIMITED, LONDON
SAMUEL MARTIN, LTD.
LONDON
English Top Coats and Lounge Suits
U. S. Warehouse, Seattle, Wash.
SAMUEL MARTIN, LTD.
LONDON
Seattle, U.S.A.

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Complaint

SAMUEL MARTIN, LIMITED
LONDON
Pacific Coast Warehouse
600 Textile Tower
Seattle, Washington, U.S.A.

(Picture representation of a three-story factory building upon which appears the name SAMUEL MARTIN, LTD., and beneath which is the following: "FACTORY IN LEEDS, ENGLAND")

SAMUEL MARTIN, LTD.
LONDON
English Top Coats
1417 Fourth Avenue, Seattle, Wash.
Factory, Leeds, England

PAR. 4. Through the use of the aforesaid statements and representations and other similar thereto not specifically set out herein, respondent represents that Samuel Martin, Ltd., is an English limited company, with its principal place of business at London, England; that the men's clothing offered for sale and sold by him is made by said company in a factory owned or controlled by it in Leeds, England, and imported by it from England to the United States; that the location described at 600 Textile Tower, Seattle, Wash., is the warehouse in which the imported garments are stored when received from England.

PAR. 5. In truth and in fact, respondent is not an English limited company, or an English concern or enterprise, but he is an individual doing business under the trade name of Samuel Martin, Ltd., as described in paragraph 1 hereof. Respondent has no office or place of business in London, England. Little, if any, of the men's clothing offered for sale and sold by respondent is made by him or by a company or concern which he owns or controls or in a factory owned or controlled by him in Leeds, England, or at any other place or location in England or is imported from England. The location at 600 Textile Tower, Seattle, Wash., is not a warehouse for the storage of imported garments but is the respondent's only place of business and is the place where some of the garments sold by respondent are made.

There has long been and is now a preference on the part of a substantial portion of the purchasing public for men's clothing manufactured in England and there is a demand among the purchasing public for such clothing.

PAR. 6. In the course and conduct of his business, as aforesaid, and for the purpose of inducing the purchase of his blankets, respondent

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has falsely represented by various means, such as advertisements inserted in newspapers and on invoices sent to purchasers, that said blankets are products of the Hudson's Bay Co. by designating and describing said blankets as "Imported Hudson Bay Blankets" and "Hudson Bay Blanket."

Hudson Bay Company is a corporation organized under the laws of England in the year 1670, having its principal place of business at Vancouver, British Columbia. For a great number of years it has sold and distributed blankets throughout the United States under its corporate name, such blankets being advertised, labeled and designated "Hudson's Bay 'Point' Blanket" and generally known to the purchasing public as "Hudson Bay Blanket." These blankets have enjoyed a wide sale and are well known for their excellent qualities and there is a preference and demand among the purchasing public for such blankets.

The blankets designated as "Imported Hudson Bay Blankets" and "Hudson Bay Blanket" offered for sale and sold by respondent, while imported from England, are not the product of Hudson Bay Co. nor are they Hudson Bay Point Blankets or Hudson Bay Blankets.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's products.

The respondent's aforesaid practices with respect to his said products places in the hands of retailers of said products a means and instrumentality wherewith to mislead and deceive members of the purchasing public in the manner and form hereinabove set out and described.

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 December 18, 1941, issued and subsequently served its complaint in this proceeding upon respondent, Samuel Martin, individually and trading as Samuel Martin, Ltd., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On January 10, 1942, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Samuel Martin, is an individual trading and doing business under the name of Samuel Martin, Ltd., with his principal office and place of business located at 600 Textile Tower, Seattle, Wash.

PAR. 2. Said respondent is now and for more than one year last past has been engaged in the sale and distribution of men's clothing and blankets to retailers for resale and to the general public. Respondent causes said merchandise, when sold, to be shipped from his place of business in Seattle, Wash., to the purchasers thereof, who are located at points in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said merchandise in commerce 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 and for the purpose of inducing the purchase of his men's clothing, respondent has made many false, misleading and deceptive statements and representations respecting his business status and the origin and place of manufacture of said merchandise, on stationery and invoices and in advertisements inserted in newspapers, all of which are disseminated and circulated among the purchasing public and on labels at-

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tached to said garments. Among and typical of the representations so made by the respondent are the following:

SAMUEL MARTIN, LTD.
 SAMUEL MARTIN, LIMITED
 SAMUEL MARTIN, LTD., LONDON
 SAMUEL MARTIN, LIMITED, LONDON
 SAMUEL MARTIN, LTD.
 LONDON
 English Top Coats and Lounge Suits
 U. S. Warehouse, Seattle, Wash.
 SAMUEL MARTIN, LTD.
 LONDON
 Seattle, U. S. A.
 SAMUEL MARTIN, LIMITED
 LONDON
 Pacific Coast Warehouse
 600 Textile Tower
 Seattle, Washington, U. S. A.

(Picture representation of a three-story factory building upon which appears the name "SAMUEL MARTIN, LTD.," and beneath which is the following: "FACTORY IN LEEDS, ENGLAND")

SAMUEL MARTIN, LTD.
 LONDON
 English Top Coats
 1417 Fourth Avenue, Seattle, Wash.
 Factory, Leeds, England

PAR. 4. Through the use of the aforesaid statements and representations and others similiar thereto not specifically set out herein, respondent represents that Samuel Martin, Ltd., is an English limited company, with its principal place of business at London, England; that the men's clothing offered for sale and sold by him is made by said company in a factory owned or controlled by it in Leeds, England, and imported by it from England to the United States; that the location described as 600 Textile Tower, Seattle, Wash., is the warehouse in which the imported garments are stored when received from England.

PAR. 5. In truth and in fact, respondent is not an English limited company, or an English concern or enterprise, but he is an individual doing business under the trade name of Samuel Martin, Ltd., as described in paragraph 1 hereof. Respondent has no office or place of business in London, England. Little, if any, of the men's clothing offered for sale and sold by respondent is made by him or by a com-

pany or concern which he owns or controls or in a factory owned or controlled by him in Leeds, England, or at any other place or location in England or is imported from England. The location at 600 Textile Tower, Seattle, Wash., is not a warehouse for the storage of imported garments but is the respondent's only place of business and is the place where some of the garments sold by respondent are made.

There has long been and is now a preference on the part of a substantial portion of the purchasing public for men's clothing manufactured in England and there is a demand among the purchasing public for such clothing.

PAR. 6. In the course and conduct of his business, as aforesaid, and for the purpose of inducing the purchase of his blankets, respondent has falsely represented by various means, such as advertisements inserted in newspapers and on invoices sent to purchasers, that said blankets are products of the Hudson's Bay Co. by designating and describing said blankets as "Imported Hudson Bay Blankets" and "Hudson Bay Blanket."

Hudson Bay Co., is a corporation organized under the laws of England in the year 1670, having its principal place of business at Vancouver, British Columbia. For a great number of years it has sold and distributed blankets throughout the United States under its corporate name, such blankets being advertised, labeled and designated "Hudson's Bay 'Point' Blanket" and generally known to the purchasing public as "Hudson Bay Blanket." These blankets have enjoyed a wide sale and are well known for their excellent qualities and there is a preference and demand among the purchasing public for such blankets.

The blankets designated as "Imported Hudson Bay Blankets" and "Hudson Bay Blanket" offered for sale and sold by respondent, while imported from England, are not the product of Hudson Bay Co. nor are they Hudson Bay Point Blankets or Hudson Bay Blankets.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's products.

The respondent's aforesaid practices with respect to his said products place in the hands of retailers of said products a means and instrumen-

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tality wherewith to mislead and deceive members of the purchasing public in the manner and form hereinabove set out and described.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Samuel Martin, individually and trading as Samuel Martin, Ltd., 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 men's clothing and blankets in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "London" in conjunction with respondent's name or in conjunction with any trade name used by respondent, or in any manner representing that the respondent's enterprise is a British corporation or an English concern.
2. Representing in any manner, directly or indirectly, that any merchandise sold and distributed by respondent is manufactured in the British Isles, unless the merchandise so described has been manufactured in the British Isles.
3. Using the words "Factory, Leeds, England," or representing in any manner that the merchandise sold and distributed by respondent is manufactured by him, unless and until the respondent actually owns and operates or directly and absolutely controls the plant or factory in which such merchandise is manufactured.
4. Representing, directly or indirectly, that respondent operates a warehouse or other building in connection with his business for the storage of imported merchandise, unless such is the fact.

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5. Using the words "Imported Hudson Bay Blankets" and "Hudson Bay Blanket" or words of similar import in connection with and as descriptive of blankets sold and distributed by respondent unless such blankets are the same as those sold and distributed by Hudson Bay Company, incorporated under the laws of England in 1670 with its principal place of business located in Vancouver, British Columbia.

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

HERBERT NEBENZAHL AND IRVING NEBENZAHL,
TRADING AS OLANDO MANUFACTURERS

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

Docket 4664. Complaint, Jan. 7, 1942—Decision, Mar. 9, 1942

Where two individuals, engaged in the manufacture and interstate sale and distribution of sweaters—

- (a) Represented through use of trade name "Kamelo" that their said products were composed in whole or in part of camel hair, and displayed on labels attached to said products such name superimposed in large, dark-faced type upon a camel, with the words "cotton and rayon" in much smaller and less conspicuous type on the borderline of the label where they might be easily hidden or covered in attaching the same to the garment;

Notwithstanding the fact that the material from which garments in question were made was not composed, either in whole or in part, of camel hair—yarn and garments of which have long enjoyed a substantial public demand and preference for certain purposes—but were made of cotton fiber and of rayon which, when, as here, manufactured to simulate camel hair, has the appearance and feel thereof, and is readily accepted by the purchasing public as camel hair; and

- (b) Failed to disclose adequately the rayon content of their said sweaters, which, labeled as aforesaid, were so manufactured as to simulate camel hair and had the appearance and feel thereof;

With effect of misleading and deceiving a substantial portion of the purchasing public, and inducing it to purchase substantial quantities 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. James M. Hammond 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 Herbert Nebenzahl and Irving Nebenzahl, individually and trading as Olando Manufacturers, 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, Herbert Nebenzahl and Irving Nebenzahl, are individuals trading as Olando Manufacturers, with their

office and principal place of business located at 1318 Milwaukee Avenue, in the city of Chicago, State of Illinois.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the business of manufacturing, selling and distributing sweaters. Respondents cause their said products, when sold, to be transported from their place of business in the State of Illinois to the purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the purchase of their said products, the respondents have engaged, and now engage, in the practice of falsely representing the constituent fiber or material of which their products are made. Such false representations have been, and are, made by means of statements and legends appearing on labels attached to said products, and otherwise, and by failing to disclose the rayon content of such products.

Typical of the aforesaid practice is the use by respondents of the trade name "Kamelo" to describe and designate their said products, and the appearance on the labels attached to said products of the trade name "Kamelo" superimposed, in large, dark-faced type, upon an outline or vignette of a camel. Below this illustration, but in much smaller and less conspicuous type on the borderline of the label, where they may be easily hidden or covered in the process of attaching the label to the garment, appear the words "cotton and rayon."

By the use of said labels, words and representations, the respondents have represented, and still represent, that the material of which their said products are made is composed in whole or in part of camel hair.

PAR. 4. The aforesaid representations of the respondents are false and misleading. In truth and in fact, the material of which are made the garments to which said labels have been, and are, attached have not been, and are not, composed either in whole or in part of camel hair. Said garments have been, and are, made entirely of cotton fiber and rayon.

PAR. 5. Camel hair for a long period of time has been woven into yarn, and there exists a substantial public demand and preference, for some purposes, of yarn and garments made in whole or in part of camel hair.

Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate camel hair, and when so manufactured has the appearance and feel of camel hair and is practically indistinguishable by the purchasing public from camel hair. By reason of these qualities, rayon, when manufactured to simulate camel hair and not designated as rayon, is readily believed to be camel hair, and products made of rayon are accepted by the purchasing public as being made of camel hair even though such products are not designated by terms representing or implying that they are camel hair. The rayon contained in respondents' products labeled "Kamelo" as aforesaid is so manufactured as to simulate camel hair and has the appearance and feel of camel hair.

PAR. 6. The acts and practices of the respondents, as herein set forth, including the aforesaid method of representing and labeling their said products, and the failure to disclose adequately the rayon content thereof, have had, and now have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public with respect to the constituent fiber or material of which respondents' products are made, and have had, and now have, the tendency and capacity to, and do, induce such portion of the purchasing public to purchase substantial quantities of respondents' products.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 7, 1942, issued and thereafter served its complaint in this proceeding upon respondents Herbert Nebenzahl and Irving Nebenzahl, individually, and trading as Olando Manufacturers, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On January 26, 1942, 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, Herbert Nebenzahl and Irving Nebenzahl are individuals trading as Olando Manufacturers, with their office and principal place of business located at 1318 Milwaukee Avenue, in the city of Chicago, State of Illinois.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the business of manufacturing, selling and distributing sweaters. Respondents cause their said products, when sold, to be transported from their place of business in the State of Illinois to the purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the purchase of their said products, the respondents have engaged, and now engage, in the practice of falsely representing the constituent fiber or material of which their products are made. Such false representations have been, and are, made by means of statements and legends appearing on labels attached to said products, and otherwise, and by failing to disclose the rayon content of such products.

Typical of the aforesaid practice is the use by respondents of the trade name "Kamelo" to describe and designate their said products, and the appearance on the labels attached to said products of the trade name "Kamelo" superimposed in large, dark-faced type upon an outline or vignette of a camel. Below this illustration, but in much smaller and less conspicuous type on the borderline of the label, where they may be easily hidden or covered in the process of attaching the label to the garment, appear the words "cotton and rayon."

By the use of said labels, words and representations, the respondents have represented, and still represent, that the material of which their said products are made is composed in whole or in part of camel hair.

PAR. 4. The aforesaid representations of the respondents are false and misleading. In truth and in fact, the material from which the garments to which said labels have been and are attached has not

been, and is not, composed either in whole or in part of camel hair. Said garments have been, and are, made entirely of cotton fiber and rayon.

PAR. 5. Camel hair for a long period of time has been woven into yarn and there exists a substantial public demand and preference for some purposes of yarn and garments made in whole or in part of camel hair.

Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate camel hair and when so manufactured has the appearance and feel of camel hair and is practically indistinguishable by the purchasing public from camel hair. By reason of these qualities, rayon, when manufactured to simulate camel hair and not designated as rayon, is readily believed to be camel hair, and products made of rayon are accepted by the purchasing public as being made of camel hair even though such products are not designated by terms representing or implying that they are camel hair. The rayon contained in respondents' products labeled "Kamelo" as aforesaid is so manufactured as to simulate camel hair and has the appearance and feel of camel hair.

PAR. 6. The acts and practices of the respondents, as herein set forth, including the aforesaid method of representing and labeling their said products, and the failure to disclose adequately the rayon content thereof, have had and now have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public with respect to the constituent fiber or material of which respondents' products are made, and have had and now have the tendency and capacity to, and do, induce many members of the purchasing public 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 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 Herbert Nebenzahl and Irving Nebenzahl, individually and trading as Olando Manufacturers, their employees, agents and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of sweaters or other garments in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Using the word "Kamelo," or any word or words of similar import or meaning, alone or in conjunction or connection with the picture of a camel, to describe, designate, or in any way refer to, any product which is not composed entirely of camel hair; provided, however, that in the case of a product composed in part of camel hair and in part of other material, such as cotton or rayon, the words "Camel Hair" or "Kamelo," or other descriptive words, may be used to designate or describe the camel-hair content when immediately accompanied by a word or words in equal size and conspicuousness accurately describing or designating each constituent fiber or material thereof.

3. Advertising, offering for sale or selling fabrics, garments or other products composed in whole or in part of rayon, without 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 materials, such fibers or materials, including the rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

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

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IN THE MATTER OF

FELDER BROTHERS, INC., ABRAHAM FELDER, DAVID
FELDER AND LOUIS FELDERCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4555. Complaint, Aug. 5, 1941—Decision, Mar. 12, 1942*

Where a corporation, and its three officers, who formulated and directed its policies and practices, engaged in the manufacture and interstate sale and distribution of leather goods and novelties—

Sold and distributed, prior to April 2, 1940, certain of their billfolds labeled "Genuine Leather Composition Barkhyde," and prior to February 15, 1941, certain of such products which they represented as being made of genuine leather;

Notwithstanding the fact their said products were manufactured largely of a nonleather material with which some leather fibers had been combined, which did not have the qualities of leather, and was not made from the hide of an animal;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such labels and representations were true, and of inducing it to purchase substantial quantities of such billfolds 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.

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

Mr. Jesse D. Kash for the Commission.

Mr. Leon Savage, 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 Felder Bros., Inc., a corporation, Abraham Felder, David Felder, and Louis Felder, individually and officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Felder Bros., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 583-587 Broadway, New York, N. Y.

Respondent, Abraham Felder, is an individual and is president of the corporate respondent, with his office and principal place of business located at 583-587 Broadway, New York, N. Y.

Respondent, David Felder, is an individual and is secretary of the corporate respondent, with his office and principal place of business located at 583-587 Broadway, New York, N. Y.

Respondent, Louis Felder, is an individual and is vice president and treasurer of the corporate respondent, with his office and principal place of business located at 583-587 Broadway, New York, N. Y.

The individual respondents formulate, control, and direct the policies, practices and methods of the corporate respondent.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the business of manufacturing and selling leather and imitation leather goods and novelties, including billfolds. Respondents cause their said products, when sold by them, to be transported from their 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. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said leather and imitation leather goods and novelties, including billfolds, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said billfolds, the respondents have represented, and are now representing, that certain of the billfolds manufactured, sold and distributed by them are of genuine leather composition designated "Barkhyde," such representations having been made and now being made by means of labels, tags and typed impressions stamped or attached to said billfolds, as follows:

Label:

_____	Genuine Leather Composition	_____
_____	Barkhyde	_____
Fine,	Made Exclusively for	Quality
_____	Felder Bros., Inc.,	_____
	New York, N. Y.	

Impression on billfolds:

Genuine Leather

PAR. 4. Through the use of the statements and representations hereinabove set forth, respondents have represented and now represent, directly or by implication, that their said billfolds are manufactured wholly from genuine leather, the hide of an animal.

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PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact respondents' said billfolds labeled "Genuine Leather Composition Barkhyde" and bearing a legend stamped thereon reading, "Genuine Leather," are manufactured largely of a paper material with which some leather fibers have been combined. Said products are not made of genuine leather and do not have the qualities or characteristics of leather, and are not made from the hide of any animal.

PAR. 6. The use by the respondents of the foregoing false and misleading advertising, disseminated as aforesaid, has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false advertisements are true, and to induce the purchasing public to purchase substantial quantities of respondents' products as a result of such belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 5, 1941, issued and thereafter served its complaint in this proceeding upon the respondents Felder Brothers, Inc., a corporation, Abraham Felder, David Felder, and Louis Felder, individually and as officers of said corporation, Felder Bros., Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 15, 1941, the respondents filed an answer to this proceeding, and on December 15, 1941, at a hearing duly scheduled and held in Brooklyn, New York, it was agreed by and between counsel for the respondents 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 such 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 the filing of briefs. The respondents 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. The respondent, Felder Bros., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 583-587 Broadway, New York, N. Y.

Respondent, Abraham Felder, is an individual and is president of the corporate respondent, with his office and principal place of business located at 583-587 Broadway, New York, N. Y.

Respondent, David Felder, is an individual and is secretary of the corporate respondent, with his office and principal place of business located at 583-587 Broadway, New York, N. Y.

Respondent, Louis Felder, is an individual and is vice president and treasurer of the corporate respondent, with his office and principal place of business located at 583-587 Broadway, New York, N. Y.

The individual respondents formulate, control and direct the policies, practices and methods of the corporate respondent.

PAR. 2. Respondents are now, and for more than 2 years last past have been, engaged in the business of manufacturing, and selling leather and imitation leather goods and novelties, including billfolds. Respondents cause their said products when sold by them, to be transported from their 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. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said leather and imitation leather goods and novelties, including billfolds, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products the respondents, prior to April 2, 1940, sold and distributed certain billfolds bearing the label "Genuine Leather Composition Barkhyde." Prior to February 15, 1941, respondents manufactured, sold and distributed certain billfolds and represented them as being made of genuine leather.

PAR. 4. The Commission finds that through the use of the above described labels and representations, respondents have represented

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that their said billfolds are manufactured wholly from genuine leather, the hide of an animal. Such labels and representations were misleading and deceptive. In truth and in fact, none of said billfolds were manufactured wholly of genuine leather, but were manufactured largely of a nonleather material with which some leather fibers had been combined. Said nonleather material did not have the qualities and characteristics of leather and was not made from the hide of an animal.

PAR. 5. The use by the respondents of the foregoing misleading and deceptive labels 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 labels and representations were true and induced the purchasing public to purchase substantial quantities of respondents' products as a result of such belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, the answer of the respondents and a stipulation as to the facts entered into by counsel for respondents 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 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 the said respondents have violated the provisions of the said Federal Trade Commission Act.

It is ordered, That the respondents, Felder Bros., Inc., a corporation, its officers, representatives, agents and employees and Abraham Felder, David Felder, and Louis Felder, as individuals, and as officers of Felder Bros., Inc., their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of leather goods, imitation leather goods, novelties and other similar products in com-

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

1. Representing in any manner that products which are not manufactured wholly from the hide of an animal are leather or genuine leather.

2. Using the words or legends "Genuine Leather Composition Barkhyde," "Composition Barkhyde" or the words "Barkhyde" or "leather," or any other word or words whose spelling or written appearance simulates or suggests the word "hide" or "leather" as descriptive of the composition of any products which are not made of leather, the hide of an animal.

3. Using the words "leather" or "hide" or any simulation thereof, in connection with or as descriptive of their products, made partly of leather and partly of other materials which simulate leather, unless that part which is leather and that part which simulates leather are clearly distinguished.

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

IN THE MATTER OF

INGENUITIES CORPORATION OF AMERICA, GOLDBERG,
SQUIRE, LESSER AND COHEN, INC., AND T. P.
McCUTCHEON AND BROTHER, INC.

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

Docket 4593. Complaint, Sept. 22, 1941—Decision, Mar. 13, 1942

Where a corporation, engaged in licensing a patent for the construction of neckties and the use, in connection therewith, of the registered trade-mark "Silkallo" (also licensed in combinations such as, particularly, "Duo-Silk-Allo"), which (1) paid an agreed percentage of licensees' cost of advertising the ties and furnished them with counter-cards and labels, on all of which it caused to be displayed the phrase "Duo-Silk-Allo," (2) designated approved firms for embossing said trade-marks on ties, and (3) charged royalties for neckties made and embossed under its licenses—

- (a) Represented that the neckties involved were silk through use of phrase "Duo-Silk-Allo" and other similar phrases; and failed to make it a condition precedent to the issuance of a license that licensee agree to use such phrases only on and in connection with products made entirely from silk, and to determine whether ties were entirely thus made, and to revoke licenses of those selling, shipping, labeling, embossing or advertising such products not thus made; and

Where two of its corporate licensees—

- (b) Embossed, or caused to be embossed, with words "Duo-Silk-Allo" and sold, thus embossed, rayon and rayon-and-silk ties, with woolen interlining; and
(c) Failed, in case of one of said licensees, to disclose rayon content of its products, and in other so to do except through placing on ties involved detachable paper labels reading "Silk and Rayon," and to designate each constituent fiber of such ties in order of its predominance by weight, beginning with the largest single one;

The facts being that many of the ties concerned, including those sold by other of its said licensees and similarly advertised, labeled, embossed and sold, were, except for woolen interlining, composed entirely or predominantly of rayon which, when made to simulate silk, is practically indistinguishable by the purchasing public from the genuine and long preferred product of the cocoon of the silkworm; and

Where said corporate licensor—

- (d) Placed in the hands of its said two corporate licensees aforesaid methods of misrepresenting their respective ties, and participated in the misrepresentation thereof; and

Where said licensor and its licensees—

- (e) Failed to disclose and to cause to be disclosed the fact that said products were composed in whole or in part of rayon, except as above set forth;

With tendency and capacity to mislead purchasers and prospective purchasers of said neckties into the mistaken belief that such representations were true

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and that rayon used therein was silk, thereby inducing them to purchase substantial numbers of said ties:

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. Donovan Divet for the Commission.

Munn, Liddy, Glaccum & Kane and *Mr. Murray Rosof*, 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 Ingenuities Corporation of America, a corporation and Goldberg, Squire, Lesser & Cohen, Inc., a corporation and T. P. McCutcheon & Brother, Inc., a corporation, hereinafter referred to as the respondents, have violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Ingenuities Corporation of America, 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 745 Fifth Avenue, in the city of New York, State of New York.

Respondent, Goldberg, Squire, Lesser & Cohen, Inc., 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 3 East Twenty-eighth Street, in the city of New York, State of New York.

Respondent, T. P. McCutcheon & Brothers, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania and having its principal place of business at 1216 Arch Street, in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondent, Ingenuities Corporation of America, Inc., is now, and for more than 2 years last past has been, engaged in the business of licensing the use of a certain patent for the construction of neckties and the use in connection with neckties of a registered trade mark "Silkallo," the use of which the said respondent licenses in combination with other words and with hyphens particularly as "Duo-Silk-Allo." The said respondent issues said licenses to manufacturers of neckties located in various States of the United States and in accordance with the provisions of the agreements under which

said licenses are issued and in the course and conduct of its said business pays an agreed percentage of the cost of the advertising of said neckties by the individual licensees. In the course and conduct of its said business said respondent also furnishes said licensees with counter cards advertising neckties manufactured and labeled in accordance with said licenses, and also supplies them in some cases with labels to be used on said neckties, and also designates embossing firms which emboss the said trade mark on the said neckties upon which neckties respondent receives royalties as hereinafter alleged. Respondent controls the activities of said designated embossing firms to such an extent that such embossing firms refuse to emboss neckties except under conditions not objected to by said respondent. The embossing on said neckties, the said labels, the said advertisements and the said counter cards all display the phrase "Duo-Silk-Allo." In accordance with the provisions of said licensing agreements and in the course and conduct of its said business, said respondent charges and receives a certain royalty for the neckties manufactured and embossed under said licenses.

The said neckties after being embossed by one of the said designated embossing firms as heretofore alleged, are returned to the licensees from the places of business of said embossing firms to said licensees located in States other than those in which said embossing firms are located; said counter cards and the said labels supplied by said respondent are shipped by said respondent from its principal place of business in the State of New York to said licensees in States other than New York and are by said licensees shipped from their respective places of business to persons and firms located in States other than the State in which said licensees are respectively located and from which they make said shipments; the said advertisements paid for in part by said respondent as heretofore alleged are published in newspapers and magazines which are distributed in the various States of the United States; the said neckties after being embossed by one of said designated embossing firms and returned to said licensees as aforesaid are transported with the embossing from the respective places of business of said licensees to purchasers located in States other than those from which shipment was made.

PAR. 3. In the course and conduct of its said business and for the purpose of promoting the sale of its said licenses and of the neckties manufactured under said licenses, the said respondent, Ingenuities Corporation of America, in connection with its respective licensees has engaged in the practice of falsely representing the constituent fabric or material of certain of the neckties manufactured by its said licensees by means of false representations appearing in said labels,

countercards, embossed neckties and advertisements in newspapers and magazines and by failing to disclose and to require the disclosure of the rayon content of said neckties and has placed in the hands of other persons and companies a means of so misrepresenting said products.

PAR. 4. Among the said neckties manufactured by the licensees of said respondent, Ingenuities Corporation of America. and shipped, embossed, labeled, and advertised as heretofore alleged, are many which contain no silk, but which are made entirely of rayon with woolen interlining and others which are made partly of silk and partly of rayon with a woolen interlining. In the advertising, labeling and embossing of said neckties, respondent, Ingenuities Corporation of America, has used and has permitted its licensees to use the phrase "Duo-Silk-Allo," or other phrases of similar import or meaning and has failed to make it a condition precedent to the issuance of a license to use the phrase "Duo-Silk-Allo," or other phrases of similar import or meaning, that said licensees agree to use such phrases only on and in connection with neckties made entirely from silk, and has failed to determine whether said neckties are made entirely of silk and has failed to revoke licenses when the neckties so sold, shipped, labeled, embossed, or advertised as aforesaid were not made entirely of silk. By using and by permitting the use of the phrase "Duo-Silk-Allo" and other phrases of similar import or meaning not herein specifically set forth, the respondent has made and caused to be made the representation that said neckties are composed entirely of silk and has placed in the hands of its licensees a means of making said representation.

Among the said licensees of respondent, Ingenuities Corporation of America, are the respondents Goldberg, Squire, Lesser & Cohen, Inc., a corporation and T. P. McCutcheon & Brother, Inc., a corporation, each of which said respondents under a license to use said patent, has manufactured or caused to be manufactured certain neckties composed in some cases of rayon with a woolen interlining and in other cases of rayon and silk with a woolen interlining, which neckties each of said respondents has embossed or caused to be embossed with the words "Duo-Silk-Allo" under a license from said respondent, Ingenuities Corporation of America, and which neckties so embossed said respondent licensees have sold in "commerce" as commerce is defined in the Federal Trade Commission Act. The respondent, T. P. McCutcheon & Brother, Inc., in selling its said neckties as aforesaid has entirely failed to disclose the rayon content thereof; the respondent Goldberg, Squire, Lesser & Cohen, Inc., has failed to disclose the rayon content of its said neckties except by placing thereon

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a detachable paper label reading "Silk and Rayon," and has failed to designate each constituent fiber of said neckties in the order of its predominance by weight beginning with the largest single constituent. The respondent, Ingenuities Corporation of America, has received a royalty on each of the neckties so manufactured, embossed and sold by the two other respondents and in the ways and by the methods heretofore alleged has placed in the hands of each of said two respondent licensees a method of misrepresenting their respective neckties and has participated in the misrepresentation thereof.

PAR. 5. The said representations of the respondents as heretofore alleged are false and misleading. In truth and in fact many of the neckties sold by each of said respondent licensees, as well as many of the neckties of other licensees of respondent licensor similarly advertised, labeled, embossed and sold in "commerce" as commerce is defined in the Federal Trade Commission Act, are composed of rayon with a woolen interlining, or of rayon and silk with a woolen interlining and with the rayon predominating.

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 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. 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 the aforesaid neckties labeled "Duo-Silk-Allo" is manufactured so as to simulate silk and has the appearance and feel of silk. In the sale and in the offering for sale of said neckties the respondents have failed to disclose and have failed to cause to be disclosed by labels or in any other manner except as heretofore alleged the fact that said neckties were composed in whole or in part of rayon.

PAR. 7. The use by the respondents of the aforesaid methods and representations and the failure to disclose and to cause to be disclosed the rayon content of said neckties has had and has the tendency and capacity to mislead purchasers and prospective purchasers of said neckties into the erroneous and mistaken belief that such repre-

sentations are true and that the rayon fabric and fiber used in the makeup of said neckties is silk and to induce them to purchase substantial numbers of said neckties.

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 September 22, 1941, issued, and on September 23, 1941, served its complaint in this proceeding upon respondents Ingenuities Corporation of America, a corporation, Goldberg, Squire, Lesser & Cohen, Inc., a corporation, and T. P. McCutcheon & Brother, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondents' answers, the Commission by orders entered herein granted respondents' motions for permission to withdraw said answers and to substitute therefor answers admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts, which substitute answers were duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and substitute answers, and the Commission having duly considered the matter, and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Ingenuities Corporation of America, 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 745 Fifth Avenue, in the city of New York, State of New York.

Respondent, Goldberg, Squire, Lesser & Cohen, Inc., 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 3 East Twenty-eighth Street, in the city of New York, State of New York.

Respondent, T. P. McCutcheon & Brother, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of

Pennsylvania and having its principal place of business at 1216 Arch Street, in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondent, Ingenuities Corporation of America, Inc., is now, and for more than 2 years last past has been, engaged in the business of licensing the use of a certain patent for the construction of neckties and the use in connection with neckties of a registered trademark "Silkallo," the use of which the said respondent licenses in combination with other words and with hyphens particularly as "Duo-Silk-Allo." The said respondent issues said licenses to manufacturers of neckties located in various States of the United States and in accordance with the provisions of the agreements under which said licenses are issued and in the course and conduct of its said business pays an agreed percentage of the cost of the advertising of said neckties by the individual licensees. In the course and conduct of its said business, said respondent also furnishes said licensees with counter-cards advertising neckties manufactured and labeled in accordance with said licenses, and also supplies them, in some cases, with labels to be used on said neckties, and also designates embossing firms which emboss the said trade-mark on the said neckties upon which neckties respondent receives royalties as hereinafter found. Respondent controls the activities of said designated embossing firms to such an extent that such embossing firms refuse to emboss neckties except under conditions not objected to by said respondent. The embossing on said neckties, the said labels, the said advertisements and the said counter-cards all display the phrase "Duo-Silk-Allo." In accordance with the provisions of said licensing agreements, and in the course and conduct of its said business, said respondent charges and receives a certain royalty for the neckties manufactured and embossed under said licenses.

The said neckties after being embossed by one of the said designated embossing firms, as heretofore found, are returned to the licensees from the places of business of said embossing firms to said licensees located in States other than those in which said embossing firms are located; said counter-cards and the said labels supplied by said respondent are shipped by said respondent from its principal place of business in the State of New York to said licensees in States other than New York and are by said licensees shipped from their respective places of business to persons and firms located in States other than the State in which said licensees are respectively located, and from which they make said shipments; the said advertisements paid for in part by said respondent as heretofore found are distributed in the various States of the United States; the said neckties after being embossed by one of said designated embossing firms and returned to said licensees as aforesaid are trans-

ported with the embossing from the respective places of business of said licensees to purchasers located in States other than those from which shipment was made.

PAR. 3. In the course and conduct of its said business, and for the purpose of promoting the sale of its said licenses and of the neckties manufactured under said licenses, the said respondent, Ingenuities Corporation of America, in connection with its respective licensees has engaged in the practice of falsely representing the constituent fabric or material of certain of the neckties manufactured by its said licensees by means of false representations appearing in said labels, counter cards, embossed neckties and advertisements in newspapers and magazines and by failing to disclose and to require the disclosure of the rayon content of said neckties and has placed in the hands of other persons and companies a means of so misrepresenting said products.

PAR. 4. Among the said neckties manufactured by the licensees of said respondent, Ingenuities Corporation of America, and shipped, embossed, labeled and advertised as heretofore found, are many which contain no silk, but which are made entirely of rayon with woolen interlining and others which are made partly of silk and partly of rayon with a woolen interlining. In the advertising, labeling and embossing of said neckties, respondent, Ingenuities Corporation of America, has used and has permitted its licensees to use the phrase "Duo-Silk-Allo," or other phrases of similar import or meaning and has failed to make it a condition precedent to the issuance of a license to use the phrase "Duo-Silk-Allo," or other phrases of similar import or meaning, that said licensees agree to use such phrases only on and in connection with neckties made entirely from silk, and has failed to determine whether said neckties are made entirely of silk and has failed to revoke licenses when the neckties so sold, shipped, labeled, embossed, or advertised as aforesaid were not made entirely of silk. By using and by permitting the use of the phrase "Duo-Silk-Allo" and other phrases of similar import or meaning not herein specifically set forth, the respondent has made and caused to be made the representation that said neckties are composed entirely of silk and has placed in the hands of its licensees a means of making said representation.

Among the said licensees of respondent, Ingenuities Corporation of America, are the respondents, Goldberg, Squire, Lesser & Cohen, Inc., a corporation, and T. P. McCutcheon & Brother, Inc., a corporation, each of which said respondents, under a license to use said patent, has manufactured or caused to be manufactured certain neck-

ties composed in some cases of rayon with a woolen interlining and in other cases of rayon with silk with a woolen interlining, which neckties each of said respondents has embossed or caused to be embossed with the words "Duo-Silk-Allo" under a license from said respondent, Ingenuities Corporation of America, and which neckties so embossed said respondent licensees have sold in commerce, as "commerce" is defined in the Federal Trade Commission Act. The respondent T. P. McCutcheon & Brother, Inc., in selling its said neckties as aforesaid has entirely failed to disclose the rayon content thereof; the respondent, Goldberg, Squire, Lesser & Cohen, Inc., has failed to disclose the rayon content of its said neckties except by placing thereon a detachable paper label reading "Silk and Rayon," and has failed to designate each constituent fiber of said neckties in the order of its predominance by weight beginning with the largest single constituent. The respondent, Ingenuities Corporation of America, has received a royalty on each of the neckties so manufactured, embossed and sold by the two other respondents, and in the ways and by the methods heretofore found, has placed in the hands of each of said two respondent licensees a method of misrepresenting their respective neckties and has participated in the misrepresentation thereof.

PAR. 5. The said representations of the respondents as heretofore found are false and misleading. In truth and in fact many of the neckties sold by each of said respondent licensees, as well as many of the neckties of other licensees of respondent licensor similarly advertised, labeled, embossed and sold in commerce, as "commerce" is defined in the Federal Trade Commission Act, are composed of rayon with a woolen interlining, or of rayon and silk with a woolen interlining, and with the rayon predominating.

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 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. 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

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the cocoon of the silkworm. All of the rayon contained in the aforesaid neckties labeled "Duo-Silk-Allo" is manufactured so as to simulate silk and has the appearance and feel of silk. In the sale and in the offering for sale of said neckties, the respondents have failed to disclose and have failed to cause to be disclosed by labels or in any other manner except as heretofore found the fact that said neckties were composed in whole or in part of rayon.

PAR. 7. The use by the respondents of the aforesaid methods and representations and the failure to disclose and to cause to be disclosed the rayon content of said neckties has had, and has, the tendency and capacity to mislead purchasers and prospective purchasers of said neckties into the erroneous and mistaken belief that such representations are true and that the rayon fabric and fiber used in the makeup of said neckties is silk and to induce them to purchase substantial numbers of said neckties.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of the respondents, in which answers 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 conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Ingenuities Corporation of America, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the use of or the licensing of the use of the trade mark "Silkallo" or the use of any other word or words of similar import or meaning indicative of silk for use in designating neckties, fabrics or any other similar products offered for sale, sold or distributed in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using or authorizing the use of the unqualified term "silk" or any other term or terms of similar import or meaning indicative of

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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 terms may be used as descriptive of the silk content if there are used in immediate connection or conjunction therewith in letters of at least equal size and conspicuousness words truthfully describing and designating each constituent fiber thereof.

2. Using or authorizing the use of the term "Duo-Silk-Allo" or any other term of similar import or meaning 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.

It is further ordered, That the respondents, Goldberg, Squire, Lesser & Cohen, Inc., a corporation, and T. P. McCutcheon & Brother, 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 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 there are used in immediate connection and conjunction therewith in letters of at least equal size and conspicuousness words truthfully describing and designating each constituent fiber thereof.

2. Using the term "Duo-Silk-Allo," 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 equal size and conspicuousness by words truthfully describing and designating each constituent fiber and material thereof; and such disclosure of the fiber content of such

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fabrics or products shall be made by accurately designating and naming each constituent fiber thereof in the order of its predominance by weight, beginning with the largest single constituent.

It is further ordered, That the respondents shall within 60 days after 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
CORN PRODUCTS REFINING CO. AND CORN PRODUCTS
SALES CO., INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSECTIONS (a) AND (e) OF SEC. 2, AND OF SEC. 3 OF AN ACT OF CON-
GRESS APPROVED OCT. 15, 1914, AS AMENDED BY ACT OF JUNE 19, 1936

Docket 3633. Complaint, Mar. 25, 1939¹—Decision, Mar. 16, 1942

Where a corporation which (1) constituted a large and important processor and refiner of corn and manufacturer of products and byproducts of such processing and refining; (2) owned and operated corn grinding and refining plants in Illinois, Missouri, and New Jersey, with facilities for the production of many products and byproducts of corn, including all known corn starch products for both household and industrial use, and including starch, glucose or corn sirup, corn sugar, corn oil, glucose feed, corn oil cake, corn oil meal and other products, and selling, in addition, many branded products including its Kingsford and Duryea starches, Karo sirup, Mazola oil, Argo corn starch, Argo gloss starch, Kre-mel desserts, Linit, and Cerelose; (3) owned and operated can, carton and printing plants for the production of containers for many of the packaged products; and (4) distributed the products so manufactured to purchasers in New York and Illinois, and through its wholly owned subsidiary, to purchasers elsewhere; in competition with seven other concerns; manufacturers and distributors, together with its said subsidiary;

In selling their glucose or corn sirup, used principally in the manufacture of candy and the mixing of table sirup, to purchasers, of whom many were candy manufacturers, competitively engaged in the sale of candy to various customers, including wholesalers, chain stores and retailers—

- (a) Discriminated in price unlawfully through concurrently selling glucose of like grade and quality to different purchasers at differing delivered prices which were calculated upon the basis of the price in Chicago plus the railroad tariff rate from Chicago to the destination of the purchaser, irrespective of whether shipments were made from their Chicago plant or, as was their usual practice, from their Kansas City plant; and thereby, depending upon purchaser's location, included in or excluded from, particular delivered price, artificial, or actual freight, as case might be;
- (b) Discriminated in price unlawfully through concurrently selling glucose of like grade and quality to different purchasers at differing prices which were created through their practice of adding to the railroad tank car price additional sums, depending upon the type of container in which the glucose was delivered, ranging from \$1.08 over tank car prices for 5-gallon kegs to 2 cents on tank trucks in which delivery was made by customer's equipment and 10 cents where delivered by their own equipment; and
- (c) Discriminated in price through concurrently selling glucose of like grade and quality to different purchasers at differing prices through allowing some purchasers, under their order "booking" system, a period of days after a price increase had been announced within which to purchase glucose

¹ Amended.

at the price in effect before the announcement of the increase, in some cases making deliveries to those favored more than 30 days after date of the increase while requiring other customers to take delivery within the 30-day period or suffer cancellation of the undelivered portion of the order, and in others permitting favored customers who had no trackage or storage facilities for the acceptance of railroad tank car deliveries and purchased in tank wagon quantities, to purchase tank car lots at the price in effect before an advance, delivering such purchasers' order in tank wagon quantities over extended periods of time; and through modifications of said booking practices;

With the result that the higher prices paid by competitors of aforesaid favored customers for glucose—a major raw material particularly in low-priced candies sold at narrow margins of profit—resulted in higher material costs to them, so that, especially in the case of manufacturers of candies priced at but a few cents a pound and bearing no differing name or brand, in sales of which to large quantity purchasers a small fraction of a cent is determinative, the ability of those paying the higher prices to compete with those paying the lower prices was diminished;

In selling their gluten feed and meal byproduct (used principally for livestock feed) of which they produced 40 to 50 percent of all that used in the United States, selling and shipping more than 250,000 tons annually to 3,000 different purchasers in various States, in competition with other producers and also with other types of feed produced by distillers, cotton seed mills, wheat flour mills and soy bean crushers—

(d) Discriminated in price in favor of at least six dealers through allowing them discounts of 50 cents a ton or more from regular market prices, while selling said products without any such allowances or other compensation to their competitors;

In selling their corn starch (employed, in addition to its household uses, in various forms in the paper, laundry and cloth making industries), one of their principal products which they sold and distributed on a large scale throughout the United States—

(e) Discriminated in price through selling and delivering many millions of pounds to two concerns at prices which reflected a substantial discount or allowance from their regular prices while selling to competitors of said concerns at current market or list prices without any such discounts:

With the result that such unlawful discounts or allowances were sufficient to increase substantially said dealers' and said concerns' margins of profits over and above those otherwise obtainable and if reflected in resale prices, to enable favored dealers and concerns to attract business from their competitors, or to force latter to resell at substantially reduced profits, or refrain from reselling:

Held, That such discrimination in price resulted in substantial injury to competitors, obstructed and tended to suppress competition and to create a monopoly in said corporations in the processing and refining of corn and the sale of products and byproducts thereof, resulted in substantial injury to competition among purchasers through affording material and unjustified price advantages to preferred buyers, and violated subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act; and

Where said corporations, in sale of their powdered dextrose "Cerelese" to the baking, soft drink and canning industries and to candy manufacturers—

(f) Entered into an understanding with a certain candy manufacturer—which, for a period of years, had advertised its products as much as all other candy manufacturers in the United States combined and had as wide a distribution of its candy as any manufacturer in the United States—to induce it to use such dry dextrose in its candies and to advertise them as containing the same, pursuant to which, in consideration of the addition of the “dextrose message” to said candy company’s advertising, they appropriated large sums of money for expenditure by their advertising agency for advertising in newspapers, magazines and on the radio depicting the candy products of said company as being “Rich in dextrose” or “Enriched with dextrose”; while failing and declining to enter into any similar arrangements with other purchasers of dry dextrose, competitors of said candy company, which used the dextrose thus purchased from them in amounts which varied from a small percentage to as much as 90 percent of the weight of the candy, and which constituted a substantial and frequently a major portion of its candy products:

Held, That said acts of such corporations, in furnishing or contributing to the furnishing of advertising services and facilities to one of their customers in the resale of dextrose purchased from them and not to competing customers upon proportionally equal terms or upon any terms whatever, violated the provisions of subsection (e) of section 2 of the Clayton Act as amended; and

Where said corporations, in sale of their various starches and starch products—

(g) Entered into contracts with two large purchasers, who had theretofore been engaged in the grinding and refining of corn and manufacture of starch and starch products, under the terms of which 15-year contracts, subject to a 10-year extension, the buyers obligated themselves, directly or in effect, to purchase their entire requirements of various starches and starch products—such as thin boiling pearl, chlorinated and other special starches, ordinary thick boiling pearl, powdered corn starches, edible pearl and powdered corn starches—at prices which were below the cost at which they could have been made by such concerns; and required that said purchasers refrain from using or dealing in starches or starch products of any competitor;

With the result that such purchasers wholly ceased manufacture of starches and starch products from corn during period concerned, within which period one or more competitors of corporations here involved were ready, willing and able to supply some of said purchasers’ requirements, and with further result of substantially lessening competition between said corporations and their competitors and tending to create a monopoly in the former, in the sale and distribution of starches of the type manufactured by them for aforesaid purchaser:

Held, That said contracts providing that aforesaid concerns should purchase their requirements of starch and starch products from said corporations to the exclusion of latter’s competitors, and the acts and practices pursuant thereto, constituted a violation of section 3 of the Clayton Act as amended.

Before *Mr. Charles F. Diggs*, *Mr. John P. Bramhall* and *Mr. John L. Hornor*, trial examiners.

Mr. A. W. DeBirny, *Mr. Curtis C. Shears*, *Mr. D. E. Hoopingarner*, *Mr. Frank Hier*, and *Mr. P. R. Layton* for the Commission.

Mr. Frank H. Hall and *Lord, Day & Lord*, of New York City, for respondents.

AMENDED COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of section 2 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:

COUNT I

PARAGRAPH 1. Respondent, Corn Products Refining Co., is a corporation organized and existing under the laws of New Jersey with its principal office and place of business at 17 Battery Place in the city and State of New York. Respondent, Corn Products Sales Co., Inc., is a corporation organized under the laws of the State of New Jersey and has its principal office and place of business at 17 Battery Place, city and State of New York. Respondent, Corn Products Sales Co., Inc., is a wholly owned sales subsidiary of respondent Corn Products Refining Co., through which products manufactured by Corn Products Refining Co. are sold and distributed. Corn Products Refining Co. owns the entire capital stock of Corn Products Sales Co., Inc. and controls and directs Corn Products Sales Co., Inc.

PAR. 2. Respondent, Corn Products Refining Co., has an authorized capital stock of \$100,000,000. Corn Products Refining Co. owns and operates plants at Pekin and Argo, Ill.; North Kansas City, Mo.; and Edgewater, N. J. The Argo, Pekin, and North Kansas City plants have a corn grinding capacity in excess of 155,000 bushels per day, with complete facilities for the finished fabrication of all known corn starch products, both for household and industrial use, and including well equipped carton and can plants and printing establishments for use in producing the many packaged products of the company. The Edgewater plant has a reserve corn grinding capacity of 30,000 bushels daily. Respondents grind of corn approximates that of all of its competitors combined.

PAR. 3. For many years respondents have been and are now engaged in the business of manufacturing, selling and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) starch, both for food and other purposes; (2) glucose or corn sirup; and (3) corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by treating the starch with certain acids, the resulting solid product being sugar and the resulting sirup being glucose.

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Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of sirups.

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

The Corn Products Refining Co., in addition to bulk products, produces the following branded products:

Kingsford and Duryea Starches, Karo Syrup, Mazola Oil, Argo Corn Starch, Argo Gloss Starch, Kre-mel Dessert, Linit and Cerelose.

PAR. 4. For many years in the course and conduct of their business, the respondents have been and are now manufacturing the aforesaid commodities at the aforesaid plants and have sold and shipped and do now sell and ship such commodities in commerce between and among the various States of the United States from the States in which their factories are located across State lines to purchasers thereof located in States other than the States in which respondents' said plants are located in competition with other persons, firms and corporations engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936, and while engaged as aforesaid in commerce among the several States of the United States and the District of Columbia, the respondents have been and are now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption or resale within the several States of the United States and the District of Columbia in that the respondents have been and are now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondents to other purchasers generally competitively engaged with the first mentioned purchasers.

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

PAR. 7. The effect of said discriminations in price made by said respondents, as set forth in paragraph 5 herein, may be substantially to lessen competition between the buyers of said corn products from respondents receiving said lower discriminatory prices and other buyers from respondents competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a mon-

opoly in the lines of commerce in which buyers from respondents are engaged; and to injure, destroy, or prevent competition in the lines of commerce in which those who purchase from respondents are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices.

PAR. 8. The aforesaid acts of respondents constitute a violation of the provisions of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936, (U. S. C. title 15, sec. 13).

COUNT II

The Federal Trade Commission having reason to believe the party respondents named in the caption hereof, and heretofore more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13), hereby issues this its complaint against respondents and states its charges with respect thereto, as follows, to wit:

PARAGRAPH 1. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraphs 1 to 4, inclusive, of count I of this complaint to the same extent and as though the allegations of said paragraphs 1 and 4, inclusive, of said count I were set out in full herein, and said paragraphs 1 to 4, inclusive, of said count I are incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. Respondents have entered into advertising arrangements with certain of their purchasers, to wit, Curtiss Candy Co. of Chicago, Ill., and the Bachman Chocolate Manufacturing Co. of Mount Joy, Pa. of dextrose, as a result of which large sums of money have been spent by them since June 19, 1936, in cooperatively advertising with such purchasers the dextrose so purchased and the respondents have not accorded such services or facilities to other of their purchasers competitively engaged with the aforementioned purchasers on proportionally equal terms.

PAR. 3. Since June 19, 1936, in the course and conduct of their business described in paragraphs 1 to 4, inclusive, of count I hereof, respondents have discriminated and are discriminating in favor of certain purchasers against other purchasers of corn products bought for resale by contracting to furnish or furnishing, or by contributing to the furnishing of, services and facilities connected with the offering for sale, of such commodity so purchased upon terms not accorded all purchasers on proportionally equal terms.

PAR. 4. The aforesaid acts of respondents constitute a violation of section 2 (e) of the above mentioned act of Congress.

COUNT III

The Federal Trade Commission having reason to believe that the party respondents named in the caption hereof, and heretofore more particularly designated and described, 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 (the Clayton Act), hereby issues this its complaint against respondents and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraphs 1 to 4, inclusive, of count I of this complaint to the same extent and as though the allegations of said paragraphs 1 to 4, inclusive, of said count I were set out in full herein, and said paragraphs 1 to 4, inclusive, of said count I are incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. That the respondents, for several years last past, in the course of interstate commerce, have sold to and made contracts for sale of large quantities of corn starch with the Keever Starch Co. of Columbus, Ohio, and the Huron Milling Co. of Harbor Beach, Mich., for use, consumption and resale within the United States and the District of Columbia, and have fixed and are now fixing the price charged therefor on the condition, agreement and understanding that the purchasers thereof shall not use the goods, wares, merchandise, supplies or other commodities of a competitor or competitors of respondents, and that the effect of such sales and contracts of sale or conditions and agreements and understandings may be to substantially lessen competition between respondents and their competitors; and to tend to create a monopoly in respondents in the sale and distribution of corn starch in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The aforesaid acts of respondents constitute a violation of the provisions of section 3 of the hereinabove mentioned act of Congress.

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 (Clayton

Act), as amended by an act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission on October 21, 1938, issued and thereafter served its complaint in this proceeding upon respondents Corn Products Refining Co., a corporation, and Corn Products Sales Co., Inc., a corporation, charging them with violation of the provisions of subsection (a) of section 2 of the said Clayton Act, as amended. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before examiners of the Commission theretofore duly designated by it.

On March 25, 1939, the Commission issued and thereafter served upon said respondents an amended complaint charging violation of subsections (a) and (e) of section 2 and of section 3 of the aforesaid Clayton Act, as amended. After the filing of respondents' answer to the amended complaint, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced 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 complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and oral arguments by counsel; and the Commission, having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Corn Products Refining Co., is a corporation organized and existing under the laws of the State of New Jersey, having its principal office and place of business at 17 Battery Place, New York, N. Y. Respondent, Corn Products Sales Co., Inc., is a corporation organized and existing under the laws of the State of New Jersey, having its principal office and place of business at 17 Battery Place, New York, N. Y. Corn Products Sales Co., Inc., is a wholly owned subsidiary of Corn Products Refining Co. and is engaged in the sale and distribution of products manufactured by Corn Products Refining Co. The policies and operations of Corn Products Sales Co., Inc., are controlled and directed by Corn Products Refining Co.

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PAR. 2. Respondent Corn Products Refining Co. is a large and important processor and refiner of corn and manufacturer of products and byproducts of such processing and refining. It has an authorized capital stock of \$100,000,000 and owns and operates corn grinding and refining plants at Pekin and Argo, Ill.; North Kansas City, Mo.; and Edgewater, N. J. The Argo, Pekin, and North Kansas City plants have a corn grinding capacity in excess of 155,000 bushels per day, with facilities for the production of many products and byproducts of corn, including all known corn starch products for both household and industrial use. It owns and operates can, carton, and printing plants for the production of containers for many of its packaged products. It distributes the products so manufactured to purchasers located in the States of New York and Illinois, and its subsidiary, Corn Products Sales Co., Inc., sells and distributes the products of its parent company in the other States of the United States and in the District of Columbia.

In the course and conduct of the aforesaid business respondents for many years have been, and are now, engaged in the sale and distribution of their various products which, when sold, are transported in commerce from their plants through and into the various States of the United States and in the District of Columbia, and respondents have maintained, and now maintain, a course of trade in such various products in commerce in and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, respondents produce, sell, and distribute starch, glucose or corn syrup, corn sugar, corn oil, gluten feed, corn oil cake, corn oil meal, and other products. In addition to the products sold in bulk, respondents have many branded products distributed to the public, including Kingsford and Duryea starches, Karo syrup, Mazola oil, Argo corn starch, Argo gloss starch, Kre-mel desserts, Linit, and Cerelose.

Of the many products and byproducts of corn produced and sold by respondents, the ones of primary interest for the purposes of this proceeding are bulk glucose or corn syrup, corn starch and starch products derived therefrom, dextrose, and corn gluten feed and meal. Bulk glucose is a standard syrup used principally in the manufacture of candy and the mixing of table syrups. Corn starch, in addition to its well-known household uses, is extensively used in various forms in the paper, laundry, and cloth-making industries. Dextrose is a dry white sugar which is not as sweet as sugar produced from sugar cane or beets and is used principally in the candy, canning, and soft drink industries. Gluten meal is a byproduct of corn refining consisting of corn hulls, husks, gluten, and other residues

remaining after the starch and germ have been removed from corn, and when sweetened with molasses is known as gluten meal. Both gluten feed and meal are principally used for the feeding of livestock.

Respondents' competitors in the manufacture, sale, and distribution of corn products and byproducts, including the location of the plant of each, are: A. E. Staley Manufacturing Co., Decatur, Ill.; Clinton Company, Clinton, Iowa; Penick & Ford, Limited, Inc., Cedar Rapids, Iowa; American Maize-Products Co., Roby, Ind.; Union Starch & Refining Co., Granite City, Ill.; Anheuser-Busch, Inc., St. Louis, Mo.; and The Hubinger Co., Keokuk, Iowa. Each of these concerns has national distribution of its products.

PAR. 4. (a) Respondents began the distribution of glucose or corn syrup from their Argo plant, which is within the railroad switching district of Chicago, Ill., in 1910 and from their Kansas City plant in 1922. This product is sold by respondents largely to candy manufacturers in railroad tank car lots of approximately 95,000 pounds each, in tank wagon or truck lots of approximately 12,000 pounds each, and in drums, barrels, half barrels, 10-gallon kegs, and 5-gallon kegs. Respondents have concurrently sold glucose of like grade and quality to different purchasers at differing prices. Since June 19, 1936, and for many years prior thereto, respondents have sold bulk glucose to purchasers throughout the United States at delivered prices which were, and are, calculated upon the basis of the price in Chicago plus the railroad tariff rate from Chicago to the destination of the purchaser. Additional price differences among purchasers of glucose have been, and are, created by respondents through their practice of adding to the railroad tank car price additional sums, the amounts of such additions depending upon the type of container in which the glucose is delivered. Respondents have created other price differentials among purchasers through preferential application to some purchasers of their practice of allowing customers a period of days after a price increase has been announced within which such customers may purchase an amount of glucose at the price in effect before the announcement of the increase. This is known as the order "booking" system.

(b) Respondents have been, and are now, selling and shipping glucose or corn syrup, unmixed, of like grade and quality from their plants in Chicago, Ill., and Kansas City, Mo., to purchasers throughout the United States, some of which purchasers are located in the following cities: Chicago, Ill.; Kansas City, St. Joseph, and Springfield, Mo.; Fort Smith, Ark.; Hutchinson, Kans.; Lincoln, Nebr.; Sioux City, Iowa; Waco, Sherman, and San Antonio, Tex.; Denver, Colo.; and Salt Lake City, Utah. Sales to purchasers, including those in the

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cities named, are fulfilled by shipments of glucose from respondents' plant at Chicago, Ill., or from their plant at Kansas City, Mo., depending in each instance upon the judgment of and subject to the entire control of respondents. With the exception of a few sales, shipments to fulfill which were made from respondents' plant at Chicago, Ill., sales to purchasers located in all of the cities named above except Chicago (which cities are used for the purpose of illustrating respondents' selling and delivery practices) were fulfilled by shipments from respondents' plant at Kansas City, Mo.; a substantial number of the sales to purchasers in Chicago were fulfilled by deliveries from respondents' filling station in Chicago to which glucose had been shipped by respondents from their plants in Kansas City and Chicago; and a few such sales were fulfilled by shipments directly to customers in Chicago from respondents' plant in Kansas City. Many purchasers who bought glucose from respondents also purchased glucose from competitors of respondents. To illustrate the differing prices at which glucose was sold by respondents on particular dates, the following tabulation shows the prices per hundred pounds to purchasers in the cities named above for 43° Baumé glucose in tank car lots on the dates stated:

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill.....	\$2.94	\$3.04	\$2.29	\$2.09
Kansas City, Mo.....	3.32	3.40	2.69	2.49
St. Joseph, Mo.....	3.32	3.40	2.69	2.49
Springfield, Mo.....	3.32	3.40	2.69	2.49
Fort Smith, Ark.....	3.58	3.64	2.94	2.74
Hutchinson, Kans.....	3.53	3.60	2.90	2.70
Lincoln, Nebr.....	3.37	3.45	2.74	2.54
Sioux City, Iowa.....	3.32	3.40	2.69	2.49
Waco, Tex.....	3.77	3.82	3.14	2.94
Sherman, Tex.....	3.68	3.74	3.06	2.86
San Antonio, Tex.....	3.74	3.84	3.17	2.97
Denver, Colo.....	3.79	3.64	2.95	2.75
Salt Lake City, Utah.....	3.79	3.74	3.06	2.86

At all times between the dates set forth substantially the same differences in and relationships between and among said prices illustrated above existed as to purchasers so located, and these prices were charged and paid by such purchasers regardless of whether the glucose or corn syrup unmixed was shipped to such purchasers in the city named from respondents' plant at Chicago, Ill., or respondents' plant at Kansas City, Mo.

(c) The illustrative prices set forth above were determined by respondents by following their general practice of adding to the prices shown for Chicago on the dates set forth, respectively, the then effective railroad tariff rate from Chicago to destination without reference to whether the sale would be fulfilled by shipment from Kansas City or from Chicago. Such rates in cents per hundred

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pounds, together with similar rates from Kansas City to the same destinations, were as follows:

[Cents per hundred pounds]

	Aug. 1, 1936		Aug. 1, 1937		Aug. 1, 1938		Aug. 1, 1939	
	Chicago	Kansas City						
Chicago, Ill.....	0	38	0	36	0	40	0	40
Kansas City, Mo.....	38	0	36	0	40	0	40	0
St. Joseph, Mo.....	38	8	36	8	40	9	40	9
Springfield, Mo.....	38	35	36	33	40	36	40	36
Fort Smith, Ark.....	64	42	60	40	65	45	65	45
Hutchinson, Kans.....	59	35	56	33	61	36	61	36
Lincoln, Nebr.....	43	12	41	12	45	13	45	13
Sioux City, Iowa.....	38	23	36	22	40	24	40	24
Waco, Tex.....	83	62	78	58	85	63	85	63
Sherman, Tex.....	74	52	70	49	77	54	77	54
San Antonio, Tex.....	85	67	80	63	88	69	88	69
Denver, Colo.....	85	68	60	51	66	56	66	56
Salt Lake City, Utah.....	85	82	70	61	77	67	77	67

(d) Insofar as sales which are fulfilled by shipments from respondents' Chicago plant are concerned, although the differential in price to purchasers at various locations may not be precisely justified by the cost to respondents of delivery, because of milling in transit rates and other freight rate adjustments, it does not appear that there is substantial unjustified discrimination under the pricing plan set forth above. It is plain, however, that a purchaser located in Kansas City who received delivery from respondent's Kansas City plant on the dates set out above paid respondents prices higher than the prices to a customer in Chicago by approximately the following percentages: August 1, 1936, 13 percent; August 1, 1937, 12 percent; August 1, 1938, 17 percent; August 1, 1939, 19 percent. The percentages vary with variations in the Chicago price as well as with rate changes. These higher prices were in no way warranted by additional delivery costs. Any purchaser who is located closer freightwise to Kansas City than to Chicago, Ill., and who received delivery from Kansas City, was forced to pay a price which included delivery costs not incurred or paid by respondents. For example, the price to a purchaser in Waco, Tex., for such delivery included "phantom" freight delivery costs which made the price to him approximately 10 percent higher than to a Chicago purchaser. It is also plain that a purchaser in Chicago who received delivery from Kansas City purchased at a price which not only did not include any artificial freight, but which did not take into account the freight actually incurred and paid by respondents. Similarly, any purchaser located closer freightwise to Chicago than to Kansas City, and who received delivery from respondents' Kansas City plant, received

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a price which not only did not include any artificial freight but which did not include all the freight actually paid by respondents.

(e) Respondents did not attempt to show that the price differences illustrated in the first table in this paragraph made only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such corn syrup was to such purchasers sold or delivered.

PAR. 5. (a) In addition to the price differences as among customers of respondents which are created by the pricing system illustrated in the preceding paragraph, respondents have sold, and are now selling, glucose or corn syrup unmixed to different purchasers, wherever located, in containers of different sizes at prices per hundredweight in addition to the tank car price as follows:

Type of container:	Additional price per hundredweight over tank car prices
Barrels-----	\$0.33.
Half barrels-----	\$0.58.
10-gallon kegs-----	\$0.98.
5-gallon kegs-----	\$1.08.
Returnable steel drums-----	\$0.13 where there is no return freight paid on empty drums.
Do-----	\$0.18 where the return freight on the empty drum is between 50 and 75 cents per hundredweight.
Do-----	\$0.23 where the return freight on the empty drum is between 76 and 90 cents per hundredweight.
Do-----	\$0.28 where the return freight on the empty drum is between 91 cents and \$1 per hundredweight.
Do-----	\$0.33 where the return freight on the empty drum is more than \$1 per hundredweight.
Tank trucks-----	\$0.10 where delivered by respondents' equipment.
Do-----	\$0.02 where delivered by customer's equipment.

(b) Respondent made no effort to show that the price differences among their customers created by the aforesaid container differentials were price differences which made only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities were to such purchasers sold or delivered.

PAR. 6. (a) Price differences as among customers, in addition to those illustrated in paragraphs 4 and 5, have been created by respondents through the operation of the "booking" system hereinbefore

mentioned. In case of a decline in their price for glucose it is the general policy of respondents to correspondingly reduce their prices to all customers as to undelivered orders or portions of orders which were taken at higher prices. In case of an advance in their price for glucose respondents attempt to notify the trade generally of such increase and by means of telephone calls, personal calls by their salesmen, or letter they inform all their customers of such increase. The general policy further provides that customers, within a period of days (formerly 10 and now 5) after an increase in price, may "book" or order from respondents, at the price in effect before the increase, an amount of glucose not to exceed the customer's requirements for 30 days, and delivery of amounts so ordered must be accepted by the customer within 30 days from the date of the price increase under penalty of cancellation if not accepted. All such orders or bookings must be approved at the principal office of respondents, and they are there considered before acceptance, modification, or refusal. "Bookings" are not firm contracts of purchase but mere options. Actual sales pursuant to "bookings" occur when delivery of the glucose is ordered and it is then that the amount delivered is invoiced. The granting of preferential treatment to favored customers under the guise of the booking system has resulted in substantial discriminations in price among candy manufacturers purchasing glucose from respondents.

(b) In some instances respondents, after the expiration of the time during which such booking is permitted to other customers, have allowed favored customers to purchase at the price in effect before an increase; in other instances respondents have made deliveries of glucose to favored customers more than 30 days after the date of the increase at the price in effect before an increase was made, while requiring other customers to take delivery within the 30-day period or suffer cancellation of the undelivered portion of the order; in still other instances respondents have permitted favored customers who purchase in tank wagon quantities, and who have no trackage or storage facilities for the acceptance of railroad tank car deliveries, to purchase tank car lots at the price in effect before an advance and have delivered such purchases in tank wagon quantities over extended periods of time, thus giving such favored customers the benefit of prices lower than those in effect to other tank wagon purchasers following the increase in price. There have also been price differences created among respondents' customers by various combinations or modifications of the booking practices described.

(c) To illustrate some of the booking practices of respondents, they booked for E. J. Brach and Sons 27 tank cars of glucose on March 25.

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1937, at \$3.04 per hundredweight preceding a price advance to \$3.49 early in April, and a second price advance about the middle of May to \$3.59. Deliveries under this order were commenced on May 19, 1937, and completed on July 3, 1937, during all of which time respondents sold to other customers at base prices of \$3.49 and \$3.59 per hundredweight. On March 25, 1937, respondents booked 7 tank cars of glucose for the Crystal Pure Candy Co., at a time when the base price was \$3.04 per hundredweight and delivered this glucose during April, May, and June when sales were made to other purchasers at base prices of \$3.49 and \$3.59. The Crystal Pure Candy Co. has no facilities to accept delivery by tank car or in tank car quantities, and deliveries by respondents against the 7-tank-car booking were in fact made by tank wagon from respondents' general storage tanks at their Chicago filling station. Such deliveries were made from day to day as required by the purchaser, who was thus afforded the benefit of the \$3.04 price at a time when other tank wagon customers were buying upon a base price of \$3.54 and \$3.59.

PAR. 7. (a) Many of those who purchase glucose or corn sirup of like grade and quality from the respondents pursuant to the aforesaid pricing plan, container differentials, and booking practices are candy manufacturers located in various States of the United States and are competitively engaged among themselves and with others in the sale of candy to various customers, including wholesalers, chain stores, and retailers located in the various States of the United States. The glucose so purchased is used as an ingredient to some extent in the manufacture of most kinds of candy and is one of the major raw materials used in the production of many varieties of candy, constituting from about 5 to approximately 90 percent of the finished weight thereof. Generally, glucose is used in greatest proportion in candies which are sold by such manufacturers at prices of a few cents a pound and at narrow margins of profit. The higher prices paid for glucose purchased from respondents by candy manufacturers located in cities other than Chicago, Ill., result to a greater or lesser degree in higher material costs to them than to manufacturers in Chicago who purchase from respondents, the degree in each instance depending upon the difference in price and the proportion of glucose in the particular candy manufactured. Some of such candy manufacturers who were located in cities other than Chicago before the construction and operation of respondents' plant in Kansas City, and some candy manufacturers formerly located in such cities, have since 1922 relocated in Chicago. Those manufacturers who have purchased, and purchase, glucose from respondents in quantities smaller than a tank

car and are charged prices established pursuant to the aforesaid container differentials have higher material costs for glucose than do those candy manufacturers who purchase from respondents in tank car quantities. Those manufacturers who purchase glucose from respondents and do not receive a preferential treatment under the booking practices of respondents also have higher material costs for glucose than do those manufacturers who purchase from respondents and receive such preferential treatment.

(b) As to candies priced at but a few cents a pound and bearing no differentiating name or brand, candy manufacturers may attract customers by selling such candies at only a small fraction of a cent per pound lower than a competitor's price. This is especially true in selling such candies to chain stores and other purchasers of large quantities of candy to whom a small difference is determinative in the placing of their business. Under such circumstances candy manufacturers paying higher prices for glucose than competitors may attempt to recover such increased costs by increasing the price of such candy, or may make only selected sales on a nonprice or other basis. The result in either case is to reduce profit. This result may occur either directly through the absorption by the manufacturer of higher syrup costs in the sale of candies at competitive prices or indirectly through a reduced volume of sales, or the result may be to diminish the ability of those paying the higher prices to compete with those paying the lower prices. These results may be avoided or augmented by differences in the costs to such candy manufacturers of other factors, such as labor, taxes, rents, insurance, other ingredients, proximity to markets, and delivery of the finished candies, no matter how such differences are brought about.

PAR. 8. (a) As a byproduct of their corn refining, respondents produce and sell gluten feed and meal to the amount of more than 250,000 tons annually, which is approximately 40 to 50 percent of all such products used in the United States. Respondents sell and ship such products to approximately 3,000 different purchasers located in various States of the United States. Gluten feed and meal compete with similar products produced and sold by the aforesaid corn refining competitors of respondents, and also compete with other types of feed produced by distillers, cottonseed mills, wheat flour mills, and soybean crushers. Respondents sell such feed and meal produced at their Pekin and Argo plants on the basis of a gross price for delivery in Chicago plus freight from Chicago to any other destination. The gluten feed and meal produced by respondents at their Kansas City plant are sold at a bulk price for delivery in Kansas City plus freight

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from Kansas City to any other destination. While selling to the majority of their customers at prices arrived at in the manner set out above, respondents have, over a period of years, discriminated in favor of at least 6 purchasers of such products by means of discounts, commissions, rebates, refunds, or allowances. The purchasers so favored were, and are: Allied Mills, Inc., Chicago, Ill.; Cooperative G. L. F. Mills, Inc., Buffalo, N. Y.; E. W. Bailey & Co., Montpelier, Vt.; Jesse C. Stewart & Co., Pittsburgh, Pa.; Marshfield Milling Co., Marshfield, Wis.; and Farley Feed Co., Janesville, Wis.

(b) Pursuant to various contracts and agreements respondents have, since June 19, 1936, sold Buffalo corn gluten feed and Diamond corn gluten meal to Cooperative G. L. F. Mills, Inc., in the following amounts at respondents' regular prices:

Date:	Feed (in tons)	Meal (in tons)
June 19-Dec. 31, 1936.....	29, 917½	2, 070
1937.....	40, 474½	770
1938.....	36, 078	1, 221
1939.....	58, 652	2, 796

By the contracts and agreements under which these sales were made respondents agreed to pay to Cooperative G. L. F. Mills, Inc., an allowance of 50 cents per ton from their regular market prices on sales and shipments of such feed and meal in quantities of from 1,500 to 2,499 tons per month, and an allowance of 65 cents per ton on feed and meal on monthly shipments in excess of 2,500 tons. Respondents have paid to Cooperative G. L. F. Mills, Inc., substantial sums of money pursuant to such agreements. Cooperative G. L. F. Mills, Inc., has resold the corn gluten feed and meal purchased from respondents, both unmixed and as ingredients in prepared, mixed, or branded feeds of its own, to authorized agents, buyers, and retail stores owned or controlled by it in the States of New York, New Jersey, and Pennsylvania. Respondents have, since June 19, 1936, sold corn gluten feed and meal products of like grade and quality in substantial quantities at their full market price without discount, allowance, commission, rebate, or other compensation to dealers in such products and feed mixers located in and doing business in New York, New Jersey, and Pennsylvania. Such dealers and feed mixers were, and are, in direct competition with Cooperative G. L. F. Mills, Inc., in the resale of respondents' products unmixed or as substantial and essential ingredients in prepared, mixed, or branded feed products.

(c) Pursuant to certain contracts or agreements, respondents have since June 19, 1936, sold to Allied Mills, Inc., Buffalo corn gluten feed

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and Diamond corn gluten meal in the following amounts at respondents' regular market prices for such products:

Date:	Feed (in tons)	Meal (in tons)
June 19-Dec. 31, 1936.....	6, 623	1, 702
1937.....	11, 446	2, 252
1938.....	8, 903	6, 684½
1939.....	9, 013	5, 143½

Under said contracts and agreements respondents agreed to pay to Allied Mills, Inc., an allowance of 50 cents per ton from their regular market prices for such products on sales and shipments of feed and meal of not less than 1,200 tons per month, and as a result thereof respondents have paid to Allied Mills, Inc., substantial sums of money. Allied Mills, Inc., has resold the said products purchased from respondents, both unmixed and as ingredients in prepared, mixed, or branded feeds of its own, to feed dealers in 31 States of the United States. Respondents have, since June 19, 1936, sold similar products of like grade and quality in substantial quantities at their regular market prices without discount, allowance, commission, rebate, or other compensation to dealers in these products and feed mixers located in and doing business in a substantial number of the 31 States above referred to, and said dealers and feed mixers were, and are, in direct competition with Allied Mills, Inc., in the resale of these products unmixed or as substantial and essential ingredients in prepared, mixed, or branded feed products.

(d) Pursuant to an understanding and agreement respondents have, since June 19, 1936, sold to E. W. Bailey & Co., of Montpelier, Vt., Buffalo corn gluten feed and Diamond corn gluten meal in the following amounts at their regularly established market prices:

Date:	Feed (in tons)	Meal (in tons)
June 19-Dec. 31, 1936.....	290	-----
1937.....	1, 548½	110½
1938.....	2, 175	146
1939.....	1, 968	141

As a result of said understanding and agreement respondents have paid E. W. Bailey & Co. an allowance on said purchases at the rate of 50 cents per ton. E. W. Bailey & Co. has resold such products, both unmixed and as ingredients in prepared, mixed, or branded feeds of its own, to feed dealers in the States of Vermont, New Hampshire, Massachusetts, and New York. Respondents have, since June 19, 1936, sold their aforesaid products of like grade and quality in substantial quantities at their regular market prices with-

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out any discount, allowance, commission, rebate, or other compensation to dealers in such products and feed mixers located and doing business in the States of Vermont, New Hampshire, Massachusetts, and New York, and said dealers and feed mixers are in direct competition with E. W. Bailey & Co. in the resale of said products unmixed or as a substantial and essential ingredient in prepared, mixed, or branded feed products.

(e) Pursuant to an understanding and agreement respondents have, since June 19, 1936, sold to Jesse C. Stewart & Co. of Pittsburgh, Pa., Buffalo corn gluten feed and Diamond corn gluten meal in the following amounts at their regular market prices:

Date:	Feed (in tons)	Meal (in tons)
June 19-Dec. 31, 1936.....	240	90
1937.....	840	170
1938.....	990	160
1939.....	915	175

As a result of said agreement and understanding, respondents have paid to Jesse C. Stewart & Co. an allowance of 50 cents per ton on such products resold unmixed. Jesse C. Stewart & Co. has resold said products purchased from respondents, unmixed, to feed dealers in the State of Pennsylvania and in the area immediately surrounding Pittsburgh, Pa. Respondents have, since June 19, 1936, sold their said products of like grade and quality in substantial quantities at their regular market prices therefor without discount, allowance, commission, rebate, or other compensation to dealers in such products located in and doing business in Pennsylvania and in the area immediately surrounding Pittsburgh, Pa., and who are in direct competition with Jesse C. Stewart & Co. in the resale of such products.

(f) Pursuant to an understanding and agreement respondents have, since June 19, 1936, sold to Marshfield Milling Co. of Marshfield, Wis., Buffalo corn gluten feed and Diamond corn gluten meal in the following amounts at their regular market prices therefor:

Date.	Feed (in tons)	Meal (in tons)
June 19-Dec. 31, 1936.....	155	165
1937.....	341	141
1938.....	157	120
1939.....	180	50

As a result of said agreement and understanding respondents have paid to the Marshfield Milling Co. allowances at the rate of 50 cents per ton on said products resold unmixed, and said purchaser has resold these products, unmixed, to feed dealers in the State of Wisconsin. Respondents have, since June 19, 1936, sold their aforesaid

products in substantial quantities at their regular market prices therefor without discount allowance, commission, rebate, or other compensation to dealers in such products located in and doing business in the State of Wisconsin and who are in direct competition with Marshfield Milling Co. in the resale of said products.

(g) Pursuant to an understanding and agreement respondents have, since June 19, 1936, sold to Farley Feed Co., Janesville, Wis., Buffalo corn gluten feed and Diamond corn gluten meal in the following amounts at their regular market prices therefor:

Date:	Feed (in tons)	Meal (in tons)
June 19-Dec. 31, 1936.....	10	10
1937.....	93	73
1938.....	50	70
1939.....	69½	68½

As a result of said agreement and understanding respondents have paid to the Farley Feed Co. allowances at the rate of 50 cents per ton on said products resold unmixed, and said company has resold these products, unmixed, to feed dealers in the State of Wisconsin. Respondents have, since June 19, 1936, sold their aforesaid products in substantial quantities at their regular market prices therefor without discount, allowance, commission, rebate, or other compensation to dealers in such products located in and doing business in the State of Wisconsin who are in direct competition with Farley Feed Co. in the resale of said products.

(h) The allowances granted and paid by respondents to the aforesaid Cooperative G. L. F. Mills, Inc., Allied Mills, Inc., E. W. Bailey & Co., Jesse C. Stewart & Co., Marshfield Milling Co., and Farley Feed Co. are sufficient, if and when reflected in whole or in substantial part in resale prices, to attract business to Cooperative G. L. F. Mills, Inc., Allied Mills, Inc., E. W. Bailey & Co., Jesse C. Stewart & Co., Marshfield Milling Co., and Farley Feed Co. away from their respective competitors, or to force said competitors to resell such feed and meal products purchased from respondents at a substantially reduced profit, or to refrain from reselling. The allowances thus paid by respondents to the favored customers are sufficient to substantially increase the respective margins of profit of such customers over and above the margins of profit otherwise obtainable in the resale of such feed and meal products. Respondents did not produce any evidence to show that the lower prices granted to the above-named favored purchasers of feed and meal products made no more than due allowance for differences, if any, in the cost of manufacture, sale, or delivery of their said feed and meal products resulting from

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the differing methods or quantities, if any, in which such products were to said purchasers sold or delivered.

PAR. 9. (a) One of the principal products resulting from respondents' grinding and refining of corn is corn starch. Such corn starch is sold and distributed by respondents on a large scale throughout the United States. It is sold in many different forms varying in moisture content, viscosity, and in other ways. The form known as thick boiling pearl starch of 12 percent moisture is usually considered the basic form and is customarily used as a base to which the prices of other forms of starch are related.

(b) Since June 19, 1936, and up to the present time respondents have sold and delivered substantial quantities, amounting to many millions of pounds, of starches and starch products to Kever Starch Co., Columbus, Ohio, hereafter referred to as Kever, and to Stein, Hall and Co., of New York, N. Y., and/or Stein, Hall Manufacturing Co., of Chicago, Ill., hereafter referred to as Stein-Hall, for use, consumption, and resale within the United States and in the District of Columbia. Respondents have also sold substantial quantities of starches and starch products of like grade and quantity to individuals, firms, partnerships, and other corporations located in the several States of the United States and competitively engaged with Kever and Stein-Hall in the use, consumption, and resale of such products.

(c) The sales made by respondents to Kever and Stein-Hall were at prices which reflected a substantial discount, rebate, commission, or other allowance from respondents' regular market or list prices at the time of such sales. Respondents, during the same period of time, made sales to competitors of Kever and Stein-Hall at their market or list prices current at the time of such sales without any discount, rebate, commission, or other allowance. The discount, rebate, commission, or allowance granted to Kever and to Stein-Hall was, and is, sufficient to substantially increase their respective margins of profit over and above the margins of profit otherwise obtainable in the use, consumption, and resales of starches and starch products; and is sufficient, if and when reflected in whole or in substantial part in resale prices, to attract business to Kever and to Stein-Hall away from their competitors, or to force such competitors to resell said starches and starch products at substantially reduced profit, or to refrain from reselling. The said discount, rebate, commission, or other allowance granted to Kever and to Stein-Hall may be sufficient to attract the business of such purchasers away from competitors

of respondents, or to force said competitors to sell such starches and starch products at substantially reduced profit, or to refrain from selling. Respondents did not produce any evidence to show that the discount, rebate, commission, or other allowance granted by them to Keever and to Stein-Hall, respectively, made no more than due allowance for differences, if any, in the cost of manufacture, sale or delivery of their starches and starch products resulting from differing methods or quantities, if any, in which such products were to such purchasers sold or delivered.

PAR. 10. (a) Since about 1933 respondents have produced, sold, and distributed dextrose in dry, powdered form under the trade name "Cerelese" to the baking, soft drink, and canning industries, and for a shorter period of time to candy manufacturers. Glucose, or corn syrup unmixed, contains a substantial quantity of dextrose, but the product here under consideration is dry, powdered dextrose.

(b) In 1935 or 1936 respondents entered into negotiations with the Curtiss Candy Co. of Chicago, Ill., for the purpose of inducing that company to use dry dextrose in its candies and to advertise them as containing dextrose. The Curtiss Candy Co. has as wide distribution of its candies as any candy manufacturer in the United States and is an aggressive company which has, over a period of years, advertised its products approximately as much as all other candy manufacturers in the United States combined. Its advertising has appeared in newspapers, magazines, on billboards, stationery, envelopes, candy wrappers, cartons, and boxes, and on radio broadcasts. Prior to September 1936 the Curtiss Candy Co. had purchased small quantities of dry dextrose from manufacturers other than respondents but prior to that date was not using such dextrose in its candies to any appreciable extent.

(c) After a year or more of experimentation and negotiation with respondents, the Curtiss Candy Co. undertook to use dry dextrose in the manufacture of most of its candy products and to advertise the presence of dextrose in its candies and explain the nature of dextrose. It has, since September 1936, added to its advertising representations statements to the general effect that its candies are enriched by dextrose or rich in dextrose, that dextrose is a quick source of energy, and that it is energizing and aids in relieving fatigue, all for the purpose of inducing the purchase of its candies by members of the consuming public in order to get the benefit of the dextrose contained therein. By means of various advertising media the Curtiss

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Candy Co. has advertised certain of its candy products in a manner of which the following is typical:

Is Rich in Pure
DEXTROSE
The Sugar
Your Body Uses
Directly for Energy

RICH IN DEXTROSE
Step Out With Vigor!

For pep and energy that take you to the end of the trail without tiring, carry these energy-food candies wherever you go * * *. That's because all four of these famous Curtiss candy bars are enriched with dextrose—the sugar your body uses directly for energy.

* * * * *

The satisfying goodness of Baby Ruth is as natural as the pure foods combined to make this big delicious candy bar. Milk, butter, eggs, fine chocolate, plump crisp peanuts—and dextrose, the sugar your body uses directly for energy—these are among the choice ingredients which give Baby Ruth its fine flavor, fresh fragrance and its real food value.

* * * * *

Yes, in every bar of fresh, fragrant Baby Ruth candy is an abundance of food energy. Deliciously blended in Baby Ruth are such natural foods as milk, butter, eggs, fine chocolate, top grade peanuts—and pure dextrose, the sugar your body uses directly for energy. Is it any wonder that millions agree "Baby Ruth is fine candy and fine food?"

And by radio announcements such as:

Wise parents insist upon their children eating Baby Ruth candy. It's pure, delicious, and energizing because it's rich in dextrose.

* * * * *

Lots of mothers have written us asking for more information about dextrose, the energy sugar * * * and how it makes Baby Ruth candy so good for everyone. Well, it's simple to explain. Dextrose is a pure white sugar * * * which doctors call "body" or "muscle" sugar. It is the substance which makes your heart beat, your lungs breathe, your muscles move. Delicious Baby Ruth candy is so rich in dextrose that it is more than just a fine pure candy * * * Baby Ruth is a real energizing food.

(d) Pursuant to the negotiations with the Curtiss Candy Co. but without any written contract with regard thereto, respondents, in consideration of the addition of the "dextrose message" to the Curtiss Candy Co.'s advertising, appropriated various sums of money which were paid to and expended by their advertising agency in the purchase of advertising in newspapers, magazines, and on the radio depicting Curtiss candy products as being "rich in dextrose" or "enriched with dextrose." Respondents were not obligated to expend any specific amount in advertising Curtiss candies, and the money actually expended was not paid to the Curtiss Candy Co. but was paid to and

expended by respondents' advertising agency in the aforesaid manner. Respondents have expended in advertising the Curtiss Candy Co. products in the aforesaid manner approximately \$100,000 in 1936, \$250,000 in 1937, \$200,000 in 1938, and \$200,000 in 1939.

(e) Officials of the Curtiss Candy Co. and of respondents testified that there was no agreement that Curtiss would purchase its requirements of dry dextrose from respondents. However, in testifying with regard to the arrangements made with the Curtiss Candy Co. the vice president in charge of sales for Corn Products Refining Co., who is also president of Corn Products Sales Co., referred to his belief that Curtiss would use 12,000,000 pounds of dextrose the first year, and when asked why he thought this would be the case, replied:

A. Because we knew what his volume was and we thought we could put a certain percentage of dextrose in that volume. And we were fooled.

Q. Well, it was to get that percentage of volume, that 12 million pounds from Curtiss that you entered into the advertising arrangements?

A. No, it wasn't. We entered into the advertising arrangements because we thought it was a first class advertising campaign for dextrose. The 12 million was just velvet, that's all.

Q. Why do you say you were fooled?

A. Well, because 12 million pounds is a nice amount of business to shoot at. But our main object was to—was to publicize dextrose * * *

(f) As a matter of fact, after the agreement with respondents the Curtiss Candy Co. purchased the following amounts of dry dextrose from respondents and made no purchases from any other source:

Date:	Pounds	Date:	Pounds
1936.....	1, 347, 357	1938.....	3, 386, 431
1937.....	2, 046, 015	1939.....	7, 090, 863

Curtiss also began purchasing glucose from respondents in 1938 but its purchasing agent testified that such purchases of glucose were not made pursuant to any understanding as to advertising. Glucose purchases by Curtiss during the 4 years mentioned were:

Date:	Glucose from all sources	Glucose from respondents	Date:	Glucose from all sources	Glucose from respondents
1936..	22, 997, 379	0	1938..	27, 808, 709	3, 549, 260
1937..	22, 746, 549	0	1939..	24, 712, 254	14, 609, 138

(g) Respondents, during the time sales of dry dextrose were being made to the Curtiss Candy Co., also sold and delivered substantial quantities of dry dextrose to other candy manufacturers located in

various States of the United States who were, and are, competitors of the Curtiss Candy Co. However, respondents did not enter into any arrangement with any of such purchasers similar to the arrangement with the Curtiss Candy Co., or into any arrangement to supply services or facilities of any kind. As to substantially all, if not all, of these competing candy manufacturers no offer of any such arrangement on proportionally equal terms, or upon any terms whatever, was made. In fact, respondents since June 19, 1936, have instructed their salesmen to advise customers to whom they sell products to be used in the manufacture of confectionery that they do not contribute to the advertising done by customers. Respondents have not, during the time the aforesaid arrangements have been in effect with the Curtiss Candy Co., appropriated, turned over, or paid to their advertising agency, or to any one else, any money with which advertising services were, or could be, purchased for the advertising of products of any purchaser of dry dextrose except the Curtiss Candy Co., and they have not furnished any advertising services or facilities, either similar or of any kind or character whatever, to their customers who purchase dry dextrose from them and who compete with the Curtiss Candy Co. in the sale of candy containing dextrose.

(*h*) The Curtiss Candy Co. used dextrose purchased from respondents in most of the candies it made and sold. The amount used varied in different products from a small percentage to as much as 90 percent of the weight of the candy. Such dextrose was mixed with other products, as indicated in subparagraph (*e*) of paragraph 10 hereof, to produce the candy sold by Curtiss, and it constituted a substantial, and frequently a major, portion of the products advertised and sold by the Curtiss Candy Co.

PAR. 11. (*a*) The Huron Milling Co. of Harbor Beach, Michigan, and the Keever Starch Co. of Columbus, Ohio, are large purchasers of pearl starch and other starches and were each engaged in the grinding and refining of corn and manufacture of starch and starch products until 1927 in the case of the Huron Milling Co. and until 1932 in the case of the Keever Starch Co..

(*b*) On April 21, 1927, respondents entered into a contract with the Huron Milling Co. by which that company agreed to purchase from respondents its entire requirements of thin boiling pearl, chlorinated and other special starches, including Hercules gum, up to a maximum of 30,000,000 pounds annually, and to purchase from respondents its entire requirements of ordinary thick boiling pearl and powdered corn starches and edible pearl and powdered corn starches up to a maximum of 20,000,000 pounds annually. This contract was for a period of 15 years from the date of execution

thereof, with provision for an extension of 10 years at the option of the buyer. On July 12, 1932, respondents entered into a contract with the Keever Starch Co. whereby they agreed to sell and that company agreed to purchase from respondents its entire requirements of corn starch products up to a maximum of 20,000,000 pounds per annum. Said contract was for a term of 15 years from the date of execution thereof, with provision for an extension of 10 years at the option of the buyer.

(c) The prices at which said starches and starch products were contracted to be sold by respondents, and at which they have been sold to said purchasers in the course of interstate commerce, did, and do, approximate, or were, and are, below the cost at which said starches and starch products were then, and since could have been, manufactured by Huron Milling Co. and Keever Starch Co. Said starches and starch products were sold by respondents for use, consumption, and resale within the United States, territories thereof, and the District of Columbia.

(d) Said contracts are, in fact, for the entire requirements of the Huron Milling Co. and Keever Starch Co., respectively, and require for their performance that said purchasers refrain from using or dealing in starches and starch products manufactured by any competitor or competitors of respondents, and the parties to said contracts so understood the meaning of said contracts and the effect of the performance thereof. These contracts have been, and are being, faithfully performed by said purchasers, and in so doing they have refrained, and are refraining, from using or dealing in starches or starch products manufactured by any competitor or competitors of respondents. Although the purchasers reserve the right in said contracts to manufacture and sell starches and starch products produced from corn by the use of their own facilities, the prices charged them by respondents are so satisfactory to said purchasers that since the execution of said contracts said purchasers have wholly ceased the manufacture of starches and starch products from corn. At times and from time to time one or more competitors of respondents were, and have been, ready, willing, and able to supply some of said purchasers' requirements of such products.

(e) The effect of the execution and performance of said contracts, as aforesaid, may have been to substantially lessen competition between the respondents and their competitors and may have tended to create a monopoly in the respondents in the sale and distribution of starches of the type manufactured by respondents for such purchasers.

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CONCLUSION

The discriminations in price by respondents as hereinabove set forth have resulted, and do result, in substantial injury to their competitors, hinder, obstruct, and tend to suppress competition with respondents, and tend to create a monopoly in them in the processing and refining of corn and the sale of products and byproducts of such processing and refining, and have resulted, and do result, in substantial injury to competition among purchasers of such products and byproducts 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 (Clayton Act), as amended by the act of June 19, 1936 (Robinson-Patman Act). The acts of respondents as hereinabove set forth in furnishing or contributing to the furnishing of advertising services and facilities to one of their customers in the resale of dextrose purchased from them and not to competing customers purchasing said dextrose upon proportionally equal terms, or upon any terms whatever, violate subsection (e) of section 2 of said Clayton Act as amended. The contracts with Huron Milling Co. and Keever Starch Co. providing that said companies shall purchase their requirements of starch and starch products from respondents to the exclusion of respondents' competitors, and the acts and practices pursuant to said contracts, constitute violation by respondents of section 3 of the aforesaid Clayton Act as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, the amended complaint of the Commission and respondents' answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and oral arguments by counsel, and the Commission having made its findings as to the facts and its conclusion that respondents have violated subsections (a) and (e) of section 2 and section 3 of "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by act of June 19, 1936 (Robinson-Patman Act):

It is ordered, That respondents Corn Products Refining Co., a corporation, and Corn Products Sales Co., Inc., a corporation, and their officers, directors, representatives, agents, and employees, in

connection with the offering for sale, sale, and distribution of products resulting from the grinding and refining of corn in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Directly or indirectly discriminating in price between different purchasers of glucose or corn syrup unmixed of like grade and quality in the manner and degree set forth in paragraphs 4 and 5 of the findings as to the facts herein, or in any manner or degree substantially similar thereto, or from continuing or resuming any such discriminations in price.

2. Discriminating in price between purchasers of glucose or corn syrup unmixed by the methods set out in paragraph 6 of the findings as to the facts herein, or otherwise discriminating in price between purchasers by means of the booking or entry of orders for glucose or corn syrup unmixed, where the price differences between purchasers resulting therefrom substantially approximate or exceed those set forth in paragraph 4 or 5 of the findings as to the facts herein, provided this shall not prohibit actual sales of glucose or corn syrup unmixed for future delivery which do not involve such discriminations in price at the time of actual sale.

3. Directly or indirectly discriminating in price between different purchasers of starch or starch products of like grade and quality in the manner and degree set forth in paragraph 9 of the findings as to the facts herein, or in any manner or degree substantially similar thereto, or from continuing or resuming any such discriminations in price.

4. Directly or indirectly discriminating in price between different purchasers of corn gluten feed and corn gluten meal of like grade and quality in the manner and degree set forth in paragraph 8 of the findings as to the facts herein, or in any manner or degree substantially similar thereto, or from continuing or resuming any such discriminations in price.

5. Furnishing advertising services to the Curtiss Candy Co. as set forth in paragraph 10 of the findings as to the facts herein, or directly or indirectly furnishing services or facilities to the Curtiss Candy Co. or to any purchaser of dextrose or other of respondents' products in connection with the processing, handling, sale, or offering for sale thereof, when such services or facilities are not accorded to all competing purchasers of any such product on proportionally equal terms.

6. Contracting to sell to, or selling to, the Huron Milling Co., the Keever Starch Co., or any other customer buying in quantities approximating those of the purchasers named, corn starch or other

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starch products, or fixing a price therefor or discount or rebate therefrom, on the condition, agreement, or understanding that any such purchaser shall not use or deal in corn starch or other starch products of a competitor or competitors of respondents, or from performing, enforcing, or continuing in operation or effect any such condition, agreement, or understanding.

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

CLINTON COMPANY AND CLINTON SALES COMPANY

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

Docket 3800. Complaint, June 1, 1939—Decision, Mar. 17, 1942

Where a corporation, with principal place of business in Iowa, where it had a corn grinding plant with capacity in excess of 32,000 bushels a day and complete facilities for the production of all known corn products, both for household and industrial use; including starch for food and other purposes, glucose or corn syrup, and corn sugar, and, as by-products, gluten feed, corn oil, corn oil cake and corn oil meal; and its wholly owned subsidiary, with principal office at Chicago; together long engaged in manufacture, sale and distribution of said corn products, and, in addition, various branded products—

In selling their glucose or corn syrup, used in most kinds of candy, and constituting from 50 to 90 percent of the finished weights of many varieties, largely to manufacturers of candies and mixers of table syrups—

- (a) Discriminated in price unlawfully through sales of like grade and quality, fulfilled by shipments from their Iowa plant to purchasers in various cities, at differing delivered prices, through a pricing system based upon their Chicago tank car price, to which was added as differentials the amounts of the railroad tariff from Chicago to destinations;
- (b) Discriminated in price unlawfully between different purchasers through adding to their base railroad tank car price, certain "container differentials" which varied from ten cents, where delivery was by tank trucks owned by such corporations, to \$1.08 for 5-gallon cans; and
- (c) Discriminated in price between different purchasers through preferential operation or application of their booking system—under which, following announcement of new price increase, purchasers were granted a period of five days within which to purchase at the old and lower price, provided shipment was made within 30 days—through making shipments at times to various purchasers, after expiration of 30-day period, at the older and lower price, while concurrently charging other and competing purchasers who ordered after expiration of the 5-day period, the new and higher prices, and through accepting, upon one occasion, an order for glucose at the old and lower price, while concurrently selling the same product to competing purchasers at the new and higher price;

With the result that—

(1) Candy manufacturers located in cities other than Chicago had higher raw material and total costs than did Chicago manufacturers; and manufacturers of low-priced candies selling at a narrow margin of profit—in which the cost of glucose is a major portion of the total manufacturing costs, and in the case of which chain stores and other large quantity purchasers are attracted by a difference as little as one-eighth of a cent per pound—could only sell their product at competitive prices by absorbing the higher glucose costs or by selling on a non-price basis, with

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consequence, in either event, that manufacturer's profit was reduced directly through such absorption or indirectly through reduced sales volume and resulting increased overhead unit costs, and some who otherwise would have entered upon manufacture of candy in cities where glucose prices were higher were deterred from so doing; and

(2) Customer-purchasers engaged in mixing, for sale to wholesalers and other distributors, table sirup, in which approximately 85 percent of content is glucose, and located in cities other than Chicago, had higher raw material and total costs than Chicago mixers; sales of those who sell their product at but a few cents per case lower than a competitor were substantially diminished or prevented by reason of the lower glucose cost to Chicago mixers; and sales and profits of mixers paying the higher prices were less than they otherwise would have been; and potential new mixers were deterred from entering the industry in those cities in which corporations in question sold their corn sirup at such higher prices:

Held, That such discriminations in price resulted in substantial injury to competition among purchasers of glucose by affording material and unjustified price advantages to some and not to others, and constituted violation of Subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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

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

Lowenhaupt, Waite & Stolar, of St. Louis, Mo., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of 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, Clinton Co., is a corporation organized and existing under the laws of Iowa with its principal office and place of business in the city of Clinton and State of Iowa. Respondent, Clinton Sales Co., is a corporation organized under the laws of the State of Illinois and has its principal office and place of business at 1525 South Sangamon Street in the city of Chicago, State of Illinois. Respondent, Clinton Sales Co., is a wholly owned sales subsidiary of respondent Clinton Co., through which products manufactured by Clinton Co. are sold and distributed. Clinton Co. owns the entire capital stock of Clinton Sales Co., and controls and directs Clinton Sales Co.

PAR. 2. Respondent, Clinton Co., owns and operates a plant at Clinton, Iowa. This plant has a corn grinding capacity in excess of

32,000 bushels per day, with complete facilities for the finished fabrication of all known corn products, both for household and industrial use.

PAR. 3. For many years respondents have been and are now engaged in the business of manufacturing, selling and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) Starch, both for food and other purposes; (2) Glucose or corn syrup; and (3) Corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by treating the starch with certain acids, the resulting solid product being sugar and the resulting syrup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of syrups.

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

The Clinton Co., in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of their business, the respondents have been and are now manufacturing the aforesaid commodities at the aforesaid plant and have sold and shipped and do now sell and ship such commodities in commerce between and among the various States of the United States from the State in which their factory is located across State lines to purchasers thereof located in States other than the State in which respondents' said plant is located in competition with other persons, firms, and corporations engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936, and while engaged as aforesaid in commerce among the several States of the United States and the District of Columbia, the respondents have been and are now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption or resale within the several States of the United States and the District of Columbia in that the respondents have been and are now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondents to other purchasers generally competitively engaged with the first mentioned purchasers.

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

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gaged; and to injure, destroy, and prevent competition in the sale and distribution of corn products between the said respondents and their competitors.

PAR. 7. The effect of said discriminations in price made by said respondents, as set forth in paragraph 5 herein, may be substantially to lessen competition between the buyers of said corn products from respondents receiving said lower discriminatory prices and other buyers from respondents competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from respondents are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from respondents are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices.

PAR. 8. The aforesaid acts of respondents constitute a violation of the provisions of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by act approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission on June 1, 1939, issued and subsequently served its complaint in this proceeding upon respondents Clinton Co., a corporation, and Clinton Sales Co., a corporation, charging them with discrimination in price among purchasers of their products in violation of subsection (a) of section 2 of said act, as amended.

After the issuance of said complaint and the filing of respondents' answer thereto, certain stipulated facts were read into the record and exhibits introduced before an examiner of the Commission theretofore duly designated by it, and such evidence was duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the complaint, answer, evidence, 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 Clinton Co. is a corporation organized and existing under the laws of the State of Iowa, having its principal office and place of business in Clinton, Iowa. Clinton Sales Co. is a corporation organized and existing under the laws of the State of Illinois, having its principal office and place of business at Chicago, Ill. Clinton Sales Co. is a wholly owned subsidiary of the Clinton Co. and is engaged in the sale and distribution of the products manufactured by the Clinton Co.

PAR. 2. For many years respondents have been, and are now, engaged in the business of manufacturing, selling, and distributing products derived from corn. They have a plant at Clinton, Iowa, which has a corn grinding capacity in excess of 32,000 bushels per day and complete facilities for the production of all known corn products both for household and industrial use. The principal products so made are starch, both for food and other purposes, glucose or corn syrup, and corn sugar. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and in the mixing of syrups. The principal byproducts resulting from such processing of corn are gluten feed, corn oil, corn oil cake, and corn oil meal. In addition to the products sold by respondents in bulk, they also produce and sell various branded products.

PAR. 3. In the course and conduct of their business as aforesaid respondents have been, and are now, selling and shipping such commodities in commerce between and among the various States of the United States from the State in which their plant is located across State lines to purchasers thereof located in other States, and maintain, and have maintained, a course of trade in commerce among and between the various States of the United States.

PAR. 4. (a) Respondents sell glucose or corn syrup largely to manufacturers of candy and mixers of table syrups on a delivered price basis, the price in each instance depending upon the location of the purchaser freightwise to Chicago, Ill. Respondents' railroad tank car price in Chicago is the base from which its prices to purchasers at all other locations are determined, and such other prices are arrived at by adding to the Chicago tank car price the amount of the railroad tariff from Chicago to the purchaser's location. This pricing plan has been followed by respondents since the establishment of their plant at Clinton, Iowa, in 1906, and similar pricing

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plants have been, and are being, used by respondents' competitors. These competitors and the plant locations of each are: Corn Products Refining Co., with plants at Chicago, Ill., and Kansas City, Mo.; A. E. Staley Manufacturing Co., Decatur, Ill.; Penick & Ford, Ltd., Inc., Cedar Rapids, Iowa; Anheuser-Busch, Inc., St. Louis, Mo.; Union Starch and Refining Co., Granite City, Ill.; American Maize-Products Co., Roby, Ind.; and Hubinger Co., Keokuk, Iowa.

(b) In order to illustrate respondents' pricing system to customers in various cities of the United States, their prices per hundred pounds for 43° glucose in railroad tank car lots to customers in a few of such cities on particular dates were:

Location of purchaser	AUG. 1, 1936	AUG. 1, 1937	AUG. 1, 1938	AUG. 1, 1939
Chicago, Ill.	\$2.94	\$3.04	\$2.29	\$2.09
Clinton, Iowa	3.11	3.20	2.47	2.27
Dubuque, Iowa	3.11	3.20	2.47	2.27
Marshalltown, Iowa	3.23	3.31	2.59	2.39
Sioux City, Iowa	3.32	3.40	2.69	2.49
Sioux Falls, S. Dak.	3.33	3.41	2.70	2.50
Fort Worth, Tex.	3.72	3.77	3.09	2.89
Dallas, Tex.	3.72	3.77	3.09	2.89
Kansas City, Mo.	3.32	3.40	2.69	2.49
St. Louis, Mo.	3.11	3.20	2.47	2.27
Salt Lake City, Utah	3.79	3.74	3.06	2.86
Ogden, Utah	3.79	3.74	3.06	2.86
Lincoln, Nebr.	3.37	3.45	2.74	2.64
Oklahoma City, Okla.	3.62	3.68	2.99	2.79

At all times between the dates set forth substantially the same differences in and relationships between and among said prices illustrated above existed as to purchasers so located.

(c) The railroad tariff stated in cents per hundred pounds of glucose from Chicago, Ill., to each of the cities shown in the table above for the periods shown was:

Cities	June 19, 1936, through Dec. 31, 1936	Jan. 1, 1937, through Apr. 10, 1937	Apr. 20, 1937, through Dec. 19, 1937	Dec. 20, 1937, through Mar. 27, 1938	Mar. 28, 1938, through Aug. 14, 1938	Aug. 15, 1938, through —
Clinton, Iowa	17	16	16	17½	17½	18
Dubuque, Iowa	17	16	16	17½	17½	18
Marshalltown, Iowa	29½	27½	27½	30½	30	30
Sioux City, Iowa	38	36	36	39	40	40
Sioux Falls, S. Dak.	39	37	37	40	41	41
Fort Worth, Tex.	78	73	73	80	80	80
Dallas, Tex.	78	73	73	80	80	80
Kansas City, Mo.	38	36	36	39	40	40
St. Louis, Mo.	17	16	16	17½	17½	18
Lincoln, Nebr.	43	41	41	44	45	45
Oklahoma City, Okla.	68	64	64	70	70	70
Salt Lake City, Utah	85	80	70	73	77	77
Ogden, Utah	85	80	70	73	77	77

(d) All sales of glucose made by respondents are fulfilled by shipments made from their plant at Clinton, Iowa, and the railroad tariff stated in cents per hundred pounds applicable to such shipments from Clinton, Iowa, to the above-named cities were as follows for the periods shown:

Cities	June 19, 1936, through Dec. 31, 1936	Jan. 1, 1937, through Apr. 19, 1937.	Apr. 20, 1937, through Dec. 19, 1937	Dec. 20, 1937, through Aug. 14, 1938	Aug. 15, 1938, through —
Chicago, Ill.....	17	16	16	17½	18
Dubuque, Iowa.....	12	11	11	12	12
Marshalltown, Iowa.....	19½	17½	17½	19½	19½
Sioux City, Iowa.....	31	28	28	31	31
Sioux Falls, S. Dak.....	32½	29½	29½	32½	32½
Fort Worth, Tex.....	73	70	70	77	77
Dallas, Tex.....	73	70	70	77	77
Kansas City, Mo.....	31	28	28	31	31
St. Louis, Mo.....	17½	16	16	17½	18
Lincoln, Nebr.....	36	33	33	36	36
Oklahoma City, Okla.....	64	61	61	67	67
Salt Lake City, Utah.....	85	80	85½	88½	72
Ogden, Utah.....	85	80	85½	88½	72

From a comparison of the price differences as among customers in different cities with the applicable railroad rates it is evident that the price differences created by respondents' pricing system do not reflect actual differences in delivery costs to respondents. Milling in transit and other rate adjustments would not operate to cause respondents' actual delivery costs to coincide with such price differences.

PAR. 5. As a part of their pricing plan to purchasers of glucose or corn syrup, respondents follow the practice of granting to purchasers a period of 5 days after the announcement of any price increase by them within which purchasers may buy at the price which was in effect before the increase, provided shipment of glucose so ordered be made within 30 days after the date of the price increase. Upon orders entered within such 5-day period respondents at times have shipped glucose to various purchasers after the expiration of the 30-day period, charging and receiving therefor the older and lower price, while at the same time charging and receiving the new increased and higher prices for similar glucose from other and competing purchasers who ordered after the expiration of the 5-day period. Upon one occasion respondents accepted an order for glucose at the old and lower price after the 5-day period had expired, and sold glucose to such purchaser at the old and lower price while concurrently selling glucose of like grade and quality to other and competing purchasers at the new and higher price. When respond-

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ents accepted said order the purchaser stated that competitors of respondents were offering to sell such glucose to him at such lower price, but respondents did not attempt to determine whether such statement was true.

PAR. 6. In addition to the price differences among their customers created by respondents through the method of basing all delivered prices upon the Chicago price, and price differences created by reason of preferential treatment given some customers in the operation of the order booking system used, respondents create further price differences among their customers by means of "container differentials." Respondents sell corn syrup or glucose in railroad tank car lots, in tank truck or tank wagon quantities, in steel drums, barrels, half barrels, 10-gallon cans, and 5-gallon cans. Respondents' base price for glucose is in tank car quantities, and in the event a purchaser takes delivery in a smaller quantity or smaller containers the price to him is increased above the tank car price as shown in the following table:

Type of container:	<i>Additional price per hundredweight over tank car price</i>	
Barrels.....	\$0.33	
Half barrels	\$0.58	
10-gallon cans.....	\$0.98	
5-gallon cans.....	\$1.08	
Returnable steel drums..	\$0.13	where there is no return freight paid on empty drums.
Returnable steel drums..	\$0.18	where the return freight on the empty drum is 75 cents or less per hundredweight.
Returnable steel drums..	\$0.23	where the return freight on the empty drum is between 76 and 90 cents per hundredweight.
Returnable steel drums..	\$0.28	where the return freight on the empty drum is between 91 cents and \$1 per hundredweight.
Returnable steel drums..	\$0.33	where the return freight on the empty drum is more than \$1 per hundredweight.
Tank trucks	\$0 10	where delivered by respondents' equipment.

PAR. 7. (a) Some of the customers who purchase glucose of like grade and quality from respondents are candy manufacturers located in the cities heretofore named. These manufacturers use the glucose so purchased in the manufacture of candy which is sold in competition with candy manufactured by others to various customers such as wholesalers, retailers, and chain stores, who purchase for resale. Glucose is used to some extent in the manufacture of most kinds of candy and is one of the major raw materials used in the production of many varieties, constituting from 5 to 90 percent of the finished weight thereof. The cost of glucose is a substantial part of the raw material cost and of the total cost of manufacturing many

candies and is a major portion of the raw material and total cost of manufacturing candies which have a high glucose content. The higher prices paid for glucose by candy manufacturers located in cities other than Chicago, Ill., such as those previously enumerated, contribute to a greater or lesser degree to their having higher raw material and total costs than those manufacturers located in Chicago, Ill., the degree in each instance depending upon the difference in price and the proportion of glucose used in the candy manufactured. Generally, glucose is used in greater proportion in candies which are sold at but a few cents per pound and at a narrow margin of profit. As to low-priced candies which have no differentiating name or brand, candy manufacturers may, and do, attract customers by selling such candies at as little as one-eighth cent per pound lower than competitors, and this is especially true in selling candies to chain stores and other large quantity purchasers to whom such a small difference in price is determinative in the placing of their business. Under such circumstances, candy manufacturers paying higher prices for glucose can only sell candies at competitive prices by absorbing the higher glucose costs or by increasing the price of such candies and selling them on a nonprice basis. The result in either case is to reduce the manufacturer's profit either directly through such absorption or indirectly through reduced sales volume of high glucose content candies at higher than competitive prices, and in the latter alternative reduced sales volume usually results in increased overhead unit costs. The lower profits or any of the other results stated above to candy manufacturers paying higher prices for glucose diminishes their incentive and ability to compete with those candy manufacturers paying lower prices for glucose and deters some who otherwise would enter the manufacture of candy in those cities where respondents' glucose prices are higher.

(b) Some customers who purchase glucose from respondents are located in the cities previously named and are engaged in the business of mixing or preparing sirup for table use for sale to wholesalers and other food product distributors. Such table sirups contain approximately 85 percent of glucose or corn sirup. A typical and usual method of packaging and selling such mixed table sirup is in cases containing six 10-pound cans or twelve 5-pound cans, or 60 pounds net of table sirup, of which approximately 50 pounds is glucose or corn sirup sold by respondents. The higher prices paid for such glucose by table sirup mixers located in cities other than Chicago, Ill., contributes in greater or lesser degree to their having higher raw material and total costs than the comparable costs of table sirup

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mixers located in Chicago, Ill., the degree in each case depending upon the difference in price paid for glucose. Table sirup mixers may, and do, attract customers by selling table sirup at but a few cents per case lower than the price at which a competitor is selling. The lower cost of glucose to table sirup mixers located in Chicago, Ill., when reflected in the selling price of such table sirup, substantially diminishes or prevents sales of such table sirup by mixers located in cities other than Chicago, Ill., to customers in areas where, and to the extent that, transportation costs on such mixed table sirup from Chicago, Ill., to such areas is less than the amount of the difference in the price or cost of glucose to such mixers, or is less than such price difference plus transportation costs from such other cities to such areas. If the table sirup mixers paying the higher prices for glucose were paying lower prices they could, and would, sell table sirup mixed by them to customers located in areas where they cannot now sell to the extent and degree that they would be able to reduce their delivered prices because of lower glucose prices. Under such circumstances the sales and profits of table sirup mixers paying the higher prices for glucose have been less than they would have been, or would be, if the price of such glucose were lower; and such lessening or lowering of sales and profits has diminished their incentive to compete with table sirup mixers paying lower prices for glucose, and has deterred potential new mixers of table sirup from entering the industry in those cities where respondents sell their corn sirup at such higher prices.

PAR. 8. Respondents have introduced no evidence to show that the aforesaid price differentials, or any of them, as among their customers, made only due allowance for differences in the cost of manufacture, sale, or delivery, if any, resulting from differing methods or quantities, if any, in which glucose was to such purchasers sold or delivered.

CONCLUSION

The discriminations in price by respondents, as hereinabove set forth, have resulted, and do result, in substantial injury to competition among purchasers of glucose by affording material and unjustified price advantages to some 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 (Clayton Act), as amended by the act of June 19, 1936 (Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, respondents' answer thereto, certain stipulated facts read into the record and exhibits introduced, briefs filed herein, 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 subsection (a) of section 2 of "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by the act approved June 19, 1936 (Robinson-Patman Act).

It is ordered, That respondents Clinton Co., a corporation, and Clinton Sales Co., a corporation, and 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 glucose or corn syrup unmixed in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Directly or indirectly discriminating in price between different purchasers of glucose or corn syrup unmixed of like grade and quality in the manner and degree set forth in paragraphs 4 and 6 of the findings as to the facts herein, or in any manner or degree substantially similar thereto, or from continuing or resuming any such discriminations in price.

2. Discriminating in price between different purchasers of glucose by the methods set out in paragraph 5 of the findings as to the facts herein, or otherwise discriminating in price between purchasers by means of the booking or entry of orders for glucose or corn syrup unmixed, where the price differences between purchasers resulting therefrom substantially approximate or exceed those set out in paragraphs 4 or 6 of the findings as to the facts herein, provided this shall not prohibit actual sales of glucose or corn syrup unmixed for future delivery which do not involve such discriminations in price at the time of actual sale.

3. Otherwise discriminating in price as between purchases of glucose or corn syrup unmixed of like grade and quality where the effect may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which customers of respondent are engaged, or to injure, destroy, or prevent competition with any recipient of the benefit of such discrimination, provided that this shall not prevent price differences which make only due allowance for

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differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which said glucose is to such purchasers sold or delivered, and provided further that this shall not prevent respondents from showing that any lower price to any purchaser was made in good faith to meet an equally low price of a competitor of respondents.

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
WARNER'S RENOWNED REMEDIES COMPANY

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

Docket 4063. Complaint, Mar. 12, 1940—Decision, Mar. 23, 1942

Where a corporation, engaged in interstate sale and distribution, among other medicinal preparations, of its "Warner's Renowned Prescription No. 6," "Warner's Renowned Laxative Tablets," and "Warner's Renowned Alkaline Douche Tablets," which were sold separately and in combination under the designations "Prescription No. 6 Complete," "Prescription No. 6 Method," and "Formula No. 6 Method"; by means of advertisements through the mails, newspapers and periodicals, and by circulars, leaflets, and other advertising literature—

- (a) Represented that its said preparations were cures or remedies for functional sterility and constituted a competent and effective treatment therefor, and possessed beneficial properties in relation to the functioning of the female reproductive organs;
- (b) Represented that one of the general causes of functional sterility is lack of proper timing between ovulation and menstruation, and that its products served to synchronize such phenomena and thereby bring about pregnancy; and that another general cause of functional sterility is constriction of the mouth of the womb, which prevents fertilization, causing scanty menstruation and toxic accumulation, and that "Warner's Renowned Prescription No. 6" would relax the tension so that the mouth of the womb would be sufficiently open to permit pregnancy and prevent toxic accumulations;
- (c) Represented that the alkalinizing hot douche provided by "Prescription No. 6" counteracted an acid condition of the womb, represented as another general cause of functional sterility, and thereby made fertilization or pregnancy possible; and that use of its products would tone up the female organs and relieve sluggishness, and thereby overcome functional sterility; and
- (d) Represented that its preparation would relieve itchy, sensitive, tender, and sore breasts associated with the menstrual period;

The facts being that such assertions as to ailments and their causes, and the functions concerned, were erroneous; its said preparations would not, either by reason of the theory upon which based or the ingredients therein contained accomplish results claimed; they were not, used either singly or in combination, cures or effective treatments for sterility, functional or otherwise, and possessed no beneficial properties with relation to the functioning of the female reproductive organs; and there was nothing in its "Prescription No. 6" or its combination treatment which could in any way affect the peculiar sensations in the breasts associated with menstruation; With the effect of misleading a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and of thereby inducing it to purchase its 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.

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Before *Mr. Arthur F. Thomas* and *Mr. Robert S. Hall*, trial examiners.

Mr. William L. Taggart for the Commission.

Nash & Donnelly, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Warner's Renowned Remedies 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, Warner's Renowned Remedies Co., is a corporation, organized and doing business under the laws of the State of Minnesota with its principal office and place of business located at 13 East Twenty-fifth Street and 2451 Nicollet Avenue, Minneapolis, Minn. Said respondent trading under the name Warner's Renowned Medicine Co., is now, and for more than 1 year last past has been, engaged in the sale and distribution of various medicinal preparations. Among the preparations sold and distributed by the respondent are "Warner's Renowned Prescription No. 6" and "Warner's Renowned Alkaline Douche Tablets."

Respondent causes its products when sold to be shipped from its place of business in Minneapolis, Minn., 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, 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 described, by the United States mails, by advertisements inserted in newspapers and periodicals, by circulars, leaflets, and other advertising literature, are the following:

1. That respondent's preparations are cures or remedies for functional sterility and constitute competent and effective treatment therefor;
2. That respondent's preparations possess beneficial properties in relation to the functioning of the female reproductive organs;
3. That one of the general causes of functional sterility is lack of proper timing between ovulation and menstruation and that the Warner products serve to synchronize such phenomena thereby bringing about pregnancy;
4. That another general cause of functional sterility is constriction or closing of the mouth of the womb which prevents fertilization causing scanty menstruation and toxic accumulation and that "Warner's Renowned Prescription No. 6" will relax the tension so that the mouth of the womb will be sufficiently opened to permit pregnancy and prevent toxic accumulations;
5. That the alkalizing hot douche provided by "Prescription No. 6" counteracts an acid condition of the womb which is another general cause of functional sterility and thereby makes fertilization or pregnancy possible;
6. That the use of the Warner products will tone up the female organs and relieve sluggishness and thereby overcome functional sterility; and
7. That respondent's preparations will relieve itchy, sensitive, tender, and sore breasts associated with the menstrual period.

PAR. 3. The respondent's aforesaid representations and claims, as well as others of similar import which have not been specifically set out herein, are grossly exaggerated, misleading and untrue. In truth and in fact respondent's preparations have no therapeutic value in the treatment of the female organs or in relieving any form of functional sterility. Said preparations do not constitute cures or remedies for functional sterility and are not competent or effective treatments therefor. Said preparations possess no value or beneficial properties in reference to the functioning of the female reproductive organs. Representations to the effect that the use of respondent's preparations will serve to synchronize the phenomena of ovulation and menstruation are false and deceptive in that menstruation is entirely dependent upon ovulation and there is no lack of synchronization between ovulation and menstruation but they must occur simultaneously. Respondent's representations as to the effect of its preparations in relaxing the mouth of the uterus and removing toxic accumulations is false, deceptive and misleading for the reason that when menstruation occurs the cervical opening will be sufficient to admit the passage of spermatozoa

since it is through the cervix that drainage of menstrual discharges must take place. Furthermore, there is no toxic accumulation in the female organs arising from the causes or in the manner described by the respondent in its various advertising material. Any alkalization or neutralization of the acid condition of the vaginal secretions is contrary to nature since the normal reaction of the vagina is acid and consequently there would be no benefit derived from the use of respondent's alkalizing douche. Respondent's preparations have no therapeutic value in toning up the organs and relieving itchy, sensitive, tender or sore breasts associated with the menstrual period.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to its preparations has had and now has a tendency and capacity 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 induces a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondents' preparations containing drugs.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 12 A. D. 1940, issued and subsequently served its complaint upon the respondent, Warner's Renowned Remedies 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 issuance of said complaint, testimony, and other evidence in support of said complaint were introduced by William L. Taggart, attorney for the Commission and in opposition to the allegations of the complaint by John A. Nash and Horace J. Donnelly, attorneys for the respondent, before Arthur F. Thomas and Robert S. Hall, 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 upon said complaint, testimony and other evidence, report of Trial Examiner Arthur F. Thomas upon the

evidence and exceptions filed 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, Warner's Renowned Remedies Co., is a corporation organized and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 2451 Nicollet Avenue, Minneapolis, Minn. Said respondent, trading under the name of "Warner's Renowned Medicine Co.," is now, and for more than one year last past has been, engaged in the sale and distribution of various medicinal preparations. Among the preparations sold and distributed by the respondent are "Warner's Renowned Prescription No. 6," "Warner's Renowned Laxative Tablets," and "Warner's Renowned Alkaline Douche Tablets," which are sold separately and in combination under the designations "Prescription No. 6 Complete," "Prescription No. 6 Method," and "Formula No. 6 Method."

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

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said 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 is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparations, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements dis-

seminated and caused to be disseminated as hereinabove described, by United States mails, by advertisements inserted in newspapers and periodicals, and by circulars, leaflets, and other advertising literature, are the following:

1. That respondent's preparations are cures or remedies for functional sterility and constitute a competent and effective treatment therefor;

2. That respondent's preparations possess beneficial properties in relation to the functioning of the female reproductive organs;

3. That one of the general causes of functional sterility is lack of proper timing between ovulation and menstruation, and that the Warner products serve to synchronize such phenomena, thereby bringing about pregnancy;

4. That another general cause of functional sterility is constriction or closing of the mouth of the womb, which prevents fertilization, causing scanty menstruation and toxic accumulation, and that Warner's Renowned Prescription No. 6 will relax the tension so that the mouth of the womb will be sufficiently open to permit pregnancy and prevent toxic accumulation;

5. That the alkalizing hot douche provided by Prescription No. 6 counteracts an acid condition of the womb, which is another general cause of functional sterility, and thereby makes fertilization or pregnancy possible;

6. That the use of Warner's products will tone up the female organs and relieve sluggishness, and thereby overcome functional sterility; and

7. That respondent's preparation will relieve itchy, sensitive, tender, and sore breasts associated with the menstrual period.

PAR. 3. From examination of the testimony in this case, it appears that it is the respondent's contention that the general health of a woman has a direct bearing upon sterility and that the administration of the various tonics combined in respondent's preparation tones up the general health, with a favorable reaction upon the female organs, causing them to function properly and permit conception to occur. For the purpose of accomplishing this tonic effect, the respondent has developed its combination treatment, which consists of its preparations "Warner's Renowned Prescription No. 6," "Warner's Renowned Laxative Tablets," and "Warner's Renowned Alkaline Douche Tablets."

PAR. 4. Respondent's tablet preparation "Warner's Renowned Prescription No. 6" is designed for use as a tonic and contains three ingredients: Ferrous sulfate, gentian, and nux vomica, which are designed as tonics to tone up the general health. Ferrous sulfate is an iron preparation effective in cases of anemia; gentian is a drug, the use of which

in modern medicine has, to a great extent, been discontinued, and which was formerly used as a stomachic, with perhaps some tonic value; and nux vomica is the original organic substance from which strichnine is obtained, which has been used considerably in the past as a tonic but less in recent years, and has a stimulating effect upon gastric secretions and is a nerve stimulant which tends to relax the nerve endings.

In addition to the above ingredients used for general tonic effect, there are other ingredients contained in this tablet which are designed to tone up the female organs and directly affect sterility. These ingredients are viburnum pruniflorous, a drug formerly used as a uterine tonic or sedative, which, since the use of more specific medication, has been largely discontinued and is now thought to be relatively inert; ovarian substance, a preparation made from whole ovary, which is considered to be inert and of no value when administered orally, particularly in quantities provided in respondent's preparation; and wheat germ oil, which contains vitamin E, sometimes referred to as a sterility vitamin. The value of vitamin E as affecting pregnancy or sterility in women has not been definitely determined. In tests upon rats it has been found to be effective in preventing repeated abortions, the minimum dose required being a half gram a day. If the ordinary pharmacological scale is used, it would require the use of a minimum of one hundred of respondent's pills, three times daily, to provide a comparable dose of this vitamin for human beings.

Respondent's laxative tablets designated "Warner's Renowned Laxative Tablets" are designed to assist in beneficially affecting sterility by toning up the system, relieving sluggishness, and eliminating constipation. This preparation consists of three drugs: Cascarin, podophyllin, and aloin, which combination constitutes a harsh laxative, the value of which is limited to the temporary relief of constipation and is of no value in the treatment of sterility.

Respondent's third preparation in its combination treatment is a douche tablet designated "Warner's Renowned Alkaline Douche Tablets" containing ten grains soda bicarbonate. The use of this douche in combination with the other preparations hereinabove described, is designed to assist in toning up the female organs by removing toxic accumulations and particularly the thickened mucous secretion forming a cervical plug or barrier against the entry of male spermatozoa, and by neutralizing the acid condition of the vagina, considered to be unfavorable to the spermatozoa.

PAR. 5. Based upon the medical testimony, the Commission finds that there are a large number of causes for sterility in women, many

of which are unknown to the medical profession. The term "functional sterility" as used by the respondent is a misnomer and incorrect. By "functional" is meant that the organs are normally functioning, that the ovaries, tubes, uterus, and vagina are all normally developed and functioning within the normal realm, as contrasted to "pathological," where they would be improperly developed or where disease process has taken place. The conditions under which respondent asserts that sterility takes place are, by their nature, pathological and require specific treatment.

It is an established medical fact that women suffering from anemia, tuberculosis, and other debilitating diseases have become pregnant and the toning up of the general health of the individual will not in itself, overcome sterility, which may be due to many various causes of a pathological nature.

The lack of proper timing between ovulation and menstruation is not generally considered as a cause of sterility. In any event, there is nothing in respondent's "Prescription No. 6" or its combination treatment which will in any way effect the timing between ovulation and menstruation or serve to synchronize such phenomena.

The statements made by the respondent with reference to the constriction or closing of the mouth of the womb as being a general cause of functional sterility, are false and misleading. The mouth of the womb is never closed unless there is a congenital condition requiring surgery. Menstrual fluid is not normally held within the uterus due to constriction of the uterine outlet, and in event the uterine outlet should remain closed and the menstrual fluid accumulate, a very acute illness would undoubtedly result. It is normal between the periods of menstruation for a small amount of mucus to be present in the cervix or mouth of the womb. The presences of such mucous material is not generally considered as an obstruction to pregnancy, as the spermatozoa are able to penetrate this mucous, which is normally present. None of respondent's said preparations, used either singly or in combination will have the effect of relaxing the womb, so that the mouth of the womb will be sufficiently open to permit pregnancy or have any value in the prevention of so-called toxic accumulations.

The normal condition of the vagina is acid, and such acidity is essential for normal functioning. The use of the preparations contained in respondent's combination treatment, with the exception of the douche tablets, has no effect upon the acid condition of the vagina. The use of the bicarbonate of soda douche as provided in this prescription might have a tendency to temporarily neutralize

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the acid condition of the vagina. This, however, is contrary to the normal process of the vagina and has no value in favorably affecting sterility.

Respondent's preparations, used either singly or in combination as provided in "Prescription No. 6 Complete," "Prescription No. 6 Method," or "Formula No. 6 Method," are not cures or remedies for sterility, functional or otherwise, and do not constitute competent or effective treatments for sterility and possess no beneficial properties which have any value in promoting or aiding the functioning of the female reproductive organs. The use of said preparations will not tone up the female organs, relieve sluggishness, or in any way overcome sterility. Increased sensitivity of the breasts at or about the time of menstruation is considered to be physiological and normal in a great many women. There is nothing in respondent's "Prescription No. 6" or its combination treatment which can in any way affect the peculiar sensations in the breasts associated with menstruation, described by the respondent as itchy, sensitive, tender, and sore breasts.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to its preparations, has had, and now has, the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparations containing drugs.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony, and other evidence taken before Arthur F. Thomas and Robert S. Hall, trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of Trial Examiner Arthur F. Thomas upon the evidence and exceptions filed thereto, and

briefs in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Warner's Renowned Remedies Co., a corporation, trading as Warner's Renowned Medicine Co., or under any other trade name, and 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 preparations designated "Warner's Renowned Prescription No. 6," "Warner's Renowned Laxative Tablets," and "Warner's Renowned Alkaline Douche Tablets," either singly or in combination under the designations "Prescription No. 6 Complete," "Prescription No. 6 Method," or "Formula No. 6 Method," or any other products of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other name or names, do forthwith cease and desist from:

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 preparations, either singly or in combination, are cures or remedies for, or constitute competent or effective treatments for, functional sterility.

(b) That respondent's preparations, either singly or in combination, have any therapeutic value in the treatment of any form of sterility.

(c) That respondent's preparations, either singly or in combination, possess any properties which have any value in promoting or aiding the functioning of the female reproductive organs.

(d) That respondent's preparations, either singly or in combination, possess any properties which will in any way affect the timing between ovulation and menstruation, or serve to synchronize such phenomena.

(e) That the use of said preparations, either singly or in combination, will be effective in relaxing the womb, cause the mouth of the womb to be sufficiently open to permit pregnancy, or prevent toxic accumulations.

(f) That the use of respondent's preparation "Warner's Renowned Alkaline Douche Tablets" has any value in the treatment of sterility by neutralizing the acid condition of the vagina, or that the use of said preparation will remove toxic accumulations or any barrier in

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the cervix, or in any way affect sterility or make fertilization and pregnancy possible.

(g) That the use of said preparations, either singly or in combination, will tone up the female organs, relieve sluggishness, or overcome sterility.

(h) That the use of said preparations, either singly or in combination, can in any way affect the sensations of the breasts associated with menstruation or that said preparations have any therapeutic value in the treatment of itchy, sensitive, tender, or sore breasts associated with the menstrual period.

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 preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof.

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

IN THE MATTER OF
DE FOREST'S TRAINING, INC.

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

Docket 4441. Complaint, Dec. 31, 1940—Decision, Mar. 23, 1942

Where a corporation, engaged in the sale of a course of home study in electronics, including radio, sound and television, and branches thereof, such as facsimile, sound pictures, public address system, and many uses of the electric eye, which might be concluded, at the student's option, with 2 weeks of shop training at said corporation's place of business, in any branch the student might select; by means of booklets, pamphlets, etc., circulated to prospective students by mail, and by numerous salesmen to whom it referred inquiries received in response to advertising—

Made such representations concerning the opportunities in television open to those who completed said course as "If Television develops as we anticipate, it won't be very long until many of the 23,000,000 homes in the U. S. will want Television receivers. * * *"; "So it seems that Television will soon be one of the big industries of this country—possibly as large as the Radio and Sound Picture business combined. It will hold wonderful opportunities for the young man who has the vision and foresight to get into it at the very beginning and pioneer and grow with it"; "* * *. Our Employment Service is available to every enrollee * * *. Through this service we have helped scores of men obtain employment. * * * What we have done for others we can do for you, when you are properly trained. * * *"; and "To the young man seeking to fit himself into this exciting new picture of modern opportunity, *everything* may depend on one factor. That is—whether he has the ambition and foresight to seize this fine chance; whether he makes himself ready for Television NOW, before its pioneering opportunities pass on into history";

The facts being that delay after delay has occurred to postpone commercial development in the television field, involvement of the Nation in active hostilities will undoubtedly result in further delay, and no one can say when it will reach a stage assuring opportunities for the employment of large numbers of men; up to the present, opportunities for employment in that field have been limited to a few individuals with wide training and experience in radio and allied problems, and much broader scientific education than offered by course in question; and while said corporation, during a 3-year period, placed in employment with a large number of different concerns, 1,077 of a total of 1,155 graduates, such employment was usually in beginners' positions for which no training was necessary, and in such instances completion of the course was helpful merely as indicating sustained interest on the part of the individual for that particular field;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were

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true, and of causing it to purchase said course; thereby diverting trade unfairly from competitors who do not misrepresent their courses, to their injury and that of the public:

Held, That such acts and practices, under the circumstances set forth, constituted unfair methods of competition in commerce, and unfair and deceptive acts and practices therein.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. William L. Pencke for the Commission.

Nash & Donnelly, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that De Forest's Training, 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, De Forest's Training, Inc., is an Illinois corporation, with its principal office and place of business located at 2533 North Ashland Avenue, Chicago, Ill. It is now, and for more than one year last past has been, engaged in conducting a vocational school in television, radio, and motion picture sound equipment maintenance and manufacture, and in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of combination home study and shop training courses therein. It has caused and is causing said printed courses of instruction, when sold, to be transported from its 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. Respondent maintains and at all times mentioned herein has maintained a course of trade in said courses of instruction in commerce 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, respondent is now and has been at all times herein referred to, in substantial competition with other corporations, and with individuals, firms and partnerships, also engaged in the sale and distribution in said commerce of similar courses of instruction intended for preparing students thereof by correspondence for various positions, employments, and trades in the television, radio, motion picture sound equipment and related fields.

PAR. 3. In the course and conduct of its business in said commerce as aforesaid, and for the purpose of promoting the sale of its said course of instruction, respondent has secured, and does secure, prospective students and purchasers of its said course by means of mailing lists. Prospective students who answer the circulars mailed to them and who request further information are solicited by various field agents of the respondent, who undertake to enroll said prospective purchasers for the course. Said field agents are furnished by the respondent with sales literature consisting of instructions in the manner in which the course is to be presented to prospective purchasers, illustrations of the motion picture machine which forms part of the equipment furnished to the students, numerous photographs and reprints from newspaper articles, letters of recommendation from other students, and other advertising literature. In the prepared sales talk supplied by respondent and which is to be so used by said agents there appear, among others, the following statements:

This is a new field and one that offers great opportunities for young men—there are real possibilities for the man who is fortunate enough to get into the industry in the near future. Therefore, it is important that only the right type of young man be considered.

* * * * *

If Television develops as we anticipate, it won't be very long until many of the 23,000,000 homes in the U. S. will want television receivers. In addition to broadcasting, this should require the services of thousands of men to design, manufacture, install, and service these units.

There is still another big Television field that should develop in the near future. As you no doubt know, many newspaper pictures are now transmitted by wire, a process which is really a form of wired Television. When this method is speeded up enough to transmit movies, theaters should make daily use of the equipment. When this comes to pass it should bring theaters all over the country into circuits, and no matter where a person is, he should be able to hear and see news events and other things of national interest just as they happen. * * *

So it seems that Television will soon be one of the big industries of this country—possibly as large as the Radio and Sound Picture business combined. It will hold wonderful opportunities for the young man who has the vision and foresight to get into it at the very beginning and pioneer and grow with it.

In the advertising material supplied by respondent and distributed by said agents among prospective purchasers, there appear, among others, the following statements:

Sound, television, radio present world-wide opportunities. Television, a new branch of the Electronic field, is developing rapidly, * * *. After a man is trained the De Forest way, he is ready to enter the Electronic industry and really go places. Our employment service is available to every enrollee no

matter where he lives. Through this service we have helped scores of men obtain employment. Because we train our men well, manufacturers, dealers, and distributors are glad to consider our advanced students and graduates.

What we have done for others we can do for you when you are properly trained. Start your preparation now so you can soon take advantage of our employment service.

Consider TELEVISION a moment! Developments have come so rapidly that the beginning of a new industry is already here. Television is estimated to expand into a billion dollar field. * * *

And Television, like the automobile and other industries in their earlier days, should offer some of the most outstanding opportunities to those who get into the field when it counts most—on the ground floor!

And another demand for trained Television men should come from the installation and servicing of Television receivers. * * *

Yes, the future of TELEVISION, RADIO, SOUND, and SOUND PICTURES—and therefore your future—promises to be one of great growth and possibilities.

PAR. 4. Through the use of the statements hereinabove set forth, and many others of like import and effect, the respondent represents, directly or by implication, that there are at the present time great opportunities for persons who enter upon the field of television: That within a short time there will be a market for large numbers of television receivers; that by vastly increased use of television apparatus thousands of men will be required in said field; that television will soon be as large a business as the radio and sound picture business combined and will offer extraordinary opportunities to people who enter upon the field now; that any man who is trained in the work of television as taught by respondent will be ready to enter the electronic industry and be assured of lucrative employment.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, misleading and deceptive. In truth and in fact, while television is now occupying the serious attention of scientists, it is still in its infancy, and opportunities for employment and rapid advancement in said field are very few and limited. There is at the present time no assurance that many television receivers will be manufactured and will find their way into the homes of the public. At the present time there are still a number of technical difficulties to be overcome before television apparatus can be sold and distributed on the scale and in the quantity indicated by respondent's representations. It is therefore very doubtful that any great number of men trained and experienced in the field of television will be needed within the near future. While television may at some future time become as large an industry as the radio and sound picture business, there is at the present time no indication that persons entering said field will have unusual opportunities to practice their profession. The demand

at the present time for men trained in the television field is not large enough to warrant respondent's representation that graduates of respondent's school may be readily placed in positions in such field.

Moreover, graduates of respondent's school do not possess sufficient practical experience to qualify as skilled employees or craftsmen in the radio and television industry. The taking of a correspondence course, together with a 2-weeks' shop training, is not sufficient to equip a student with the practical knowledge required in positions in said field, nor will such students be qualified as competent servicemen.

PAR. 6. The representations made by respondent as set out herein have had and now have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true, and cause such portion of the public to purchase respondent's said course of instruction instead of the courses of instruction sold by competitors of the respondent who do not in any manner misrepresent their courses of instruction. As a consequence thereof substantial trade has been diverted from said competitors to the respondent, to the injury of such competitors and to the injury of the public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 31, 1940, issued and subsequently served its complaint in this proceeding upon De Forest's Training, 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 thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced 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, briefs in support of the complaint and in opposition thereto, and oral arguments 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, De Forest's Training, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Illinois, with its principal office and place of business at 2533 North Ashland Avenue, Chicago, Ill. Respondent is engaged in the sale of a course of home study in the general field of electronics. This course consists of various books, pamphlets and other written material, and some items of mechanical equipment. Upon completion of the home study by correspondence, respondent furnishes a short period of shop training at its place of business in Chicago.

PAR. 2. In the course and conduct of its aforesaid business, respondent causes the books, pamphlets, other written material, and mechanical equipment used in connection with its correspondence courses to be transported from its place of business in Chicago, Ill., to the purchasers thereof located at various points in the several States of the United States other than the State of Illinois, and respondent maintains, and has maintained, a constant 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 order to induce the sale of said courses of instruction, respondent advertises its school by various means, including booklets, pamphlets, and other written material circulated to prospective students by mail and by salesmen employed by respondent. Among the statements and representations made to prospective students by means of said written material and by respondent's salesmen are the following:

If Television develops as we anticipate, it won't be very long until many of the 23,000,000 homes in the U. S. will want Television receivers. In addition to broadcasting, this should require the services of thousands of men to design, manufacture, install, and service these units.

There is still another big Television field that should develop in the near future. As you no doubt know, many newspaper pictures are now transmitted by wire, a process which is really a form of wired Television. When this method is speeded up enough to transmit movies, theatres should make daily use of the equipment. When this comes to pass it should bring theatres all over the country into circuits, and no matter where a person is, he should be able to hear and see news events and other things of national interest just as they happen. * * *

So it seems that Television will soon be one of the big industries of this country—possibly as large as the Radio and Sound Picture business combined. It

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will hold wonderful opportunities for the young man who has the vision and foresight to get into it at the very beginning and pioneer and grow with it.

* * * * *

SOUND—TELEVISION—RADIO

Present World-Wide Opportunities

* * * Television, a new branch of the Electronic field, is developing rapidly. * * * After a man is trained the De Forest way, he is ready to enter the Electronic industry and really "go places." Our Employment Service is available to every enrollee, no matter where he lives. Through this service we have helped scores of men obtain employment. Because we train our men well, manufacturers, dealers, and distributors are glad to consider our advanced students and graduates. What we have done for others we can do for you, when you are properly trained. Start your preparation now so you can take advantage of our employment service.

* * * * *

To date, Television has progressed true to prediction. The beginning of a new American industry is already with us—one that may exceed even the spectacular record of Radio—one that should provide an even wider range of opportunities for interesting and profitable careers.

All of these future possibilities * * * all of the present activity in Television * * * combine to spell one word in the mind of the forward-looking, ambitious man, and that is—OPPORTUNITY! Opportunity for the fascinating career he is seeking * * * opportunity to realize some of the material things in life he has always wanted.

* * * * *

Today, the whole brilliant story of Radio's early growth, development and opportunities may repeat itself in TELEVISION. To the ambitious young man, here may be one of his greatest fields of possibilities.

* * * * *

Ambitious men who want steady, big-paying jobs *are needed* in the fast-growing TELEVISION, RADIO, and SOUND PICTURE INDUSTRY. De Forest's Master Training, planned by Dr. Lee De Forest, will properly prepare those selected for responsible jobs.

* * * * *

A word to the Wise About the Future. We will recommend the men we train to numerous manufacturers and dealers to design—manufacture—install—operate and maintain Television, Radio, and Sound Equipment.

* * * * *

But to the young man seeking to fit himself into this exciting new picture of modern opportunity, everything may depend on one factor. That is—whether he has the ambition and foresight to seize this fine chance; whether he makes himself ready for Television Now, before its pioneering opportunities pass on into history.

PAR. 4. Respondent's course consists of approximately 140 lessons which an earnest student may complete in 12 to 18 months by the application thereto of 7 to 12 hours of study per week but which respondent will allow the student to continue for a maximum of 3

years. In connection with the course of lessons respondent furnishes to each student a small motion picture projection machine and a number of films designed to aid the student in understanding the action of electricity. The films remain the property of respondent, but the student is allowed to retain the projector. Upon satisfactory completion of the lessons given by correspondence the student, at his option, may have as a part of his course 2 weeks of shop training at respondent's place of business in Chicago at which time the student may devote himself particularly to any branch of the electronics industry he selects. The respondent does not offer separate courses in particular branches of the electronics field but offers a single course which includes radio, sound, and television and branches thereof such as facsimile, sound pictures, public address systems, and many uses of the electric eye. The charge made by respondent for its course is \$145 if payment is made in cash, or \$165 if paid on the installment plan. If the student so elects, for an additional \$60 respondent will furnish transportation to and from Chicago and room and board while there to the student taking the 2 weeks of shop training. Otherwise, the student may make his own arrangements for transportation to and from Chicago and lodging while there. Under the contract between respondent and a student the student may quit at any time upon certain terms and conditions. Respondent maintains the right to sue for performance of such contract but rarely resorts to suit.

The principal method used by respondent in promoting the sale of its course in electronics is to circularize by mail young men in the classes graduating from high school. Respondent has some 50 salesmen located at various points in the United States and when an inquiry is received in response to any advertising circular a salesman calls upon the prospect and attempts, by means of a sales routine and instructions furnished by respondent, to secure his enrollment as a student. Prospective students are not promised a job upon satisfactory completion of the course, but are informed of the employment assistance furnished and advised that respondent will use every reasonable effort to secure employment for them. Graduates of the school are not termed "engineers" but are referred to as "technicians." Students are generally high school graduates and approximately 90 percent have had no practical experience at the time they undertake respondent's course.

Respondent began its present business in 1931 and about 1936 or 1937 added to its advertising, promotional literature, and representations various statements concerning television, its future growth, and the opportunities for employment of trained men in television.

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PAR. 5. Television has been the subject of research, experimentation, and development for many years. The introduction of television to the general public began at the opening of the World's Fair in New York in April 1939, at which time television was practicable, and several thousand television receivers have been manufactured and a substantial number thereof sold to members of the public. The question of the establishment of standards to avoid undue obsolescence of receiving equipment which might be sold to the public was before the Federal Communications Commission, and on April 30, 1941, that Commission approved, with certain reservations, a set of standards and authorized the limited commercialization of television. At hearings in the present proceeding prior to the action taken by the Federal Communications Commission a number of officials of concerns prominent in the radio, television, and broadcasting fields testified to the general effect that television was then commercially practicable and its commercialization was largely dependent upon the action taken by the Federal Communications Commission with respect to authorizing its commercial development. They were agreed that television would become a large and important industry, perhaps as large or larger than the radio industry; that its possibilities were immense in many directions; and that when its commercial development began large numbers of men would be employed in the production, sale, and servicing of television receivers and in various ways in connection with broadcasting of television programs and other technical aspects of the art. The greatest divergence of opinion was with respect to the time element involved; that is, when commercialization on a substantial scale would occur. Some witnesses felt that this was in the immediate future or that it would immediately follow the establishment of standards by the Federal Communications Commission and authorization for its introduction to the public. Some felt that the prospects were not nearly so immediate, and it was pointed out that even after standardization there could be no immediate substantial development because of problems which must be solved with respect to the erection of broadcasting equipment, with respect to the provision of suitable programs, the sale of a sufficient number of sets whereby the heavy cost of broadcasting programs might be met by securing sponsors for programs, and many other practical considerations the solution of which would all require time. One well qualified witness expressed the view that for many years television has been plagued by wishful thinking and optimistic statements as to its immediate future by those who failed to consider the fact that commercial development even at best would require several years to become substantial.

PAR. 6. It is plain that, regardless of the optimism of various individuals engaged in the television field with respect to its commercial development, delay after delay has occurred to postpone that development. Even after the action of the Federal Communications Commission referred to above, the involvement of the nation in active hostilities will undoubtedly result in further delay. The fact is that no one can say with certainty when the commercial development of television will reach a stage which assures opportunities for the employment of large numbers of men.

However, during the past several years respondent has made various representations presenting an entrancing prospect of the possibilities and opportunities in television said to be open to those who have completed its course. The fact is that during those years and up to the present time there have been no opportunities for the employment of graduates of respondent's school in the television field, and there is no evidence that any graduates were actually placed in employment in that field by respondent. Only a limited number of people have up to this time been employed in television, and it has been principally an experimental and research problem for which respondent's course does not qualify students. In fact, the field has been limited to a few individuals with wide training and experience in radio and allied problems and a few graduates of recognized technical colleges and universities having a much broader scientific education and training than is offered by respondent's course.

PAR. 7. Respondent has maintained, and does maintain, an employment service for advanced students in, or graduates of, its school and has an employment manager to seek the establishment of relations with employers which would aid in placing students of respondent's course. From 1937 to 1940 a total of 1,155 men were graduated from respondent's school, and during this period of time 1,077 were placed in employment with some 137 different employers, including many large and well-known concerns such as General Electric Co., Westinghouse Electric & Manufacturing Co., Illinois Bell Telephone Co., Western Electric Co., and numerous others. The employment found for graduates is usually work as beginners at wages ranging from \$15 to \$25 weekly, and frequently is in positions for which mastery of respondent's course is not needed and for which no training is necessary. In such instances the completion of respondent's course is helpful merely to the extent of indicating sustained interest and enthusiasm on the part of the individual student for the particular field in which employment is sought.

PAR. 8. Respondent's representations have had, and now have, the tendency and capacity to, and do, mislead and deceive a substantial

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portion of the purchasing public into the erroneous and mistaken belief that such representations are true, and cause such portion of the purchasing public to purchase respondent's said course of instruction, and as a consequence thereof substantial trade has been diverted from competitors of respondent who do not misrepresent their courses of instruction, to the injury of such competitors and of the general public.

CONCLUSION

The aforesaid acts and practices of respondents constitute unfair methods 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 and in opposition to the allegations of said complaint taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs filed herein, and oral arguments by 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, De Forest's Training, 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 any course of study in television or electronics 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 there are possibilities or opportunities for employment of students or graduates of respondent's course in the television field until substantial numbers of such students or graduates have been, and can be, employed directly in such field.

2. Representing directly or by implication that there are now, or in the near future will be, possibilities or opportunities for the employment of students or graduates of respondent's course in the television field until the commercial development of television is sufficiently advanced to assure immediate availability of such possibilities or opportunities.

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3. Misrepresenting in any manner the possibilities or opportunities for employment of students or graduates of respondent's course in the television field or any other branch of the electronics industry.

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

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IN THE MATTER OF

WILLIAM E. BOYER AND ROBERT J. BOYER, TRADING
AS BOYER BROTHERSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4475. Complaint, Mar. 25, 1941—Decision, Mar. 23, 1942*

Where two individuals, engaged in competitive interstate sale and distribution of assortments of candy and push cards, such as their "Round House" assortment, consisting of a number of uniform candy bars, together with a push card for use in their resale under a plan by which the purchaser received for the five cents paid 1, 2, 3, or 4 bars, in accordance with number selected by chance from card as explained thereon, and person making last push received a "large delicious candy surprise"—

Sold such assortments to wholesalers, jobbers and retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid plan; and thereby supplied to and placed in the hands of others a means of conducting lotteries in the sale of their candy in accordance with such plan, under which the number of bars of candy received for the money paid was determined wholly by lot or chance, and there was involved sale of a chance to procure additional bars without additional cost; contrary to an established policy of the Government of the United States, and in competition with many who, unwilling to use a method involving chance or contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales plan and were thereby induced to buy and sell such individual's candy in preference to that of their said competitors, and that because of said game of chance, trade was unfairly diverted to them from their competitors aforesaid; to the substantial injury or 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. A. B. Duvall* and *Mr. John W. Addison*, trial examiners.
Mr. J. V. Mishou for the Commission.

Jubelirer, Jubelirer & Smith, of Altoona, 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 William E. Boyer and Robert J. Boyer, individually and trading as Boyer Brothers, 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, William E. Boyer and Robert J. Boyer, are individuals trading as Boyer Bros., with their principal office and place of business located at 821 Seventeenth Street, Altoona, Pa. Respondents are now and for more than 8 years last past have been engaged in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers. The respondents cause and have caused said candy when sold to be transported from their place of business in the city of Altoona, Pa., to purchasers thereof at their respective points of location in the various other States of the United States and in the District of Columbia. There is now and for more than eight years last past, has been a course of trade by respondents in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of their said business, respondents are and have been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers and jobbers certain assortments of candy and cause and have caused push cards which are designed to be and are used with the said assortments of candy to be transported by means of respondents' salesmen and otherwise 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. Respondents distribute, and have distributed, various push cards for use in the sale and distribution of their candy to the consuming public by means of a game of chance, gift enterprise or lottery scheme. 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 bars of candy of uniform size and shape together with a device commonly called a push card. The push card contains 60 partially perforated disks and on the face of each of said disks is printed the word "push." Concealed within the said disks are numbers which are effectively concealed from purchasers and prospective purchasers until a push or selection has been made and the selected disk pushed or separated from the card. Sales

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are 5 cents each. The following legend appears on the face of said card:

WHY REACH BEYOND GOOD TASTE?

EAT ROUND HOUSE

5 per sale

ADVERTISING MEDIUM

No. 13 Receives FOUR 5¢ Candy Bars—No. 23 Receives

THREE 5¢ Candy Bars

NUMBERS 5-10-20-25-30-40-50-60 each receive two 5¢ Candy Bars

All other numbers receive a 5¢ Candy Bar except the last number pushed which receives

A LARGE DELICIOUS CANDY SURPRISE

The sales of respondents' candy by means of said push card are made in accordance with the above-described legend or instructions. Said bars of candy are allotted to customers or purchasers in accordance with the above legend or instruction. The fact as to whether a purchaser receives one or more bars of candy for the amount of money paid is thus determined wholly by lot or chance.

Respondents sell and distribute and have sold and distributed various assortments of candy along with push cards involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said candy expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. 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 method and plan hereinabove set forth involves a game of chance or the sale of a chance to procure additional bars of candy without additional cost. Many persons, firms and corporations who sell and distribute candy in competition with respondents, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their candy and the element of chance involved therein and are thereby induced to buy and sell respondents' candy in preference to candy of said

competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents because of said game of chance has a tendency and capacity to and does unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent methods. As a result thereof, substantial injury is being done and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 25, 1941, issued and subsequently served its complaint in this proceeding upon respondent, William E. Boyer, an individual, and Robert J. Boyer, an individual, copartners trading as Boyer Bros., charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced 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 said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, William E. Boyer, an individual, and respondent, Robert J. Boyer, an individual, are copartners trading as

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Boyer Bros., with their principal place of business located at 821 Seventeenth Street, Altoona, Pa. Respondents are now, and for a number of years last past have been, engaged in the sale and distribution of candy, including candy bars, package goods, and specialties to wholesale dealers, jobbers, and others.

PAR. 2. In the course and conduct of their said business respondents cause, and have caused, candy, when sold, to be transported from their place of business in Altoona, Pa., to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. There is now, and for a number of years last past has been, a course of trade by respondents in such candy in commerce between and among various States of the United States and in the District of Columbia. In the course of their said business respondents are, and have been, in competition with other individuals and 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. 3. In the course and conduct of their aforesaid business, respondents sell, and have sold, to wholesale dealers, jobbers, and others certain assortments of candy, and have furnished, or caused to be furnished, in connection therewith push cards designed to be used with said assortments of candy in the resale thereof. One of said assortments, known as the "Round House" assortment, is hereinafter described for the purpose of showing the methods used, as follows:

The "Round House" assortment consists of a number of bars of candy of uniform size and shape, together with a device commonly called a push card. The push card contains 60 partially perforated disks on the face of each of which is printed the word "Push." Within said disks are numbers which are effectively concealed from purchasers and prospective purchasers until a push or selection has been made and the disk so selected has been pushed or separated from the card. Sales are 5 cents each. The following legend appears on the face of said push card:

Why Reach Beyond Good Taste?

CANDY

is

Delicious Food

Enjoy Some Every Day

Eat **ROUND HOUSE**

Advertising Medium

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Per Sale

No. 13 Receives FOUR 5¢ Candy Bars.

No. 23 Receives THREE 5¢ Candy Bars.

Nos. 5-10-20-25-30-40-50-60 each receive two 5¢ Candy Bars.

All other numbers receive a 5¢ CANDY BAR except the last number pushed which receives A LARGE DELICIOUS CANDY SURPRISE

Sales of respondents' candy by means of said push card are made in accordance with the above instructions and said candy is allotted to customers or purchasers in accordance with the above instructions. The fact as to whether a purchaser receives one or more bars of candy for the amount of money paid is thus determined wholly by lot or chance.

PAR. 4. Retail dealers who directly or indirectly purchase respondents' said candy expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others a means of conducting lotteries in the sale of their candy. 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. 5. The sale of candy to the purchasing public by the method and plan hereinabove set forth involves a game of chance or the sale of a chance to procure additional bars of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with respondents are unwilling to adopt and use a method involving a game of chance or the sale of a chance to win something by chance, or any other method contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their candy and are thereby induced to buy and sell respondents' candy in preference to candy of said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents, because of said game of chance, has the tendency and capacity to, and does, unfairly divert trade in commerce between and among various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent methods. As a result thereof, substantial injury is being done, and has been done, by respondents to competition in commerce between and among 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

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constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony, and other evidence in support of and in opposition to the allegations of said complaint taken before an examiner of the Commission theretofore duly designated by it, and brief 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 respondent, William E. Boyer, an individual, and respondent, Robert J. Boyer, an individual, 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 candy or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing 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, punch boards, or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, punch boards, or other lottery devices are to be used, or may be used, in selling or distributing 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

FOLDING FURNITURE WORKS, INC., ALSO DOING BUSINESS AS COAST TO COAST DISTRIBUTORS AND MANUFACTURERS AND NATIONAL MERCANTILE REPORTERS

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

Docket 4611. Complaint, Oct. 9, 1941—Decision, Mar. 23, 1942

Where a corporation, engaged in manufacture of children's cribs and bassinets; tables, and other furniture, and in interstate sale and distribution thereof from its factory and place of business in Wisconsin, and maintaining an address in Chicago for the receipt and dispatch of mail under the trade names "Coast to Coast Distributors and Manufacturers" and "National Mercantile Reporters"—

(a) Made such typical statements in circulars and by its salesmen as "An Annual Production Capacity of One-Hundred-Thousand Children's Cribs," "The largest manufacturer of low price children's cribs in the world," and the "Largest exclusive manufacturers of children's cribs and beds in the world"; and

(b) Represented that its business was so large and the quantity of its production such as to require warehouses and branch offices which it maintained at convenient locations throughout the United States;

The facts being that its annual production capacity was substantially less than that claimed above, it did not maintain offices at any other place than its Wisconsin place of business, and other representations, above set out, were false;

(c) Represented that "Coast to Coast Distributors and Manufacturers" was separate and distinct from, and in nowise connected with, the business conducted by it under its corporate name; and

(d) Represented that "National Mercantile Reporters" maintained an office and place of business in Chicago, Ill., and branch offices at various other points, preparing accurate reports on paying ability, unpaid accounts, and trade experience, and making collections of mercantile accounts for various manufacturers, and was an independent bona fide collection business in nowise connected with its business;

The facts being that said supposed separate businesses were, as noted above, mere trade names employed by it, the latter, i. e., National Mercantile Reporters, being used by it to force collection on accounts of merchandise shipped on "padded" orders;

(e) Made use of said latter trade name to collect from customers, through use of threats to sue and other intimidation, price of unordered goods which it shipped to them under its practice of "padding" orders by shipping to customers goods greatly in excess of the quantity ordered; advising said customers "under no circumstances to return the shipment or any part thereof as that would only mean an unnecessary expense and which you probably then would not care to assume"; and

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(f) Made use of its trade name "Coast to Coast Distributors & Manufacturers" in securing repeat orders from customers who had had unsatisfactory dealings with it under its corporate name without disclosing to them its identity therewith;

With effect of causing a substantial portion of the purchasing public to believe that such representations were true, and, as a result of such mistaken belief, to purchase its said products; to their injury and that of the public:

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

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

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Folding Furniture Works, Inc., a corporation, also trading as Coast to Coast Distributors and Manufacturers and National Mercantile Reporters, 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, Folding Furniture Works, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its offices, factory, and principal place of business located at Portage and First Streets, Stevens Point, Wis. It also does business under the style and trade name of "Coast to Coast Distributors & Manufacturers," maintaining an address for the receipt and despatch of mail under this name in the Transportation Building, Chicago, Ill., and under the name "National Mercantile Reporters." Respondent is now, and has been for more than 2 years last past, engaged in the manufacture, sale, and distribution of children's cribs and bassinets, tables, and other furniture. Respondent causes, and at all times mentioned herein has caused, its said products, when sold, to be transported from its factory and place of business in Stevens Point, Wis., to purchasers thereof and dealers therein 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 among and between the various States of the United States and in the District of Columbia.

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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 said products, respondent has circulated among prospective purchasers circulars containing representations as to the quality of its said products and the size of its plant and factory. Typical of the statements and representations made by respondent in said circulars and by its salesmen are the following:

LOW-PRICED CHILDREN'S CRIBS

Low-Priced Children's Cribs—is the cry of today. In response to meet the natural demand for QUALITY LOW-PRICED CHILDREN'S CRIBS we especially have built a

MODERN NEW FACTORY

equipped with Up-to-Date Machinery, etc.—The LARGEST of its kind in the world—
With an Annual Production Capacity of over

One-Hundred-Thousand

Children's Cribs

A Lot of Cribs, Isn't It?

The largest manufacturers of low-price children's cribs in the world.

Largest exclusive manufacturers of children's cribs and beds in the world.

Largest exclusive manufacturers of this line in the world.

The largest crib manufacturers in the world.

On its letterheads and stationery the respondent has represented that it maintains offices and warehouses in the following cities: New York, N. Y.; Buffalo, N. Y.; St. Louis, Mo.; Dallas, Tex.; and San Francisco, Calif.; and under its trade name "Coast to Coast Distributors & Manufacturers" it has represented that it maintains offices and warehouses in New York, N. Y., and San Francisco, Calif.

Respondent, in doing business under the name of "National Mercantile Reporters," represents that National Mercantile Reporters is located in Consumers Building, 220 South State Street, Chicago, Ill. On a typical letterhead used by respondent under said name appears the following:

National Mercantile Reporters,

Consumers Building,

220 South State Street,

Chicago, Illinois

Accurate reports on
Paying Ability,
Unpaid Accounts
Trade Experience, Etc.

Branch Offices

Please directly reply
to office from which
received.

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PAR. 3. In the manner and by the means aforesaid, respondent represents and implies that it has an annual production capacity of over 100,000 cribs; that it is the largest manufacturer of low-priced children's cribs in the world, the largest exclusive manufacturer of children's cribs and beds in the world, the largest exclusive manufacturer of this line in the world, and the largest crib manufacturer in the world; that its business is so large and the quantity of its production such as to require and justify warehouses and branch offices which it maintains at convenient locations throughout the United States; that Coast to Coast Distributors and Manufacturers is separate and distinct from and in nowise connected with the business conducted by respondent under its corporate name; that National Mercantile Reporters maintains an office and place of business in Chicago, Ill., and branch offices at various other points, prepares accurate reports on paying ability, unpaid accounts, and trade experience, and makes collections of mercantile accounts for various manufacturers; and that National Mercantile Reporters is an independent bona fide collection business in nowise connected with the business of respondent.

PAR. 4. In truth and in fact, the respondent does not have an annual production capacity of over 100,000 cribs, but its annual production capacity is substantially less than that number; it is not the largest manufacturer of low-priced children's cribs in the world, nor the largest exclusive manufacturer of children's cribs and beds in the world, nor the largest exclusive manufacturer of this line in the world, nor is it the largest crib manufacturer in the world; and it does not maintain branch offices or warehouses in New York, N. Y.; Buffalo, N. Y.; St. Louis, Mo.; Dallas, Tex.; or San Francisco, Calif.; or at any place other than Stevens Point, Wis. National Mercantile Reporters is not an independent bona fide collection business with a place of business in Chicago, Ill., and branch offices at other points throughout the United States, which prepares accurate reports on paying ability, unpaid accounts, and trade experience, and which makes commercial collections for manufacturers, but is simply a trade name used by respondent in the manner described in paragraph 5 hereof to force collection on accounts of merchandise shipped on "padded" orders.

PAR. 5. The respondent, both under its name Folding Furniture Works, Inc., and under its name Coast to Coast Distributors & Manufacturers, has accepted the practice of "padding" orders received from customers by shipping to such customers goods greatly in excess of the quantity ordered. Respondent attempts to, and does, under

the name National Mercantile Reporters, collect from such customers the price of the unordered goods. In attempting to make and in making such collections, respondent uses threats to sue and other forms of intimidation, advising such customers to retain such unordered goods and "under no circumstances return the shipment or any part thereof, as that would only mean an unnecessary expense and which you probably then would not care to assume."

Respondent has also used its trade name Coast to Coast Distributors & Manufacturers in securing repeat orders from customers who have had unsatisfactory dealings with respondent under its corporate name, without disclosing to such customers the identity of corporate respondent and Coast to Coast Distributors & Manufacturers.

PAR. 6. The use by the respondent of the aforesaid acts, practices, and methods is deceptive and misleading and causes a substantial portion of the purchasing public erroneously to believe that said statements and representations are true, and that respondent's business and the quantity of its production are much larger than they are in fact; that it maintains and operates branch offices or warehouses at various convenient points throughout the United States; that Coast to Coast Distributors & Manufacturers is in nowise connected with the business of respondent; that National Mercantile Reporters is an independent bona fide collection agency in nowise connected with the business of respondent; that National Mercantile Reporters has a place of business in Chicago, Ill., and maintains branch offices at various other points, prepares accurate reports on paying ability, unpaid accounts, and trade experience, and makes collections of mercantile accounts for various manufacturers.

As a result of the aforesaid mistaken beliefs, engendered as aforesaid, many members of the purchasing public have purchased respondent's said products in said commerce to their injury and to the injury of the public.

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 October 9, 1941, issued and subsequently served its complaint in this proceeding upon respondent Folding Furniture Works, Inc., a corporation, also doing business

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as Coast to Coast Distributors & Manufacturers and National Mercantile Reporters, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On February 17, 1942, 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, Folding Furniture Works, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its offices, factory, and principal place of business located at Portage and First Streets, Stevens Point, Wis. It also does business under the style and trade name of Coast to Coast Distributors and Manufacturers, maintaining an address for the receipt and dispatch of mail under this name in the Transportation Building, Chicago, Ill., and under the name National Mercantile Reporters. Respondent is now, and has been for more than 2 years last past, engaged in the manufacture, sale, and distribution of children's cribs and bassinets, tables, and other furniture. Respondent causes, and at all times mentioned herein has caused, its said products, when sold, to be transported from its factory and place of business in Stevens Point, Wis., to purchasers thereof and dealers therein 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 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 in said commerce as aforesaid, and for the purpose of inducing the purchase of its said products, respondent has circulated among prospective purchasers circulars containing representations as to the quality of its said products and the size of its plant and factory. Typical of the

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statements and representations made by respondent in said circulars and by its salesmen are the following:

LOW-PRICED CHILDREN'S CRIBS

Low-Priced Children's Cribs—is the cry of today. In response to meet the natural demand for QUALITY LOW-PRICED CHILDREN'S CRIBS we especially have built a

MODERN NEW FACTORY

equipped with Up-to-Date Machinery, etc.—The LARGEST of its kind in the World—With an Annual Production Capacity of over

One-Hundred-Thousand

Children's Cribs

A Lot of Cribs, Isn't It?

The largest manufacturers of low price children's cribs in the world.

Largest exclusive manufacturers of children's cribs and beds in the world.

Largest exclusive manufacturers of this line in the world.

The largest crib manufacturers in the world.

On its letterheads and stationery the respondent has represented that it maintains offices and warehouses in the following cities: New York, N. Y.; Buffalo, N. Y.; St. Louis, Mo.; Dallas, Tex.; and San Francisco, Calif.; and under its trade name, Coast to Coast Distributors & Manufacturers, it has represented that it maintains offices and warehouses in New York, N. Y., and San Francisco, Calif.

Respondent, in doing business under the name of National Mercantile Reporters, represents that National Mercantile Reporters is located in Consumers Building, 220 South State Street, Chicago, Ill. On a typical letterhead used by respondent under said name appears the following:

National Mercantile Reporters,
Consumers Building,
220 South State Street,
Chicago, Illinois

Collections.

Accurate reports on Paying ability, Unpaid Accounts, Trade Experience, Etc.

Branch Offices
Please directly reply to office from which received.

PAR. 3. In the manner and by the means aforesaid, respondent represents and implies that it has an annual production capacity of over 100,000 cribs; that it is the largest manufacturer of low-priced children's cribs in the world, the largest exclusive manufacturer of children's cribs and beds in the world, the largest exclusive manu-

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facturer of this line in the world, and the largest crib manufacturer in the world; that its business is so large and the quantity of its production such as to require and justify warehouses and branch offices which it maintains at convenient locations throughout the United States; that Coast to Coast Distributors and Manufacturers is separate and distinct from and in nowise connected with the business conducted by respondent under its corporate name; that National Mercantile Reporters maintains an office and place of business in Chicago, Ill., and branch offices at various other points, prepares accurate reports on paying ability, unpaid accounts, and trade experience, and makes collections of mercantile accounts for various manufacturers; and that National Mercantile Reporters is an independent bona fide collection business in nowise connected with the business of respondent.

PAR. 4. In truth and in fact, the respondent does not have an annual production capacity of over 100,000 cribs, but its annual production capacity is substantially less than that number; it is not the largest manufacturer of low-priced children's cribs in the world, nor the largest exclusive manufacturer of children's cribs and beds in the world, nor the largest exclusive manufacturer of this line in the world, nor is it the largest crib manufacturer in the world; and it does not maintain branch offices or warehouses in New York, N. Y.; Buffalo, N. Y.; St. Louis, Mo.; Dallas, Tex.; or San Francisco, Calif.; or at any place other than Stevens Point, Wis. National Mercantile Reporters is not an independent bona fide collection business with a place of business in Chicago, Ill., and branch offices at other points throughout the United States, which prepares accurate reports on paying ability, unpaid accounts, and trade experience, and which makes commercial collections for manufacturers, but is simply a trade name used by respondent in the manner described in paragraph 5 hereof to force collection on accounts of merchandise shipped on "padded" orders.

PAR. 5. The respondent, both under its name Folding Furniture Works, Inc., and under its name Coast to Coast Distributors & Manufacturers, has adopted the practice of "padding" orders received from customers by shipping to such customers goods greatly in excess of the quantity ordered. Respondent attempts to, and does, under the name National Mercantile Reporters, collect from such customers the price of the unordered goods. In attempting to make and in making such collections, respondent uses threats to sue and other forms of intimidation, advising such customers to retain such unordered goods

and "under no circumstances return the shipment or any part thereof, as that would only mean an unnecessary expense and which you probably then, would not care to assume."

Respondent has also used its trade name Coast to Coast Distributors and Manufacturers in securing repeat orders from customers who have had unsatisfactory dealings with respondent under its corporate name, without disclosing to such customers the identity of corporate respondent and Coast to Coast Distributors and Manufacturers.

PAR. 6. The use by the respondent of the aforesaid acts, practices, and methods is deceptive and misleading and causes a substantial portion of the purchasing public erroneously to believe that said statements and representations are true, and that respondent's business and the quantity of its production are much larger than they are in fact; that it maintains and operates branch offices or warehouses at various convenient points throughout the United States; that Coast to Coast Distributors & Manufacturers is in nowise connected with the business of respondent; that National Mercantile Reporters is an independent bona fide collection agency in nowise connected with the business of respondent; that National Mercantile Reporters has a place of business in Chicago, Ill., and maintains branch offices at various other points, prepares accurate reports on paying ability, unpaid accounts, and trade experience, and makes collections of mercantile accounts for various manufacturers.

As a result of the aforesaid mistaken beliefs, engendered as aforesaid, many members of the purchasing public have purchased respondent's said products in said commerce to their injury and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and 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 conclu-

sion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Folding Furniture Works, Inc., a corporation, also doing business as Coast to Coast Distributors & Manufacturers and as National Mercantile Reporters, 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 children's cribs and bassinets, tables, and other furniture in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from.

1. Representing that it is the largest manufacturer of low-priced children's cribs in the world, or the largest exclusive manufacturer of children's cribs and beds in the world, or the largest crib manufacturers in the world, or the largest exclusive manufacturer of this line in the world, or that it has an annual production capacity of over 100,000 cribs, or any other quantity of cribs in excess of its actual annual production capacity.

2. Representing that its business is so large and the quantity of its production such as to require and justify warehouses and branch offices, or that it maintains warehouses and branch offices, at various points throughout the United States.

3. Representing that it maintains branch offices or warehouses in New York, N. Y.; Buffalo, N. Y.; St. Louis, Mo.; Dallas, Tex.; or San Francisco, Calif.; or at any other point, unless such warehouses and branch offices are actually maintained by respondent.

4. Representing that the business conducted under the name Coast to Coast Distributors & Manufacturers is separate and distinct from and not connected with the business conducted under respondent's corporate name, Folding Furniture Works, Inc., or dealing with customers under two or more names without disclosing to such customers that the business operated under the several names used is one and the same.

5. Representing that National Mercantile Reporters is an independent, bona fide collection agency not connected with the business of respondent or that it has a business in Chicago, Ill., which maintains branch offices at various other points, and prepares accurate reports on paying ability, unpaid accounts, and trade experience, and makes collections of mercantile accounts for various manufacturers.

6. Engaging in the practice of "padding" orders received from customers by shipping goods to such customers in excess of the quantity ordered or attempting to collect the price of such unordered goods by threats of suit or other forms of intimidation; or of advising such

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customers to retain such unordered goods because the return thereof will mean unnecessary expense to such customers.

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
**ASSOCIATED MOTOR OILS, INC., ALSO DOING BUSINESS
 UNDER THE NAME OF ASSOCIATED PRODUCTS COM-
 PANY**

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

Docket 4621. Complaint, Oct. 31, 1941—Decision, Mar. 23, 1942

Where the distinctive emblem of an Association—dating from 1923 and composed of practically all of the refiners of motor oils produced in the Pennsylvania oil fields and of a number of jobbers and distributors of such oils—featuring the words "Guaranteed 100% Pure Pennsylvania Oil" along with insignia or advertising matter signifying that distributor concerned was a member of the Association, together with the name "Pennsylvania" and derivations thereof, had acquired a definite secondary meaning to the purchasing public when used in connection with motor oils, indicating unadulterated oil produced from the Pennsylvania oil fields; and thereafter, a corporation engaged in blending and canning motor oils and greases, both under its own trade brands and under brands which it packaged for marketers and jobbers, and in competitive interstate sale and distribution of said products—

- (a) Represented that it controlled and operated a refinery, and that purchasers of its products were dealing directly with the manufacturer thereof through use on its labels and in its catalogs and other advertising material of its former corporate name in which were included words "Associated Refineries;"
- (b) Placed on some of its products an emblem bearing the legend "All motor oils bearing this seal Guaranteed 100% pure Pennsylvania Motor Oils. Spec. No. —," which, in size and shape, simulated that of aforesaid Pennsylvania Grade Crude Oil Association, and shared with it as the most conspicuous words the statement "Guaranteed 100% pure Pennsylvania oil," substituting for the words "Permit No. —" on the Association emblem, the meaningless words "Spec. No. —;" and set forth on containers the representation that the contents were "100% pure Pennsylvania Motor Oil," or "Certified 100% pure Pennsylvania Motor Oil;" and
- (c) Made use of abbreviations of words coined from the word "Pennsylvania" in naming some of its motor oils and greases to suggest that they were made entirely from oil derived from the Pennsylvania fields;

Notwithstanding the fact it did not own, operate, or control an oil refinery, or refine and prepare virgin crude oil for use as a motor oil, or have equipment for such purpose, but was engaged solely in blending and canning the products concerned; its said motor oils and greases contained, to a substantial extent, oils and additives from other than the Pennsylvania oil fields, while some contained no Pennsylvania oil whatever; and it was not a member of said Pennsylvania Grade Crude Oil Association, nor entitled to the use of the emblem thereof;

- (d) Placed on its cans and other containers the letters and numbers used by the Society of Automotive Engineers to indicate relative viscosity of motor oils, which, through long usage, had come to have a definite meaning in such connection;

Notwithstanding the fact the oil contained in aforesaid containers did not have the relative viscosity so indicated;

- (e) Represented in its catalogs and other advertising material, and on its cans and other containers, among other claims, that its "Zeroil Motor Oil" would flow more freely and lubricate more perfectly at lower temperatures than many other oils; that its "Three Star Penn Motor Oil" would not thin out and break down under service, but would hold its body under high temperatures and would not sludge; and that its "Penn-Durance Motor Oil" would not break down or thin out and was super-refined;

The facts being all oils constantly change their viscosity with changes of temperature, and will break down, thin out and sludge, and said representations were false;

- (f) Represented that use of its "Pensile-Vis," by virtue of scientific refining process employed, assured superior lubrication which would reduce friction, heat and drag with result of saving of power usually lost, and also brought about lower gas and oil consumption; that uniformity of its "Safety Seal" was such that each package was labeled with its "Certified 2000 mile money-back guarantee;" that regular use of its "Ultra-Penn" could be expected to give savings up to 50 percent in motor oil and 10 percent or more on gas, and also prevent one-third the usual wear on motor parts; and that constant use of its "Graf-O-Lyne" would double motor life and reduce the danger of scored cylinder walls and burnt bearings, insuring against former during the starting period;

The facts being that use of its "Ultra-Penn" motor oil, as compared with other standard motor oils, would not result in substantial saving; and none of said products would substantially increase motor life, or reduce the danger of scored cylinders more than other lubricants;

- (g) Set forth on cans and containers of many of the products concerned herein another emblem bearing the legend "Automotive Test Laboratories of America—Tested and Approved," thereby leading purchasing public to believe that its oils and greases had been approved by laboratories used extensively in the oil industry for testing motor oils as to their value, quality and efficacy in use;

Notwithstanding the fact said Automotive Test Laboratories was not a bona fide laboratory for the testing of automotive oils nor disinterested, and, further, ceased to function in 1938;

- (h) Falsely represented and implied, through aforesaid acts and practices that the motor oils and greases offered for sale and sold by it were superior to the ordinary standard types of oils and greases offered for sale by competitors;

Notwithstanding fact most of the standard competitive products of comparable type were equal in grade, quality, and performance to, and in many instances excelled, its said products:

Tendency, capacity and effect of which various acts, practices and methods were to mislead and deceive a substantial portion of the purchasing public into believing that aforesaid representations were true, with result that many members of such public purchased its products, thereby unfairly diverting trade to it from its competitors, including many who do not in any manner misrepresent their business status or products; to the injury of said competitors and that of the public:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and its competitors, and con-

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stituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

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

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Associated Motor Oils, Inc., a corporation, also doing business under the name of Associated Products Co., hereinafter referred to as respondent, has violated the provision 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, Associated Motor Oils, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2313 South LaSalle Street, in the city of Chicago, State of Illinois. For several years last past the respondent has been engaged in the business of blending and canning motor oils and greases, both directly under its own trade brands and under brands which it packages for marketers and jobbers, and in the sale and distribution of said products in commerce between and among the various States of the United States. Respondent causes said products, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in other States of the United States and in the District of Columbia.

Respondent, previously engaged in said business under the corporate name Associated Refineries, Inc. On March 25, 1940, the corporate name of respondent was changed from Associated Refineries, Inc., to Associated Motor Oils, Inc.

In the course and conduct of its business, respondent has been and is in substantial competition with other corporations and with partnerships, firms and individuals likewise engaged in the sale and distribution of motor oils and greases in commerce between and among the several States of the United States and in the District of Columbia. Among said competitors of the respondent are many who do not in any manner misrepresent their business status or the grade, quality or performance of their said products.

PAR. 2. The Pennsylvania Grade Crude Oil Association is a non-profit association organized in 1923, and has been in continuous oper-

ation since that time. Its membership is composed of practically all of the refiners of motor oils produced in the Pennsylvania oil fields and a number of jobbers and distributors of such oils. The purpose of said Association is to establish higher standards of quality for oils produced in Pennsylvania, to advertise such oils, to protect the Pennsylvania oil industry against adulteration of its products and to prevent the sale of oils produced elsewhere as Pennsylvania products. The Association provides an emblem and advertising matter to be used, which signify that such distributor is a member of the Association. The emblem certifies that the oil sold under it is a pure, unadulterated oil produced from the Pennsylvania oil fields, and a bond is given by each member as a guarantee of these facts. The emblem is quite distinct in arrangement, shape, coloring and wording; the featured wording being "Guaranteed 100% Pure Pennsylvania Oil." As a result of the activity of the Association, the emblem and insignia referred to, as well as the name Pennsylvania and derivations thereof, have acquired a definite secondary meaning to the purchasing public when used in connection with motor oils; they indicate and suggest pure, unadulterated oil produced from the Pennsylvania oil fields, for which there exists a substantial public demand.

PAR. 3. Through the use on its labels and in its catalogs and other advertising material of the name Associated Refineries, Inc., either alone or in conjunction with respondent's present corporate name, Associated Motor Oils, Inc., respondent represents to members of the purchasing public, and the purchasing public is thereby led to believe, that respondent controls and operates a refinery wherein its said products are made or refined and that purchasers of its products are dealing directly with the manufacturer of said products.

A substantial part of the purchasing public prefer to purchase motor oil directly from the refiner of the oil, believing that in so doing they secure better products, prices, and other advantages not ordinarily procurable through dealers or other middlemen.

PAR. 4. On some of its products sold and distributed in commerce as aforesaid respondent has also caused to be placed an emblem bearing the following legend: "All Motor Oils Bearing this Seal Guaranteed 100% Pure Pennsylvania Motor Oils. Spec. No. —," superimposed upon an outline map of the State of Pennsylvania. The containers or cans also contain the representation that the contents are "100% Pure Pennsylvania Motor Oil" or "Certified 100% Pure Pennsylvania Motor Oil." In general size and shape respondent's emblem simulates the emblem of the Pennsylvania Grade Crude Oil Association, and the most conspicuous words on

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both the "Guaranteed 100% Pure Pennsylvania Oil." In respondent's emblem appear the words, "Spec. No. —" and upon that of the Pennsylvania Grade Crude Oil Association appears "Permit No. —." The words "Spec. No. —" appearing in respondent's emblem are of no significance and are meaningless.

In naming and designating some of its motor oils and greases, respondent uses abbreviations of and words coined from the name Pennsylvania in such a way as to suggest to the purchaser or prospective purchaser that they are made entirely of Pennsylvania oil.

PAR. 5. In truth and in fact respondent does not own, operate or control an oil refinery, it does not refine and prepare virgin crude oil for use as motor oil nor does it have the proper and usual equipment for such purpose. Respondent is engaged solely in the blending and canning of motor oils and greases and its motor oils and greases contain to a substantial extent oils and additives other than those produced from the Pennsylvania oil fields, and some of said products contain no Pennsylvania oil whatever. Respondent is not a member of the Pennsylvania Grade Crude Oil Association and is not entitled to use the emblem of said Association.

PAR. 6. The Society of Automotive Engineers has developed a system of numbers to indicate relative viscosity of motor oils and through long usage this system of letters and numbers has come to have a definite meaning when used in connection with motor oils. The higher numbers used in the system indicate heavier oils to be used in higher temperatures and in fast driving and the lower numbers a lighter oil to be used when the temperature is lower. There is a substantial demand on the part of the consuming public for oils with the true viscosity indicated by the said numbers.

Respondent places on its cans and other containers the letters and numbers used by the Society of Automotive Engineers to indicate relative viscosity, but the oil contained therein does not have the relative viscosity indicated by said letters and numbers.

PAR. 7. In the course and conduct of its business and for the purpose of inducing the purchase of its products, the respondent has made certain representations concerning its products, in its catalogs and other advertising material and on its oil cans and other containers, purporting to be descriptive of its products. The following representations, among others, have been used by the respondent:

Zeroll Motor Oil. Especially refined for sub-zero temperature. Zeroll will flow freely and lubricate perfectly at lower temperatures than any other motor oil known. Peps up sluggish motors in cold weather.

Three Star Penn Motor Oil will not thin out or break down under the hardest, toughest service. Holds its body under high temperatures. Will not sludge.

Penn-Durance Motor Oil. Super-refined and compounded from high grade bright stocks and neutral oils. Will not break down or thin out.

Pensile-Vis. The scientific refining process used in the manufacture of this oil produces a pure dewaxed heat-resisting stock, having a low cold test and a high flash and fire. Superior lubrication such as Pensile-Vis assures reduced friction, heat and drag so that power usually lost through these sources is saved. Therefore because of more scientific operation, brought about by the use of this pre-tested motor oil, lower gasoline and oil consumption results.

Safety Seal. Uniformity is such that we fearlessly label each package of Safety Seal with the certified 2,000 mile money-back guarantee. This guarantee is your definite assurance that this oil has been refined to meet the high standards required of any motor oil. Strict supervision and analysis in our modern laboratory such as is applied to all premium motor oils now on the market also protects you.

Ultra Penn. Regular use of Ultra Penn can be expected to give you savings up to 50 percent in motor oil alone. The better performance it brings about in your motor can save you 10 percent and more on gasoline. Besides these savings, about one third the usual wear on motor parts is prevented.

Graf-O-Lyne. Evens up minute abrasions and produces an oil having a high film strength and greater oiliness. If consistently used it will double motor life and reduce the danger of scored cylinder walls and burnt bearings. Insures against scored cylinders during the starting period.

PAR. 8. In truth and in fact, respondent's product "Zeroil" will not flow more freely and lubricate more perfectly at lower temperatures than many other oils. "Three Star Penn Motor Oil" will thin out and break down under service and will not hold its body under high temperatures, and will sludge. "Penn-Durance Motor Oil" will break down and thin out, and it is not super-refined. In fact, all oils constantly change their viscosity with changes of temperature and will break down and thin out and sludge. The use of respondent's product "Ultra Penn" motor oil, as compared with the use of other standard motor oils, will not result in a saving of up to 50 percent, or any substantial percentage, on motor oils, or result in a savings of 10 percent, or any other substantial percentage, of the usual wear on motor parts. None of respondent's said products, including the product "Graf-O-Lyne," will, if consistently used, double or substantially increase motor life; nor will such products reduce the danger of scored cylinders more so than other lubricants on the market.

PAR. 9. On the cans and containers of many of the oils and greases of respondent appears another emblem bearing the following legend:

Automotive Test Laboratories of America—Tested and Approved.

The purchasing public is thereby led to believe that respondent's oils and greases have been tested and approved by laboratories used extensively in the oil industry for the testing and approving of motor oils as to quality, value and efficacy in use.

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In truth and in fact, the Automotive Test Laboratories of America is not a bona fide laboratory for the testing of automotive oils and its reports as such are not the result of bona fide tests and are not disinterested. Furthermore, this so-called laboratory ceased to function in about July 1938, but respondent has continued since that time to use such emblem.

PAR. 10. The use by the respondent of the emblem simulating the emblem of the Pennsylvania Grade Crude Oil Association and the statements and representations thereon and the use of the abbreviations of the word Pennsylvania and words coined therefrom, as hereinabove alleged, are misleading and deceptive and cause the purchasing public to believe that the products in connection with which said emblem and said abbreviations and coined words are used are manufactured from Pennsylvania oil in their entirety, whereas in truth and in fact some of said products contain no Pennsylvania oil at all, while others contain some Pennsylvania oil and a substantial quantity of oil produced in States other than Pennsylvania.

Through all the aforesaid acts, practices and methods, the respondent falsely represents and implies that the motor oils and greases offered for sale and sold by it in said commerce are superior in grade, quality and performance to the ordinary standard types of oils and greases offered for sale by competitors. In truth and in fact, most standard competitive products, of comparative type, are equal in grade, quality and performance to, and in many instances excel, respondent's said products.

PAR. 11. The use by the respondent of the aforesaid acts, practices and methods has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public and cause it erroneously to believe that the aforesaid representations and implications are true, and that respondent owns, operates or controls a refinery where said products are produced, that said products are 100 percent pure Pennsylvania oil, that said products have been tested and approved by a recognized testing laboratory and that said products are superior in grade, quality and performance to ordinary standard oils and greases, of comparative type, and as a result of said erroneous and mistaken belief, induced as aforesaid, many members of the purchasing public have purchased respondents' said products, thereby unfairly diverting trade to the respondent from its competitors in commerce between and among the several States of the United States and in the District of Columbia, to the injury of said competitors and to the injury of the public.

PAR. 12. The aforesaid acts, practices and methods of the respondent, as herein alleged, are all to the prejudice and injury of the public

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 31, 1941, issued and served its complaint in this proceeding upon respondent, Associated Motor Oils, Inc., 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, Associated Motor Oils, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2313 South LaSalle Street in the city of Chicago, State of Illinois. For several years last past respondent has been engaged in the business of blending and canning motor oils and greases, both directly under its own trade brands and under brands which it packages for marketers and jobbers, and in the sale and distribution of said products in commerce between and among the various States of the United States. Respondent causes said products, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in other States of the United States and in the District of Columbia.

Respondent previously engaged in the said business under the corporate name, Associated Refineries, Inc. On March 25, 1940, the corporate name of respondent was changed from Associated Refineries, Inc., to Associated Motor Oils, Inc.

In the course and conduct of its business, respondent has been and is in substantial competition with other corporations and with partnerships, firms, and individuals likewise engaged in the sale and distribution of motor oils and greases in commerce between and among the several States of the United States and in the District of Columbia. Among said competitors of the respondent are many who do not in any manner misrepresent their business status or the grade, quality or performance of their said products.

PAR. 2. The Pennsylvania Grade Crude Oil Association is a non-profit association organized in 1923, and has been in continuous operation since that time. Its membership is composed of practically all the refiners of motor oils produced in the Pennsylvania oil fields and a number of jobbers and distributors of such oils. The purpose of said association is to establish higher standards of quality for oils produced in the Pennsylvania oil fields, to advertise such oils, to protect the Pennsylvania oil industry against adulteration of its products and to prevent the sale of oils produced elsewhere as Pennsylvania products. The association provides an emblem and advertising matter to be used, which signify that such distributor is a member of the association. The emblem certifies that the oil sold under it is a pure unadulterated oil produced from the Pennsylvania oil fields, and a bond is given by each member as a guarantee of these facts. The emblem is quite distinct in arrangement, shape, coloring and wording, the featured wording being "Guaranteed 100% Pure Pennsylvania Oil." As a result of the activity of the association, the emblem and the insignia referred to, as well as the name "Pennsylvania" and derivations thereof, have acquired a definite secondary meaning to the purchasing public when used in connection with motor oils. They indicate and suggest pure unadulterated oil produced from the Pennsylvania oil fields, for which there exists a substantial public demand.

PAR. 3. Through the use on its labels and in its catalogues and other advertising material of the name Associated Refineries, Inc., either alone or in conjunction with respondent's present corporate name, Associated Motor Oils, Inc., respondent represents to members of the purchasing public, and the purchasing public is thereby led to believe, that respondent controls and operates a refinery wherein its said products are made or refined and that the purchasers of its products are dealing directly with the manufacturer of said products.

A substantial part of the purchasing public prefers to purchase motor oils directly from the refiner of the oil, believing that in so doing they secure better products, prices and other advantages not ordinarily procurable through dealers or other middlemen.

PAR. 4. On some of its products sold and distributed in commerce as aforesaid, respondent has also caused to be placed an emblem bearing the following legend,

All Motor Oils Bearing This Seal Guaranteed 100% Pure Pennsylvania Motor Oils. Spec. No. —.

superimposed upon an outline map of the State of Pennsylvania. The containers or cans also contain the representation that the contents are "100% Pure Pennsylvania Motor Oil" or "Certified 100% Pure Pennsylvania Motor oil." In general size and shape respondent's emblem simulates the emblem of the Pennsylvania Grade Crude Oil Association, and the most conspicuous words on both are "Guaranteed 100% Pure Pennsylvania Oil." On respondent's emblem appear the words "Spec. No. —" and on that of the Pennsylvania Grade Crude Oil Association appears "Permit No. —." The words "Spec. No. —" appearing on respondent's emblem have no significance and are meaningless.

In naming and designating some of its motor oils and greases, respondent uses abbreviations of words coined from the name Pennsylvania in such a way as to suggest to the purchaser or prospective purchaser that they are made entirely of oil derived from the Pennsylvania oil fields.

PAR. 5. In truth and in fact respondent does not own, operate or control an oil refinery, it does not refine and prepare virgin crude oil for use as motor oil, nor does it have the proper and usual equipment for such purpose. Respondent is engaged solely in the blending and canning of motor oils and greases and its motor oils and greases contain to a substantial extent oils and additives other than those produced from the Pennsylvania oil fields, and some of said products contain no Pennsylvania oil whatever. Respondent is not a member of the Pennsylvania Grade Crude Oil Association and is not entitled to the use of the emblem of said Association.

PAR. 6. The Society of Automotive Engineers has developed a system of numbers to indicate relative viscosity of motor oils and through long usage this system of letters and numbers has come to have a definite meaning when used in connection with motor oils. The higher numbers used in the system indicate heavier oils to be used in higher temperatures and in fast driving, and the lower numbers of lighter oil to be used when the temperature is lower. There is a substantial demand on the part of the consuming public for oils with the true viscosity indicated by the said numbers.

Respondent places on its cans and other containers the letters and numbers used by the Society of Automotive Engineers to indicate

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relative viscosity, but the oil contained therein does not have the relative viscosity indicated by said letters and numbers.

PAR. 7. In the course and conduct of its business and for the purpose of inducing the purchase of its products, the respondent has made certain representations concerning its products in its catalogues and other advertising material and on its oil cans and other containers' purporting to be descriptive of its products. The following representations, among others, have been used by the respondent:

Zeroil Motor Oil. Especially refined for sub-zero temperatures. Zeroil will flow freely and lubricate perfectly at lower temperatures than any other motor oil known. Peps up sluggish motors in cold weather.

Three Star Penn Motor Oil will not thin out or break down under the hardest, toughest service. Holds its body under high temperatures. Will not sludge.

Penn-Durance Motor Oil. Super-refined and compounded from high grade bright stocks and neutral oils. Will not break down or thin out.

Pensile-Vis. The scientific refining process used in the manufacture of this oil reduces a pure dewaxed heat-resisting stock, having a low cold test and a high flash and fire. Superior lubrication such as Pensile-Vis assures reduced friction, heat and drag so that power usually lost through these sources is saved. Therefore because of more scientific operation brought about by the use of this pre-tested motor oil, lower gasoline and oil consumption results.

Safety Seal. Uniformity is such that we fearlessly label each package of Safety Seal with the certified 2,000 mile money-back guarantee. This guarantee is your definite assurance that this oil has been refined to meet the high standards required of any motor oil. Strict supervision and analysis in our modern laboratory such as is applied to all premium motor oils now on the market also protects you.

Ultra Penn. Regular use of Ultra Penn can be expected to give you savings up to 50 percent in motor oil alone. The better performance it brings about in your motor can save you 10 percent and more on gasoline. Besides these savings, about one third the usual wear on motor parts is prevented.

Graf-O-Lyne. Evens up minute abrasions and produces an oil having a high film strength and greater oilness. If consistently used it will double motor life and reduce the danger of scored cylinder walls and burnt bearings. Insures against scored cylinders during the starting period.

PAR. 8. In truth and in fact respondent's product "Zeroil" will not flow more freely and lubricate more perfectly in lower temperatures than many other oils. "Three Star Penn Motor Oil" will thin out and break down under service and will not hold its body under high temperatures, and will sludge. "Penn-Durance Motor Oil" will break down and thin out and it is not super-refined. In fact all oils consistently change their viscosity with changes of temperature and will break down and thin out and sludge. The use of respondent's product "Ultra Penn" motor oil, as compared with the use of other standard motor oils, will not result in a saving of up to 50 percent or any substantial percentage, on motor oils, or result in a saving of

10 percent, or any other substantial percentage, of the usual wear on motor parts. None of respondent's said products, including the product "Graf-O-Lyne," will, if consistently used, double or substantially increase motor life; nor, will such products reduce the danger of scored cylinders more than other lubricants on the market.

PAR. 9. On the cans and containers of many of the oils and greases of respondent appears another emblem bearing the following legend: "Automotive Test Laboratories of America—Tested and Approved." The purchasing public is thereby led to believe that respondent's oil and greases have been tested and approved by laboratories used extensively in the oil industry for the testing and approving of motor oils as to their value, quality, and efficacy in use.

In truth and in fact, the Automotive Test Laboratories of America is not a bona fide laboratory for the testing of automotive oils and its reports as such are not the result of bona fide tests and are not disinterested. Furthermore, this so-called laboratory ceased to function in about July 1938, but respondent has continued since that time to use such emblem.

PAR. 10. The use by the respondent of the emblem simulating the emblem of the Pennsylvania Grade Crude Oil Association and the statements and representations thereon and the use of the abbreviations of the word "Pennsylvania" and words coined therefrom, as hereinabove set forth, are misleading and deceptive and cause the purchasing public to believe that the products in connection with which said emblem and said abbreviations and coined words are used are manufactured from oils derived from the Pennsylvania oil fields in their entirety, whereas in truth and in fact some of said products contain no Pennsylvania oil at all, while others contain some Pennsylvania oil and a substantial quantity of oil derived from fields other than the Pennsylvania oil fields.

Through all the aforesaid acts, practices and methods, the respondent falsely represents and implies that the motor oils and greases offered for sale and sold by it in said commerce are superior in grade, quality and performance to the ordinary standard types of oils and greases offered for sale by competitors. In truth and in fact, most of the standard competitive products, of comparative type, are equal in grade, quality and performance to, and in many instances excel, respondent's said products.

PAR. 11. The use by the respondent of the aforesaid acts, practices and methods has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public and cause it erroneously to believe that the aforesaid representations and impli-

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cations are true, and that the respondent owns, operates or controls a refinery where said products are produced; that said products are 100 percent pure Pennsylvania oil; that said products have been tested and approved by a recognized testing laboratory and that said products are superior in grade, quality and performance to ordinary standard oils and greases of comparative type, and as a result of said erroneous and mistaken belief, induced as aforesaid, many members of the purchasing public have purchased said respondent's products, thereby unfairly diverting trade to the respondent from its competitors in commerce between and among the several States of the United States and in the District of Columbia, to the injury of said competitors and to the injury of the public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Associated Motor Oils, 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 motor oils and greases, or any products of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that Associated Motor Oils, Inc., owns, controls, or operates a refinery wherein its said products are made or refined.

2. The use of any design, insignia, or emblem in advertising or on containers, labels, or in any other manner, which simulates the emblem or insignia of the Pennsylvania Grade Crude Oil Association.

3. The use of the word "Pennsylvania" or any abbreviation or colorable simulation thereof, or the use of an outline of the State of Pennsylvania in advertising or on containers, labels, or in any other manner to designate or describe any oil product which is not composed wholly of oil derived from the Pennsylvania oil fields, *Provided, however*, That in the case of a product composed in part of oil derived from the Pennsylvania oil fields and in part from oil derived from other oil fields, such word or abbreviation thereof may be used as descriptive of the proportion of the oil derived from the Pennsylvania oil fields if there are used in immediate connection and conjunction therewith, in letters of at least equal size and conspicuousness, words or figures truthfully designating or describing the percentage of oil in said product which is derived from the Pennsylvania oil fields.

4. Representing, directly or by implication, that any oil product sold and distributed by the respondent which is not composed in its entirety of oils produced and having their origin in the Pennsylvania oil fields, is a pure Pennsylvania motor oil.

5. Representing, directly or by implication, that the respondent's oils and greases have been tested and approved by a disinterested laboratory as to quality, value and efficacy in use, unless said oils and greases have been tested and approved by a bona fide, disinterested automotive oils testing laboratory.

6. The use of any letters or numbers developed by the Society of Automotive Engineers which do not indicate the true, relative viscosity of respondent's products.

7. Representing, directly or by implication, that its product now designated "Zeroil Motor Oil," or any motor oil of similar character or quality, will flow more freely and lubricate more perfectly in lower temperatures than many other oils; or that its product now designated "Three Star Penn Motor Oil," or any motor oil of similar quality or character, will not thin out, break down, or sludge under service or that it will hold its body under high temperatures; or that its product now designated "Penn-Durance Motor Oil," or any motor oil of similar quality or character, will not break down or thin out, or that it is a super-refined oil; or that the use of its product now designated "Ultra Penn," or any motor oil of similar quality or character, as compared with other standard motor oils, will effect a saving up to 50 percent, or any substantial percentage, of motor oils, or result in a saving of

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10 percent, or any substantial percentage of the usual wear on motor parts; or that its product now designated "Graf-O-Lyne," or any motor oil of similar quality or character, will consistently double, or to any substantial extent increase, motor life and reduce the danger of scored cylinders more than any other lubricants on the market.

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
**WALTER L. MILLER, TRADING AS WAMILL QUILT
 FACTORIES**

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

Docket 4108. Complaint, Apr. 25, 1940—Decision, Mar. 31, 1942

Where an individual, engaged in the manufacture and interstate sale and distribution of quilts, bed coverings, and other products; through agents soliciting orders, and through advertising folders, pamphlets, circulars post-cards, sales slips, and other literature—

- (a) Represented that the filling in his "Wamill Feather-Down Quilts" consisted of 50 percent goose down and 50 percent feather down, that the feathers therein were treated in a special manner which afforded complete and lifelong deodorization, and that such quilts were of extra large size, light weight, extra warm, free from lint, mothproof, and would last a lifetime, and would not slide;

The facts being "Feather-Down" was a misnomer, down being the undercoating of water fowl, consisting of light, fluffy filaments growing from one quill point without any quill shaft, of a softer and finer texture and fluffier than feathers, which consist of quill shafts and barbs growing therefrom; and its said "Feather-Down Quilt" were not, during the period concerned, filled with goose down and feather down in proportions set forth, but were filled with chicken feathers with only a slight trace of down; neither treatment in question nor any other applied to such quilts will afford lifelong deodorization and make them permanently mothproof, or do more than temporarily mask objectionable odors and temporarily repel moths; and other representations above set forth were also false;

- (b) Represented that the quoted price of \$18.95 or two for \$37.50 was an introductory or special price, limited as to time:

The facts being \$18.95 or two for \$37.50 was the regular and customary price at which he sold his said product; and he never sold them at \$37.50;

- (c) Represented that he maintained a laboratory fully and properly equipped with facilities for experimenting with and testing said products, materials of which they were composed, and durability thereof; and that quilts in question were developed and tested under supervision and direction of experts, qualified by special education, training and experience, and had been tested and found satisfactory as to quality, workmanship, and durability of materials; and

- (d) Represented that he had been in business for over fifteen years and had sold such products to over 40,000 customers without having received a single complaint or expression of dissatisfaction;

The facts being he did not maintain any laboratory equipped with necessary facilities for experimenting with and testing his products, or the materials of which they were composed, and had not sold his products to over 40,000 customers;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, and of

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inducing 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 and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Van Cise, Robinson & Charlton, of Denver, Colo., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that *Walter L. Miller*, individually, and trading as *Wamill Quilt Factories*, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, *Walter L. Miller*, is an individual operating and doing business under the trade name *Wamill Quilt Factories*, with his principal office and place of business located at 1026 Seventeenth Street, Denver, Colo.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the business of manufacturing selling and distributing quilts, comforts, bedding, and like products, under the trade name *Wamill Quilt Factories*. Said respondent now causes and for more than 1 year last past has caused his said products to be sold directly by mail and by agents through various advertising mediums and has caused the same when sold to be transported from his principal place of business in Denver, Colo., to purchasers thereof located at points in various States of the United States other than the aforesaid State of Colorado, and in the District of Columbia.

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

PAR. 3. In the course and conduct of the business set out and described in paragraphs 1 and 2 hereof, respondent, for the purpose of inducing the purchase of commodities offered for sale by him, has circulated by mail to purchasers and prospective customers throughout the United States advertising folders, pamphlets, circulars, post cards, sales slips, letters, and other literature and through agents, personally soliciting orders, statements, and representations concerning the value,

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price, composition, workmanship, and materials of the quilts, comforts, bedding, and like products sold by him, typical of which statements and representations, among others, are the following:

Why Freeze Nights? Sleep warm under one Wamill Feather-Down Quilt. Warmest Quilt known to mankind. One Wamill Feather-Down Quilt is as warm as three wool blankets or four cotton quilts. Save Money on your bedding, have delivery made later if desired. We have a budget plan. * * *

SAVE	RETURN CARD	SAVE
½	Within 5 days	½
	We have a budget plan	
	* * * * *	

Save by ordering now—have delivery made later, if desired. One Wamill Feather-Down Quilt will keep you warm in zero weather. World's warmest quilt. If interested fill out and return this card at once for full details. No postage needed. Just mail it now. * * * This card from Wamill Quilt Factories, 1026 17th St., Denver, Colo. * * *

* * * * *

The highest grade sateen used exclusively by the Wamill Quilt Factories is a factor of economy because of its extra long life. Wamill Feather Quilts are guaranteed for 25 years and the sateen covering will not become shabby or lifeless during the entire life of the quilts.

* * * * *

After many years of hard use Wamill Quilt will look just as new, will be just as neat, and will be held together just as firmly as the day it was manufactured.

* * * * *

Wamill Feather Quilts fully moth-proofed as an added feature of protection.

* * * * *

Wamill Quilts are the final achievement of many years of Wamill Quilt Factories and subsidiary organizations.

Employ only men who are considered as authorities in the field. * * *

After carefully charting the ideal desires of our customers we work in our laboratories until we have developed the products which fully meet these qualifications.

* * * * *

Our policy greatly simplifies our marketing methods, save otherwise the extra cost of selling, we find out what you want, we develop it to perfection, manufacture it in economic volume, and we tell you about it.

Wamill Feather and Down Quilts—50% finest Goose Down, 50% finest Feather Down (quills out). Regular price \$37.50; sale price, 2 for \$37.50 * * * \$37.50 for 2, \$18.95 for one.

* * * Wamill Quilts are beyond comparison * * *. They cost less than ordinary bedding due to their long life. (With good care our quilts will last a lifetime.)

* * * * *

Research work * * * testing, surveying * * * for years was secretly carried on to find the elements that could possibly combine to form the ideal.

This work necessitated developing special manufacturing processes and ma-

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chines; raw materials were tried, changed, discarded for others. Finally all these elements essential to the ideal quilt were developed.

Wamill Quilts give you All these features—Extra large size; light weight; extra warmth; durability; non-slide; moth proof; no lint; economy; long life; beauty * * *.

To protect against the disgusting odor common with ordinary feather bedding, we treat all feathers in a special manner to afford complete and lifelong deodorization.

We have been engaged in manufacturing for over 15 years and enjoy the goodwill of thousands of satisfied customers.

There has been over 40 thousand customers who have purchased, and are using, Feather Quilts without a single complaint or dissatisfaction.

Half price sale * * * our special price * * * save $\frac{1}{2}$ * * * 5 days only—save $\frac{1}{2}$ * * * wonderful one-half price sale * * * special $\frac{1}{2}$ price sale.

“Down” means the under coating of water fowl, consisting of the light, fluffy filaments growing from one quill point, but without any quill shaft.

The 50 percent alleged feather down filling in respondent's said Wamill feather-down quilts—“50 percent finest Goose Down and 50 percent finest Feather down (quills out)”—is deceptive and misleading. There is no such thing as feather down. The phrase “quills out” shows that the said feather down is of an entirely different structure from down, which has no quill except a mere stub protruding from the skin of the fowl and carrying a tuft of filaments instead of veins composed of parallel ribs attached to a central quill. The word “feathers” as used in the quilt and bed padding industry means the natural feather of the goose, duck, chicken, and other birds or fowls, and there is no such classification recognized as feather-down.

Said statements and representations, together with similar statements and representations not herein set out in full, purport to be descriptive of respondent's Wamill feather-down quilts and like products and serve as representations on the part of the respondent to members of the purchasing public that said quilts were designed by specialists after extensive research work and experimentation; that the filling in said quilts is 50 percent goose down and 50 percent feather down; that the feathers in said quilts are treated in a special manner which affords complete and lifelong deodorization; that said quilts are of extra large size, light weight, extra warm, free from lint, mothproof, and will last a lifetime and will not slide; that \$37.50 is the usual, regular, and customary retail price for said quilts; that the quoted price of \$18.95 is an introductory or other special price limited as to time and is one-half the usual, regular, and customary selling price therefor; that respondent maintains a laboratory fully

and properly equipped with facilities for experimenting with and testing said products and the materials of which they are composed and the durability thereof, and that they were supervised and tested by experts qualified by virtue of special education, training, and practice for developing and testing the same, and that said products have been tested as to quality, workmanship, and durability of the materials of which they are composed and have been found satisfactory; that respondent had been in business for over 15 years and had sold over 40,000 customers who had purchased and are using said quilts without a single complaint or dissatisfaction.

PAR. 4. In truth and in fact, the statements and representations and prices quoted pursuant thereto, hereinabove set out, are deceptive, false, and misleading. Respondent does not maintain a laboratory fully and properly equipped with facilities for experimenting with and testing quilts and like products and the materials of which they are composed; respondent's quilts and other products and the materials of which they are composed are not developed, designed, and tested by specialists after extensive research work and experimentation; said quilts are not filled with 50 percent goose-down and 50 percent feather-down and are not extra large in size, light in weight, and extra warm; said quilts are not free from lint, are not mothproof and will not last a lifetime with ordinary use and care, and the statement that said quilts will not slide is untrue; said quilts have never had the usual, customary, and regular retail sales price of \$37.50; the purported introductory half price, \$18.95, or other special reduced price, is not, in fact, a reduced, introductory or special price reduced for a limited time. The price, \$18.95, quoted as an alleged introductory one-half price or other special price for an alleged limited period of time is, in fact, the usual, regular, and customary retail selling price of said quilts at all times, and respondent has regularly and customarily sold said quilts to all purchasers for a period of several years at said price. Respondent has not been engaged in this business for more than 15 years, nor had he, at the date of the advertisement containing the representations with regard to more than 40,000 persons having purchased said quilts, sold that quantity of quilts or any quantity approaching that number.

PAR. 5. The use by respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its products disseminated as aforesaid has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce a substantial portion of the purchasing public because of such erroneous and

mistaken belief, to purchase respondent's quilts, comforts, bedding and like products.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 25, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Walter L. Miller, individually and trading as Wamill Quilt Factories, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 31, 1940, the respondent filed his answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent, Walter L. Miller, individually, and trading as Wamill Quilt Factories, and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of the facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Walter L. Miller is an individual trading and doing business under the trade name, Wamill Quilt Factories, with his principal office and place of business located at 1026 17th St., Denver, Colo.

PAR. 2. Respondent is now, and for more than five years last past has been, engaged in the manufacture, sale, and distribution of quilts, bed coverings, and other products. Respondent causes, and has

caused, his quilts and other products, when sold, to be transported from his place of business in the State of Colorado to purchasers thereof in other States of the United States and in the District of Columbia, and has maintained, and now maintains, a course of trade in said products in commerce in competition with other individuals, firms, and corporations engaged in the sale and distribution of similar products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of the aforesaid business respondent has, by means of agents engaged in the solicitation of orders from purchasers or prospective purchasers and by means of advertising folders, pamphlets, circulars, post cards, sales slips, and other literature circulated by mail to such purchasers or prospective purchasers, made various false and misleading statements and representations concerning the value, price, composition, workmanship, and materials of the quilts, bed coverings, and other products sold by him. These statements and representations have been made for the purpose of inducing the purchase of respondent's said quilts, bed coverings, and other products. Among and typical of such statements and representations are the following:

Why Freeze Nights? Sleep warm under one Wamill Feather-Down Quilt. Warmest Quilt known to mankind. One Wamill Feather-Down Quilt is as warm as three wool blankets or four cotton quilts. Save Money on your bedding, have delivery made later if desired. We have a budget plan. * * *

SAVE	RETURN CARD	SAVE
½	Within 5 days	½
	We have a budget plan	
	* * * * *	

Save by ordering now—have delivery made later, if desired. One Wamill Feather-Down Quilt will keep you warm in zero weather. World's warmest quilt. If interested fill out and return this card at once for full details. No postage needed. Just mail it now * * * This card from Wamill Quilt Factories, 1026 17th St., Denver, Colorado * * *.

Respondent used this advertisement prior and up to December 1, 1940.

The highest grade sateen used exclusively by the Wamill Quilt Factories is a factor of economy because of its extra long life. Wamill Feather Quilts are guaranteed for 25 years and the sateen covering will not become shabby or lifeless during the entire life of the quilts.

* * * * *

After many years of hard use Wamill Quilt will look just as new, will be just as neat, and will be held together just as firmly as the day it was manufactured.

* * * * *

Wamill Feather Quilts fully mothproofed as an added feature of protection.

* * * * *

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Wamill Quilts are the final achievement of many years of Wamill Quilt Factories and subsidiary organizations.

Employ only men who are considered as authorities in the field. * * *

After carefully charting the ideal desires of our customers we work in our laboratories until we have developed the products which fully meet these qualifications.

* * * * *

Our policy greatly simplifies our marketing methods, save otherwise the extra cost of selling, we find out what you want, we develop it to perfection, manufacture it in economic volume, and we tell you about it.

Wamill Feather and Down Quilts—50% finest Goose Down, 50% finest Feather Down (quills out). Regular price \$37.50; sale price, 2 for \$37.50 * * * \$37.50 for 2, \$18.95 for one.

* * * Wamill Quilts are beyond comparison * * *. They cost less than ordinary bedding due to their long life. (With good care our quilts will last a lifetime.)

Research work * * * testing, surveying * * * for years was secretly carried on to find the elements that could possibly combine to form the ideal.

This work necessitated developing special manufacturing processes and machines; raw materials were tried, changed, discarded for others. Finally all these elements essential to the ideal quilt were developed.

Wamill quilts give you all these features—Extra large size; light weight; extra warmth; durability; non-slide; moth proof no lint; economy; long life; beauty * * *.

To protect against the disgusting odor common with ordinary feather bedding we treat all feathers in a special manner to afford complete and lifelong deodorization.

We have been engaged in manufacturing for over 15 years and enjoy the good will of thousands of satisfied customers.

There has been over 40 thousand customers who have purchased, and are using, Feather Quilts without a single complaint or dissatisfaction.

Half price sale * * * our special price * * * save $\frac{1}{2}$ * * * 5 days only—save $\frac{1}{2}$ * * * wonderful one-half price sale * * * special $\frac{1}{2}$ price sale.

Respondent admits making the aforesaid statements and representations up to September 1, 1938.

PAR. 4. The statements quoted in the preceding paragraph purporting to be descriptive of respondent's products serve as representations by him to members of the purchasing public that "Wamill Feather-Down Quilts" were designed by specialists after extensive research work and experimentation; that the filling in said quilts consists of 50 percent goose-down and 50 percent feather-down; that the feathers in said quilts are treated in a special manner which affords complete and lifelong deodorization; that said quilts are of extra large size, light weight, extra warm, free from lint, moth proof, will last a lifetime, and will not slide; that \$37.50 is the usual, regular, and customary price for said quilts; that the quoted price of \$18.95, or two for \$37.50, is an introductory or other special price limited as to

time; that respondent maintains a laboratory fully and properly equipped with facilities for experimenting with and testing said products, the materials of which they are composed, and the durability thereof; that said quilts were developed and tested under the supervision and direction of experts qualified by virtue of special education, training, and experience for developing and testing such products; and that said quilts have been tested and found satisfactory as to quality, workmanship, and durability of the materials of which they are composed; and that respondent has been in business for over 15 years and has sold such quilts to over 40,000 customers without having received a single complaint or expression of dissatisfaction from any purchaser.

PAR. 5. "Feather-Down" is a misnomer, as the composition of down is different from that of feathers. Down is the undercoating of water fowl, consisting of light, fluffy filaments growing from one quill point without any quill shaft, and is of a softer and finer texture and more fluffy than feathers. Feathers consist of quill shafts and barbs growing therefrom. Respondent's "Wamill Feather-Down Quilts" were not, during the period prior to September 1938, filled with 50 percent finest goose-down and 50 percent finest feather-down, but were in fact filled with chicken feathers and contained only a slight trace of down. Respondent's said quilts will not last a lifetime, and they will not retain their original appearance for 25 years, nor will the sateen covering of said quilts retain its original sheen and appearance during the entire life of the quilts. Said quilts are not the world's warmest bed covering, nor are they free from lint. The treatment applied to said quilts by respondent, or any known treatment, will not afford lifelong deodorization and make them permanently moth-proof, but will only temporarily mask objectionable odors and temporarily repel moths. Respondent does not maintain any laboratory equipped with the necessary facilities for experimenting with and testing quilts, bed coverings, and other products or the materials of which they are composed.

During the period prior to September 1, 1938, the regular and customary price at which respondent sold "Wamill Feather-Down Quilts" in the usual and ordinary course of business was \$18.95, or two for \$37.50, and those prices, though represented as special or reduced prices offered for a limited time, were in fact respondent's regular prices and were not limited as to time. Respondent has never sold such quilts at the price of \$37.50 and has not sold them to over 40,000 customers.

PAR. 6. The use by respondent of the false, deceptive, and misleading statements and representations with respect to his products, as

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found above, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and induces, and has induced, members of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of 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 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 respondent, Walter L. Miller, individually and trading as Wamill Quilt Factories, or trading under any other name or names, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of quilts, comforts, bedding or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as the customary or regular prices of quilts, bed coverings, or other products, prices which are in excess of the prices at which such products are regularly and customarily sold by respondent in the normal and usual course of business.

2. Representing that the prices at which respondent offers for sale and sells his products constitute a discount to the purchaser, or that such prices are special or reduced, or sale or introductory prices, or one-half price, or that such prices are applicable for a limited time only, when in fact such prices are the usual and customary prices

at which respondent sells such products in the normal and usual course of business.

3. Using the word "down," either alone or in combination with any other word or words, to designate feathers or feather products other than the undercovering of water fowl as distinguished from feathers.

4. Representing that any of said products are composed of 50 per cent down, or any other percentage of down in excess of the actual percentage by volume of down in such product or products.

5. Representing that said quilts or other bed coverings are free from lint; or will last a lifetime, or any other period of time in excess of the time such products will last under ordinary conditions of use.

6. Representing that respondent has, or maintains a laboratory with the necessary facilities for experimenting with and testing quilts or bed coverings or the materials of which they are composed.

7. Representing that respondent has sold "Wamill Feather-Down Quilts," under that or any other name, to over 40,000 customers or any other number of customers in excess of the actual number of purchasers of such quilts.

8. Representing that respondent's quilts or other products, by reason of special treatments or otherwise, are rendered permanently mothproof or more than temporarily moth repellent.

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

NATHAN E. HERZFELD AND SAUL S. HERZFELD, TRADING AND DOING BUSINESS UNDER THE NAME STEPHEN RUG MILLS¹

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

Docket 4222. Complaint, Aug. 6, 1940—Decision, Mar. 31, 1942

Where two individuals engaged in the importation and competitive interstate distribution and sale of rugs to wholesale and retail dealers—

- (a) Used the word "Bombay" to designate certain rugs which closely resembled true Orientals, and word "Manchu" to designate rugs which closely resembled true Chinese Orientals, in invoices and other references to said rugs in sale to dealers, and on labels attached thereto, together with depiction of an Oriental scene, and, on other labels set forth inadequate and contradictory qualification "Made in Belgium" or "Made in Italy";

Notwithstanding fact rugs thus designated were not, as thus suggested, made in Bombay, India, or in China, and were not true Oriental or Chinese Oriental rugs, as generally understood, made by hand in the Orient and more particularly southwestern Asia, of pleasing texture and of original and beautiful design, with pile of wool or silk and wool, and threads individually knotted in a special manner, but, while so closely resembling Orientals as to be indistinguishable therefrom by a large portion of the purchasing public, were made on power looms in Belgium and Italy of cotton or jute, or both;

- (b) Represented that certain of their rugs were in all respects reproductions of true Chinese Oriental rugs through labels attached thereto upon which appeared the words, among others, "Chinese Ovalette Replica," together with an Oriental scene, along with other labels, "Made in Italy" or "Made in Belgium";

Notwithstanding fact rugs thus described were not exact copies of true Chinese Orientals in structure, method of manufacture or material, but merely simulated them;

¹ Original findings and order to cease and desist made as of January 7, 1942 (not published), were set aside by "Order Reopening Case for Amendment of Stipulation as to the Facts" which, made on March 9, 1942, was as follows:

This matter coming on to be heard by the Commission upon respondents' "Motion for an Order Amending and Amplifying the Record of this Proceeding" by incorporating in the Stipulation as to the Facts in this proceeding respondents' exhibits "A" to "II," inclusive, attached and annexed to said motion, and the Commission having duly considered the matter and being now fully advised in the premises.

It is ordered, That this case be, and the same hereby is, reopened for the purpose of amending and amplifying said Stipulation as to the Facts by incorporating therein and making a part thereof said exhibits "A" to "H," inclusive, attached and annexed to said motion.

It is further ordered, That the Findings as to the Facts and the Order to Cease and Desist issued herein on January 7, 1942, be, and the same hereby are, set aside.

It is further ordered, That respondents' said exhibits "A" to "H," inclusive, be incorporated in and made a part of said Stipulation as to the Facts.

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(c) Made use of name "New Bedford," widely known Massachusetts textile manufacturing center, to designate certain hooked rugs, in invoices to dealers and upon labels attached thereto, together with other labels reading "Made in Italy" or "Made in Belgium";

Notwithstanding fact the cheap rugs in question were of European and not of domestic manufacture; and

(d) Made use of words "Rug Mills" in their trade name, and on invoices, letterheads and other business stationery and literature accompanied said name by words "Importers and Wholesalers of Floor Covering";

The facts being that, while they had arrangements with certain European mills under which they designated design to be used exclusively in rugs made for them and also designated size, quantity, quality, and structure; had other arrangements under which they purchased all the raw material used by a certain mill operated wholly for them, and had a mortgage on all its looms, machines, etc., and a lease of its premises; had similar arrangements with 22 rug mills in China, and owned a substantial minority of the capital stock of a Pennsylvania rug manufacturer—thereby exercising a measure of control over certain mills which supplied them—said facts did not constitute them manufacturers or warrant use by them of words "Mills," and use of legend "Importers and Wholesalers," etc., was insufficient to correct erroneous impression thus caused;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that aforesaid rugs were genuine Oriental or Chinese Oriental rugs or copies or reproductions thereof, or that they were of domestic rather than foreign manufacture, and to mislead and deceive a substantial number of dealers and members of the public in aforesaid respects and as to their business status as manufacturers—from whom a substantial number purchase in preference to wholesalers—and thereby cause such dealers and public to buy their products, and with effect of placing in the hands of dealers a means of misleading a substantial portion of the purchasing public, and of thereby diverting substantial trade unfairly to them from their competitors, many of whom do not misrepresent the nature or origin of their products or their business status:

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

Mr. Randolph W. Branch for the Commission.

Mr. Leon Herzfeld, 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 Nathan E. Herzfeld and Saul S. Herzfeld, individuals, trading and doing business under the name Stephen Rug Mills, 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, Nathan E. Herzfeld and Saul S. Herzfeld, are individuals trading and doing business under the name of Stephen Rug Mills, and having an office and principal place of business at 135 Madison Avenue, city and State of New York.

PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the business of importing, distributing, and selling rugs. In the course and conduct of their business respondents sell said rugs to various wholesale and retail dealers and cause them, when sold, to be transported from their 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. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said rugs in commerce between and among various States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been at all times mentioned herein, in substantial competition with other partnerships and with firms, corporations 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 their business status, and who do not furnish their dealer-customers with means or instrumentalities for deceiving the public.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient, or more particularly in certain parts of southwestern Asia, by hand, of pleasing texture and original and beautiful design and having a pile of wool or silk and wool, the threads of which are individually knotted in a special manner. Such rugs are usually designated by names which are indicative of the Orient and Oriental origin and manufacture. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Chinese Oriental rugs to be rugs made in China, by hand, in the same manner and possessing the same qualities and characteristics as the Oriental rug. Both Oriental and Chinese Oriental rugs have been for many years, and still are, held in great public esteem because of their texture, beauty, durability, and other qualities, and by reason thereof there is a decided preference on the part of the purchasing public for such rugs.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of said rugs, respondents have engaged in the practice of describing and designating certain of their rugs which closely resemble true Oriental and Chinese Oriental rugs in appearance by the names of "Bombay" and "Manchu." The names used by respondents connote places in India and China and have the capacity and tendency to, and do, create the mistaken and erroneous belief that the rugs so designated are made, respectively, at Bombay, India, and in China, by hand, and are in all respects, including materials, true Oriental or Chinese Oriental rugs. Respondents use the names "Bombay" and "Chinese" to designate the said rugs in invoices to dealers and in otherwise referring to the same in the sale thereof to dealers. To said rugs are firmly attached labels upon which the word "Manchu" or "Bombay" appears in connection with a depiction of an Oriental scene.

Respondents have also engaged in the practice of describing certain of their rugs, designated as "New Avalon," as being in all respects, including materials, reproductions and copies of true Chinese Oriental rugs by the use of the phrase "Chinese Ovalette Replica," which appears upon labels firmly attached to the said rugs in connection with a depiction of an Oriental scene.

All of 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 "Bombay" and "Manchu" rugs are made on power looms in factories in Belgium and Italy. 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 of the characteristics of the true Oriental or Chinese Oriental rug, but do in fact so closely resemble such rugs in appearance as to be indistinguishable from them by a large portion of the purchasing public, and are in consequence readily accepted as being true Oriental or Chinese Oriental rugs. The rugs described as "Chinese Ovalette Replicas" are not exact copies or reproductions of true Chinese Orientals in structure, method of manufacture or material, but merely simulate them in appearance.

PAR. 6. The manufacture of hooked rugs has been carried on in this country since early in its Colonial history and was one of the early forms of artistic expression of the early settlers. Hooked rugs always have been and still are generally regarded as being a distinctively American product.

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PAR. 7. In the course and conduct of their business and for the purpose of inducing the sale of certain of their rugs, respondents have engaged in the practice of describing and designating certain of their hooked rugs by the name "New Bedford." Said name carries so definite an American connotation as to have the tendency and capacity to create the mistaken and erroneous belief that the rugs so designated were made in the United States. Respondents used said name to designate said rugs in invoices to dealers, and also caused labels bearing the said name to be securely attached to the said rugs so as to be plainly discernible to the purchasing public when such rugs are displayed for sale by retail dealers. In truth and in fact, the rugs were made in Europe.

PAR. 8. In the course and conduct of their business and in furtherance thereof, respondents have represented, and now represent, themselves to be the manufacturers of the rugs offered for sale and sold by them. This representation is made through the use of the words "Rug Mills" in their firm or trade name, which appears on their letterheads and invoices, and through other means.

In truth and in fact, respondents do not manufacture the rugs which they offer for sale and sell nor have they during any of the times mentioned herein made or manufactured such rugs. Respondents do not, and have not during any of such times, owned or operated or directly and absolutely controlled any mill or factory in which rugs are made or manufactured.

PAR. 9. There is a substantial portion of those who purchase rugs for resale which prefers to purchase direct from the manufacturer, believing that advantages over purchases from those who are not manufacturers in price and in other respects may be obtained.

PAR. 10. The use by respondents of the designations and representations, as set forth herein, in connection with the offering for sale and sale of their said rugs, has had, and now has, the tendency and capacity to, and does, mislead purchasers and prospective purchasers 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 respondents' said acts and practices, trade has been unfairly diverted to respondents from their 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 respondents to competition in commerce among and between various States of the United States and in the District of Columbia.

PAR. 11. The aforesaid acts and practices of 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, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 6, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Nathan E. Herzfeld and Saul S. Herzfeld, individuals trading and doing business under the name Stephen Rug Mills, 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 24, 1940, the respondents filed their answer to the complaint. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by the respondents through their counsel, and Richard P. Whiteley, assistant 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 such statement of facts to make its report, stating its findings as to the facts (including inferences which it might draw from the stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter the proceeding regularly came on for hearing before the Commission on the complaint, answer and stipulation, the stipulation having been approved and accepted by the Commission and entered of record, and the Commission, having duly considered the same and being fully advised in the premises, on January 7, 1942, issued and subsequently served upon the respondents its findings as to the facts and its conclusion based thereon, and its order requiring the respondents to cease and desist from the practice charged in the complaint.

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Thereafter, on February 14, 1942, the respondents, through their attorney, filed with the Commission a motion requesting that the aforesaid stipulation as to the facts be amended and amplified by adding thereto as exhibits, certain samples of business stationery used by respondents, and on March 9, 1942, the Commission, in response to such motion, entered its order setting aside its findings as to the facts and order to cease and desist issued on January 7, 1942, and reopening the proceeding for the purpose of amending and amplifying the stipulation as to the facts as requested by respondents.

Thereafter the proceeding again came on for consideration by the Commission on the record as set forth above, including the amended and amplified stipulation as to the facts, 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 modified findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Nathan E. Herzfeld and Saul S. Herzfeld, are individuals trading and doing business under the name of Stephen Rug Mills, with their office and principal place of business at 135 Madison Avenue, New York City, N. Y.

PAR. 2. Respondents are now, and for more than 9 years last past have been, engaged in the business of importing, distributing, and selling rugs. In the course and conduct of their business respondents sell their rugs to various wholesale and retail dealers and cause their rugs, 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 rugs in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents are now, and at all times mentioned herein have been, in substantial competition with other individuals, partnerships, and firms, and with corporations, 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 or the place or method of manufacture thereof or their business status, and who do not furnish their dealer-customers with means or instrumentalities for deceiving the public.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient or more particularly in certain parts of southwestern Asia, by hand, of pleasing texture and original and beautiful design, and having a pile of wool or silk and wool, the threads of which are individually knotted in a special manner. Such rugs are usually designated by names which are indicative of the Orient and Oriental origin and manufacture. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Chinese Oriental rugs to be rugs made in China, by hand, in the same manner and possessing the same qualities and characteristics as the Oriental rug. Such Oriental and Chinese Oriental rugs have been for many years and still are held in great public esteem because of their texture, beauty, durability, and other qualities, and by reason thereof there is a substantial demand on the part of the purchasing public for such rugs.

PAR. 5. In the course and conduct of their business respondents have engaged in the practice of describing and designating certain of their rugs which closely resemble true Oriental and Chinese Oriental rugs in appearance, by the names "Bombay" and "Manchu." The names used by respondents connote places in India and China and have had the capacity and tendency to create the belief that the rugs so designated were made respectively at Bombay, India, and in China, by hand, and were in all respects, including materials, true Oriental or Chinese Oriental rugs. Respondents used the names "Bombay" and "Chinese" to designate these rugs in invoices to dealers and in otherwise referring to the rugs in the sale thereof to dealers. To these rugs were firmly attached labels approximately 4 by $3\frac{3}{8}$ inches upon which the word "Bombay" or "Manchu" appeared in letters approximately $\frac{3}{8}$ inch in height, in connection with a depiction of an Oriental scene. Also sewn to the rugs were other labels upon which the words "Made in Belgium" or "Made in Italy" appeared in letters not less than $\frac{1}{4}$ inch in height.

Respondents have also engaged in the practice of representing that certain of their rugs were in all respects reproductions or copies of true Chinese Oriental rugs. Such representation was made by means of labels firmly attached to such rugs, and approximately $4\frac{3}{4}$ by $2\frac{3}{4}$ inches, upon which appeared the words "New Avalon" in letters $\frac{3}{8}$ inch in height and the words "Chinese Ovalette Replica" in letters $\frac{5}{32}$ inch in height, in connection with a depiction of an Oriental scene. Also sewn to these rugs were other labels upon which the words "Made in Italy" or "Made in Belgium" appeared in letters not less than $\frac{1}{4}$ inch in height.

Respondents' "Bombay" and "Manchu" rugs were in fact made on power looms in factories in Belgium and Italy. They were not made by hand, nor were the individual threads knotted in the distinctive manner of the true Oriental or Chinese Oriental rug. The rugs were made of cotton or of jute or of the two combined. They did not possess all of the characteristics of the true Oriental or Chinese Oriental rug, but did in fact so closely resemble such rugs in appearance as to be indistinguishable from them by a large portion of the purchasing public, and were in consequence readily accepted as being true Oriental or Chinese Oriental rugs. The rugs described as "Chinese Ovalette Replicas" were not exact copies or reproductions of true Chinese Orientals in structure, method of manufacture or material but merely simulated them in appearance.

PAR. 6. In the course and conduct of their business in hooked rugs, respondents have engaged in the practice of describing and designating such rugs by the name "New Bedford." Respondents used this name to designate such rugs in invoices to dealers and also caused labels bearing the name to be securely attached to the rugs. Such labels were approximately 4 inches by $3\frac{3}{8}$ inches and upon them appeared the words "New Bedford" in letters $\frac{5}{16}$ inch in height. Also sewn to the rugs were other labels upon which the words "Made in Italy" or "Made in Belgium" appeared in letters not less than $\frac{1}{4}$ inch in height.

New Bedford is a city in Massachusetts widely known in the United States as a textile manufacturing center.

A questionnaire was sent by the Federal Trade Commission to various members of the public in Greater New York whose names were selected at random from telephone directories. The pertinent portion of this questionnaire read as follows:

If hooked rugs were identified or described to you by the names given below, would you or would you not, from those names, form any opinion or gain any impression as to the country where they were made? If you would not, please write "No" on the "Answer" line; otherwise please insert the name of the country. It is requested that you give your answer as to each of the names.

"New Bedford."

Answer.

Thirty-eight of these persons answered the questionnaire. As to the name "New Bedford" 16 answered that they would not form any opinion or gain any impression from this name as to the country of manufacture of the rugs, while 22 answered that they would form the opinion or gain the impression that the rugs were of domestic manufacture.

The stipulation provided that these answers to the questionnaire may be considered by the Commission to the same extent and to the

same effect as if the members of the public who gave the answers had appeared as witnesses in this proceeding and had answered the same question in the same manner.

The rugs designated by respondents as "New Bedford" were in fact made in Europe.

PAR. 7. The trade name used by respondents includes the words "Rug Mills." On respondents' letterheads, invoices, and other business stationery and literature the trade name is accompanied by the words "Importers and Wholesalers of Floor Covering."

A questionnaire was sent by the Commission to a number of retail rug dealers in several of the eastern States of the United States, the names of such dealers being taken at random from the classified sections of the telephone directories. The questions contained in the questionnaire are set forth below, together with tabulations of the answers received to the questions:

Question. In buying cheap rugs (not Orientals) do you or do you not have any general preference for purchasing from manufacturers over purchasing from wholesalers?

Answer. Yes—16. No—18. Preference for wholesaler—5.

Question. A concern is known as the "XYZ Rug Mills." Would you or would you not conclude from this name that this concern actually owned a rug mill?

Answer. Yes—34. No—7.

Question. On this concern's stationery, etc., under the name "XYZ Rug Mills" appears "Importers and Wholesalers of Floor Covering." Would you or would you not conclude from this that its business was exclusively that of importers and wholesalers?

Answer. Yes—30. No—8.

The rugs sold by respondents come within the general category of "cheap," nonoriental rugs.

Of the 34 dealers to whom the words "Rug Mills" would indicate ownership of a rug mill, 26 would be induced by the addition of "Importers and Wholesalers of Floor Covering" to believe that the concern was exclusively an importer and wholesaler.

The stipulation provided that the answers to the foregoing questions may be considered by the Commission to the same extent and to the same effect as if the dealers who gave the answers had appeared as witnesses in this proceeding and had answered the same questions in the same manner as indicated above.

PAR. 8. The facts set forth by respondents as warranting the use in their trade name of the word "Mills" are as follows:

For some time prior to April 1940 respondents had arrangements with certain mills in Europe under which respondents designated the designs to be used by such mills in rugs manufactured for respondents, which designs were exclusively respondents'. Respondents also des-

ignated the size and quantity of rugs manufactured for them by such mills, as well as the quality and structure of the rugs. No one other than respondents could obtain these rugs, and respondents had the exclusive disposition of the entire output of the mills making these rugs.

Since about June 1940 respondents have had arrangements with a certain mill under which respondents purchase and pay for all of the raw materials used by the mill. The mill operates wholly for the respondents and the only rugs made by the mill are made at respondents' orders. The size, quantity, color, weight and quality of the rugs and carpets made by the mill are designated by the respondents, and the mill cannot sell rugs or carpets to anyone other than respondents. Respondents have had a mortgage on all of the looms, machinery, equipment and raw materials of this mill and on the lease of the premises on which the mill is located.

Since about November 1940 respondents have had arrangements with some 22 rug mills in China under which respondents purchase and pay for all of the raw materials used by the mills. The mills operate wholly for respondents and the only rugs made by the mills are at respondents' orders. The size, quantity, color, weight and quality of the rugs made by these mills are designated by respondents, and the mills cannot sell rugs to anyone other than respondents.

Since sometime prior to June 1940 respondents have owned a substantial minority portion of the capital stock of a Pennsylvania corporation known as the Crown Products Corporation, which manufactures rug cushions and kindred articles incidental to the use of rugs, and one of the respondents (representing both respondents) is a director in this corporation.

PAR. 9. While these facts disclose that the respondents have exercised and are now exercising a measure of control over certain mills which supply them with rugs, the Commission is of the opinion and finds that these facts do not constitute respondents manufacturers or warrant the use by respondents of the word "Mills" in their trade name. Respondents have never owned any rug mill, nor have they operated any mill within the real meaning of the term. To a substantial number of dealers the use by respondents of the word "Mills" in their trade name constitutes a representation that respondents actually own a rug mill. There is a preference on the part of a substantial number of dealers for purchasing from manufacturers rather than from wholesalers. The practice of respondents in accompanying their trade name with the legend "Importers and Wholesalers of Floor Covering" is insufficient, in a substantial number of cases, to correct

the erroneous impression conveyed by the use of the word "Mills" in the trade name.

PAR. 10. The Commission further finds that the use by respondents of the terms "Bombay," "Manchu" and "Chinese," and other terms of a similar nature, to designate certain of their rugs, particularly when such terms are accompanied by a depiction of an Oriental scene, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that the rugs so designated are genuine Oriental or Chinese Oriental rugs. Likewise, the use by respondents of the legend "Chinese Oval-ette Replica," together with a depiction of an Oriental scene, to designate certain of their rugs, has the tendency and capacity to cause a substantial portion of the purchasing public to believe that the rugs so designated are copies or reproductions of genuine Chinese Oriental rugs in all respects, including material, structure, and method of manufacture.

The use by the respondents of the words "New Bedford" to designate and describe certain of their rugs has the tendency and capacity to cause a substantial portion of the purchasing public to believe that the rugs so designated are of domestic rather than foreign manufacture.

The legends "Made in Belgium" and "Made in Italy," which appear on other labels attached to respondents' rugs, are insufficient to correct the misleading impression conveyed by the terms and legends referred to above. These legends, being wholly inconsistent with respondents' representations with respect to the nature and origin of their rugs, are incapable of properly qualifying such representations so as to avoid their misleading effect upon the public. A prospective purchaser could believe one but not both of the conflicting representations.

PAR. 11. The Commission therefore finds that the acts and practices of the respondents as herein described have the tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public with respect to the nature and origin of respondents' products, and with respect to respondents' business status, and to cause such dealers and such portion of the public to purchase respondents' products as a result of the erroneous and mistaken belief so engendered. Such acts and practices of the respondents have the effect also of placing in the hands of dealers a means and instrumentality whereby such dealers may be enabled to mislead and deceive a substantial portion of the purchasing public. In consequence thereof substantial trade has been diverted unfairly

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to the respondents from their competitors, many of whom do not misrepresent the nature or origin of their products or their business status.

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.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and a stipulation as to the facts entered into between the respondents 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 conclusion based thereon and an order disposing of the proceeding (such stipulation having subsequently been amplified upon motion of the respondents), and the Commission having made its modified findings as to the facts and conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Nathan E. Herzfeld and Saul S. Herzfeld, individually and trading as Stephen Rug Mills, or trading under any other name, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of their rugs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Bombay," or any other word indicative of the Orient, or any pictorial representation of a typically Oriental scene, to designate or describe rugs which are not in fact made in the Orient and which do not possess all of the essential characteristics of Oriental rugs.

2. Using the words "Manchu" or "Chinese," or any other words indicative of Chinese origin, or any pictorial representation of a typically Oriental or Chinese scene, to designate or describe rugs which are not in fact made in China and which do not possess all of the essential characteristics of Chinese Oriental rugs.

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3. Using the word "Replica," or any other word of similar import, to designate or describe rugs which are not in fact reproductions in all respects of the type named, including material.

4. Using the words "New Bedford," or any other distinctively American name, to designate or describe rugs which are not in fact made in the United States.

5. Using the word "Mills" as a part of respondents' trade name, or otherwise representing that respondents manufacture the rugs sold 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

STANLEY LABORATORIES, INC., EDWARD A. BACHMAN
TRADING AS STILLMAN PRODUCTS COMPANY AND AS
STANLEY LABORATORIESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4130. Complaint, May 7, 1940—Decision, April 1, 1942*

Where a corporation and its president, who controlled and directed its business activities, engaged in interstate sale and distribution of drug products for feminine hygiene; in advertisements of their "M. D. Medicated Douche Powder" through the mails, in newspapers, circulars, leaflets, folders, pamphlets, and other advertising literature; directly and by implication—

- (a) Represented that said powder was a recent development of scientific research which was endorsed by leading physicians and surgeons; that it was an antiseptic and germicide which would combat any form of bacteria; and that it had competent remedial qualities for use on cuts, sores, and burns, and would relieve fatigue and annoying discharge sometimes connected therewith; and
- (b) Represented that said preparation constituted a contraceptive and a prophylactic against disease through use of such descriptive words and phrases as "dependable," "insure—personal hygiene," "dependable safeguard," "reliable safeguard," and "effective, reliable antiseptic powder" in referring thereto;

When in fact said preparation was neither such a recent development, nor thus endorsed; while the ingredient oxyquinolin sulphate, commonly used in such powders, has a spermatocidal action in direct concentration, under conditions of use the proportion thereof was so small as to have little or no value; the ingredient phenol under conditions of use would have no germicidal properties, but solely an antiseptic effect; use of the two together in sufficient concentration to act as a germicide would have a tendency to irritate and damage the tissues; and while laboratory tests indicated that the product contained a bacteriostatic, or germ-inhibiting, substance and had antiseptic properties, under the dissimilar conditions of use the value thereof was limited to that of a mild antiseptic; product had little or no therapeutic value in treatment of cuts, sores, and burns; use as a douche had no value in relieving fatigue, and would not affect the cause of any discharge; it did not constitute a preventative against conception in excess of the mechanical effect of flushing the vagina, and was not a prophylactic against disease; and

Where said corporation and individual—

- (c) Represented, through use of the term "Laboratories" in their corporate and trade names, and in their advertising material, that they owned, operated, and controlled a laboratory equipped for compounding medicinal preparations and for research in connection therewith;

The facts being they were merely distributors of products compounded and manufactured by other concerns; and

(d) Falsely represented that their products were either prescribed or compounded by physicians or bore the endorsement or recommendation of the medical profession by use of the letters "M. D." in designating their product "M. D. Medicated Douche Powder" and by including in advertising thereof the likeness of nurses and doctors, with a red cross; tendency and capacity of which was to cause the purchasing public to believe that such products were endorsed and recommended by the medical profession or by the American Red Cross.

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby causing it, because of such mistaken belief, to purchase said products:

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

Before *Mr. William C. Reeves* and *Mr. Charles A. Vilas*, trial examiners.

Mr. R. P. Bellinger and *Mr. Carrel F. Rhodes* for the Commission.

Mr. James J. Hayden, of Washington, D. C., and *Mr. Leo Levinson*, of Portland, Oreg., 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 Stanley Laboratories, Inc., a corporation, and Edward A. Bachman, an individual trading as Stillman Products Co. and as Stanley Laboratories, 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 this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Stanley Laboratories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon, with its principal place of business located in Portland, Oreg. Respondent, Edward A. Bachman, is an individual, trading as Stillman Products Co. and as Stanley Laboratories, who also has his office and principal place of business in Portland, Oreg., in connection with and located at the same address as the corporate respondent above named. The respondent Edward A. Bachman is also president of the corporate respondent Stanley Laboratories, Inc., and controls and directs the business activities, sales policies and practices of the corporate respondent.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the business of selling and distributing certain drug products for feminine hygiene.

Respondents designate their said products so sold and distributed as "M. D. Medicated Douche Powder," "Contra-Jel," "Femeze," and "M. D. Supercones."

Respondents cause said products, when sold, to be transported from their place of business in Oregon to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce 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 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 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, folders, pamphlets, and other advertising literature, are the following:

1. As to M. D. Medicated Douche Powder:

A VALUABLE PRESCRIPTION FOR DISCRIMINATING WOMEN * * * produced for discriminating modern women who desire a sanitary, and dependable douche to insure their personal hygiene. It is but recently that scientific research has developed new and improved methods to safeguard the health and happiness of married women. Endorsed by physicians and surgeons. M. D. Medicated Douche Powder not only cleans the vagina, and soothes the delicate membrane tissue, but it has the added advantage of the protective action of oxyquinolin sulphate, a dependable safeguard. Because of its many other beneficial uses, "M. D." is also a very valuable household remedy * * * for cuts, sores and burns.

M. D. Medicated Douche Powder, endorsed by leading physicians and surgeons, is a germicide—soothing and cooling to delicate membranes with the addition of oxyquinolin sulphate—a reliable safeguard.

Medical science now answers the problems of millions of women with a truly effective, reliable antiseptic powder.

Effective in combatting any form of bacteria.

It relieves women of fatigue and the annoying discharge, often occasioned by all day standing.

Manufactured by Stanley Laboratories.

2. As to Contra-Jel:

Contra-Jel is the highest quality vaginal antiseptic in jelly form. Its consistency insures even distribution and prolonged contact with every part of the vaginal tract, and its protective action endures as long as it remains within the vagina * * *

Contra-Jel is a harmless, non-irritating, vaginal antiseptic and prophylactic * * * It is more convenient, sanitary and effective than are douches, tablets, capsules, or suppositories.

3. As to M. D. Supercones:

They are stable and do not lose their antiseptic strength * * * a powerful yet non-irritating antiseptic * * * M. D. Supercones remain in effective antiseptic contact for many hours * * * They are actually soothing and beneficial as well as antiseptic.

4. As to Femeze:

Femeze has been found to be a simple effective prescription affording relief for the functional pains and cramps which accompany menstruation * * * bringing relief in a short time by relaxing the contracted womb muscles, allowing them to react in a natural way. It does not merely deaden your nerves with drugs or narcotics to stop the pain. Femeze contains no narcotics.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, the respondents represent directly and by implication:

1. That M. D. Medicated Douche Powder is a recent development of scientific research which is endorsed by leading physicians and surgeons; that said preparation is a competent and effective contraceptive; that said preparation is an antiseptic and germicide which will combat any form of bacteria; that such preparation has competent remedial qualities for use on cuts, sores, and burns, and that said preparation will relieve fatigue and annoying discharge connected with the menstrual period.

2. That Contra-Jel gives immunity from pregnancy, protection from venereal disease, and has germicidal and antiseptic properties.

3. That M. D. Supercones constitute an effective contraceptive which has powerful antiseptic properties.

4. That Femeze is an effective treatment for functional pains and cramps which accompany menstruation and that said preparation will relax the womb muscles, allowing them to react in a natural way.

PAR. 5. In truth and in fact none of said products distributed by the respondents constitute competent or effective contraceptives and will not give immunity from pregnancy. None of said products constitute an adequate prophylactic and will not give protection from venereal diseases.

The product M. D. Medicated Douche Powder is not a recent development of scientific research and is not endorsed by leading physicians or surgeons. Under the conditions of use recommended by the respondents this product is not a germicide and is not a reliable antiseptic effective in combatting any form of bacteria. This preparation would have very little therapeutic value in the treatment of cuts, sores, and burns generally. Such preparation has no therapeutic value in relieving fatigue or discharge connected with the menstrual period.

Respondents' preparation Femeze is not an effective treatment for functional pains and cramps in excess of possible lessening of sensitivity to pain which might accompany menstruation. There is no scientific basis for the representation that this preparation will relieve menstrual pain by relaxing the womb muscles and allowing them to react in a natural way, and respondents' said preparation will not accomplish such results.

Respondents' preparations, Contra-Jel and M. D. Supercones do not have germicidal properties nor do they constitute powerful antiseptics as the antiseptic properties of these preparations are comparatively mild.

PAR. 6. In addition to the statements and representations hereinabove set forth, the respondents make false, deceptive, and misleading representations to the effect that their products are either prescribed or compounded by physicians or that they bear the endorsement or recommendation of the medical profession by means of the use of the letters "M. D." in designating their products M. D. Medicated Douche Powder and M. D. Supercones and by including therewith in advertising the likeness of nurses and doctors with the figure of a cross in simulation of the Red Cross emblem.

In truth and in fact said products are not prescribed or compounded by a physician or physicians and they have not received the endorsement or recommendation of the medical profession.

PAR. 7. In addition to the above representations, the respondents, by the use of the term "laboratories" in their corporate and trade names, and in their advertising literature, also represent that they own, operate, and control a laboratory equipped for the compounding of medicinal preparations and for research in connection therewith. In

truth and in fact the respondents neither own nor control any factory, plant, or laboratory wherein their medicinal preparations are compounded or wherein any research activities are conducted, but instead the respondents are merely distributors of products compounded and manufactured by other concerns.

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

PAR. 9. 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 A. D. 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Stanley Laboratories, Inc., a corporation, and Edward A. Bachman, an individual trading as Stillman Products Company and as Stanley Laboratories, 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 said complaint were introduced by R. P. Bellinger and Carrel F. Rhodes, attorneys for the Commission, and in opposition to the allegations of the complaint by James J. Hayden and Leo Levinson, attorneys for the respondents, before William C. Reeves, 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 upon 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. Respondent, Stanley Laboratories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon, with its principal place of business located in Portland, Oreg.

Respondent, Edward A. Bachman, is an individual trading as Stanley Laboratories, who also has his office and principal place of business in Portland, Oreg., in connection with, and located at the same address as, the corporate respondent. The respondent Edward A. Bachman is also president of the corporate respondent Stanley Laboratories, Inc., and controls and directs the business activities, sales policies and practices of the corporate respondent.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the business of selling and distributing certain drug products for feminine hygiene, including a product designated "M. D. Medicated Douche Powder." Respondents cause said products, when sold, to be transported from their place of business in the State of Oregon to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination, of false advertisements concerning their said products, by United States mails 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 by circulars, leaflets, folders, pamphlets, and other advertising literature, are the following:

A VALUABLE PRESCRIPTION FOR DISCRIMINATING WOMEN * * * produced for discriminating modern women who desire a sanitary and dependable douche to

insure their personal hygiene. It is but recently that scientific research has developed new and improved methods to safeguard the health and happiness of married women. Endorsed by physicians and surgeons. M. D. Medicated Douche Powder not only cleans the vagina, and soothes the delicate membrane tissue, but it has the added advantage of the protective action of oxyquinolin sulphate, a dependable safeguard. Because of its many other beneficial uses, "M. D." is also a very valuable household remedy * * * for cuts, sores, and burns.

M. D. Medicated Douche Powder, endorsed by leading physicians and surgeons, is a germicide—soothing and cooling to delicate membranes with the addition of oxyquinolin sulphate—a reliable safeguard.

Medical science now answers the problems of millions of women with a truly effective, reliable antiseptic powder.

Effective in combatting any form of bacteria.

It relieves women of fatigue and the annoying discharge, often occasioned by all day standing.

Manufactured by Stanley Laboratories.

PAR. 4. Through the use of the aforesaid statements and representations, and others of similar import and meaning not specifically set out herein, the respondents represent, directly and by implication, that "M. D. Medicated Douche Powder" is a recent development of scientific research which is endorsed by leading physicians and surgeons; that said preparation is an antiseptic and germicide which will combat any form of bacteria; that such preparation has competent remedial qualities for use on cuts, sores, and burns; and that said preparation will relieve fatigue and annoying discharge sometimes connected therewith.

The use by the respondents of such descriptive words and phrases as "dependable," "insure personal hygiene," "dependable safeguard," "reliable safeguard," and "effective, reliable antiseptic powder" in referring to, designating and describing said "M. D. Medicated Douche Powder," has a tendency and capacity to cause purchasers and prospective purchasers to believe that said preparation is a preventative against conception and a prophylactic against disease.

PAR. 5. Respondents' preparation "M. D. Medicated Douche Powder" is composed of the following ingredients: Alum, zinc sulphate, boric acid powder, oxyquinolin sulphate, oil of white thyme, oil of peppermint, phenol, and eucalyptol. This preparation is not a recent development of scientific research and is not endorsed by leading physicians or surgeons. The ingredient oxyquinolin sulphate is commonly used in douche powders and has a spermaticidal action in direct concentration. Under conditions of use, however, the proportion of oxyquinolin sulphate is so small as to have little or no therapeutic value. The ingredient phenol appearing in respondents preparation is a germicide when used in sufficient concentration, but under the conditions of use in this preparation, this ingredient would have

no germicidal properties and its effect would be solely that of an antiseptic. The use of oxyquinolin sulphate and phenol in sufficient concentration to act as a germicide, would have a tendency to irritate and damage the mucous membrane and other tissue with which it might come in contact.

A bacteriologist who testified on behalf of the respondents made a test of respondents' preparation "M. D. Medicated Douche Powder" and found that dilutions of one teaspoonful to a pint, and one teaspoonful to a quart, had the ability to restrain the growth of test organism, indicating that the preparation had a bacteriostatic or germ-inhibiting substance in it and indicating antiseptic properties. Under the conditions of use, the germ-inhibiting ingredients of respondents' preparation do not remain in direct or concentrated contact similar to that of a laboratory test and, consequently, the therapeutic value of this preparation is limited to that of a mild antiseptic. This preparation has little or no therapeutic value in the treatment of cuts, sores, and burns. The use of this preparation in the form of a douche might temporarily clean out the vaginal tract but has no value in relieving fatigue and will not affect the cause of any discharge. Under conditions of use this preparation does not have either spermatocidal or germicidal properties and will not constitute a preventative against conception in excess of the mechanical effect of flushing the vagina, and is not a prophylactic against disease.

PAR. 6. In addition to the above representations, the respondents, by the use of the term "laboratories" in their corporate and trade names, and in their advertising literature, also represent that they own, operate, and control a laboratory equipped for the compounding of medicinal preparations and for research in connection therewith. In truth and in fact, the respondents neither own nor control any factory, plant, or laboratory wherein their medicinal preparations are compounded or wherein any research activities are conducted, but, instead, respondents are merely distributors of products compounded and manufactured by other concerns.

PAR. 7. In addition to the statements and representations hereinabove set forth, the respondents make false, deceptive, and misleading representations to the effect that their products are either prescribed or compounded by physicians or that they bear the endorsement or recommendation of the medical profession by means of the use of the letters "M. D." in designating their product "M. D. Medicated Douche Powder" and by including therewith, in advertising, the likeness of nurses and doctors, with the figure of a cross in simulation of the American Red Cross emblem. In truth and in fact, said products are not prescribed or compounded by a physician or physicians and they

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have not received the endorsement or recommendation of the medical profession, and the use of the letters "M. D.", either alone or in combination with the likeness of nurses and doctors and the figure of a cross has a tendency and capacity to cause members of the purchasing public to believe that products so designated and described are endorsed and recommended by the medical profession. The use of a cross simulating the American Red Cross emblem in design, either alone or in combination with the letters "M. D." or with the picture of a nurse or doctor, has a tendency and capacity to cause members of the purchasing public to believe that the product is in some way endorsed or approved by the American Red Cross.

PAR. 8. The Commission further finds that there is not sufficient evidence in the record as to the dissemination of any particular advertisement with reference to respondents' preparations "Contra-Jel," "Supercones," and "Femeze" to warrant any finding involving these products.

PAR. 9. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and causes a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' preparations.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, 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 and in opposition thereto, 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 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, Stanley Laboratories, Inc., a corporation, and its officers, and Edward A. Bachman, an individual trading as Stanley Laboratories, 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 preparation "M. D. Medicated Douche Powder," 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:

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 is a recent development of scientific research, or that it is endorsed by physicians and surgeons.

(b) That respondents' preparation has either germicidal or spermaticidal properties under conditions of use.

(c) That respondents' preparation will combat any form of bacteria, or that it will have any effect upon any bacteria in excess of that of a mild antiseptic.

(d) That respondents' preparation has any substantial therapeutic value in the treatment of cuts, sores, or burns.

(e) That the use of respondents' preparation will relieve fatigue or have any effect upon the cause of vaginal discharge.

(f) That the use of respondents' preparation constitutes a preventative against conception, in excess of the mechanical effect of flushing the vagina.

(g) That respondents' preparation constitutes a prophylactic against disease.

2. 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 in designating or describing respondents' preparation "M. D. Medicated Douche Powder" or any other preparation of substantially similar composition or possessing substantially similar properties, or the effectiveness of the use of such preparation, uses the words "dependable," "dependable safeguard," "reliable safeguard," "effective reliable antiseptic powder," or any other words of similar import or meaning, in such a manner as to infer or imply that such preparation is a contraceptive or prophylactic.

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 respondents' preparation, which advertisement contains any of the representations prohibited in paragraphs (1) and (2) hereof and the respective subdivisions thereof.

4. The use of the letters "M. D." in respondents' trade name, or in any other manner, either alone or in conjunction with the picturization of a doctor, nurse, or cross, to designate or describe respondents' preparation or any other preparation which has not been endorsed or recommended by the medical profession.

5. The use of the picturization of a cross or any other simulation of the American Red Cross emblem, either alone or in conjunction with the picturization of a doctor or a nurse, to designate or describe respondents' preparation.

6. Use of the word "Laboratories" or any other word of similar import or meaning in respondents' corporate or trade name, or representing through any other means or device, or in any manner, that the respondents own, operate, or control a laboratory equipped for the compounding of medicinal preparations and for research in connection therewith.

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

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IN THE MATTER OF

FRANK G. HUNTINGTON, JOSEPH PUSTERHOFER, HERMAN PUSTERHOFER, AND LOUIS WALTON, TRADING AND DOING BUSINESS UNDER THE NAME EUCLID RUBBER & 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 4394. Complaint, Nov. 30, 1940—Decision, Apr. 3, 1942

Where two individuals, engaged in interstate sale and distribution of electric lamp guards, rubber handles for safety lights, and other electrical devices—

(a) Represented, through statements in catalogues and letters, and through placing letters "U L" on devices sold and distributed by them, that their products had been approved and tested by Underwriters' Laboratories, Electrical Testing Laboratories, and Hydro-Electric Power Commission of Ontario;

Notwithstanding fact they had not submitted their products to any such testing organizations, which had not approved such products, and they had not been authorized to mark any of their goods in any manner signifying that they had been thus tested or approved; and

(b) Made misrepresentations with respect to a competitor, through such typical statements as that name of the concern, which included word "manufacturing," was a false and misleading representation of such concern's business, as they did not then or never had manufactured anything "but lies concerning this company," and did not own "a stitch of machinery for the manufacture of their rubber handles or lamp guards," as all of their "manufacturing" is "jobbed out to the lowest bidder and they merely pack and ship the goods";

When in fact such concern manufactured 15 to 20 percent of its total sales, amounting to about \$125,000 annually, including some of the rubber handles used on its products;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby causing it, because of such mistaken belief, to purchase said products:

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

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

Mr. Clark Nichols and *Mr. James I. Rooney* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Frank G. Hunting-

ton, Joseph Posterhofer, Herman Posterhofer, and Louis Walton, trading as Euclid Rubber & Manufacturing Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Frank G. Huntington, Joseph Posterhofer, Herman Posterhofer, and Louis Walton, are individuals, trading and doing business under the firm name, Euclid Rubber & Manufacturing Co., with their principal office and place of business at 19730 Tyronne Avenue, Cleveland, Ohio. Respondents are now, and for more than two years last past have been, engaged in the manufacture and sale of rubber handles for safety lights, electric lamp guards and other electrical devices. Respondents cause said devices, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in various points in the several States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said devices in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business in said commerce as aforesaid, and for the purpose of inducing the purchase of their rubber handles for safety lights, lamp guards, and other electrical devices, respondents have circulated among prospective purchasers of said devices through advertisements in trade catalogues, circulars and letters, many statements concerning the efficiency and merits of said devices, statements concerning the length of time respondents have been in business, and statements disparaging certain of their competitors, and statements that their products have been approved by certain laboratories and associations which test products of similar character as those manufactured and sold by respondent. Among the statements so used and circulated among prospective purchasers by the respondents, with reference to their products, their business and their competitors, are the following:

For the past 10 years we have specialized in the manufacture of these products, have our own molding equipment and machine shop facilities for their complete fabrication.

Our products have been approved by the Underwriter Laboratories, Electrical Testing Laboratories, and the Hydro-Electric Commission of Ontario.

There is another outfit here in Cleveland who call themselves Ericson Manufacturing Co., who will give you no worth-while competition. Their name is a false and misleading representation of their business as they do not now, and never have, manufactured anything except lies concerning this company, and own

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not a stitch of machinery for the manufacture of their rubber handles or lamp guards.

The respondents also place, on certain of their products, letters and designs indicating that such products have been tested by Underwriters Laboratories or Electrical Testing Laboratories.

Through the use of the foregoing statements, letters and designs, and others of similar import and meaning not herein set out, the respondents represent and imply that they have been in the business of manufacturing said products for a period of ten years and that their products have been inspected, tested and approved by Underwriters Laboratories, Electrical Testing Laboratories, and the Hydro-Electric Commission of Ontario, Canada; that the Ericson Manufacturing Co., of Cleveland, Ohio, a competitor of respondents, is a small, insignificant concern not worthy of mention as a competitor of the respondents and that the use of a name by this concern indicating that it is a manufacturer is false and misleading, that this concern has circulated falsehoods concerning respondents' business and that it has no machinery of any kind for the manufacture of the products sold by it.

PAR. 3. The above and foregoing representations and implications are false, misleading and deceptive, for in truth and in fact respondents have not been engaged in business for a period of ten years but only since 1933; their products have not been submitted to, inspected, tested or approved by, Underwriters Laboratories, Electrical Testing Laboratories, or the Hydro-Electric Commission of Ontario, Canada. The statements and representations aforesaid concerning the Ericson Manufacturing Co., a competitor of respondents, are false, misleading and deceptive, and falsely defame and disparage that company and its products. In truth and in fact, the Ericson Manufacturing Co. is a substantial, growing concern, actively engaged in manufacturing rubber handles and lamp guards on machinery owned and operated by it, which products are sold in competition with those sold by respondents, and said Ericson Manufacturing Co. has not circulated falsehoods concerning the respondents or their business.

A substantial portion of the purchasing public prefers rubber handles for safety lights, lamp guards and other electrical devices that have been tested, inspected and approved by laboratories, or governmental agencies, equipped and qualified to make scientific tests of such products. Both Underwriters Laboratories and Electrical Testing Laboratories are well known to the purchasing public as agencies equipped and qualified to make scientific tests of such products. The belief on the part of the purchasing public that either of these concerns has tested and approved the products is a substan-

tial and material factor in inducing the public to purchase said products.

PAR. 4. The acts and practices of respondents in circulating and using the aforesaid statements, representations and implications in connection with the offering for sale, sale and distribution of their products in said commerce have had, and now have, the tendency and capacity to, and did and do, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such statements, representations and implications are true, and cause a substantial portion of the purchasing public because of such mistaken and erroneous belief, to purchase said products.

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 November 30, 1940, issued and subsequently served its complaint in this proceeding upon respondents, Frank G. Huntington, an individual, Joseph Posterhofer, an individual, and Herman Posterhofer, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint (no answer having been filed by respondents thereto) testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before examiners of the Commission theretofore duly designated by it 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 examiners, 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. Respondents, Frank G. Huntington and Herman Pusterhofer (the person referred to in the complaint as Herman Pusterhofer) are brothers and have for several years last past traded and carried on business under the name, Euclid Rubber & Manu-

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facturing Co., with their principal office and place of business at 19730 Tyronne Avenue, Cleveland, Ohio. It was testified that Joseph Pusterhofer (the person referred to in the complaint as Joseph Posterhofer), a brother of the two respondents named, has had no connection with the business for more than five years. The identity of respondent Louis Walton was not established either as being Louis Pusterhofer or any other individual. Respondents Frank G. Huntington and Herman Pusterhofer during several years last past have been engaged in the sale and distribution of electric lamp guards, rubber handles for safety lights, and other electrical devices, and respondents have caused said articles, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located at various points in the United States other than the State of Ohio. Respondents have maintained, and now maintain, a course of trade in said devices in commerce between and among the several States of the United States.

PAR. 2. In the course and conduct of their aforesaid business and for the purpose of aiding in the sale of and inducing the purchase of various electrical devices, respondents have circulated among prospective purchasers of such devices various representations such as the statement on page 5 of the catalog distributed to prospective purchasers:

SPRING ACTION

Safety Attachment Plugs

Approved by Underwriters Laboratories, Electrical Testing Laboratories, and Hydro-Electric Power Commission of Ontario.

By means of letters such as that of February 27, 1939, to the Chandler-Boyd Company of Pittsburgh, Pennsylvania, they have represented to prospective purchasers that:

Our products have been approved by the Underwriters' Laboratories, Electrical Testing Laboratories, and Hydro-Electric Power Commission of Ontario.

They have sold and distributed electrical devices on which they have placed the letters "U L," which letters signify to dealers and other purchasers in the trade, and are understood to mean, that the product so marked has been tested and approved by the Underwriters' Laboratories. One of the respondents testified that the letters "U L" had been used to determine whether their use would result in easier or readier sale of such products.

Respondents have not, in fact, submitted their products to the Underwriters' Laboratories, Inc., Electrical Testing Laboratories, or the Hydro-Electrical Power Commission of Ontario for testing, nor have such products been approved by any of the testing organizations

named, nor have respondents been authorized to mark any of their products in any manner signifying that they have been tested or approved by any of said organizations.

PAR. 3. Respondents, in the sale and distribution of their said products, are in competition with other concerns engaged in the sale and distribution of similar products, including the Ericson Manufacturing Co., of Cleveland, Ohio. Respondents have circulated letters to dealers and other prospective purchasers of products offered for sale by Ericson Manufacturing Co., which letters contained statements substantially similar to those contained in a letter of May 16, 1939, to McKinley-Mockenhaupt Co. of Chicago, Ill., a dealer handling Ericson products:

Our business is not a monopoly built up around patents. We have two long established active competitors, namely the McGill Manufacturing Co., Valparaiso, Ind., and the Daniel Woodhead Co., of your city. There is another outfit here in Cleveland who call themselves the Ericson Manufacturing Co., who will give you no worth-while competition. Their name is a false and misleading representation of their business, as they do not now, and never have manufactured anything but lies concerning this company, and own not a stitch of machinery for the manufacture of their rubber handles or lamp guards. All their "manufacturing" is jobbed out to the lowest bidder and they merely pack and ship the goods.

Ericson Manufacturing Co., is a concern doing a substantial business in electrical devices similar to those sold by respondents and whose annual sales amount to approximately \$125,000. The Ericson Manufacturing Co., manufactures certain of the products which it offers for sale, including some of the rubber handles used by it on its products, the extent of such manufacture approximating 15 to 20 percent of its total sales.

4. The acts and practices of respondents in using and circulating the statements and representations set out above in connection with the sale and distribution of their products have had, and now have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations and statements are true, and cause a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase said products.

CONCLUSION

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

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and other evidence taken before examiners of the Commission theretofore duly designated by it, report of the trial examiner, and briefs filed herein in support of and in opposition to 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 respondents, Frank G. Huntington, an individual, and Herman Pusterhofer, an individual, jointly or severally, trading as the Euclid Rubber & Manufacturing Co., or under any other name, directly or through any corporation or other device, in connection with the offering for sale, sale, and distribution of electric lamp guards, handles for safety flights, and other electrical devices 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 any product or products not tested or approved by Underwriters' Laboratories, Inc., Electrical Testing Laboratories or Hydro-Electric Power Commission of Ontario have been so tested or approved.

2. Representing directly or by implication that any product or products have been tested or approved by any organization when such product or products have not been so tested or approved.

3. Disparaging the Ericson Manufacturing Co., or any other competitor, by representing that its manufacturing facilities, or the size and scope of its business, are less than is the fact, or by making other false representations with respect to any such competitor or its business operations.

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

It is further ordered, That the case growing out of the complaint herein be, and the same hereby is, closed as to respondents Joseph Pusterhofer and Louis Walton for the reasons set out in the findings as to the facts herein 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.

Syllabus

IN THE MATTER OF
**INDIANAPOLIS SOAP COMPANY, WILLIAMS SOAP COM-
 PANY, 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 3971. Complaint, Dec. 13, 1939—Decision, Apr. 6, 1942

Where two corporations, under common family ownership and control, and their three officers and owners, engaged in interstate sale and distribution of soap and soap products largely to "medicine and street men," which type of trade they solicited in a periodical of national circulation, offering among other things, their "NATURE'S WONDER * * * golden yellow soap * * * put up in attractive cartons bearing price mark of 25¢ per carton" at \$3.95 per gross, their "CUTICLEAR * * * pure white cocoanut oil soap" in cartons bearing price mark of 25¢ per cake, and their "Velvatex Cream Compound" and "Marie Martell * * * luxurious cleansing preparation," in one carton combination deals marked "75¢" and also packaged separately or in combination with other soaps such as laundry or cleaning powders—

- (a) Represented and implied that said soap had the retail value and price of figure marked on such cartons, through such practice; and
- (b) Placed in the hands of canvassers, peddlers and others, means and instrumentality whereby they were enabled to mislead and deceive members of the purchasing public who generally placed confidence in such price markings and representations as to retail values and prices; and
- (c) Placed on their soaps and on the cartons in which they were packed such statements as "Made from mineral and vegetable oils, nature's own products compounded with other pure materials by the most improved methods of modern soap making * * * absolutely free from impure or rancid animal fats or greases, chemicals, strong alkalies or other harmful substances * * * purifies and invigorates the skin, opens up the pores and gives nature the opportunity to function properly;"

Notwithstanding fact products in question were inferior in quality and contained an excessive proportion of water, increasing the size and weight without adding to the actual quantity, which type of soap soon dries out, shrinks and hardens so as to become substantially unsuited for the use intended; and external application of no soap can "open up the pores," etc., as above claimed;

With effect of misleading and deceiving a substantial portion of purchasing public into the mistaken belief that said soaps had a value greatly in excess of their actual retail price and value, and possessed qualities which they did not in fact possess; of placing in the hands of others a means to mislead and deceive said public, and of inducing it, because of its mistaken belief, to purchase substantial quantity of the soaps in question:

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.

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Before *Mr. John W. Addison* and *Mr. Andrew B. Duvall*, trial examiners.

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 Indianapolis Soap Co., a corporation, Williams Soap Co., a corporation, and Jesse M. Daily, Maude S. Daily, Robert S. Daily and Sidney F. Daily, Jr., individually and as officers of Indianapolis Soap Co. and Williams Soap Co., hereinafter referred to as respondents, have violated the provisions of the said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Indianapolis Soap Co., is a corporation organized under the laws of the State of Indiana. Said respondent operates under various trade names, including the names Union Soap Co., Sanisoap Co., Sanisoap Co., Inc., W & W Soap Mfg. Co., Crescent Soap Co., Cleanaid Products Co., Utility Cleaner Co., Hoosier Mfg. Co., and Nature's Products Co.

Respondent, Williams Soap Co., is a corporation organized under the laws of the State of Indiana. Said respondent operates under various trade names, including the names Unisoap Co. and Unisoap Sales Co.

Respondent, Jesse M. Daily, is an individual, and is President of the Indianapolis Soap Co. and secretary and treasurer of the Williams Soap Co. Said respondent is the principal stockholder in and, together with the other individual respondents named herein, formulates, controls and dominates the practices and policies of the corporate respondents.

Respondent, Maude S. Daily, is an individual and is vice president of both the Indianapolis Soap Co. and the Williams Soap Co.

Respondent, Robert S. Daily, is an individual and is secretary and treasurer of the Indianapolis Soap Co.

Respondent, Sidney F. Daily, Jr., is an individual and is president of the Williams Soap Co.

All of the respondents have their office and principal place of business at 1249 Roosevelt Avenue, in the city of Indianapolis, Ind. All have acted in conjunction and cooperation with each other in carrying out the acts, practices and methods 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 soap products. Respondents cause their said products, when sold, to be shipped from their place of business in the State of Indiana to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, respondents sell and distribute certain varieties of soaps known as canvassers' soaps, which are sold by respondents to canvassers or peddlers and in turn sold by such canvassers and peddlers to the purchasing public. Such soaps are packed by respondents in cartons and on such cartons are placed false and misleading representations with respect to the value and price of such soap. Among and typical of such false and misleading representations are the following:

Velvatex Creme Compound—a combination of vegetable oils and mineral salts for the toilet, bath and shampoo—One carton of combination deal—price of complete unit—75¢.

Marie Martell—a luxurious cleansing preparation—One carton of combination deal—price of complete unit—75¢.

By the use of the foregoing representations, together with other representations of similar import not specifically set out herein, the respondents represent that such cartons of soap have an actual retail value or retail selling price of 75¢ each.

PAR. 4. The aforesaid representations are grossly exaggerated, false and misleading. In truth and in fact the prices placed by respondents on said cartons are fictitious prices and do not in any sense represent the actual retail value or the retail price of such soap. Said prices are far in excess of the prices at which said soaps are customarily sold in the normal and regular course of business. In truth and in fact said soaps are sold by respondents to canvassers and peddlers at a price of approximately 5 cents per carton.

PAR. 5. The public generally understands the custom of marking or stamping the retail price or value on various commodities, and has been led to, and does, place its confidence in the price markings so stamped on the commodities and the representations thereby made as to the value and retail price of such products.

PAR. 6. By this means respondents have also placed directly in the hands of unscrupulous canvassers and peddlers a means and instru-

mentality whereby such canvassers and peddlers have been and are enabled to mislead and deceive members of the purchasing public.

PAR. 7. The respondents also cause to be placed on their soaps and on the cartons in which such soaps are packed and sold, false and misleading representations with respect to the grade, quality and ingredients of said soaps. Among and typical of such false and misleading representations are the following:

This soap is made from mineral and vegetable oils, nature's own products, compounded with other pure materials by the most improved methods of modern soap making. It is absolutely free from impure or rancid animal fats or greases, chemicals, strong alkalies or other harmful substances. It cleanses thoroughly, purifies and invigorates the skin, opens up the pores and gives nature the opportunity to function properly.

Nature's vegetable soap—vegetable compound—guaranteed purely vegetable—manufactured only by Nature's Products Company, Indianapolis, Indiana.

Through the use of the foregoing representations and others of similar import not specifically set out herein, respondents represent that their said soaps are absolutely free from impurities or other harmful substances; that they are made from natural mineral and vegetable oils; that they purify and invigorate the skin and open up the pores of the skin; that said soaps are of superior grade and quality.

PAR. 8. The aforesaid representations are grossly exaggerated, false and misleading. In truth and in fact said soaps are not free from impurities nor are they made entirely from natural mineral and vegetable oils. Said soaps contain caustic soda, which is irritating and injurious to the skin. Said soaps do not purify or invigorate the skin, nor do they serve to open the pores of the skin. They are not superior in grade or quality, but are of the most inferior grade and quality, in that in addition to the caustic soda content hereinbefore referred to, they contain an unusually large quantity of water, which evaporates rapidly and causes the soap to become dry and unfit for use.

PAR. 9. The acts and practices of the respondents, as herein set forth, have had and now have the capacity and tendency to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's soaps have a value greatly in excess of their actual retail price and value and that said soaps possess qualities and ingredients which they do not in fact possess. As a result of such erroneous and mistaken belief the purchasing public has been induced to purchase a substantial quantity of respondent's products.

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 December 13, 1939, issued and subsequently served its complaint in this proceeding upon respondents, Indianapolis Soap Co., a corporation, Williams Soap Co., a corporation, and upon Jesse M. Daily, Maude S. Daily, Robert S. Daily, and Sidney F. Daily, Jr., individually, and as officers of said corporations, charging said respondents 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, certain stipulated facts were read into the record and testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answers thereto, testimony and other evidence, report of the trial examiners and exceptions thereto, and briefs in support of and in opposition to the complaint (oral arguments not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Indianapolis Soap Co., is a corporation organized and existing by virtue of the laws of the State of Indiana, having its principal place of business at 901 High Street, Indianapolis, Ind. It also uses the trade names "Cleanaid Products Company" and "Nature's Products Company," and has at various times used other trade names including "Sanisoap Company," "W & W Soap Manufacturing Company," and "Crescent Soap Company."

Respondent, Williams Soap Co., is a corporation organized and existing by virtue of the laws of the State of Indiana, having its principal place of business at 901 High Street, Indianapolis, Ind. It uses the trade name "Unisoap Sales Company" and has at various times used numerous other trade names.

Both respondent corporations formerly had their principal place of business at 1249 Roosevelt Avenue, Indianapolis, Ind.

Respondent, Jesse M. Daily, an individual, is president of respondent Indianapolis Soap Co. and secretary and treasurer of respondent, Williams Soap Co. He is, and for a number of years last past has been, the active manager of both corporations and has controlled and directed their business operations.

Respondent, Maud S. Daily (the individual referred to in the complaint as Maude S. Daily), now deceased, was the wife of respondent Jesse M. Daily and was formerly an officer, director, and stockholder in both respondent corporations.

Respondent, Robert S. Daily, an individual, is a son of respondent Jesse M. Daily and is secretary of respondent, Indianapolis Soap Co. He is engaged to some extent in the sale of the products of respondent corporations, and in the absence of his father directs and controls the business of the corporate respondents.

Respondent, Sidney F. Daily, Jr., an individual, is a son of respondent Jesse M. Daily and is president of respondent, Williams Soap Co. He attends stockholders' meetings and business meetings of the corporation and acts to a limited degree in an advisory capacity.

The capital stock of the Indianapolis Soap Co. consists of 100 shares, 96 shares of which are owned by respondent Jesse M. Daily, 2 shares are owned by respondent, Robert S. Daily, and 2 shares were formerly owned by respondent, Maud S. Daily. The capital stock of the Williams Soap Co. consists of 5 shares, 2 shares of which are owned by respondent, Sidney F. Daily, Jr., 1 share is owned by respondent, Jesse M. Daily, and 2 shares were formerly owned by respondent, Maud S. Daily. The corporate respondents have a joint office from which the affairs of each are directed, and are wholly owned, dominated, controlled, and directed by the individual respondents and constitute the means through which various acts and practices of respondents have been done and performed. The several respondents have acted in conjunction and cooperation with one another in carrying out such acts and practices.

PAR. 2. Respondents are now, and for a number of years last past have been, engaged in the sale and distribution of soap and soap products. Respondents cause their said products, when sold, to be shipped from their place of business in Indianapolis, Ind., to purchasers thereof located in various States of the United States and in the District of Columbia, and 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 sale and distribution of soap and soap products, respondents have specialized largely in a particular type of trade.

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They have advertised under the name of the Indianapolis Soap Co. in a magazine of national circulation known as "The Billboard" in the following manner:

FOR MEDICINE
SOAPS AND STREET MEN

For more than 35 years we have specialized on pure Coconut Oil Soaps for Streetmen. Large Assortment Stock Brands, also Private Brands to order. Write today for price list and samples.

Among the soaps offered in the price list of respondent Indianapolis Soap Co. are:

NATURE'S WONDER

This is a golden yellow soap, made from pure Cochin Oil, pressed and put up in attractive cartons bearing price mark of 25 cents per carton. Very flashy package.

Price

No. 2 size----- \$3.95 per gross.

and

CUTICLEAR

Cuticlear is a pure white Coconut Oil Soap; looks unusually large for its weight. Each cake neatly pressed with brand name across the front and packed in very attractive yellow cartons printed in black ink, bearing price mark of 25 cents per cake. A new and very attractive brand for medicine men.

Price \$3.35 per gross

Respondents, through the Williams Soap Co., sell and distribute a soap designated as "Velvatex Creme Compound" packed three cakes to a carton. Across the top of the face of the carton appears the legend, "One Carton of Combination Deal," and at one end of the face of the carton are two concentric circles. In the center of the inner circle are the figures "75¢" and in the space between the inner and outer circles is the lettering, "Price of Complete Unit." Another soap offered for sale and sold through the Williams Soap Co. is designated "Marie Martell, a luxurious cleansing preparation." This soap is also packed three cakes to a carton, and the carton carries on its face the words and figures, "One Carton of Combination Deal—Price of Complete Unit—75¢" arranged in the same manner as in the case of the soap designated as "Velvatex." By such statements respondents represent and imply that such soaps have a retail value of 75 cents per carton, and such representations have the capacity and tendency to, and do, mislead members of the purchasing public into the belief that said soaps have a retail value and price of 75 cents per carton.

Respondents sell Velvatex and Marie Martell packaged as stated either separately or in combination with other soaps such as laundry

soap or cleaning powders. If purchased alone, the price of either of these brands is 4 to 5 cents per carton of three cakes. The price of 75 cents placed on cartons of the above soap grossly exaggerates and is far in excess of the retail value of such soaps and of the prices at which such soaps are customarily sold in the regular and normal course of business. Respondents' price marked products are sometimes resold in combination with other products and in such event respondents cannot, and do not, control the combinations offered and have no means of knowing what may be offered in such combinations or the retail value thereof. The aforesaid price marking places in the hands of medicine men, street men, or canvassers a means whereby they may, by offering the three-cake carton at the exaggerated price and adding to the offer a bar of laundry soap and a box of washing powder or various other items of insignificant cost, mislead and deceive prospective purchasers as to the value of the goods offered.

When questioned about this practice, respondent, Jesse M. Daily, testified that, "When people buy from peddlers they have to know what they are doing." He also testified that it would be difficult to sell these soaps if the price marks were not placed on the cartons to afford peddlers " * * * a unit price to work on * * *," and that the absence of such price marks would interfere with sales.

PAR. 4. Members of the purchasing public are familiar with and understand the custom of marking or stamping the retail price or value on various commodities, and generally place confidence in such price markings and the representations thus made as to the value and retail price of such products. By placing upon its products price markings which are fictitious and which grossly exaggerate the actual price at which such products are customarily sold to members of the purchasing public, respondents have placed in the hands of canvassers, peddlers, and others a means and instrumentality whereby such canvassers and peddlers have been, and are, enabled to mislead and deceive members of the purchasing public.

PAR. 5. Respondents cause various representations with respect to the grade, quality, and ingredients of their soaps to be placed on such soaps and on the cartons in which such soaps are packed and sold. Among such representations are:

This soap is made from mineral and vegetable oils, nature's own products, compounded with other pure materials by the most improved methods of modern soap making. It is absolutely free from impure or rancid animal fats or greases, chemicals, strong alkalies or other harmful substances. It cleanses thoroughly, purifies and invigorates the skin, opens up the pores and gives nature the opportunity to function properly.

Nature's vegetable soap—vegetable compound—guaranteed purely vegetable—manufactured only by Nature's Products Company, Indianapolis, Indiana.

In fact, respondents' soaps are inferior in quality and are water-filled, in that they contain an excessively large proportion of water which increases the apparent size and weight of the soap without adding to the actual quantity. Such excessively water-filled soaps soon dry out, shrink and harden so as to become substantially unsuitable for the use intended. The representation that respondents' soaps, or any of them, "open up the pores of the skin and give nature the opportunity to function properly" is false and misleading in that this cannot be done by the external application of any soap.

PAR. 6. The acts and practices of respondents as set forth above 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 respondents' soaps have a value greatly in excess of their actual retail price and value and that said soaps possess qualities which they do not in fact possess, and said acts and practices place in the hands of others a means to so mislead and deceive. As a result of such erroneous and mistaken belief members of the purchasing public have been induced to purchase a substantial quantity of respondents' products.

CONCLUSION

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.

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, certain stipulated facts read into the record, testimony and other evidence taken before examiners of the Commission theretofore duly designated by it, and briefs filed herein in support of and in opposition to 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 respondents, Indianapolis Soap Co., a corporation, Williams Soap Co., a corporation, their directors, officers, agents, and employees; Jesse M. Daily, an individual, Robert S. Daily, an individual, and Sidney F. Daily, Jr., an individual, and their agents, representatives, or employees; jointly or severally, directly or through any corporate or other device, in connection with the offering for

sale, sale, and distribution of soap or other 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 fictitious price marks or in any other manner, that soaps or other products have retail values or prices in excess of the prices at which such products are regularly and customarily sold at retail.

2. Using, on or in connection with soap or other products, fictitious price representations or marks which import or imply, or placing in the hands of others such means of representing, that the retail value or price of any product, either alone or in combination with other products, is in excess of the price at which such product or combination of products is regularly and customarily sold at retail.

3. Representing that soaps which are water-filled or contain an excessive quantity of water are of superior quality.

4. Representing that respondents' soaps "open up the pores and give nature the opportunity to function properly," by the use of the words stated or by the use of any other words or terms of similar import or meaning.

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

It is further ordered, That for the reason stated in the findings as to the facts in this proceeding the complaint herein be, and the same hereby is, dismissed, as to respondent, Maude S. Daily.

Syllabus

IN THE MATTER OF

WOOL TRADING 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 4267. Complaint, Aug. 26, 1940—Decision, Apr. 6, 1942

Where a corporation, engaged in competitive interstate sale and distribution of hand knitting yarn direct to the purchasing public, advertising in periodicals of wide circulation and forwarding to those replying thereto various advertising material such as catalogues, cards, and circulars containing samples—

- (a) Made use, in designating certain yarns in its said advertising and on labels and tags attached thereto, of names (1) "Cashmere," "Genuine Cashmere," and "Genuine Cashmere Sport," and "Genuine Imported Cashmere," and (2) "Glow Tweed," "Petite Zephyr Tweed," "Ascot Tweed," and "Shag Tweed"; notwithstanding the fact such yarns were not, respectively, composed entirely of wool made from the hair of the cashmere goat as understood by public from word "cashmere," but were composed wholly or largely of other materials nor composed entirely of wool as long understood from word "tweed," but contained substantial percentages of rayon or cotton;
- (b) Made use of word "wool" in describing certain yarns, such as "Luster Wool," "Wool Bouclé," and of word "Angora" to designate others as "Sport Angora"; notwithstanding the fact the former yarns were not composed wholly of wool, but were partly rayon; nor did the latter contain any hair of the Angora goat;
- (c) Make use, as aforesaid, of word "crepe" to designate certain yarns as "Sparkle Crepe," and of word "Shetland" to designate others as "Shetland Floss"; notwithstanding the fact yarns thus designated, respectively, contained no silk, product of the cocoon of the silk worm, as long understood by purchasing public from unqualified word "crepe," but were made of rayon or a mixture thereof; and were not made of wool from Shetland sheep grown on the Shetland Islands or on the contiguous mainland of Scotland, as understood from use of word "Shetland";
- (d) Made use of word "Scotch" to designate certain yarns as "Scotch Tweed" and "Scotch Heather," and of word "Saxony" to designate others as "Saxony Zephyr"; notwithstanding the fact such yarns or the wool from which they were made were neither made in nor imported from either Scotland or the Province of Saxony;
- (e) Falsely represented that certain domestic yarns were imported products through use of word "Imported" to describe them;
- (f) Advertised and sold various yarns which were composed in whole or in part of rayon, but had the appearance of wool and silk, without disclosing such content of rayon, which, when so manufactured, is practically indistinguishable from silk or wool by the purchasing public, with result that it purchased same as being composed entirely of silk or wool; and
- (g) Used on its letterheads the legend "Manufacturers of Peter Pan Yarns," notwithstanding the fact it was not a manufacturer, preferably dealt with directly by a substantial portion of the public as securing, in its belief

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lower prices and other advantages, but obtained its yarns from other sources;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to its products and business status, and to cause said public to purchase substantial quantities of its yarns as a result of the erroneous belief engendered, thereby diverting trade to it from its competitors:

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

Before *Mr. Charles A. Vilas*, trial examiner.

Mr. Robert Mathis, Jr. and *Mr. L. E. Creel, Jr.*, for the Commission.

Mr. S. Robert Israel, 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 Wool Trading 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, Wool Trading 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 361 Grand 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 knitting yarn. 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 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. 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 corporations and with part-

nerships and persons likewise engaged in the business of selling and distributing various grades and types of knitting yarn in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. The word "cashmere" has long been applied to a particular type of wool fiber that is made from the hair of the cashmere goat, and has for a long time been known well and favorably to the purchasing public. The word "cashmere" when used in connection with the designation and description of yarns or other products having the general appearance of wool fibers is considered by members of the purchasing public as describing a product composed entirely of the hair of the cashmere goat.

The word "tweed" is a word long and favorably known to a substantial portion of the purchasing and consuming public as descriptive of a product composed entirely of wool.

The word "crepe" is a word long and favorably known to a substantial portion of the purchasing public as descriptive of a certain type product made of unweighted silk, the product of the cocoon of the silk worm. Silk products for many years have held, and still hold, great public esteem and confidence for their preeminent qualities.

The word "Angora" has long been known to the purchasing public as the designation of products made from the hair of the Angora goat.

The purchasing public has long considered products normally composed of wool, and having the appearance of wool, to be wool, and not to be cotton, cotton and rayon, or other material; and it has likewise long considered products normally composed of silk, and having the appearance of silk, to be silk and not rayon or other material, unless in each instance the presence of material other than wool, or other than silk, is clearly and conspicuously disclosed.

There has long been a preference on the part of the public for dealing with persons who are prominently and favorably known.

A substantial portion of the purchasing and consuming public has long had a preference for dealing directly with the manufacturer, in the belief that lower prices, superior products, and other advantages can thereby be obtained.

PAR. 5. 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 caused various statements and representations, purportedly descriptive of its business and of its products, their place of origin or their respective constituent fibers or mate-

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rials, to be inserted in catalogs or sample books and price lists, on the labels attached to said products, and on its letter-heads, which it had distributed among customers and prospective customers located in the various States of the United States and in the District of Columbia.

Many of the designations of the yarns and of their constituent fibers and materials used by the respondent are false and misleading. Among and typical of such false and misleading designations are the following:

“Cashmere sport” for yarn which contains none of the wool of the cashmere goat.

“Genuine cashmere feather tone” for yarn which is not composed wholly of the wool of the cashmere goat, but is composed largely of other wool.

“Ascot tweed,” “Zephyr tweed,” “Shag tweed,” for yarns that are not composed wholly of wool, but are composed of wool and rayon.

“Lustre Wool” for yarn that is not composed wholly of wool, but is composed of about equal parts of wool and rayon.

“Sparkle crepe” for yarn that is not composed wholly of silk, but is composed wholly of wool and rayon.

“Angora” for yarn that is not composed wholly of the wool of the Angora goat, but is composed partly of other wool.

“Frazee” and “Gimp” for yarns which have the appearance of being composed partly of silk, but which in fact are composed of wool and rayon or cotton and rayon.

Respondent has likewise misrepresented the place of origin of its yarns, or misrepresented domestic yarn to be imported. Among and typical of such misrepresentations are the following:

“Shetland floss,” “Scotch heather,” “Scotch tweed” for yarns that are not imported from the Shetland Islands or from Scotland.

“Imported cashmere (Feather tone)” for yarn that is not imported, but is of domestic origin.

Respondent has likewise made misrepresentations with respect to persons connected with its business, with the tendency and capacity of leading prospective purchasers to believe that prominent persons are connected with its business. Typical of such misrepresentations is the use of the name “Elsie Janice,” who is stated in respondent’s literature to be its “chief instructress”; whereas there is no such person, but said name so closely resembles the name of the famous actress “Elsie Janis” as to have the tendency and capacity to lead many persons to believe they are one and the same person.

Respondent has made further false and misleading statements with respect to its business status, as illustrated by the following: The

letterheads employed by respondent in connection with its business as aforesaid carry the wording:

Wool Trading Co. Inc.
Manufacturers of Peter Pan Yarns

In truth and in fact respondent does not manufacture the yarns which it advertises and sells, but purchases the same from others.

The aforesaid false and misleading statements and representations used by respondent in connection with the conduct of its business as aforesaid are not all-inclusive, but are merely illustrative of the character and type of such false and misleading statements and representations made by respondent to induce the purchase of its merchandise.

PAR. 6. The use by the respondent of the aforesaid acts and practices has had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations 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 products, with the result that trade has been diverted unfairly to the respondent from its competitors who are also engaged in the sale and distribution of various grades and types of knitting yarn in commerce between and among the various States of the United States and in the District of Columbia. As a consequence thereof, injury has been, and is now being, done by respondent to commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 26, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Wool Trading Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of 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 attorneys for

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the Commission, and in opposition to the allegations of the complaint by the attorney for the respondent, before Charles A. Vilas, 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 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. The respondent, Wool Trading 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 at 361 Grand Street, New York City, N. Y. Respondent is now, and for a number of years last past has been, engaged in the business of selling and distributing various grades and types of hand knitting yarn. At times respondent trades under the name Peter Pan Yarn Co., as well as under its corporate name, and certain of its yarns are designated by it as "Peter Pan" yarns.

PAR. 2. In the course and conduct of its business the respondent sells its yarns direct to members of the purchasing public, and causes its products, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is and has been engaged in substantial competition with other corporations, and with firms and individuals, engaged in the sale and distribution of hand knitting yarns in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business and for the purpose of promoting the sale of its products, respondent inserts advertisements in various periodicals having wide circulation throughout the United States. Upon receiving inquiries from members of the public in response to such advertisements, respondent forwards to such prospective purchasers various advertising material, such as catalogs,

card and circulars, containing samples of the various types and grades of yarn offered for sale by respondent. The various yarns are designated and described in respondent's advertising material by certain name, and these names are also used by respondent on labels and tags attached to the yarns themselves when they are sold to the public.

Among the names used by respondent to designate and describe certain of its yarns are "Cashmere," "Genuine Cashmere," "Genuine Cashmere Sport," and "Genuine Imported Cashmere." The word "cashmere" has long been understood by a substantial portion of the purchasing public as denoting a particular type of wool which is made from the hair of the cashmere goat, and when the word is used to designate knitting yarns the public understands that such yarns are composed entirely of such wool. Respondent's yarns bearing the names set forth above are not in fact composed wholly of wool made from the hair of the cashmere goat, but are composed wholly or largely of other materials.

Other names used by respondent to designate certain of its yarns are "Glow Tweed," "Petite Zephyr Tweed," "Ascot Tweed" and "Shag Tweed." The word "tweed" has long been understood by a substantial portion of the purchasing public as denoting products composed entirely of wool. Respondent's yarns described in the above manner are not in fact composed entirely of wool, but contain substantial percentages of rayon or cotton. Respondent also uses the word "wool" in describing certain of its yarns, as "Luster Wool" and "Wool Boucle." The yarns so designated are not in fact composed wholly of wool but are composed in part of rayon.

Respondent also uses the word "Angora" to designate certain of its yarns, as "Sport Angora." The word Angora has long been understood by the purchasing public as denoting products made from the hair of the Angora goat. The yarn designated by respondent as "Sport Angora" does not in fact contain any hair of the Angora goat but is composed entirely of other materials.

Respondent has also used the word "Crepe" in describing certain of its yarns, as "Sparkle Crepe." The unqualified word "crepe" has long been known to a substantial portion of the purchasing public as denoting products made entirely of silk, the product of the cocoon of the silk worm. The yarn designated by respondent as "Sparkle Crepe" did not in fact contain any silk but was composed of rayon or a mixture of rayon and other materials.

Respondent also uses the word "Shetland" to designate certain of its yarns, as "Shetland Floss." The word Shetland, when applied to knitting yarns, is understood by a substantial portion of the purchasing public as denoting yarns made of wool from Shetland sheep

grown on the Shetland Islands or on the contiguous mainland of Scotland. The yarns so designated by respondent are not in fact made of such wool.

Respondent also uses the word "Scotch" to designate certain of its yarns, as "Scotch Tweed" and "Scotch Heather." To a substantial portion of the public such use of the word Scotch constitutes a representation that the yarns so designated, or the wool composing such yarns, is imported from Scotland. In fact neither these yarns nor the wool of which they are made is imported from Scotland. Respondent also uses the word "Saxony" to designate certain of its yarns, as "Saxony Zephyr." To a substantial portion of the purchasing public the word Saxony, when so used, denotes that such yarns, or the wool composing them, is imported from the Province of Saxony. In fact neither such yarns nor the wool used therein is imported from Saxony.

Respondent also makes use of the word "Imported" in designating and describing certain of its yarns, thus representing that such yarns are imported from foreign countries, when in fact the yarns so designated are not imported products but are domestic products.

Respondent has also engaged in the practice of advertising and selling various yarns composed in whole or in part of rayon, without disclosing such rayon content. Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate silk or wool. When manufactured to simulate silk, it has the appearance and feel of silk, and when manufactured to simulate wool, it has the appearance of wool. By reason of these qualities, rayon, when manufactured to simulate silk or wool and not designated as rayon, is practically indistinguishable by the purchasing public from silk or wool, as the case may be. Respondent's yarns have the appearance of wool or of wool and silk, and the failure of respondent to disclose the rayon content of such yarns has resulted in the purchase of such yarns by a substantial portion of the public under the erroneous impression that they were composed entirely of wool or of wool and silk.

PAR. 5. Respondent has also represented that it is the manufacturer of the yarns sold by it, such representation being made through the use on its letterheads of the legend, "Manufacturers of Peter Pan Yarns." Respondent does not own or operate any manufacturing plant and does not manufacture any of the yarns sold by it, but obtains its yarns from other sources. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with manufacturers, such preference being due in part to the

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belief that by dealing with manufacturers lower prices and other advantages may be obtained.

PAR. 6. The Commission finds further that the acts and practices of the respondent as herein described have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, character and origin of respondent's products, and with respect to respondent's business status, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of the erroneous beliefs so engendered. In consequence thereof, substantial trade has been diverted to the respondent from its competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Charles A. Vilas, 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 the exceptions to such report, 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Wool Trading Co., Inc., a corporation, trading under its corporate name and under the name Peter Pan Yarn Company, or trading under any other name, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its knitting yarns in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Cashmere," or any other word of similar import, to designate or describe any product which is not composed

entirely of the hair of the cashmere goat; provided, however, that in the case of a product composed in part of the hair of the cashmere goat and in part of other fibers or materials, such word may be used as descriptive of the cashmere fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

2. Using the words "wool" or "tweed," or any other word indicative of wool, to designate or describe any product which is not composed entirely of wool: *Provided, however,* That in the case of a product composed in part of wool and in part of other fibers or materials, such words may be used as descriptive of the wool content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

3. Using the word "Angora," or any other word of similar import, to designate or describe any product which is not composed entirely of the hair of the Angora goat: *Provided, however,* That in the case of a product composed in part of the hair of the Angora goat and in part of other fibers or materials, such word may be used as descriptive of the Angora fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

4. Using the unqualified word "crepe," or any other descriptive term indicative of silk, to designate or describe any product which is not composed entirely of silk, the product of the cocoon of the silk worm: *Provided, however,* That such word or descriptive term may be used truthfully to designate or describe the type of weave, construction, or finish, if such word is qualified by using in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words clearly and accurately naming the fibers or materials from which such product is made.

5. Using the word "Shetland," or any other word of similar import, to designate or describe any product which is not made from the wool of Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland: *Provided, however,* That in the case of a product composed in part of such wool and in part of other fibers or materials, such word may be used as descriptive of the Shetland wool content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

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6. Using the word "Scotch" to designate or describe any product which is not imported from Scotland or made of materials imported from Scotland.

7. Using the word "Saxony" to designate or describe any product which is not imported from the Province of Saxony or made of materials imported from the Province of Saxony.

8. Advertising, offering for sale, or selling products composed in whole or in part of rayon without clearly disclosing such rayon content, and when such products are composed in part of rayon and in part of other fibers or materials, all of such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

9. Using the word "Imported" to designate or describe any product which is not in fact imported from a foreign country, or otherwise representing that any product is imported from a foreign country when such is not the fact.

10. Using the word "Manufacturers," or any other word of similar import, to designate or describe respondent's business, or otherwise representing that respondent is a manufacturer or that it manufactures the products sold by it.

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

It is further ordered, That no provision in this order shall be construed as relieving respondent in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the authorized Rules and Regulations thereunder.

IN THE MATTER OF

SAMUEL GOTTLIEB AND PETER GOTTLIEB, TRADING AS
GOTTLIEB BROTHERS AND AS JACK FROST YARN
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4268. Complaint, Aug. 26, 1940—Decision, Apr. 6, 1942*

Where two individuals, engaged as wholesalers in the interstate sale and distribution of hand knitting yarns, in designating and describing their yarns on labels and tags attached thereto, and on advertising color cards containing samples thereof distributed among prospective retail purchasers—

- (a) Made use of names (1) "Cashmere Sport" and "Imported Cashmere," (2) "Zephyr Tweed," (3) "Angora" and "Sport Angora," and (4) "Shetland Floss" to designate certain of their yarns; notwithstanding the fact the yarns designated "Cashmere" were not made from the hair of the Cashmere goat, but were composed wholly of other wool; the "Zephyr Tweed" was not composed entirely of wool as understood from word "tweed," but contained a large percentage of rayon; said "Angora" yarns contained no hair of the Angora goat, but were composed entirely of other material; and the "Shetland Floss" was not made of wool from Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland, as understood from word "Shetland";
- (b) Made use of words "Scotch Tweed," "English Zephyr," and "Saxony Zephyr" to designate certain yarns, when neither the yarns nor the wool of which they were made were imported from Scotland, England, or the Province of Saxony; and
- (c) Advertised and sold various yarns with appearance of wool or wool and silk without disclosing their content of rayon which, when made to simulate silk or wool, is practically indistinguishable therefrom by the purchasing public; with result that substantial portion of such public purchased said yarns as entirely wool or wool and silk;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their products, and to cause it to purchase substantial quantities thereof as a result of the erroneous belief so engendered:

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. Miles J. Furnas* and *Mr. Charles A. Vilas*, trial examiners.

Mr. Robert Mathis, Jr., and *Mr. L. E. Creel, Jr.*, for the Commission.

Mr. S. Robert Israel, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Samuel Gottlieb and Peter Gottlieb, trading as Gottlieb Bros. and as Jack Frost Yarn Co., have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Samuel Gottlieb and Peter Gottlieb, are individuals, trading as Gottlieb Bros., and also as Jack Frost Yarn Co., with their principal place of business at 207 Avenue C, in the city and State of New York.

PAR. 2. Respondents are now and have been for a year or more last past engaged in the business of selling and distributing various grades and types of knitting yarns. Respondents are wholesale dealers and sell their products to retail dealers who in turn sell them to the purchasing public situated in various States of the United States and in the District of Columbia. Respondents cause said products, when sold by them, to be transported from their place of business in the State of New York to the purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business respondents have engaged in the practice of falsely representing the constituent fiber or material of which the various products sold and distributed by them are made by means of false representations on labels attached to their products and on various sample cards and other advertising matter circulated among purchasers, and by failure to disclose the rayon content of certain of their products. In furtherance of the foregoing practices and for the purpose of inducing the purchase of said product, respondents have caused false and misleading statements and representations purporting to be descriptive of such products and of their respective constituent fiber or material to be inserted in price lists, sample cards, and other advertising matter which is distributed by retailers who buy from respondents to prospective purchasers of said products situated in various States of the United States.

PAR. 4. Among and typical of the practice of falsely representing the constituent fiber or material of which the various products sold and distributed by respondents are made are the following: "Sport Angora," "Cashmere Sport," "Imported Cashmere," "Zephyr Tweed," "Persian Curl" and other similar words and terms, when in fact said products were not made of the fibers indicated by the use of these terms but were made from fibers other than those indicated.

Some of the aforesaid terms and others of similar import and meaning do not indicate the kind or type of material from which said products are made and are used on materials having the appearance and feel of either silk or wool. An example of this practice is the use of the words and phrases "Heatherstone," "Pompadour," "Paradise," "Duveen," "Magic Duveen," "Willow Down," "Supersheen," "Germantown," and "Persian Curl," when in truth and in fact said products are composed in whole or in part of rayon.

PAR. 5. Typical also of said acts and practices, respondents represent their said products as being of a finer grade, higher quality or of a different fiber than is actually the fact by the use of words and phrases indicative to the purchasing public of certain fiber, grade or quality. An example of this practice is the respondents' use of the words and phrases "Cashmere Sport" and "Imported Cashmere" in advertising material to designate and describe certain of their products which do not contain the hair of the Kashmir goat but instead are composed of other fibers.

PAR. 6. A further typical act and practice on the part of the respondents is the use of words which are associated in the minds of the purchasing and consuming public as being descriptive of wool exclusively to designate and describe certain yarn products as aforesaid which are composed in part of wool and in part of other materials. As an example of this practice, the respondents used the words "Tweed," "Worsted," "Angora," and "Cashmere" and other words of similar import and meaning indicative of wool in price lists, sample cards, and other advertising matter to designate the yarn products which are in fact composed of rayon and wool.

PAR. 7. The word "Angora" has long been applied to a particular type of wool that comes from the hair of the Angora goat and which product has for a long time been well and favorably known to the purchasing public. The word "Angora" when used in connection with the designation and description of yarns or other products having the general appearance of wool fibers is considered by members of the purchasing public as being a descriptive designation of an Angora wool product composed entirely of the hair of the Angora goat.

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

The word "Persian" has long been associated in the minds of the purchasing public with wool and wool products produced in Persia.

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

PAR. 8. The word "rayon" is the name of a chemically manufactured fiber or fabric which may be manufactured so as to stimulate either silk or wool, and when so manufactured it has the appearance and feel of either silk or wool, as the case may be, and is by the purchasing public practically indistinguishable from silk or wool. By reason of these qualities, rayon, when manufactured to simulate either silk or wool and not designated as rayon, is readily believed and accepted by the purchasing public as being either silk or wool, as the case may be. By the use of the acts and practices herein set forth, the respondents place in the hands of uninformed or unscrupulous retail dealers a means and instrumentality where said retail dealers may and do deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing yarn or material manufactured from materials and fibers indicated by the use of the aforesaid terms or phrases.

PAR. 9. The use by the respondents of the foregoing acts and practices has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said statements and representations are true and that respondents have truthfully represented the constituent fiber and material of which their products are made. On account of these erroneous beliefs, a number of the consuming and purchasing public purchases a substantial volume of respondents' products.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 26, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Samuel Gottlieb and Peter Gottlieb, individuals trading as Gottlieb Bros. and as Jack Frost Yarn 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 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, and in opposition to the allegations of the complaint by the attorney for the respondents, before Charles A. Vilas, 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 the exceptions to such report, 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. The respondents, Samuel Gottlieb and Peter Gottlieb, are individuals, trading as Gottlieb Bros., and also as Jack Frost Yarn Co., with their principal place of business at 207 Avenue C, New York City, N. Y. Respondents are now, and for more than 4 years last past have been, engaged in the business of selling and distributing various grades and types of hand knitting yard. Respondents are wholesale dealers, and sell their products to retail dealers who in turn resell such products to the purchasing public.

PAR. 2. Respondents cause and have caused their products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, and for the purpose of promoting the sale of their products, respondents dis-

tribute among prospective purchasers certain advertising material known as color cards, which contain samples of the various types and grades of yarn offered for sale by respondents. The various yarns are designated and described in such color cards by certain names, and these names are also used by respondents on labels and tags attached by the respondents to the yarns, and which remain on the yarns until after they are displayed and sold to the public.

Among the names which have been used by the respondents to designate and describe certain of their yarns are "Cashmere Sport" and "Imported Cashmere." The word "cashmere," when applied to wool products, has long been understood by a substantial portion of the purchasing public as denoting that the product so designated is made from the hair of the cashmere goat. Respondents' yarns bearing the names set forth above are not in fact made from the hair of the cashmere goat, but are composed wholly of other wool.

Another name used by respondents to designate certain of their yarns is "Zephyr Tweed." The word "tweed" has long been understood by a substantial portion of the purchasing public as denoting a product composed entirely of wool. Respondents' yarns described in the above manner are not in fact composed entirely of wool, but contain a large percentage of rayon.

Respondents have also used the word "Angora" to designate certain of their yarns, as "Sport Angora." The word "Angora" has long been understood by the purchasing public as denoting products made from the hair of the Angora goat. The yarns designated by respondents as "Sport Angora" do not in fact contain any hair of the Angora goat but are composed entirely of other materials.

Respondents also use the word "Shetland" to designate certain of their yarns, as "Shetland Floss." The word "Shetland" when applied to knitting yarns, is understood by a substantial portion of the purchasing public as denoting yarns made of wool from Shetland sheep grown on the Shetland Islands or on the contiguous mainland of Scotland. The yarns so designated by respondents are not in fact made of such wool.

Respondents also use the word "Scotch" to designate certain of their yarns, as "Scotch Tweed." To a substantial portion of the public such use of the word "Scotch" constitutes a representation that the yarns so designated, or the wool composing such yarns, is imported from Scotland. In fact neither these yarns nor the wool of which they are made is imported from Scotland.

Respondents also use the word "English" to designate certain of their yarns, as "English Zephyr." To a substantial portion of the purchasing public the word "English," when so used, denotes that

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such yarns, or the wool of which they are made, is imported from England. In fact neither the yarns so designated nor the wool used therein is imported from England.

Respondents also use the word "Saxony" to designate certain of their yarns, as "Saxony Zephyr." To a substantial portion of the purchasing public the words "Saxony," when so used, denotes that such yarns, or the wool composing them, is imported from the Province of Saxony. In fact neither such yarns nor the wool used therein is imported from Saxony.

Respondents have also engaged in the practice of advertising and selling various yarns composed in part of rayon, without disclosing such rayon content. Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate silk or wool. When manufactured to simulate silk, it has the appearance and feel of silk, and when manufactured to simulate wool, it has the appearance of wool. By reason of these qualities, rayon, when manufactured to simulate silk or wool and not designated as rayon, is practically indistinguishable by the purchasing public from silk or wool, as the case may be. Respondents' yarns have the appearance of wool or of wool and silk, and the failure of respondents to disclose the rayon content of such yarns has resulted in the purchase of such yarns by a substantial portion of the public under the erroneous impression that they were composed entirely of wool or of wool and silk.

PAR. 4. The Commission finds further that the acts and practices of the respondents as herein described have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, character and origin of respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' products as a result of the erroneous belief so engendered.

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 Charles A. Vilas, a trial examiner of the Commission theretofore duly designated by it, in

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support of the allegations of the complaint and in opposition thereto, report of the trial examiner upon the evidence and the exceptions to such report, 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, Samuel Gottlieb and Peter Gottlieb, individually, and trading as Gottlieb Bros. and as Jack Frost Yarn Co., or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of their knitting yarns in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Cashmere," or any other word of similar import, to designate or describe any product which is not composed entirely of the hair of the cashmere goat: *Provided, however*, That in the case of a product composed in part of the hair of the cashmere goat and in part of other fibers or materials, such word may be used as descriptive of the cashmere fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

2. Using the word "tweed," or any other word indicative of wool, to designate or describe any product which is not composed entirely of wool: *Provided, however*, That in the case of a product composed in part of wool and in part of other fibers or materials, such word may be used as descriptive of the wool content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

3. Using the word "Angora," or any other word of similar import, to designate or describe any product which is not composed entirely of the hair of the Angora goat: *Provided, however*, That in the case of a product composed in part of the hair of the Angora goat and in part of other fibers or materials, such word may be used as descriptive of the Angora fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

4. Using the word "Shetland," or any other word of similar import, to designate or describe any product which is not made from the wool of Shetland sheep grown on the Shetland Islands or the con-

tiguous mainland of Scotland: *Provided, however,* That in the case of a product composed in part of such wool and in part of other fibers or materials, such word may be used as descriptive of the Shetland wool content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

5. Using the word "Scotch" to designate or describe any product which is not imported from Scotland or made of materials imported from Scotland.

6. Using the word "English" to designate or describe any product which is not imported from England or made of materials imported from England.

7. Using the word "Saxony" to designate or describe any product which is not imported from the Province of Saxony or made of materials imported from the Province of Saxony.

8. Advertising, offering for sale, or selling products composed in whole or in part of rayon without clearly disclosing such rayon content, and when such products are composed in part of rayon and in part of other fibers or materials, all of such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

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

It is further ordered, That no provision in this order shall be construed as relieving respondents in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the authorized rules and regulations thereunder.

Syllabus

IN THE MATTER OF

SUPERIOR FELT AND BEDDING COMPANY

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

Docket 4309. Complaint, Sept. 10, 1940—Decision, Apr. 6, 1942

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of mattresses to retailers for resale to purchasing public—

- (a) Represented that certain of its mattresses were designed, sponsored, approved or recommended by physicians, and were in general use in hospitals, through use on labels attached thereto of such statements as "General Hospital Mattress," "Rx Just what the doctor ordered," together with outline of a red cross, and "Rx The Hospital Mattress" and picture of a doctor in uniform;

The facts being that its mattresses were not in general use in hospitals, or of a type peculiar to and generally used in hospitals, or "just what the doctor ordered," or endorsed, approved or recommended by doctors;

- (b) Represented that its said mattresses were so designed and constructed as to be capable of building a correct posture and correcting posture defects, through use of such statements on labels applied thereto as "Built Up Center—Posture Builder—Scientific Construction" and "Scientifically Posturized—Built up Center—Innerspring Construction";

The facts being there is no relationship between the positions assumed in sleep and a person's waking posture or carriage, nor any such relationship between such posture and the type of innerspring mattress on which one may sleep; and its said mattresses have no ability to, and will not, correct defects in the posture or carriage of the user, or "build" posture, either good or bad; and

- (c) Misrepresented retail price of its mattresses through placing on tags or labels attached thereto prices which were purely fictitious and greatly in excess of the retail value and customary prices at which said products were sold to the purchasing public, and thereby placed in the hands of department stores and other retailers means whereby they might mislead and deceive the purchasing public, a typical act consisting of selling a department store a 100-lot of mattresses of the same quality at \$12.95 each, less discount, which it labeled with various names and price marks, including "Golden Rest," \$39.50; "Cinderella," \$39.50; "Dream Ship," \$49.50; "Mammoth DeLuxe," \$44.50; and "Splendor," \$39.50; which were resold by said store, together with certain others purchased by it at \$10.75 each, less cash discount, at \$19.95, and in no case at the prices marked thereon by it; said store advertising in connection with said sale "It's your chance to save \$9.80 to \$19.55 and get the benefit of in-built comfort in Mattresses that are quality built * * *! Choose early";

With effect of misleading and deceiving a substantial portion of purchasing public into the mistaken belief that said mattresses possessed qualities which they did not possess, and customarily sold for prices for which they did not sell, thereby inducing said public to purchase substantial quantities of said mattresses, with result that trade was unfairly diverted to it from its competitors, and injury done by it to competition in commerce:

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

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methods of competition in commerce, and unfair and deceptive acts and practices therein.

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

Mr. Charles S. Cow and *Mr. Maurice C. Pearce* for the Commission.

Mr. Samuel J. Winograd, 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 Superior Felt and Bedding 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, Superior Felt and Bedding Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, and having its principal office and place of business at 2447 Roosevelt Road, Chicago, Ill. Respondent also maintains branch factories or warehouses in New York; Dallas, Tex.; Kansas City, Mo.; Columbus, Ohio; Cleveland, Ohio; DeKalb, Ill.; Detroit, Mich.; and Pittsburgh, Pa.

PAR. 2. Respondent is now and for more than 4 years last past has been engaged in manufacturing, selling and distributing mattresses. Respondent causes its said mattresses, when sold by it, to be transported from its place of business in Chicago, Ill., or from its other factories or warehouses, to purchasers thereof located in the various States of the United States other than the points of origin of the shipments, and in the District of Columbia. Respondent's said mattresses are sold to retailers, who, in turn, resell the same to members of the purchasing public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said mattresses in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is now, and for more than 4 years last past has been, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its said products, respondent, through its salesmen and by means of circulars, labels, and other ad-

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vertising material distributed among prospective purchasers, has made many statements and representations to the purchasing public concerning certain of its products. Among and typical of said statements and representations so disseminated are the following, which appear on the labels attached to certain of said mattresses:

POSTURE BUILDER

Copyright

SCIENTIFIC CONSTRUCTION

* * * *

Ⓡ

(Picture of doctor in uniform)

THE
HOSPITAL
MATTRESS

S
A
N
I
A. C. A. TICKING
I
Z
E
D

(Set out
in
cross
outlined
in red)

SANITARY COMFORT

THE
GENERAL
HOSPITAL
MATTRESS

Ⓡ "Just what the doctor ordered"

(Cross
Outlined
In Red)

SCIENTIFICALLY
POSTURIZED

Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents and has represented that said mattresses are designed, sponsored, approved or recommended by physicians; that they are in general use in hospitals; that said mattress designated as "Posture Builder" is so designed and constructed that it is capable of building a correct posture and correcting defects in the posture. The symbol Ⓡ and the red cross have for many years been associated in the mind of the public with medical treatment and service, and the use by the respondent of these symbols as a part of its said labels has the effect of accentuating the other representations appearing on said labels.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact none of the respondent's mattresses have been designed, sponsored, approved or recommended by physicians, nor are they in general use in hospitals. The mattresses designated as "Posture Builder" is wholly incapable of building a correct posture or correcting any defects in the posture.

PAR. 6. In addition to the practices set forth above, the respondent has heretofore engaged in the practice of attaching to its mattresses tags or labels bearing price marks purporting to represent the customary resale or retail prices of such mattresses, when in fact such prices were fictitious and were far in excess of the prices at which such mattresses were regularly sold at retail. Among and typical of such price marks was the mark "\$39.50" appearing on certain mattresses which were intended by the respondent to sell, and did sell, at retail in the usual and regular course of business for approximately \$20.

Such practice on the part of respondent had the further effect of placing in the hands of uninformed or unscrupulous dealers a means and instrumentality whereby such dealers were enabled to mislead and deceive the purchasing public as to the quality of said mattresses, and as to the savings to be effected in the purchase thereof.

PAR. 7. The acts and practices of the respondent as herein set forth have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the respondent's products possess characteristics and qualities which they do not in fact possess, and that such products customarily sell for certain specified prices when such is not the fact. As a result of such erroneous and mistaken belief, engendered as herein set forth, the purchasing public has been induced to and has purchased substantial quantities of respondent's products. In consequence, trade has been diverted to the respondents from its competitors, and thereby substantial injury has been done and is being done by the respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 10, 1940, issued and

subsequently served its complaint in this proceeding upon respondent Superior Felt and Bedding 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 and in opposition to the allegations of said complaint were introduced 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 said complaint, the answer thereto, testimony and other evidence, briefs in support of and in opposition to the complaint, and oral arguments 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, Superior Felt and Bedding Co., is a corporation organized, existing, and doing business, under and by virtue of the laws of the State of Delaware and having its principal office and place of business at 2447 Roosevelt Road, Chicago, Ill. Respondent maintains branch factories or warehouses in New York, N. Y.; Dallas, Tex.; Kansas City, Mo.; Columbus, Ohio; Cleveland, Ohio; DeKalb, Ill.; Detroit, Mich.; and Pittsburgh, Pa.

PAR. 2. Respondent is now, and for more than 4 years last past has been, engaged in manufacturing, selling, and distributing mattresses. Respondent causes its said mattresses, when sold, to be transported from its place of business in Chicago, Ill., or from its other factories or warehouses, to purchasers thereof in various States of the United States other than the points of origin of such shipments and in the District of Columbia. Respondent's said mattresses are sold to retailers who, in turn, resell the same to members of the purchasing public. Respondent maintains, and for a number of years last past has maintained, a course of trade in its said mattresses in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business respondent is, and has been, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of similar products

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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 mattresses respondent, through its salesmen and by means of circulars, labels, and other advertising material distributed among purchasers and prospective purchasers, has made various statements and representations concerning certain of its mattresses. Among and typical of the statements and representations so made are the following, which appear on labels attached to certain of said mattresses:

Built Up Center
 POSTURE BUILDER
 Scientific Construction
 * * * * *
 THE GENERAL
 HOSPITAL
 MATTRESS

B "Just what the doctor ordered"

Outline of
 a red cross

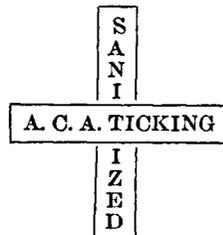
SCIENTIFICALLY
 POSTURIZED
 Built Up Center
 Innerspring Construction
 * * * * *

B

THE
 HOSPITAL
 MATTRESS

\$29.50

Picture of doctor in uniform



Through the use of the foregoing statements respondent represents, and has represented, that its said mattresses are designed, sponsored, approved, or recommended by physicians and that they are in general use in hospitals; and, further, that the mattresses designated as "Posture Builder" are so designed and constructed as to be capable of building a correct posture and correcting defects in the posture of users.

PAR. 4. A number of years ago Dr. Norman D. Mattison advanced the idea of building a mattress with innerspring construction having varying degrees of spring resistance at the head, center section, and foot of the mattress proportioned to the approximate variations in weight between the head and shoulders, the torso and hips, and the feet and lower legs of an average individual. Doctor Mattison arranged with the Owen Silent Spring Co., Inc., to produce and offer such a spring for the use of bedding manufacturers in the construction of innerspring mattresses. Doctor Mattison was unable to secure a patent on this spring construction and other spring manufacturers began the manufacture of innersprings for mattresses based at least partially upon the general conception of the Mattison spring but varying in different features, including the degrees of resistance to spring deflection in various sections of the mattress.

The respondent purchased the springs used in its "Posture Builder" mattresses from the Nachman Spring Filled Corporation and from other spring manufacturers, including the Owen Silent Spring Co. The only innerspring construction endorsed, approved, or recommended by Doctor Mattison is that produced by the Owen Silent Spring Co., which bears the "Mattison" label. Respondent's mattresses do not comply with these requirements and are not endorsed, approved, or recommended by Doctor Mattison or any other physician.

The broad meaning of the term "posture" is any position assumed by a person, but the term is more generally used to indicate the carriage of a person in walking, standing, or sitting. In sleeping, a person assumes many different positions but seldom remains more than a few minutes in any one position. When asleep, a person's muscles are relaxed and generally the elbow, thigh, and knee joints slightly flexed. There is no relationship between the several positions assumed in sleep and the waking posture or carriage of an individual, nor is there any relationship between waking posture and the type of innerspring mattress on which an individual may sleep. Respondent's mattresses have no ability to, and will not, affect the waking posture or carriage of the user, correct defects in posture or carriage, or "build" posture, either good or bad. Bad posture may be due to physical defects, carelessness, laziness, and other causes, and is not subject to correction through the use of respondent's so-called "Posture Builder" mattresses.

Respondent's "Hospital" and "General Hospital" mattresses are not in general use in hospitals, nor are they of a type peculiar to and generally used in hospitals. They are not "Just what the doctor ordered," nor have they been, or are they, endorsed, approved, or recommended by hospitals, doctors, or the medical profession.

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PAR. 5. The respondent has attached to its mattresses tags or labels bearing price marks purporting to represent the retail value and price of such mattresses and the usual and customary retail prices thereof. The prices set forth on many of these tags and labels attached to respondent's mattresses have had no relation to the retail value thereof or usual and customary retail prices of such mattresses, and have been purely fictitious.

Respondent designates its mattresses by various names such as "King-O-Rest" and "Rest Queen." The designation "King-O-Rest" is used to identify a particular quality of mattress. On May 4, 1938, respondent sold 100 of its "King-O-Rest" quality mattresses to the Elder & Johnston Co., a department store in Dayton, Ohio, at a price of \$12.95 each, less 2 percent for cash. These mattresses were labeled by respondent with various names and price marks, including "Golden Rest," \$39.50; "Cinderella," \$39.50; "Dream Ship," \$49.50; "Mammoth Deluxe," \$44.50; and "Splendor," \$39.50. Subsequently, the Elder & Johnston Co. bought from respondent additional mattresses invoiced to it as "experimental" mattresses at a price of \$10.75 each, less 2 percent for cash. The mattresses purchased from respondent were advertised by the Elder & Johnston Co. for sale at a price of \$19.95 each. One such advertisement referred to respondent's price marks and stated in part:

It's a super special buy in high grade INNERSPRING MATTRESSES! It's your chance to save \$9.80 to \$19.55 and get the benefit of in-built comfort in Mattresses that are quality built to Elder's specifications! Choose early!

These mattresses were, in fact, sold by the Elder & Johnston Co. at \$19.95 and none were sold at the prices marked on the labels affixed by respondent to such mattresses.

Late in 1937 respondent sold more than 100 mattresses of its "King-O-Rest" quality to Gimbel Brothers in Milwaukee, Wis., at a price of \$13.36 each, less 5 percent for cash, which mattresses were price-marked by respondent at \$39.50. These mattresses were advertised by Gimbel Brothers in part as follows:

Phenomenal Purchase!
"KING-O-REST"
\$39.50 Innerspring
MATTRESSES

Covered with the Finest Imported Damask Ever Shown on a Mattress
No one would think it possible—but Gimbels did it! Every mattress carries the maker's price label, \$39.50----- \$22.95

Numbers of the mattresses in question were sold by Gimbel Bros. at \$22.95, and as to those that may not have been sold pursuant to this

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advertisement it was not possible to determine whether they were also sold at \$22.95 or at some other price.

Respondent's mattresses were also sold by Michaels Bros. of Brooklyn, N. Y., pursuant to an advertisement which was in part as follows:

The "King-O-Rest" Innerspring Mattress Covered in Imported Belgian Table Panel Damask

HALF-PRICE at..... \$18.95

One that will assure you of perfect rest during the coming year. The manufacturer set the price of \$39.50 for this mattress and that is the price on the label. As a feature of our Sale, we are presenting the FAMOUS KING-O-REST at less than HALF PRICE.....

The Commission concludes that many of the price markings placed on its mattresses by respondent are arbitrary and fictitious in that they are greatly in excess of the retail value and prices at which such mattresses are generally sold to the purchasing public, and that such fictitious price markings place in the hands of department stores and other retail dealers a means whereby they may mislead and deceive the purchasing public.

PAR. 6. The acts and practices of respondent as herein set forth have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's mattresses possess characteristics and qualities which they do not in fact possess, and that such products customarily sell for certain specified prices when they do not in fact sell for such prices. As a result of such erroneous and mistaken belief the purchasing public has been induced to, and has, purchased substantial quantities of respondent's mattresses. In consequence, trade has been diverted to respondent from its competitors and thereby substantial injury has been done, and is being done, by the respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

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 and in opposition to the

complaint taken before an examiner of the Commission theretofore duly designated by it, briefs filed herein, and oral arguments by 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 Superior Felt and Bedding Company, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of mattresses and other 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 fictitious price marks, or in any other manner, that mattresses or other products have retail values or prices in excess of the prices at which such products are regularly and customarily sold at retail.

2. Using on or in connection with mattresses or other products fictitious price representations or marks which represent or imply, or placing in the hands of others such means of representing, that the retail value or price of mattresses or other products is in excess of the price at which such mattresses or other products are regularly and customarily sold at retail.

3. Representing by the use of the words "Posture Builder," or any other word or words of similar import or meaning, or in any other manner, that respondent's mattresses affect the posture, correct or assist in correcting defects of posture, or improve the posture of the user of such mattresses.

4. Using the term "Hospital Mattress" or "General Hospital Mattress," either separately or accompanied by the symbol "H" or a red cross, to designate, describe, or refer to mattresses not in general use in hospitals; or otherwise representing in any manner that such mattresses are in general use in hospitals.

5. Using the term "Just what the doctor ordered," or the symbol "H," or a picture of a doctor, or a red cross, either separately or together, to designate, describe, or refer to mattresses not designed, sponsored, approved, or recommended by members of the medical profession; or otherwise representing in any manner that such mattresses have been designed, sponsored, approved, or recommended by members of the medical profession.

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

Syllabus

IN THE MATTER OF

PHILIP JABLON, TRADING AS BELL YARN COMPANY
AND WONOCO YARN COMPANY

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

Docket 4326. Complaint, Oct. 2, 1940—Decision, Apr. 6, 1942

Where an individual, engaged in interstate sale and distribution of hand knitting yarn, to retail dealers and also direct to the purchasing public; on color cards containing samples of the various types and grades offered, distributed among prospective purchasers, and on labels and tags attached to the yarns themselves—

- (a) Made use of names (1) "Cashmere Sport" and "Imported Cashmere Blend," and (2) "Zephyr Tweed DeLuxe," "Mystic Tweed Crepe" and "Paisley Tweed" to describe certain of his products; notwithstanding the fact said yarns were, respectively, not made entirely from the hair of the cashmere goat, or composed entirely of wool as denoted by word "tweed," but said "Cashmere Sport" was composed wholly of other wool than cashmere, and "Cashmere Blend" contained substantial percentages of other materials; said "Paisley Tweed" was entirely rayon and the others, while composed principally of wool, contained substantial percentages of rayon;
- (b) Made use of word "wool" to designate certain of his yarns, as "Luster Wool" and "Wool Flake," and of word "Angora" and simulation thereof, "Angoray"; notwithstanding said "wool" yarns were not composed entirely of wool but contained large percentages of rayon, while neither of said "Angora" products contained hair of the Angora goat, but were composed entirely of other materials;
- (c) Made use of words "Luster Shetland" and "Shetland Floss," and "Genuine Camel Hair" to designate certain yarns; notwithstanding fact former yarns contained none of the wool—as understood by a substantial portion of the purchasing public—made from sheep grown on the Shetland Islands or on the contiguous mainland of Scotland; while others contained no Camel hair;
- (d) Made use of word "crepe" to designate certain products as "Pebble Crepe" and "Speckle Crepe"; notwithstanding fact said yarns were not, as long understood by public from such unqualified use of word "crepe," made entirely of silk, product of the cocoon of the silk worm, but were composed of a mixture of wool and rayon, or cotton and rayon, and contained no silk;
- (e) Made use of word "Saxony" to designate certain products; when neither yarns thus designated nor wool used therein were imported from the Province of Saxony, as implied;
- (f) Advertised and sold various yarns composed in whole or in part of rayon, but with appearance of wool or wool and silk without disclosing content of rayon which, when made to simulate silk or wool, is practically indistinguishable by purchasing public therefrom; with result that the public purchased such yarns as being entirely wool, or wool and silk; and

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(g) Represented that he was an importer and imported certain of his yarns, through use on his letterheads of the legend "Importers of D. M. C.—French—Angora—Wool—Cottons"; the facts being that while at one time he did import a limited amount of goods from foreign countries, since 1928 or 1929 he had obtained all of his products in the United States;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, which prefers to deal direct with importers and purchase imported products, and to cause it to purchase substantial quantities of his products as a result:

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. Charles A. Vilas*, trial examiner.

Mr. Robert Mathis, Jr., and *Mr. L. E. Creel, Jr.*, for the Commission.

Mr. S. Robert Israel, 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 Philip Jablon, individually and trading as Bell Yarn Co. and as Wonoco Yarn 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 Philip Jablon is an individual trading as Bell Yarn Co. and as Wonoco Yarn Co., with his office and principal place of business located at 371 Grand St., in the city of New York, State of New York.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the sale and distribution of various grades and types of knitting yarn. Respondent causes his said products, when sold, to be transported from his place of business in the State of New York to the purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in his said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, and for the purpose of inducing the purchase of his said products, the respondent has engaged in the practice of falsely representing the con-

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stituent fiber or material of which his products are made, such false representations being made by means of statements and legends appearing in catalogs, sample books, display cards, price lists, and other printed and written material, and on tags and labels attached to such products.

Typical of the aforesaid practice is the use by the respondent of the words "Cashmere Sport" and "Imported Cashmere Blend" to designate and describe certain of his yarns which are not composed entirely of fiber made from the hair of the cashmere goat. The yarn designated "Cashmere Sport" does not contain any of such fiber but is composed entirely of other wool. The yarn designated "Imported Cashmere Blend," while containing some of such fiber, is composed principally of other wool or of a mixture of wool and other material.

The word "cashmere" has long been applied to a particular type of wool fiber which is made from the hair of the cashmere goat and which has for a long time been well and favorably known to the purchasing public. The word "cashmere," when used to designate or describe yarns having the general appearance of wool fibers, is understood by the purchasing public as denoting yarns composed entirely of fiber made from the hair of the cashmere goat.

A further example of respondent's practice is the use of the words "Sporting Angora" and "Angoray" to designate and describe yarns which are not composed of fiber made from the hair of the angora goat but are composed of fiber made from other wool.

The word "angora" has long been understood by the purchasing public as denoting fiber made entirely from the hair of the angora goat, and when such term or a simulation thereof is used to designate or describe a product having the appearance of wool fiber such term is understood by the purchasing public as denoting a product made entirely from the hair of the angora goat.

A further example of the respondent's practice is the use by respondent of the terms "Zephyr Tweed Deluxe" and "Bermuda Tweed" to designate and describe certain of its yarns which are not composed entirely of wool. The yarn designated "Zephyr Tweed Deluxe" is composed of equal parts of wool and rayon, and the yarn designated "Bermuda Tweed" contains no wool but is composed of a mixture of cotton and rayon.

The word "tweed" has for a long time been understood by the purchasing public as denoting a certain kind of fabric composed entirely of wool, and such fabric is well and favorably known to the purchasing public.

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A further example of the respondent's practice is the use of the term "Genuine Camel Hair" to designate and describe a yarn which in fact contains practically no camel hair but is composed almost entirely of other materials.

A further example of the respondent's practice is the use of the term "Luster Wool" to designate and describe a yarn which is not composed entirely of wool but is composed of approximately equal quantities of wool and rayon.

PAR. 4. Another and typical act and practice on the part of the respondent is that of falsely representing that certain of his yarns are composed of silk or of a mixture of silk and wool, when such is not the fact. Among such representations are the legends "Crepe Velvette," and "Mystic Tweed Crepe," which are used by the respondent to designate and describe certain yarns which do not in fact contain any silk but are composed of a mixture of wool and rayon.

The word "silk" has had for many years and still has in the mind of the purchasing public a definite and specific meaning, to wit, the product of the cocoon of the silk worm. Silk products for many years have held and still hold the confidence and esteem of the public for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics, and certain distinctive terms have been applied to the fabrics resulting from the different types of weaving of silk fiber. Among such terms is the term "crepe." Products described and referred to as "crepe" have been and are associated in the mind of the purchasing public with fabrics made from silk, the product of the cocoon of the silk worm. When the term "crepe" is used to designate knitting yarns, such term is understood by the purchasing public as denoting that such products are made from silk.

Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate silk or wool. When manufactured to simulate silk it has the appearance and feel of silk, and when manufactured to simulate wool it has the appearance of wool. By reason of these qualities, rayon, when manufactured to simulate silk or wool and not designated as rayon, is by the purchasing public practically indistinguishable from silk or wool, as the case may be. Products made of rayon are accepted by the purchasing public as silk or wool, even though such products may not be designated by terms representing or implying that they are silk or wool.

The respondent also sells and distributes other types of yarn containing rayon, without disclosing the rayon content of such products. Among such products are the yarns hereinbefore referred to as "Zephyr Tweed Deluxe," "Bermuda Tweed" and "Luster Wool", and certain other yarns designated by the respondents as "Pompadour Zephyr"

and "Snow Flake." All of said yarns contain substantial percentages of rayon which has been manufactured so as to simulate wool or a mixture of silk and wool, and said products have the appearance of wool or a mixture of silk and wool and are understood and accepted by the purchasing public as such.

PAR. 5. The respondent also engages in the practice of falsely representing the place of origin of certain of his products. Among and typical of such false representations are the legends "Scotch Tweed," "Luster Shetland," "Bermuda Tweed," "French Zephyr" and "Imported Cashmere Blend," which the respondent uses to designate various yarns. Through the use of such legends the respondent represents that the yarn designated "Scotch Tweed" is made in Scotland; that the yarn designated "Luster Shetland" is made in the Shetland Islands; that the yarn designated "Bermuda Tweed" is made in Bermuda; that the yarn designated "French Zephyr" is made in France; and that the yarn designated "Imported Cashmere Blend" is not of domestic origin but is imported into the United States from some other country. In truth and in fact, none of said yarns are made in or imported from other countries but all of them are manufactured in the United States.

PAR. 6. The respondent also represents, through the use of the legend "Importers of D. M. C.—French—Angora—Wool—Cottons" in connection with his trade names, that he is an importer, when in fact respondent is not an importer but obtains all of his products from manufacturers or dealers in the United States.

There is a preference on the part of a substantial portion of the purchasing public for dealing direct with importers of yarns and for purchasing imported yarns, such preference being based in part upon a belief that thereby superior quality and other advantages may be obtained.

PAR. 7. The acts and practices of the respondent as herein set forth, including the failure to disclose that respondent's products contain rayon, have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public with respect to the constituent fibers or materials of which respondent's products are made, the place of origin of such products, and respondent's business status. As a result, the purchasing public has been induced to, and has, purchased substantial quantities of respondent's products.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 2, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Philip Jablon, an individual trading as Bell Yarn Co. and as Wonoco Yarn 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 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 attorneys for the Commission, and in opposition to the allegations of the complaint by the attorney for the respondent, before Charles A. Vilas, 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 the exceptions to such report, 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. The respondent, Philip Jablon, is an individual trading as Bell Yarn Co. and as Wonoco Yarn Co., with his office and principal place of business at 371 Grand Street, New York City, N. Y. Respondent is now, and for more than four years last past has been, engaged in the sale and distribution of various grades and types of hand-knitting yarn. Respondent sells his products at wholesale to retail dealers who in turn resell such products to the public, and respondent also sells direct to the purchasing public by means of orders obtained and filled through the mail.

PAR. 2. Respondent causes and has caused his 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 and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business and for the purpose of promoting the sale of his products, respondent distributes among prospective purchasers certain advertising material known as color cards, which contain samples of the various types and grades of yarn offered for sale by respondent. The various yarns are designated and described in such color cards by certain names, and these names are also used by respondent on labels and tags attached by respondent to the yarns and which remain on the yarns until after they are displayed and sold to the public.

Among the names which have been used by the respondent to designate and describe certain of his yarns are "Cashmere Sport" and "Imported Cashmere Blend." The word "cashmere" when applied to wool products, has long been understood by a substantial portion of the purchasing public as denoting that the product so designated is made from the hair of the cashmere goat. The yarn designated by respondent as "Cashmere Sport" did not in fact contain any hair of the cashmere goat but was composed wholly of other wool. The yarn designated by respondent as "Imported Cashmere Blend" was not made entirely of the hair of the cashmere goat, but contained substantial percentages of other materials as well.

Other names used by respondent to designate certain of his yarns are "Zephyr Tweed Deluxe," "Mystic Tweed Crepe," and "Paisley Tweed." The word "tweed" has long been understood by a substantial portion of the purchasing public as denoting products composed entirely of wool. The yarn designated by respondent as "Paisley Tweed" does not in fact contain any wool but is composed entirely of rayon. The yarns designated by respondent as "Mystic Tweed Crepe" and "Zephyr Tweed Deluxe," while composed principally of wool, contain substantial percentages of rayon.

Respondent also uses the word "wool" to designate certain of his yarns as "Luster Wool" and "Wool Flake," thus representing that such yarns are composed entirely of wool. The yarns so designated are not in fact composed wholly of wool but both of such yarns contain large percentages of rayon.

Respondent has also used the word "Angora" and a simulation thereof, "Angoray," to designate certain of his yarns. The word angora has long been understood by the purchasing public as denoting products made from the hair of the angora goat. Neither of the yarns so designated by respondent contains any hair of the angora goat, but both of such yarns are composed entirely of other materials.

Respondent also uses the word "shetland" to designate certain of his yarns, as "Luster Shetland" and "Shetland Floss." The word

shetland, when applied to knitting yarns, is understood by a substantial portion of the purchasing public as denoting yarns made of wool from shetland sheep grown on the Shetland Islands or on the contiguous mainland of Scotland. The yarns so designated by respondent do not in fact contain any of such wool. Respondent also represents, through the use of the words "Genuine Camel Hair" to designate certain of his yarns, that such yarns are composed entirely of camel hair. The yarns so designated do not in fact contain any camel hair but are composed entirely of other wool.

Respondent also uses the word "crepe" to designate certain of his yarns, as "Pebble Crepe" and "Speckle Crepe." The unqualified word "crepe" has long been understood by a substantial portion of the purchasing public as denoting products made entirely of silk, the product of the cocoon of the silk worm. Neither of the yarns so designated by respondent contains any silk, but such yarns are composed of a mixture of wool and rayon or cotton and rayon.

Respondent also uses the word "Saxony" to designate certain of his yarns. To a substantial portion of the purchasing public the word saxony, when so used, denotes that such yarns, or the wool composing them, is imported from the Province of Saxony. In fact neither the yarns so designated by the respondent nor the wool used therein is imported from Saxony.

Respondent has also engaged in the practice of advertising and selling various yarns composed in whole or in part of rayon, without disclosing such rayon content. Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate silk or wool. When manufactured to simulate silk, it has the appearance and feel of silk, and when manufactured to simulate wool, it has the appearance of wool. By reason of these qualities, rayon, when manufactured to simulate silk or wool and not designated as rayon is practically indistinguishable by the purchasing public from silk or wool, as the case may be. Respondent's yarns have the appearance of wool or of wool and silk, and the failure of respondent to disclose the rayon content of such yarns has resulted in the purchase of such yarns by a substantial portion of the public under the erroneous impression that they were composed entirely of wool or of wool and silk.

PAR. 4. Respondent also represents, through the use on his letterheads of the legend "Importers of D. M. C.—French—Angora—Wool—Cottons," that he is an importer and that he imports certain of the yarns sold by him. While respondent did at one time import a limited amount of goods from foreign countries, he has not imported any goods since 1928 or 1929. Since that time he has obtained all of his products from manufacturers or dealers in the United

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States. There is a preference on the part of a substantial portion of the purchasing public for dealing direct with importers and for purchasing imported products.

PAR. 5. The Commission finds further that the acts and practices of the respondent as herein described have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, character, and origin of respondent's products, and with respect to respondent's business status, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of the erroneous beliefs so engendered.

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 Charles A. Vilas, 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 the exceptions to such report, 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Philip Jablon, individually and trading as Bell Yarn Co. and as Wonoco Yarn Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of his knitting yarns in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "cashmere," or any other word of similar import to designate or describe any product which is not composed entirely of the hair of the cashmere goat: *Provided, however*, That in the case of a product composed in part of the hair of the cashmere goat and in part of other fibers or materials, such word may be used as descrip-

tive of the cashmere fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

2. Using the words "wool" or "tweed," or any other word indicative of wool, to designate or describe any product which is not composed entirely of wool; provided, however, that in the case of a product composed in part of wool and in part of other fibers or materials, such words may be used as descriptive of the wool content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

3. Using the words "angora" or "angoray," or any other word of similar import, to designate or describe any product which is not composed entirely of the hair of the angora goat; provided, however, that in the case of a product composed in part of the hair of the angora goat and in part of other fibers or materials, such word may be used as descriptive of the angora fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

4. Using the word "shetland," or any other word of similar import, to designate or describe any product which is not made from the wool of shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland; provided, however, that in the case of a product composed in part of such wool and in part of other fibers or materials, such word may be used as descriptive of the Shetland wool content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

5. Using the words "camel hair," or any other words of similar import, to designate or describe any product which is not composed entirely of camel hair; provided, however, that in the case of a product composed in part of camel hair and in part of other fibers or materials, such words may be used as descriptive of the camel hair content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

6. Using the unqualified word "crepe," or any other descriptive term indicative of silk, to designate or describe any product which is not composed entirely of silk, the product of the cocoon of the silk worm; provided, however, that such word or descriptive term may

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be used truthfully to designate or describe the type of weave, construction, or finish, if such word is qualified by using in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words clearly and accurately naming the fibers or materials from which such product is made.

7. Using the word "saxony" to designate or describe any product which is not imported from the Province of Saxony or made of materials imported from the Province of Saxony.

8. Advertising, offering for sale, or selling products composed in whole or in part of rayon without clearly disclosing such rayon content, and when such products are composed in part of rayon and in part of other fibers or materials, all of such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

9. Using the word "importers," or any other word of similar import, to designate or describe respondent's business, or otherwise representing that respondent is an importer.

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

It is further ordered, That no provision in this order shall be construed as relieving respondent in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the authorized rules and regulations thereunder.

IN THE MATTER OF

UNITED STATES RAW SKINS CORPORATION AND LIEBERSON NOVELTY 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 4469. Complaint, Feb. 27, 1941—Decision, Apr. 9, 1942

Where a corporation, engaged in the interstate sale and distribution of domestic and imported leathers—

- (a) Represented that lambskin, sheepskin, or calfskin sueded and finished so as to simulate antelope skin was such, through use of description "Black French Antelope Suede" in its invoices to a concern manufacturing women's handbags, belts and other leather goods; and

Where said corporate purchaser—

- (b) Represented that the handbags made from such leather and offered for sale by it were made of antelope skin, through advertising in periodicals and trade journals "Newest French Antelope Suede Bags * * *," "Genuine French Antelope Suede Bag * * *," and "Illustrated are four of many of our attractive numbers in French Antelope Suede";

The facts being that while term "Antelope Suede" is understood by importers, tanners, and manufacturers of leather goods as denoting lambskin, sheepskin, or other leathers sueded and finished to resemble the very rare and expensive antelope skin rather than as denoting the genuine skin itself, a substantial portion of the purchasing public understands unqualified word "antelope," thus applied, to mean that the articles are made of genuine antelope skin, and understands "antelope suede" to mean such skin thus finished, and there is a preference on its part for leather goods made of genuine antelope skin over those made of other leathers sueded and processed so as to resemble antelope;

With the result that corporation first referred to, through describing and invoicing its products as above set forth, initiated, contributed to, and, in effect, participated in, the subsequent misrepresentations made by latter purchaser-concern, and with tendency and capacity, through aforesaid acts and practices of both corporations, to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that the products in question were made of genuine antelope skin and to cause it, as a result, to purchase substantial quantities of such 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. Andrew B. Duvall*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Norman J. Steinberg, of New York City, for United States Raw Skins Corp.

Mr. Marshall Solberg, of Chicago, Ill., for Lieberman Novelty Co., Inc.

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Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that United States Raw Skins Corporation, a corporation, and Lieberston Novelty Co., Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, United States Raw Skins 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 12 East Thirty-third Street, New York City, N. Y. Respondent, Lieberston Novelty 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 325 South Market Street, Chicago, Ill.

PAR. 2. Respondent, United States Raw Skins Corporation, is now, and has been for more than 1 year last past engaged in the business of selling domestic and imported leathers to be manufactured into ladies' handbags, belts, and other articles. Respondent, Lieberston Novelty Co., Inc., is now, and has been for more than 1 year last past, engaged in the manufacture, sale, and distribution of ladies' handbags, belts, and other articles.

In the course and conduct of their respective businesses, Lieberston Novelty Co., Inc., purchases and has purchased from United States Raw Skins Corporation, and United States Raw Skins Corporation sells and has sold to Lieberston Novelty Co., Inc., domestic and imported leathers to be manufactured into ladies' handbags, belts and other articles.

Respondents, in the course and conduct of their said businesses, cause and have caused their said products when sold to be transported from their respective places of business to the purchasers thereof located in States of the United States other than the State of origin of said shipments.

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.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products, the respondents have disseminated false and misleading statements and

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representations with respect to the materials of which their said products are made, such statements and representations being inserted in magazines having a general circulation and in invoices and other advertising matter distributed among prospective purchasers and by other means. Among and typical of the false and misleading representations disseminated by respondent, United States Raw Skins Corporation is the following:

French Imported Antelope Suede.

Among and typical of the false and misleading representations disseminated as aforesaid by respondent, Lieberston Novelty Co., Inc., are the following:

Newest French Antelope SUEDE BAGS, for Fall
21.35 dozen

Genuine French Antelope Suede Bag with grain handles and side gussets. Envelope effect with gild metal ornament. Top zipper.

PAR. 4. Through the use of the foregoing statements and representations and other of similar import not specifically set out herein, the respondent, United States Raw Skins Corporation has represented, directly or by implication, that its said leather which was sold to the respondent, Lieberston Novelty Co., Inc., and to others, was leather produced by tanning antelope hide; and the respondent Lieberston Novelty Co., Inc., has represented that ladies' handbags and other articles made by it from leather purchased from respondent, United States Raw Skins Corporation were made from leather produced by tanning antelope hide.

Said statements and representations are false, misleading, and deceptive. In truth and in fact, the leather sold by respondent, United States Raw Skins Corporation and purchased by respondent, Lieberston Novelty Co., Inc., among others, was leather produced by tanning hides other than antelope hide. In truth and in fact, such ladies' handbags, belts, and other articles are not made from the hide of an antelope but are made from a leather material other than the hide of an antelope, which has been tanned in such a manner that it simulates antelope leather.

PAR. 5. There is a marked preference on the part of a substantial portion of the purchasing public for ladies' handbags, belts, and other articles made from the hide of an antelope over ladies' handbags, belts, and other articles made from other leather materials.

PAR. 6. The use by the respondents of the acts and practices hereinbefore set forth has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' prod-

ucts are made of antelope leather when such is not the fact. As a result of such erroneous and mistaken belief, the purchasing public has been induced to, and has, purchased a substantial quantity of respondents' said 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 February 27, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, United States Raw Skins Corporation, a corporation, and Lieberman Novelty Co., Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondents' answers 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 attorneys for the respondents, before Andrew B. Duvall, 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 answers thereto, testimony and other 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, United States Raw Skins Corporation, is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 12 East Thirty-third Street, New York City, N. Y. Respondent, Lieberman Novelty Co., 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 325 South Market Street, Chicago, Ill.

Respondent, United States Raw Skins Corporation, is now, and for a number of years last past has been, engaged in the business of

selling both domestic and imported leathers, which are used by the purchasers thereof in the manufacture of women's handbags, belts, and other leather articles. Respondent, Lieberston Novelty Co., Inc., is now, and for a number of years last past has been, engaged in the manufacture and in the sale and distribution of women's handbags, belts, and other leather goods.

PAR. 2. In the course and conduct of their respective businesses, the respondents cause their products, when sold, to be transported from their places of business to purchasers thereof located in various States of the United States other than the State of origin of such shipments. At all times mentioned herein the respondents have maintained a course of trade in their respective products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its business and for the purpose of promoting the sale of its products, respondent, Lieberston Novelty Co., Inc., advertises its products in various periodicals and trade journals. In certain of the advertisements disseminated by the company with respect to certain of its handbags, the following statements appeared:

Newest French Antelope SUEDE BAGS, for Fall

Genuine French Antelope Suede Bags with gros-grain handles and side gussets. Envelope effect with gild medal ornament. Top zipper.

Illustrated are four of our many attractive numbers in imported French Antelope Suede and Dull Finish Crushed Calf.

The leather used by respondent, Lieberston Novelty Co., Inc., in the manufacture of the handbags so advertised was purchased by it from respondent, United States Raw Skins Corporation. Certain shipments of such leather were described by United States Raw Skins Corporation in its invoices to the Lieberston Novelty Co., Inc., as "Black French Antelope Suede," while other shipments were invoiced as "Black French Antelope Finish Suede."

PAR. 4. Through the use of the description "Black French Antelope Suede" in its invoices, respondent, United States Raw Skins Corporation, represented that the leather in question was antelope skin, and respondent, Lieberston Novelty Co., Inc., through the use of the foregoing advertisements, represented that the handbags offered for sale by it were made of antelope skin. The leather from which such handbags were made was not in fact antelope skin, but was lambskin, sheepskin, or calfskin which had been sueded and finished in such manner that it simulated antelope skin.

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PAR. 5. The record discloses that genuine antelope skin is very rare and very expensive, and that little of it is available in the market. The record further indicates that the term "Antelope Suede" is understood by importers, tanners and manufacturers of leather goods as denoting lambskin, sheepskin, or other leathers which have been sueded and finished to resemble antelope skin, rather than as denoting genuine antelope skin. It is further evident from the record, however, that a substantial portion of the purchasing public is not familiar with the technical meaning of the term as used in the trade, and that such portion of the public understands that the unqualified word "antelope," when applied to leather goods means that the articles to which the term is applied are in fact made of genuine antelope skin. Such portion of the public further understands that the unqualified words "Antelope Suede" mean antelope skin which has been finished as a suede. There is also a preference on the part of a substantial portion of the public for leather goods made of genuine antelope skin over goods made of other leathers which have been sueded and processed in such manner that they resemble antelope skin.

PAR. 6. While the representations made by the United States Raw Skins Corporation were made primarily to the Lieberston Novelty Co., Inc., rather than to retail dealers and the purchasing public, the Commission finds that by describing and invoicing its products in the manner set forth above, the corporation initiated, contributed to, and in effect participated in, the subsequent misrepresentations made by respondent, Lieberston Novelty Co., Inc.

PAR. 7. The Commission finds further that the acts and practices of the respondents as herein described have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the products sold by respondent, Lieberston Novelty Co., Inc., are made of genuine antelope skin, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products as the 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 commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondent

ents, 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 and in opposition thereto, 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 respondent, United States Raw Skins Corporation, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of said respondent's leathers in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "antelope," or any other word of similar import, to designate or describe leather which is not in fact made from the skin of an antelope, or otherwise representing that said respondent's products are made from the skin of an antelope when such products are in fact made from the skins of other animals.

It is further ordered, That respondent, Lieberston Novelty Co., Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of said respondent's handbags, belts or other leather products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "antelope," or any other word of similar import, to designate or describe products which are not in fact made from the skin of an antelope, or otherwise representing that said respondent's products are made from the skin of an antelope when such products are in fact made from the skins of other animals.

Provided, however, That in the case of products not made of antelope skin but made of skin other than antelope skin which has been processed or finished to resemble antelope skin, this order shall not be construed to prohibit the use of the words "Antelope Finish" in describing such products, when such words are immediately accompanied by other words clearly designating the kind of skin used, and when such accompanying words and the word "Finish" are at least equal in size and conspicuousness with the word "Antelope."

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
PENN-LUB OIL PRODUCTS CO.

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

Docket 4524. Complaint, June 26, 1941—Decision, Apr. 13, 1942

Where a corporation, engaged in the interstate sale and distribution of reclaimed motor oils which had the appearance of new, unused oil, and which it sold in the same type of cans used in sale of the new, to wholesalers and retailers for resale—

- (a) Represented that said product was "Pennsylvania Oil" and "100% Pure Paraffin Base" through use of words "Penn-Lub" as part of its corporate name and as brand name on containers of its products, together with such statements thereon as "100% Pure Paraffin Base Motor Oil," "High Flash—High Fire," "Super Heat Resisting Quality," "Will Not Thin Out," "Winter Grades—Free Flowing—Low Cold Test," and "Motor Oil Specially Processed for High Speed Motors;"

The facts being its said product was not, as understood by trade and purchasing public from term "Pennsylvania Oil," made from crude oil produced in the Pennsylvania oil fields, long widely advertised, sold and distributed under various emblems, marks, and brand names in connection with or containing said word or abbreviations thereof, and preferred by a substantial part of public as superior to oil refined from crudes originating in other regions, and did not have a paraffin base, as also preferred by many, but was obtained from crankcase drainings and contained a mixture of oils from various fields in addition to the Pennsylvania region, including those not having a paraffin base; and reclaiming process employed by it did not completely segregate oils originating in other regions from Pennsylvania oils, nor completely separate oils having a paraffin base from those having a nonparaffin base; and

- (b) Advertised, invoiced and marketed its said reclaimed and processed new appearing oil, contained as aforesaid, with no label or marking on cans to indicate or disclose that product in question was old, used oil;

With the result of placing in the hands of unscrupulous or uninformed dealers a means whereby they might mislead and deceive the purchasing public, and with effect of misleading and deceiving a substantial number of wholesalers, retailers and members of the purchasing public into the mistaken belief that aforesaid statements were true, thereby inducing them to purchase said product:

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. Webster Ballinger*, trial examiner.

Mr. Eldon P. Schrup for the Commission.

Mr. Saul G. Schulter, of East Newark, N. J. for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Penn-Lub Oil Products 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, Penn-Lub Oil Products Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 85 Gotthart Street, Newark, N. J.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of reclaimed motor oils to wholesalers and retail distributors for resale to the public. Respondent causes said product when sold to be transported from its place of business in the State of New Jersey to the purchasers thereof located in the various States of the United States other than the State of New Jersey and in the District of Columbia.

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

PAR. 3. In the course and conduct of its business, in connection with the offering for sale, sale, and distribution of its product, in commerce as herein described, and for the purpose of inducing the purchase thereof, respondent has caused and now causes to be imprinted upon the containers in which its said product is displayed and sold, the following statements and representations:

PENN-LUB
100%
PURE
PARAFFIN
BASE
MOTOR OIL
PENN-LUB OIL PRODUCTS CO.
NEWARK, N. J.
* * *
SUMMER GRADES
HIGH FLASH . HIGH FIRE
SUPER
HEAT RESISTING QUALITY
WILL NOT THIN OUT

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WINTER GRADES
 FREE FLOWING . LOW COLD TEST
 ASSURING
 ECONOMY OF OPERATION
 AND MAXIMUM MILEAGE
 AT ALL TEMPERATURES.
 THE PERFECT OIL FOR ALL CARS

* * *

MOTOR OIL
 SPECIALLY PROCESSED
 FOR HIGH SPEED
 MOTORS

* * *

GUARANTEE

We Guarantee This Oil to
 Be Entirely Satisfactory
 Or Your Money Will be
 Refunded.

 PENN-LUB OIL PRODUCTS CO.

NEWARK, N. J.

PAR. 4. Respondent, through the use of the above statements and representations, represents and implies and causes to be represented and implied, to the purchasing public and to wholesalers and retailers purchasing said product for resale to the public, that said product is Pennsylvania oil with 100 percent paraffin base.

The use by the respondent of the brand name "Penn-Lub" and of the words "Penn-Lub" as a part of its corporate name, within themselves, serve as representations that respondent's said product is oil from the Pennsylvania grade oil field.

PAR. 5. Respondent's said statements and representations as aforesaid are false, misleading, deceptive and untrue. In truth and in fact, respondent's said product is not oil obtained from the Pennsylvania grade oil field, nor is it made wholly from oil with a 100 percent paraffin base obtained from the Pennsylvania grade crude oil region. The respondent's product is in fact obtained from the drainings of motor crank cases which said drainings contain a mixture of oils previously refined from crude oils coming from various oil fields other than and in addition to the Pennsylvania grade region, including regions producing oils not having a paraffin base. The process by which respondent's product is prepared does not completely segregate the reclaimed oils originating in oil regions other than the Pennsylvania grade region from the reclaimed oil originating in such region, nor does said process completely separate the reclaimed oils having a paraffin base from those having a nonparaffin base.

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The term "Pennsylvania Oil" as used in the petroleum industry and as understood by the trade and the purchasing public means oil made from crude oil produced in the geographical area known as the Pennsylvania oil field. For many years, Pennsylvania lubricating or motor oil has been widely advertised, sold, and distributed under various emblems; marks, and brand names in connection with or containing the word "Pennsylvania" or some abbreviation or derivation thereof calculated to show the quality and source of origin of such oil; and the purchasing public not only has become accustomed to recognizing and accepting such indications of the same, but further, a substantial portion of said public has come to regard such oil as a superior grade of oil to be preferred over oil refined from crude oil originating in other regions. Many members of the purchasing public also prefer motor oils having a paraffin base, irrespective of the place of origin of such oils, to motor oils not having such base.

PAR. 6. Respondent, through the use of the statements and representations hereinabove set forth imports or implies that its said reclaimed and processed motor oil is new and unused oil made from virgin crude oil. The implication that respondent's product is new and unused oil refined from virgin crude oil is also created by the fact that respondent's product, when reclaimed and processed, has the appearance of new unused oil and by the further fact that it is sold in cans of the general size, kind and appearance of those used in the sale of new, unused oil. Said containers bear no label or marking indicating or disclosing that said product is old used oil which has been reclaimed and processed.

The general understanding and belief on the part of dealers and purchasing public, in the absence of information clearly disclosing the contrary, is that motor oil having the appearance of new and unused oil and sold in containers such as are used for new oil is in fact new and unused oil and not used oil which has been reclaimed and processed. There is a marked preference on the part of a substantial portion of the purchasing public for new and unused oil over used oil which has been reclaimed and processed, such preference being due in part to a belief on the part of the public that new unused oil is superior in quality to oil which has been previously used.

In truth and in fact, respondent's said motor oil is not new and unused oil refined from virgin crude oil, but is composed entirely of old used oil from the drainings of motor crankcases which has been reclaimed and processed.

PAR. 7. The respondent's said acts and practices as herein set forth serve also to place in the hands of unscrupulous or uninformed wholesalers and retailers a means and instrumentality whereby in the sale

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of respondent's product, such parties may mislead and deceive the purchasing public in the manner and method as herein described.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and claims with respect to its product, disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial number of wholesalers, retailers, and members of the purchasing public into the erroneous and mistaken belief that such statements, representations, and claims are true and causes, and has caused, a substantial number of wholesalers, retailers, and the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's product.

PAR. 9. The aforesaid acts and practices by 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 26, 1941, issued, and on June 27, 1941, served, its complaint in this proceeding upon respondent, Penn-Lub Oil Products Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on 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, Penn-Lub Oil Products Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 85 Gotthart Street, Newark, N. J.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of reclaimed motor oils to

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wholesalers and retail distributors for resale to the public. Respondent causes said product when sold to be transported from its place of business in the State of New Jersey to the purchasers thereof located in the various States of the United States other than the State of New Jersey and in the District of Columbia.

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

PAR. 3. In the course and conduct of its business, in connection with the offering for sale, sale, and distribution of its product, in commerce as herein described, and for the purpose of inducing the purchase thereof, respondent has caused and now causes to be imprinted upon the containers in which its said product is displayed and sold, the following statements and representations:

PENN-LUB

100%

PURE

PARAFFIN

BASE

MOTOR OIL

PENN-LUB OIL PRODUCTS CO.

NEWARK, N. J.

* * *

SUMMER GRADES

HIGH FLASH . HIGH FIRE

SUPER

HEAT RESISTING QUALITY

WILL NOT THIN OUT

WINTER GRADES

FREE FLOWING, LOW COLD TEST

ASSURING

ECONOMY OF OPERATION

AND MAXIMUM MILEAGE

AT ALL TEMPERATURES

THE PERFECT OIL FOR ALL CARS

* * *

MOTOR OIL

SPECIALLY PROCESSED

FOR HIGH SPEED

MOTORS

* * *

GUARANTEE

We Guarantee This Oil To
Be Entirely Satisfactory
Or Your Money Will Be
Refunded.

PENN-LUB OIL PRODUCTS CO.
NEWARK, N. J.

PAR. 4. Respondent, through the use of the above statements and representations, represents and implies and causes to be represented and implied, to the purchasing public and to wholesalers and retailers purchasing said product for resale to the public, that said product is Pennsylvania Oil with 100-percent pure paraffin base.

The use by the respondent of the brand name "Penn-Lub" and of the words "Penn-Lub" as a part of its corporate name, within themselves, serve as representations that respondent's said product is oil from the Pennsylvania grade oil field.

PAR. 5. Respondent's said statements and representations as aforesaid are false, misleading, deceptive and untrue. In truth and in fact, respondent's said product is not oil obtained from the Pennsylvania grade oil field, nor is it made wholly from oil with a 100-percent paraffin base obtained from the Pennsylvania grade crude oil region. The respondent's product is in fact obtained from the drainings of motor crank cases which said drainings contain a mixture of oils previously refined from crude oils coming from various oil fields other than and in addition to the Pennsylvania grade region, including regions producing oils not having a paraffin base. The process by which respondent's product is prepared does not completely segregate the reclaimed oils originating in oil regions other than the Pennsylvania grade region from the reclaimed oil originating in such region, nor does said process completely separate the reclaimed oils having a paraffin base from those having a nonparaffin base.

The term "Pennsylvania Oil" as used in the petroleum industry and as understood by the trade and the purchasing public means oil made from crude oil produced in the geographical area known as the Pennsylvania oil field. For many years, Pennsylvania lubricating or motor oil has been widely advertised, sold and distributed under various emblems, marks, and brand names in connection with or containing the word "Pennsylvania" or some abbreviation or derivation thereof calculated to show the quality and source of origin of such oil; and the purchasing public not only has become accustomed to recognizing and accepting such indications of the same, but further, a substantial portion of said public has come to regard such oil as a superior grade of oil to be preferred over oil refined from crude oil originating in other regions. Many members of the purchasing public also prefer motor oils having a paraffin base, irrespective of the place of origin of such oils, to motor oils not having such base.

PAR. 6. Respondent, through the use of the statements and representations hereinabove set forth imports or implies that its said re-

claimed and processed motor oil is new and unused oil made from virgin crude oil. The implication that respondent's product is new and unused oil refined from virgin crude oil is also created by the fact that respondent's product, when reclaimed and processed, has the appearance of new unused oil and by the further fact that it is sold in cans of the general size, kind and appearance of those used in the sale of new, unused oil. Said containers bear no label or marking indicating or disclosing that said product is old used oil which has been reclaimed and processed.

The general understanding and belief on the part of dealers and purchasing public, in the absence of information clearly disclosing the contrary, is that motor oil having the appearance of new and unused oil and sold in containers such as are used for new oil is in fact new and unused oil and not used oil which has been reclaimed and processed. There is a marked preference on the part of a substantial portion of the purchasing public for new and unused oil over used oil which has been reclaimed and processed, such preference being due in part to a belief on the part of the public that new unused oil is superior in quality to oil which has been previously used.

In truth and in fact, respondent's said motor oil is not new and unused oil refined from virgin crude oil, but is composed entirely of old used oil from the drainings of motor crankcases which has been reclaimed and processed.

PAR. 7. The respondent's said acts and practices as herein set forth serve also to place in the hands of unscrupulous or uninformed wholesalers and retailers a means and instrumentality whereby in the sale of respondent's product, such parties may mislead and deceive the purchasing public in the manner and method as herein described.

PAR. 8. The use by the respondent of the foregoing false, deceptive and misleading statements, representations and claims with respect to its product, disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial number of wholesalers, retailers and members of the purchasing public into the erroneous and mistaken belief that such statements, representations and claims are true and causes, and has caused, a substantial number of wholesalers, retailers, and the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's product.

CONCLUSION

The acts and practices of respondent, as herein found, are all to the injury and prejudice of the public and constitute unfair and

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Penn-Lub Oil Products 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 oil or oil products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the term "Penn-Lub," or the word "Pennsylvania," or any abbreviation or colorable simulation thereof, including an outline map or other symbol designating Pennsylvania, in or as a part of any trade name for, or to otherwise designate, describe, or refer to, any oil or oil product not composed wholly of oil from the Pennsylvania grade oil fields: Provided, this shall not prevent the use of such words, terms, or symbols to describe or refer to the proportion of oil in any such product derived from Pennsylvania grade oil fields if there are used in immediate connection and conjunction therewith words and figures of at least equal size and conspicuousness truthfully designating the percentage of oil in such product actually derived from Pennsylvania grade oil fields.

2. Using the words "Penn-Lub" in or as a part of any corporate name under which oil or oil products containing oil not derived from the Pennsylvania grade oil fields are advertised, offered for sale, and sold; or using the word "Pennsylvania" or any abbreviation or colorable simulation thereof in or as a part of any such corporate name.

3. Representing in any manner that oil or oil products, or any proportion thereof, not derived from paraffin base crude oil, are so derived, or are paraffin oil or oil products.

4. Advertising, invoicing, distributing, or marketing used oil which has been reclaimed, either with or without reprocessing or re-refining,

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without unequivocally disclosing in a clear, conspicuous, and legible manner in such invoices and advertising and upon the containers of such oil in a clear, conspicuous, and permanent manner that such product is, or has been, reclaimed from used oil; or representing in any manner, directly or indirectly, that used oil which has been reclaimed, with or without reprocessing or re-refining, is new or unused oil.

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

Complaint

IN THE MATTER OF

ALBERT ROSE, TRADING AS PARKER-THOMPSON
COMPANY

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

Docket 4699. Complaint, Feb. 4, 1942—Decision, Apr. 13, 1942

Where an individual engaged in competitive sale and distribution of suits, overcoats, and other merchandise in the District of Columbia—
Sold and distributed his said products to the purchasing public through means of sales plans or methods involving operation of a game of chance, gift enterprise, or lottery scheme, typical of which was his so-called "Club" plan, pursuant to which he supplied each participant with a contract of purchase for a suit or overcoat for \$39, their normal retail value, to be paid at the rate of \$1 per week, and subject to the provision that should the purchaser's "ledger" or contract number correspond with the last three numbers of the Treasury balance figures, such purchaser would receive the garment without payment of remaining weekly amounts due thereon; and thereby, in so selling and distributing his merchandise in accordance with such plan, involving game of chance or sale of chance to procure an article of merchandise at less than its normal retail price, conducted lotteries, contrary to an established public policy of the United States Government, and in competition with many who do not use methods involving chance, or contrary to public policy;
With the result that many persons were attracted by said methods and the element of chance involved therein, and were thereby induced to buy his merchandise in preference to that of said competitors who do not use such methods, and with tendency and capacity to divert 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. J. W. Brookfield, Jr., for the Commission.

Mr. Joseph B. Danzansky, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Albert Rose, an individual trading and doing business as Parker-Thompson 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

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

PARAGRAPH 1. Respondent, Albert Rose, is an individual trading and doing business as Parker-Thompson Co., with his principal office and place of business located at 1205 I Street NW., Washington, D. C. Respondent is now and has been for more than one year last past engaged in the sale and distribution of suits, overcoats, and other articles of merchandise within the District of Columbia. Said respondent sold and has caused and still causes the said garments in which he deals to be sold and distributed from his place of business to purchasers located at various points in the said District of Columbia. There is now and has been a course of trade by respondent in said garments in commerce 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 the District of Columbia.

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent is now and has been selling and distributing said merchandise to members of the purchasing public by means of sales plans or methods which involve the operation of a game of chance, gift enterprise, or lottery scheme. One of said sales plans or methods is substantially as follows:

Members of the purchasing public are solicited by respondent or respondent's representatives to purchase a suit of clothes or overcoat under a so-called "club" plan. Respondent supplies each purchaser participating in said plan with a contract of purchase. Said contract provides for the sale by respondent to such purchaser of a suit of clothes or an overcoat for the sum of \$39, which said amount is to be paid as follows: \$1 when said contract is delivered and \$1 in advance each week thereafter until the full amount of the contract has been paid. There is space provided on said contract for the recording of the weekly payments. Each of said contracts has printed thereon a "ledger" number. Purchasers are informed by respondent or respondent's representatives that should said number correspond with the last three numbers of the Treasury balance figures, provided all of said purchaser's weekly payments have been made up to date, then such purchaser would be entitled to and would receive a suit or overcoat without the payment of the remaining weekly payments. Purchasers whose contracts do not bear numbers corresponding with the daily Treasury balance, as above alleged, prior to the payment of the full amount of their contracts are required to

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pay \$39 for their suits or overcoats. All of said suits and overcoats have a normal retail value of \$39. The amount which the ultimate consumer pays for one of said suits or overcoats is thus determined wholly by lot or chance.

Respondent uses and has used various sales plans which involve the operation of games of chance, gift enterprises, or lottery schemes in connection with the sale and distribution of its merchandise to the consuming public, but said sales plans are similar to the one hereinabove described, varying only in detail.

PAR. 3. Respondent has sold and distributed his merchandise to members of the consuming public in accordance with the aforesaid sales plans or methods. In so selling and distributing his merchandise, respondent has conducted lotteries in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said sales plans or methods in the sale of his merchandise and the sale of such merchandise by and through the use thereof, and by the aid of said methods, is a practice of the sort which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public, in the manner above alleged, involves a game of chance or the sale of a chance to procure an article of merchandise at a price less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above alleged, do not use said methods or any methods involving use of a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale of said merchandise in the manner above alleged and are thereby induced and persuaded to buy respondent's merchandise in preference to the merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by the respondent, because of said game of chance, has the tendency and capacity to divert trade in commerce in the District of Columbia to respondents from its said competitors who do not use the same or equivalent sales plans or methods. As a result thereof substantial injury is being and has been done by respondent to competition in commerce 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 acts and practices in commerce

within the intent and meaning of the Federal Trade Commission 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 4, 1942, issued and thereafter served its complaint in this proceeding upon respondent, Albert Rose, trading as Parker-Thompson Co., charging him 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. On February 23, 1942, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission, on the said complaint and the answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Albert Rose, is an individual trading and doing business as Parker-Thompson Co., with his principal office and place of business located at 1205 I Street NW., Washington, D. C. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of suits, overcoats, and other articles of merchandise within the District of Columbia. Said respondent sold and has caused and still causes the said garments in which he deals to be sold and distributed from his place of business to purchasers located at various points in the said District of Columbia. There is now and has been a course of trade by respondent in said garments in commerce 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 the District of Columbia.

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent is now and has been selling and distributing said merchandise to members of the purchasing public by means of sales plans or methods which involve the operation of a game of chance, gift enterprise, or lottery scheme. One of said sales plans or methods is substantially as follows:

Members of the purchasing public are solicited by respondent or respondent's representatives to purchase a suit of clothes or overcoat under a so-called "Club" plan. Respondent supplies each purchaser participating in said plan with a contract of purchase. Said contract provides for the sale by respondent to such purchaser of a suit of clothes or an overcoat for the sum of \$39, which said amount is to be paid as follows: One dollar when said contract is delivered and \$1 in advance each week thereafter until the full amount of the contract has been paid. There is space provided on said contract for the recording of the weekly payments. Each of said contracts has printed thereon a "ledger" number. Purchasers are informed by respondent or respondent's representatives that should said number correspond with the last three numbers of the Treasury balance figures, provided all of said purchaser's weekly payments have been made up to date, then such purchaser would be entitled to and would receive a suit or overcoat without the payment of the remaining weekly payments. Purchasers whose contracts do not bear numbers corresponding with the daily Treasury balance, as above found, prior to the payment of the full amount of their contracts are required to pay \$39 for their suits or overcoats. All of said suits and overcoats have a normal retail value of \$39. The amount which the ultimate consumer pays for one of said suits or overcoats is thus determined wholly by lot or chance.

Respondent uses and has used various sales plans which involve the operation of games of chance, gift enterprises, or lottery schemes in connection with the sale and distribution of its merchandise to the consuming public, but said sales plans are similar to the one hereinabove described, varying only in detail.

PAR. 3. Respondent has sold and distributed his merchandise to members of the consuming public in accordance with the aforesaid sales plans or methods. In so selling and distributing his merchandise, respondent has conducted lotteries in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said sales plans or methods in the sale of his merchandise and the sale of such merchandise by and through the use thereof, and by the aid of said methods, is a practice of the sort which is contrary to an established public policy of the Government of the United States.

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 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, do not use said methods or any methods involving use of a game

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of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale of said merchandise in the manner above found and are thereby induced and persuaded to buy respondent's merchandise in preference to the merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by the respondent, because of said game of chance, has the tendency and capacity to divert trade in commerce in the District of Columbia to respondent from his said competitors who do not use the same or equivalent sales plans or methods. As a result thereof substantial injury is being and has been done by respondent to competition in commerce 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 acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Albert Rose, trading as Parker-Thompson 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 and distribution of suits, overcoats, or any other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing any merchandise by means of any sales plan or method involving the use of a game of chance, gift enterprise, or lottery scheme.

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2. Supplying or placing in the hands of others any merchandise, together with a sales plan or method involving the use of a game of chance, gift enterprise or lottery scheme by which said merchandise is to be, or may be, sold to the purchasing public.

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

Complaint

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IN THE MATTER OF

J. D. FINE, TRADING AS J. D. FINE CANDY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4709. Complaint, Feb. 13, 1942—Decision, Apr. 13, 1942

Where an individual, engaged in the manufacture and competitive interstate sale and distribution of 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, a typical assortment being composed of 72 uniform pieces of candy together with a push card for use in their sale under a plan by which purchaser of 1 for 5 cents became entitled to a push and, if he pushed one of certain numbers, was entitled to exchange his candy piece for from 2 to 4 of said pieces—

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 game of chance or sale of chance to procure candy at prices much less than its normal retail price; and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his products, contrary to an established public policy of the United States Government, and in competition with many who do not use any method involving chance or contrary to public policy;

With the result that many persons were attracted by such sales plan and thereby induced to buy and sell his products in preference to those of said competitors, with tendency and capacity thereby to unfairly divert trade to him from them:

Held, That such acts and practices, under the circumstances set forth, 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. D. G. Johnson, of Oklahoma City, Okla., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that J. D. Fine, an individual trading as J. D. Fine 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, J. D. Fine, is an individual trading and doing business under the name of J. D. Fine Candy Co., with his

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office and principal place of business located at 222 Northwest Fourth Street, Oklahoma City, Okla. Respondent is now, and for more than 6 months last past has been, engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said candy, when sold, to be transported from his place of business in Oklahoma City, Okla., to purchasers thereof at their respective points of location in various States of the United States other than Oklahoma 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 partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

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

This assortment includes 72 pieces of candy of like size and shape and a push card. Appearing on the face or the push card is the following legend:

<p>GOOD CANDY IS HEALTHFUL</p>	<p>KREMY DIP</p> <p>ADVERTISING MEDIUM</p>	<p>5¢</p>
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You Buy A Five Cent Kremy Dip And Get One Push FREE

If you push out One of the Following Numbers or Last Push you can exchange (without extra cost) The 5¢ KREMY DIP for the MERCHANDISE INDICATED.

No. 13, Four 5¢ Kremy Dips No. 23, Three 5¢ Kremy Dips
 Numbers 5, 10, 20, 25, 30, 40, 50, 60..... Two 5¢ Kremy Dips

LAST PUSH, LARGE BOX HAND ROLLED CHOCOLATES

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

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contains 60 pushes, each concealing a number. Said numbers are not therein arranged in numerical sequence. Each purchaser of a "Kremy Dip" candy is entitled to a push. If he pushes 1 of the numbers designated on the card, he receives 2 or more additional pieces of candy without the payment of any additional sum. If he pushes 1 of the other numbers, he receives only the 1 Kremy Dip. The numbers are effectively concealed from purchasers and prospective purchasers until a push selection has been made and a disk separated from the board. The fact as to whether a purchaser of the candy and push receives 1 or more than 1 piece of candy for his purchase price is thus determined wholly by lot or chance.

The respondent furnishes and has furnished various push board and candy assortments for use in the sale and distribution of his candy by means of a game of chance, gift enterprise, or lottery scheme. Such push boards or push cards 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 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.

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, do not use said method or any method involving a game of chance and the selling of a chance to win something by chance, or any other method contrary to public policy. Many persons are attracted by said sales plan or method employed by respondent in the sale or 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 unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent

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from his said competitors who do not use the same 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 acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 13, 1942, issued and subsequently served its complaint in this proceeding upon respondent, J. D. Fine, an individual, trading as J. D. Fine Candy Co., charging him with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of said act. On March 16, 1942, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, J. D. Fine, is an individual, trading and doing business under the name of J. D. Fine Candy Co., with his office and principal place of business located at 222 Northwest Fourth Street, Oklahoma City, Okla. Respondent is now, and for more than 6 months last past has been, engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said candy, when sold, to be transported from his place of business in Oklahoma City, Okla., to purchasers thereof at their respective points of location in various States of the United States other than Oklahoma 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.

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

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

This assortment includes 72 pieces of candy of like size and shape and a push card. Appearing on the face of the push card is the following legend:

<p>GOOD CANDY IS HEALTHFUL</p>	<p>KREMY DIP</p> <p>ADVERTISING MEDIUM</p> <p>You Buy A Five Cent Kremy Dip And Get One Push FREE</p>	<p>5¢</p>
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If you push out One of the Following Numbers or Last Push you can exchange (without extra cost) The 5¢ KREMY DIP for the MERCHANDISE INDICATED.

No. 13, Four 5¢ Kremy Dips No. 23, Three 5¢ Kremy Dips
 Numbers 5, 10, 20, 25, 30, 40, 50, 60----- Two 5¢ Kremy Dips

LAST PUSH, LARGE BOX HAND ROLLED CHOCOLATES

Said candy is distributed to the purchasing public in accordance with the foregoing legend and in the following manner: Push card contains 60 pushes, each concealing a number. Said numbers are not therein arranged in numerical sequence. Each purchaser of a "Kremy Dip" candy is entitled to a push. If he pushes 1 of the numbers designated on the card, he receives 2 or more additional pieces of candy without the payment of any additional sum. If he pushes 1 of the other numbers, he receives only the 1 Kremy Dip. The numbers are effectively concealed from purchasers and prospective purchasers until a push selection has been made and a disk separated from the board. The fact as to whether a purchaser of the candy and push receives 1 or more than 1 piece of candy for his purchase price is thus determined wholly by lot or chance.

The respondent furnishes and has furnished various push board and candy assortments for use in the sale and distribution of his

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candy by means of a game of chance, gift enterprise, or lottery scheme. Such push boards or push cards 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 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.

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, do not use said method or any method involving a game of chance and the selling of a chance to win something by chance, or any other method contrary to public policy. Many persons are attracted by said sales plan or method employed by respondent in the sale or 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 unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or equivalent methods.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission and the answer of respondent

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ent, in which answer respondent admits all of the material allegations of fact set forth in said complaint, and states that he waives all intervening proceeding 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, J. D. Fine, individually, and trading as J. D. Fine Candy Co., or trading under any other name or names, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of candy or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy, or any other merchandise, so packed or 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.

Complaint

IN THE MATTER OF

HOUBIGANT, INC., CHERAMY, INC., AND HOUBIGANT
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 3343. Complaint, Mar. 2, 1933—Decision, Apr. 16, 1942

Where three corporations, with a common New York address, engaged in manufacture and competitive interstate sale and distribution of perfumes, colognes, cosmetics, and toilet preparations—

Represented that certain of their products were made or compounded in France and imported into the United States through use upon labels, markers, and containers of words "Houbigant—Paris—New York" and "Cheramy—Paris—New York—France," and on bottom of glass bottles of words "Houbigant—Paris—New York"; and made use also of trade names of French origin, such as "Quelques Fleurs," "Rose de France," and others, for their various products;

The facts being their said products were not made or compounded in France by La Parfumerie Houbigant, old and long and favorably known manufacturer of such products, as represented by use of trade name "Houbigant," but were made of imported ingredients to which was added domestic alcohol; and, excepting about 10 percent of the products of one, which did consist of imported perfumes brought in in finished condition in bulk and bottled in the United States, their said products were not the higher priced preferred perfumes, colognes, and toilet preparations made or compounded in France and imported into the United States;

With effect of misleading a substantial part of the purchasing public into the mistaken belief that said products were manufactured or compounded in France and imported into the United States, thereby inducing it to purchase substantial quantities thereof, and with result of unfairly diverting trade to them from their competitors who truthfully represent the place of origin 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.

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

Mr. S. Brogdyne Tew, II, and *Mr. Gerard A. Rault* for the Commission.

Mock & Blum and *Miller, Owen, Otis & Bailly*, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal

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Trade Commission, having reason to believe that Houbigant, Inc., a corporation, Cheramy, Inc., a corporation, and Houbigant Sales Corporation, a corporation, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Houbigant, Inc., Cheramy, Inc., and Houbigant Sales Corporation, are corporations organized, existing, and doing business under the laws of the State of New York, with their principal place of business located at 539 West Forty-fifth Street, New York, N. Y. All respondents are now, and for some time last past have been, engaged cooperatively in the business of manufacturing perfumes, colognes, cosmetics, and toilet preparations, 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 New York to purchasers thereof located at various points in the various States of the United States other than the State of New York and in the District of Columbia. Respondents now maintain, and for several years last past have maintained, a course of trade in said products manufactured, distributed, and sold by them in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other corporations, and with individuals and firms likewise engaged in the business of selling and distributing perfumes, colognes, cosmetics, and toilet preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Perfumes, colognes, and toilet preparations of high quality enjoying general acceptance throughout the world have been manufactured, compounded, and distributed since 1775 by Parfumerie Houbigant of 19 Rue du Fauborg, St. Honore, Paris, under the name Houbigant. A substantial portion of the purchasing public in the United States has associated the word "Houbigant" with perfumes, colognes, and toilet preparations manufactured or compounded in France by the firm of Parfumerie Houbigant, and when buying perfumes, colognes, and toilet preparations designated "Houbigant" they believe that said products are manufactured or compounded in France by the firm of Parfumerie Houbigant.

PAR. 5. In the course and conduct of their business as described in paragraph 1 hereof, 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:

Houbigant,
Houbigant—Paris—New York,
Cheramy—Paris—New York—France.

On the bottom of all the glass bottle containers of said products the words "Houbigant—Paris—New York" are blown into the glass. Invoices used by respondents in connection with the sale of Houbigant and Cheramy products bear the words "Distributors for Houbigant, Paris—Cheramy, Paris."

The use of such statements as herein set out, and the use of the name "Houbigant" by respondents in designating their products, serve as representations that said products are manufactured or compounded in France by the firm of Parfumerie Houbigant; that said products are manufactured or compounded in France and that respondents maintain an office in Paris, France. In truth and in fact, said products are not manufactured or compounded in France by Parfumerie Houbigant and are not made up or compounded into the finished or completed perfumes, colognes, or other toilet preparations in France, but are compounded into the finished product and bottled in the United States of America by respondents. Respondents do not maintain an office in Paris, France.

PAR. 6. 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; this is particularly true regarding perfumes, colognes, and toilet preparations manufactured or compounded in France, and such goods so manufactured or compounded and imported command and bring from the purchasing public a higher price in the markets of the United States than perfumes, colognes, and toilet preparations manufactured or compounded in the United States.

PAR. 7. The foregoing representations made by respondents in designating and describing their products and the source of origin and place of manufacture or compounding thereof are calculated to, and have a tendency and capacity to, and do, mislead a substantial part of the purchasing public into the erroneous and mistaken belief that said products are manufactured or compounded in France and are manufactured or compounded by Parfumerie Houbigant of Paris, France, and are imported from France into the United States, and that respondents maintain an office in Paris, France. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the

misrepresentations of respondents, a number of the consuming public purchase a substantial volume of respondents' products.

As a result, trade has been unfairly diverted to respondents from their competitors who actually import into the United States from foreign countries perfumes and similar products compounded in foreign countries, or who 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. As a result thereof, substantial injury has been done, and is now being done, by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. 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 March 2 A. D. 1938, issued and thereafter served its complaint in this proceeding upon the respondents, Houbigant, Inc., a corporation, Cheramy, Inc., a corporation, and Houbigant Sales Corporation, a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of said complaint were introduced by S. Brogdyne Teu, II, attorney for the Commission, and in opposition to the allegations of the complaint by Hugo Mock and Redmond F. Kernan, attorneys for the respondents, before Edward E. Reardon, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer of the respondents, testimony, and other evidence, report of the trial examiner upon the evidence, 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, Houbigant, Inc., Cheramy, Inc., and Houbigant Sales Corporation, are corporations organized, existing, and doing business under the laws of the State of New York, with their principal place of business located at 539 West Forty-fifth Street, New York, N. Y. All of said respondents are now, and for some time last past have been engaged in the business of manufacturing perfumes, colognes, cosmetics, and toilet preparations, which respondents sell and distribute throughout the various States of the United States. 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 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 business the respondents are now, and have been, in substantial competition with other corporations and with individuals and firms engaged in the sale and distribution of perfumes, colognes, cosmetics, and toilet preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Perfumes, colognes, and toilet preparations of high quality enjoying general acceptance throughout the world have been manufactured, compounded, and distributed since 1775 by La Parfumerie Houbigant of 19 Rue du Faubourg, St. Honore, Paris, under the name "Houbigant." For many years La Parfumerie Houbigant of Paris, France, sold and distributed its various preparations in the United States through salesmen and local distributors.

Respondent Houbigant, Inc., has no corporate connection with La Parfumerie Houbigant. It does have, however, an agreement with La Parfumerie Houbigant whereby the respondent is exclusively authorized to reproduce and distribute in the United States, products compounded according to the secret formula of La Parfumerie Houbigant. In like manner respondent, Cheramy, Inc., is authorized to reproduce and distribute perfume products heretofore created and manufactured in Paris, France, by Parfums Cheramy S. A. of Paris, France.

PAR. 4. A substantial portion of the purchasing public in the United States has associated the word "Houbigant" with perfumes, colognes, and toilet preparations manufactured or compounded in France by the firm of La Parfumerie Houbigant, and when buying perfumes,

colognes, and toilet preparations designated "Houbigant," they believe that said products are manufactured or compounded in France by the firm of La Parfumerie Houbigant. There is a preference on the part of the buying public for perfumes, colognes, and toilet preparations manufactured or compounded in France and imported into the United States, and such goods so manufactured or compounded and imported, command and bring from the purchasing public a higher price in the markets of the United States than perfumes, colognes, and toilet preparations manufactured or compounded in the United States.

PAR. 5. In the course and conduct of their business, the respondents represent that certain of their perfume products are manufactured or compounded in France and imported into the United States by the use of words and statements upon labels, markers, and containers for said products as follows:

Houbigant,
Houbigant—Paris—New York,
Cheramy—Paris—New York—France,

and also by the use of glass bottle containers, on the bottom of which the words "Houbigant—Paris—New York" are blown into the glass. The use of the trade name "Houbigant" serves as a representation that products so designated are manufactured or compounded in France by the firm of La Parfumerie Houbigant and imported into the United States. In addition, the respondents designate and describe their various products by the use of trade names of French origin, such as "Quelques Fleurs," "Rose de France," and others.

PAR. 6. Respondents' products are not manufactured or compounded in France by La Parfumerie Houbigant and are not made up or compounded into the finished or completed perfumes, colognes, or other toilet preparations in France, but are compounded into the finished product and bottled in the United States of America by the respondents.

In connection with the manufacture of these various perfumes, colognes, and toilet preparations, respondent, Houbigant, Inc., imports its perfume products in the form of concentrates or compounds. When these concentrates arrive in this country, they are blended with certain imported fixatives or essential oils or synthetic materials, or combinations thereof, to which domestic alcohol is added to complete the perfume product. After such blending they are sold to the public as perfumes or colognes. In launching new perfume products, very often initial shipments are made of such products in finished condition, bottled and ready for sale. In some cases the respondent,

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Houbigant, Inc., imports perfume products in finished condition in bulk, which are bottled in the United States without the addition of alcohol or other substances. This constitutes approximately 10 per cent of said respondent's business.

The respondent, Cheramy, Inc., imports no perfume in finished condition, either in bulk or bottled form, and does not import concentrates for use in the manufacture of perfumes. Said corporation does import most of the ingredients used in the manufacture of its perfumes, to which ingredients is added domestic alcohol to complete said perfume products for sale to the purchasing public.

PAR. 7. The use by the respondents of the foregoing representations in designating and describing their products and the source of origin and place of manufacture or compounding thereof, has the tendency and capacity to, and does, mislead a substantial part of the purchasing public into the erroneous and mistaken belief that said products are manufactured or compounded in France and are imported into the United States, and to induce a portion of the purchasing public, because of such erroneous belief, to purchase substantial quantities of respondents' products. As a result, trade has been diverted unfairly to the respondents from their competitors who actually import into the United States from foreign countries perfumes and similar products compounded in foreign countries, or who compound perfumes and similar products in this country for sale to the buying public and who truthfully represent and advertise the place of origin of 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, answer of the respondents, testimony and other evidence taken before Edward E. Reardon, 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, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the

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

It is ordered, That the respondents, Houbigant, Inc., a corporation, Cheramy, Inc., a corporation, Houbigant Sales Corporation, a corporation, and their respective officers, representatives, agents, and employees, directly, or through any corporate or other device, in connection with the offering for sale, sale, and distribution of perfumes, colognes, and other toilet preparations in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing through the use of the terms "Paris" or "Paris, France," or any other terms indicative of French or other foreign origin of such products, or in any manner, that perfumes, colognes, or other toilet preparations which are made or compounded in the United States are made or compounded in France or in any other foreign country, provided, however, that the country of origin of the various ingredients thereof may be stated when immediately accompanied by a statement that such products are made or compounded in the United States;

2. Using the terms "Houbigant," "Cheramy," or any other French or foreign words or terms as brand or trade names for perfumes, colognes, or other toilet preparations made or compounded in the United States without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are made or compounded in the United States.

It is further ordered, That the 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

AL MODEY LOUGHNEY, TRADING UNDER THE NAME OF
DR. A. M. LOUGHNEY, AND ROGER G. LOUGHNEYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4531. Complaint, July 7, 1941—Decision, Apr. 20, 1942*

Where two individuals, engaged under trade name Dr. A. M. Loughney, in interstate sale and distribution of a "Regimen" for the treatment of asthma, hay fever, constipation, and various other diseases and disorders, which consisted of a mimeographed brochure and supplemental inserts containing a regimen entitled "Dr. A. M. Loughney's Dependable Guide to Self-Help," and two medicinal preparations respectively designated "Dr. Loughney's Special Compound of Disinfectant Oils" (sometimes referred to as "Intra-Lung Medicant" and "Anti-Spsthma-Oyl"), and "Dr. Loughney's Natural Bowel and Intestinal Cleanser" (referred to also as "Tonic Normalizer," "Good Botanical Remedy," "Mother Nature's Own and Best Tonic Normalizer" and "Bowelkleen"); in advertisements through the mails, in newspapers, circulars, form letters, testimonials, pamphlets, and other advertising media, directly and by implication—

(a) Represented that said "Regimen" and the individual items thereof, separately or in combination, constituted a cure or remedy and safe and effective treatment for asthma, hay fever, neuritis, rheumatism, impaired circulation, catarrh, bronchitis, sinusitis, mucus colitis, stomach and bowel troubles, high blood pressure, weight control, acute diabetes and nephritis, and would eradicate and cause asthma and hay-fever symptoms lastingly to "disappear as if by Magic in 36 hours;"

The facts being said "Regimen" and items, used separately or in combination, were not a cure or remedy for aforesaid ailments and conditions, and would not eradicate or cause hay-fever symptoms to disappear;

(b) Falsely represented that their said "Anti-Spsthma-Oyl" was a cure and remedy for, and constituted a safe and effective treatment for, asthma, hay fever, bronchitis, sinusitis, pharyngitis, laryngitis, rhinitis, chest colds, head colds and pneumonia, and would protect the mucus membrane against such diseases, cleanse and disinfect the head cavities, and was an intralung medicant possessing sedative, healing, and disinfecting properties;

The facts being said preparation was nothing more than an emollient containing ineffectual amounts of volatile oils; and, whether used alone or in conjunction with said "Dependable Guide to Self-Help" and the preparation "Bowelkleen," was not a cure or remedy for the diseases listed;

(c) Falsely represented that their said medicinal preparation "Bowelkleen" was a cure and remedy, and constituted a safe and effective treatment, for constipation; would eliminate gas, and act as a neutralizer and counteract gastric acidity; was a natural bowel and intestinal cleanser and eliminator; was a normalizer and natural blood remedy with tonic value; and would correct the cause of intestinal putrescence and aid digestion;

The facts being said preparation was nothing more than a laxative cathartic; and used alone or in conjunction with said "Dependable Guide to Self-Help" and "Anti-Spsthma-Oyl," had no therapeutic value in the treatment of constipation other than its temporary effect as a laxative-cathartic;

- (d) Represented that "sour breath, coated tongue, indigestion, nausea, gas and bloating, acne and unsightly skin eruptions, lack of energy, headaches, dizziness, upset stomach, loss of appetite or perverted appetite, catarrh, sinusitis, mucus colitis, and kindred ailments" are symptoms or manifestations of disease which may indicate constipation and intestinal putrescence, that the existence of one or more of such symptoms indicates constipation or intestinal putrescence as their basic cause, and that the preparation "Bowelkleen" would overcome or "clear up" constipation and intestinal putrescence;

The facts being that the disorders and conditions mentioned are not symptoms or manifestations of constipation or intestinal putrescence; catarrh, sinusitis, acne and unsightly skin eruptions and kindred ailments have no casual relationship to constipation, and said preparation would have no therapeutic effect in the treatment thereof; as respects mucus colitis, which may be caused by other conditions, a laxative would not be a safe or sufficient treatment, and said product might tend to aggravate same and prevent its successful treatment; when such disorders as nausea and upset stomach, which may and often do accompany appendicitis, are thus caused, a laxative is not a safe treatment, and use of "Bowelkleen" under such circumstances might be dangerous; when the disorders above mentioned, including coated tongue, indigestion, lack of energy, dizziness, and loss of or perverted appetite are due to other causes, "Bowelkleen" would have no therapeutic value in the treatment thereof, and, to the extent that constipation or intestinal putrescence was the cause of such disorders, it would have no value in the treatment thereof in excess of that furnished by a laxative-cathartic; and

- (e) Failed to reveal facts material in the light of representations in their said advertisements, and that use of their "Dependable Guide" or medicinal preparations, singly or in combination, might, under usual or prescribed conditions, result in serious injury to health in case of undernourished persons or those suffering from diabetes; frequent use of their "Anti-Spsthma-Oyl" may cause oil pneumonia; and use of "Bowelkleen" as a treatment for nausea and upset stomach might result in serious injury to health in the event of appendicitis;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, and that the contents of "Dr. A. M. Loughney's Dependable Guide to Self-Help" and supplemental mimeographed inserts and said medicinal preparations were safe for use and would accomplish the results claimed for them as above set forth, thereby inducing said public to purchase said "Regimen" and medicinal preparations because of such mistaken belief:

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

Mr. John 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 Al Modey Loughney, individually and trading under the name of Dr. A. M. Loughney, and Roger G. Loughney, 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, Al Modey Loughney, is an individual, trading under the name and style of Dr. A. M. Loughney, with his principal place of business located at 318-319 Henshaw Building, Fourteenth Street and Broadway, Oakland, Calif. Respondent, Roger G. Loughney, is an individual, and is secretary to the respondent, Al Modey Loughney, with the same place of business. Said respondents act in conjunction and in cooperation with each other with respect to the acts and practices hereinafter set forth.

PAR. 2. The respondents are now, and for more than one year last past, have been engaged in the advertising for sale, sale and distribution of a regimen for the treatment of asthma, hay fever, constipation, and various other diseases, disorders, and conditions, said treatment being variously designated as "Formula," "Treatment," "Home Self-Use Formula," "Technique," "Home Self-Help Treatment," "Asthma and Hay-Fever Technique" and "Mucus Membrane Formula," hereinafter referred to as "Regimen," consisting of the following items:

(a) A mimeographed brochure and supplement inserts containing, among other things, a detailed directional daily program and regimen entitled "Dr. A. M. Loughney's Dependable Guide to Self-Help."

(b) A medicinal preparation designated "Dr. Loughney's Special Compound of Disinfectant Oils" sometimes referred to as "Intra-Lung Medicant" and "Anti-Spsthma-Oyl," hereinafter referred to as "Anti-Spsthma-Oyl."

(c) a medicinal preparation designated "Dr. Loughney's Natural Bowel and Intestinal Cleanser" sometimes referred to as "Tonic Normalizer," "Good Botanical Remedy," "Mother Nature's Own and Best Tonic Normalizer," and "Bowelkleen," hereinafter referred to as "Bowelkleen."

Respondents are now, and for more than 1 year last past, have been also engaged in the advertising, sale, and distribution of their two medicinal preparations "Anti-Spsthma-Oyl" and "Bowelkleen," as individual and separate items.

PAR. 3. In the course and conduct of their business the said respondents, individually, and trading under the name of Dr. A. M. Loughney, caused their said "Regimen" and their said medicinal preparations "Anti-Spsthma-Oyl" and "Bowelkleen" when sold to be transported from their place of business in the State of California to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said "Regimen" and their said medicinal preparations, designated as aforesaid, in commerce, between and among the various States of the United States.

PAR. 4. In the course and conduct of their aforesaid business respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their aforesaid "Regimen" and their said medicinal preparations, 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 their aforesaid "Regimen" and their aforesaid medicinal preparations, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said medicinal preparations, in commerce, as commerce is defined by 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 circulars, form letters, testimonials, pamphlets, and other advertising media, as aforesaid, are the following:

I have proven in thousands of supposedly hopeless cases that I know how to eradicate all the fearsome wheezing, all labored breathing of wretched Asthma sufferers within 36 hours and what is more I have taught and am teaching such sufferers to do the same thing for themselves, through the mail.

A cost, so low that even the very poor can be freed of Asthma and Hay Fever symptoms.

* * * because I can teach you the principles that must be applied to lastingly eradicate all wheezing, all labored breathing, within 36 hours. You apply them in the privacy of your own home so that you may automatically get well.

ASTHMA AND HAY FEVER

Symptoms Lastingly Disappear as if by Magic. All I ask is that you give me 36 hours trial! Make me prove that my discovery works! You be the sole judge. If you are satisfied, treatments will cost you \$1.00.

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AILMENTS SUCCESSFULLY TREATED—

Asthma, Hay-Fever, Neuritis, Rheumatism, Impaired Circulation, Catarrh, Bronchitis, Sinusitis, Mucus Colitis, Stomach and Bowel Troubles, High Blood Pressure, Weight Control, Acute Diabetes and Nephritis.

Two months' supply of natural blood remedy given to each patient free of charge.

Asthma and Hay-Fever successfully treated by mail. Write to me for full information how you can be quickly and lastingly freed of all wheezing—all asthma and hay-fever symptoms without leaving home.

Every week a goodly number of sufferers are restored to lasting freedom from these afflictions.

Specializing in Asthma, Hay-Fever and allied Mucous Membrane ailments, namely, Sinusitis, Bronchitis, Mucus Colitis, Catarrh, Stomach and Bowel Troubles, Blood Pressure Normalizing and Weight Control.

Eradicate all of the fearsome wheezing, all labored breathing of wretched Asthma sufferers within 36 hours.

Dr. Loughney's special compound of disinfectant oils, known as "Anti-Spsthma-Oyl" is an intra-lung medicant of oily consistency, and is nonnarcotic, mildly though positively disinfectant.

"Anti-Spsthma-Oyl" * * * is dependable and quickly effective. It may be used conveniently by Asthma, Hay-Fever, Bronchitis, Sinusitis or Pneumonia sufferers, in the privacy of their own home.

This procedure forces the "Anti-Spsthma-Oyl" well up into the head cavities, and tends to cleanse and disinfect the head cavities.

How Dr. Loughney's "Anti-Spsthma-Oyl" assists in eliminating the symptoms of Asthma, Hay-Fever, Bronchitis, Sinusitis, Pharyngitis and Laryngitis.

"Anti-Spsthma-Oyl" is at once disinfecting, soothing and healing.

Dr. Loughney's "Anti-Spsthma-Oyl" is a gentle remedy, a home self-help remedy, protects the mucous membrane of your breathing passages against such disabling diseases as Asthma, Hay-Fever, Bronchitis and Sinusitis with Anti-Spsthma-Oyl. It is at once soothing and healing to the sensitive mucous membrane.

Feel the irritation fade away. It is noteworthy how quickly the patient can obtain relief from the symptoms of recurrent, painful, Sinusitis with "Anti-Spsthma-Oyl," and from the fearful symptoms of Asthma, and Hay-Fever, and from the annoying symptoms of Bronchitis, Pharyngitis, Laryngitis, Rhinitis, from Chestcolds and from the common Head-Cold.

Dr. Loughney's Anti-Spsthma-Oyl is offered as a practical, safe and dependable remedy.

First thing you do, take "Dr. Loughney's Natural Bowel and intestinal Cleanser," to counteract gastric acidity—and chase that sickish feeling quickly.

DR. LOUGHNEY'S "NATURAL BOWEL AND INTESTINAL CLEANSER" * * * IS not an extract from drugs. Instead it is a blend of aromatic herbs and vegetable compounds, blended, perfected and prepared by Dr. Loughney * * * It is surprisingly efficient, not only as a laxative, for it contains Herbs which have medicinal and tonic values that assist in chasing away that tired and worn out feeling, as well as the blues.

Dr. Loughney's "Natural Bowel and Intestinal Cleanser" eliminates the gas and acts as a neutralizer, consequently your food is more completely and properly digested. It acts to correct the cause of intestinal putrescence.

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Dr. Loughney's "Natural Bowel and Intestinal Cleanser" is compounded * * * for people who want the pure, wholesome, and most natural, and dependable eliminator.

Any and all of the following symptoms or manifestations of disease may indicate constipation and intestinal putrescence, sour breath, coated tongue, indigestion, nausea, gas and bloating, acne and unsightly skin eruptions, lack of energy, headache, dizziness, upset stomach, loss of appetite or perverted appetite, catarrh, sinusitis, mucus colitis and kindred ailments.

CLEAR UP CONSTIPATION * * * and intestinal putrescence.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and other similar statements and representations not specifically set out herein, which purport to be descriptive of the therapeutic value of respondent's aforesaid "Regimen" including the medicinal preparations "Anti-Spasm-Oyl" and "Bowelkleen," disseminated as aforesaid, the respondents represent directly and by implication, that said "Regimen" including said medicinal preparations, either separately or in combination one with the other, is a cure or remedy, and constitutes a safe and effective treatment for asthma, hay fever, neuritis, rheumatism, impaired circulation, catarrh, bronchitis, sinusitis, mucus-colitis, stomach and bowel troubles, high blood pressure, weight control, acute diabetes and nephritis, and that said "Regimen" will eradicate and cause asthma and hay fever symptoms lastingly to "disappear as if by magic in thirty-six hours."

PAR. 6. Through the use of the aforesaid statements and representations hereinabove set forth, and other similar statements and representations not specifically set out herein, which purport to be descriptive of the therapeutic properties of respondents' medicinal preparation "Anti-Spasm-Oyl," respondents further represent, directly and by implication, that said preparation is a cure and remedy, and constitutes a safe and effective treatment for asthma, hay-fever, bronchitis, sinusitis, pharyngitis, laryngitis, rhinitis, chest colds, head colds, and pneumonia, and that it will protect the mucous membrane against such diseases; that it will cleanse and disinfect the head cavities; that it is an intra-lung medicant possessing sedative, healing and disinfecting properties.

PAR. 7. Through the use of the aforesaid statements and representations hereinabove set forth, and other similar statements and representations not specifically set out herein, which purport to be descriptive of the therapeutic properties of respondents' aforesaid medicinal preparation "Bowelkleen," respondents further represent, directly or by implication, that said preparation is a cure and remedy, and constitutes a safe and effective treatment for constipation; that it will eliminate gas, and act as a neutralizer and counteract gastric acidity; that it is a natural bowel and intestinal cleanser and eliminator;

that it is a normalizer and natural blood remedy with tonic value; that it will correct the cause of intestinal putrescence and aid digestion.

PAR. 8. Respondents further represent by the means and in the manner aforesaid, that "sour breath, coated tongue, indigestion, nausea, gas and bloating, acne and unsightly skin eruptions, lack of energy, headaches, dizziness, upset stomach, loss of appetite or perverted appetite, catarrh, sinusitis, mucus-colitis and kindred ailments" are symptoms or manifestations of disease which may indicate constipation and intestinal putrescence, and that the existence of one or more of such symptoms indicates that constipation or intestinal putrescence is generally the basic cause of such symptoms, disorders or conditions, and that their medicinal preparation "Bowelkleen" will overcome or "clear up" constipation and intestinal putrescence.

PAR. 9. The foregoing representations and advertisements and others similar thereto but not specifically set out herein, are grossly exaggerated, false, and misleading.

Respondents' aforesaid "Regimen," including their medicinal preparation "Anti-Spsthma-Oyl," and their medicinal preparation "Bowelkleen," used separately, or in any combination of one with the other, is not a cure or remedy, and does not have sufficient therapeutic value to justify use for Asthma, Hay-Fever, Neuritis, Rheumatism, Impaired Circulation, Catarrh, Bronchitis, Sinusitis, Mucus-Colitis, Stomach and Bowel Troubles, High Blood Pressure, Weight Control, Acute Diabetes and Nephritis. They will not jointly, separately or in combination of any one with the other, eradicate and cause Asthma and Hay-Fever symptoms lastingly to disappear.

PAR. 10. The contents of respondents' "Dependable Guide to Self-Help and Supplemental Mimeographed Inserts" when used alone or in conjunction with either one or both of respondents' aforesaid medicinal preparations, is not a cure or remedy for, nor an effective treatment for any of the diseases, disorders or conditions set forth in paragraph 5 hereof.

PAR. 11. Respondents' preparation "Anti-Spsthma-Oyl" is nothing more than an emollient containing ineffectual amounts of certain volatile oils. Said medicinal preparation "Anti-Spsthma-Oyl" used alone, or in conjunction with respondents' "Dependable Guide to Self-Help and Supplemental Mimeographed Inserts" and the medicinal preparation "Bowelkleen" separately, or in conjunction of one or both with the other, is not a cure or remedy for, and has no generally recognized therapeutic value in the treatment of asthma, hay fever, bronchitis, sinusitis, pharyngitis, laryngitis, rhinitis, chest colds, head colds, and pneumonia. It will not protect the

mucous membrane against such diseases. It will not cleanse and disinfect the head cavities. It is not a safe and effective intralung medicant and it does not possess sedative, healing or disinfectant properties.

PAR. 12. Respondents' medicinal preparation "Bowelkleen" is nothing more than a laxative-cathartic. This preparation used alone or in conjunction with respondents' items "Dependable Guide to Self-Help and Supplemental Mimeographed Inserts," and the medicinal preparation "Anti-Spasm-Oyl," separately, or in conjunction of one or both with the other, is not a cure or remedy for and has no generally recognized therapeutic value in the treatment of constipation other than the temporary effect it might have as a laxative-cathartic. It is not a competent and effective treatment for constipation. It will not eliminate gas. It will not act as a neutralizer and will not counteract gastric acidity. It is not a natural bowel and intestinal cleanser or eliminator. It is not a normalizer. It is not a natural blood remedy. It does not have any tonic value. It will not correct the cause of intestinal putrescence and it will not aid digestion.

PAR. 13. The disorders and conditions such as "sour breath, coated tongue, indigestion, nausea, gas and bloating, acne and unsightly skin eruptions, lack of energy, headaches, dizziness, upset stomach, loss of appetite or perverted appetite, catarrh, sinusitis, mucus-colitis and kindred ailments" are not symptoms or manifestations of constipation and intestinal putrescence, and the existence of one or more of such symptoms are not generally, as the respondents represent, symptoms or manifestations of constipation or intestinal putrescence or the basic cause of such symptoms, disorders or conditions.

Catarrh, sinusitis, acne, unsightly skin eruptions, and kindred ailments, are diseases having no causal relationship to constipation and respondents' medicinal preparation "Bowelkleen" will have no generally recognized therapeutic effect in the treatment of any of these disorders and diseases.

The disease mucus-colitis may be caused by conditions other than constipation, but whatever the underlying factor causing this disease, a laxative is not a safe or sufficient treatment therefor. The use of respondents' medicinal preparation "Bowelkleen" would have no generally recognized beneficial value in the treatment of this disease, but may tend to aggravate it and prevent the successful treatment thereof.

The disorders such as nausea and upset stomach may and often do accompany an attack of appendicitis. When such disorders are

caused by such an attack, a laxative is not a safe treatment therefor and the use of respondents' medicinal preparation "Bowelkleen" under such circumstances may be dangerous.

When the disorders such as sour breath, nausea, coated tongue, indigestion, upset stomach, gas and bloating, headaches, dizziness, loss of appetite or perverted appetite, are due to causes other than constipation or intestinal putrescence, the use of respondents' medicinal preparation "Bowelkleen" in the treatment thereof, would have no therapeutic value. To the extent that constipation or intestinal putrescence is the contributing factor to, or the basic cause of, these disorders, respondents' medicinal preparation "Bowelkleen" would have no generally accepted therapeutic value in the treatment thereof in excess of that furnished by a laxative-cathartic.

PAR. 14. 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 their "Dependable Guide to Self-Help and Supplemental Mimeographed Inserts" under the conditions prescribed in said advertisements or under such conditions as are customary or usual, and the use of said medicinal preparation "Anti-Spsthma-Oyl" or "Bowelkleen" singly or in combination with the aforesaid "Dependable Guide to Self-Help and Supplemental Mimeographed Inserts," as directed, may result in serious injury to health.

The use of respondents' "Dependable Guide to Self-Help and Supplemental Mimeographed Inserts," alone or in combination with one or both of said medicinal preparations may, in case of undernourished persons or those suffering from "Acute Diabetes," result in injury to health.

The use of respondents' "Anti-Spsthma-Oyl" as prescribed by respondents may result in introducing and injecting small quantities of oil into the lower respiratory tract and its frequent use may cause oil pneumonia and injury to health.

Furthermore, the advertisements of respondents' medicinal preparation "Bowelkleen" as a treatment for "Nausea" and "Upset Stomach" is false in that said advertisements fail to reveal that such disorders may, and often do, accompany an attack of appendicitis, and that its use under such conditions may result in serious injury to health.

PAR. 15. The use by said respondents of the foregoing false, deceptive and misleading representations and advertisements, 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 that said "Dependable Guide to Self-Help" and said medicinal preparations are safe for use, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' "Regimen" and to purchase their said medicinal preparations "Anti-Spasm-Oyl" and "Bowel-kleen."

PAR. 16. The aforesaid acts and practices of the said respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 7, 1941, issued, and on July 14, 1941, served its complaint in this proceeding upon the respondents, Al Modey Loughney and Roger G. Loughney, charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of answer by respondent, Al Modey Loughney, 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, further hearing as to said facts, oral argument, and filing of brief, 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, Al Modey Loughney and Roger G. Loughney, are individuals, trading under the name of Dr. A. M. Loughney, with their principal place of business located at 318-319 Henshaw Building, Fourteenth Street and Broadway, Oakland, Calif.

These respondents acted in conjunction and in cooperation with each other with respect to the acts and practices hereinafter set forth.

PAR. 2. The respondents, are now, and for more than 1 year last past, have been engaged in the advertising, sale, and distribution in commerce between and among the various States of the United States of a regimen for the treatment of asthma, hay fever, constipation, and various other diseases, disorders, and conditions, said treatment being variously designated as "Formula," "Treatment," "Home Self-Use Formula," "Technique Home Self-Help Treatment," "Asthma and Hay-Fever Technique," and "Mucous Membrane Formula," consisting of the following items:

(a) A mimeographed brochure and supplemental inserts containing, among other things, a detailed directional daily program and regimen entitled "Dr. A. M. Loughney's Dependable Guide to Self-Help."

(b) A medicinal preparation designated "Dr. Loughney's Special Compound of Disinfectant Oils," sometimes referred to as "Intra-Lung Medicant" and "Anti-Spsthma-Oyl."

(c) A medicinal preparation designated "Dr. Loughney's Natural Bowel and Intestinal Cleanser," sometimes referred to as "Tonic Normalizer," "Good Botanical Remedy," "Mother Nature's Own and Best Tonic Normalizer," and "Bowelkleen."

hereinafter referred to as "Regimen," and of the two medicinal preparations designated "Anti-Spsthma-Oyl" and "Bowelkleen," as individual and separate items.

Respondents cause their said "Regimen" and their said medicinal preparations "Anti-Spsthma-Oyl" and "Bowelkleen" when sold, to be transported from their place of business in the State of California to purchasers thereof located in various other States of the United States.

Respondents maintain and at all times mentioned herein have maintained a course of trade in their said "Regimen" and in their said medicinal preparations, designated as aforesaid, in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their aforesaid "Regimen" and their said medicinal preparations, by the United States mail, and by various means in commerce, as commerce is defined in the Federal Trade Commission Act, and have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their aforesaid "Regimen" and their aforesaid medicinal preparations, by various means for the purpose of inducing and which are likely

to induce, directly or indirectly, the purchase of their said medicinal preparations in commerce, as commerce is defined in the Federal Trade Commission Act.

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 as hereinabove set forth by the United States mails, by advertisements in newspapers, by circulars, form letters, testimonials, pamphlets and other advertising mediums, as aforesaid, are the following:

I have proven in thousands of supposedly hopeless cases that I know how to eradicate all the fearsome wheezing, all labored breathing of wretched Asthma sufferers within 36 hours and what is more I have taught and am teaching such sufferers to do the same thing for themselves, through the mail.

A cost, so low that even the very poor can be freed of Asthma and Hay Fever symptoms.

* * * because I can teach you the principles that must be applied to lastingly eradicate all wheezing, all labored breathing, within 36 hours. You apply them in the privacy of your own home so that you may automatically get well.

ASTHMA AND HAY FEVER

Symptoms Lastingly Disappear as if by Magic. All I ask is that you give me 36 hours trial! Make me prove that my discovery works! You be the sole judge. If you are satisfied, treatments will cost you \$1.00.

AILMENTS SUCCESSFULLY TREATED—

Asthma, Hay-Fever, Neuritis, Rheumatism, Impaired Circulation, Catarrh, Bronchitis, Sinusitis, Mucus Colitis, Stomach and Bowel Troubles, High Blood Pressure, Weight Control, Acute Diabetes and Nephritis.

Two months' supply of natural blood remedy given to each patient free of charge.

Asthma and Hay-Fever successfully treated by mail. Write to me for full information how you can be quickly and lastingly freed of all wheezing—all asthma and hayfever symptoms without leaving home.

Every week a goodly number of sufferers are restored to lasting freedom from these afflictions.

Specializing in Asthma, Hay-Fever and allied Mucous Membrane ailments, namely, Sinusitis, Bronchitis, Mucus Colitis, Catarrh, Stomach and Bowel Troubles, Blood Pressure, Normalizing and Weight Control.

Eradicate all of the fearsome wheezing, all labored breathing of wretched Asthma sufferers within 36 hours.

Dr. Loughney's special compound of disinfectant oils, known as "Anti-Spsthma-Oyl" is an Intralung medicant of oily consistency, and is non-narcotic, mildly though positively disinfectant.

"Anti-Spsthma-Oyl" * * * is dependable and quickly effective. It may be used conveniently by Asthma, Hay-Fever, Bronchitis, Sinusitis or Pneumonia sufferers, in the privacy of their own home.

This procedure forces the "Anti-Spsthma-Oyl" well up into the head cavities, and tends to cleanse and disinfect the head cavities.

How Dr. Loughney's "Anti-Spasm-Oyl" assists in eliminating the symptoms of Asthma, Hay-Fever, Bronchitis, Sinusitis, Pharyngitis and Laryngitis.

"Anti-Spasm-Oyl" is at once disinfecting, soothing and healing.

Dr. Loughney's "Anti-Spasm-Oyl" is a gentle remedy, a home self-help remedy, protects the mucous membrane of your breathing passages against such disabling diseases as Asthma, Hay-Fever, Bronchitis and Sinusitis with Anti-Spasm-Oyl. It is at once soothing and healing to the sensitive mucous membrane.

Feel the irritation fade away. It is noteworthy how quickly the patient can obtain relief from the symptoms of recurrent, painful, Sinusitis with "Anti-Spasm-Oyl," and from the fearful symptoms of Asthma, and Hay-Fever, and from the annoying symptoms of Bronchitis, Pharyngitis, Laryngitis, Rhinitis, from Chestcolds and from the common Head-Cold.

Dr. Loughney's Anti-Spasm-Oyl is offered as a practical, safe and dependable remedy.

First thing you do, take "Dr. Loughney's Natural Bowel and Intestinal Cleanser," to counteract gastric acidity—and chase that sickish feeling quickly.

DR. LOUGHNEY'S "NATURAL BOWEL AND INTESTINAL CLEANSER" * * * Is not an extract from drugs. Instead it is a blend of aromatic herbs and vegetable compounds, blended, perfected and prepared by Dr. Loughney * * * It is surprisingly efficient, not only as a laxative, for it contains Herbs which have medicinal and tonic values that assist in chasing away that tired and worn out feeling, as well as the blues.

Dr. Loughney's "National Bowel and Intestinal Cleaner" eliminates the gas and acts as a neutralizer, consequently your food is more completely and properly digested. It acts to correct the cause of intestinal putrescence.

Dr. Loughney's "Natural Bowel and Intestinal Cleanser" is compounded * * * for people who want the pure, wholesome, and most natural, and dependable eliminator.

Any and all of the following symptoms or manifestations of disease may indicate constipation and intestinal putrescence, sour breath, coated tongue, indigestion, nausea, gas and bloating, acne and unsightly skin eruptions, lack of energy, headache, dizziness, upset stomach, loss of appetite or perverted appetite, catarrh, sinusitis, mucus colitis and kindred ailments.

CLEAR UP CONSTIPATION * * * and intestinal putrescence.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and other similar statements and representations not specifically set out herein, which purport to be descriptive of the therapeutic value of respondents' aforesaid "Regimen," the respondents represent directly and by implication, that said "Regimen" and the individual items thereof, either separately or in combination of one with the other, is a cure or remedy, and constitutes a safe and effective treatment for asthma, hay fever, neuritis, rheumatism, impaired circulation, catarrh, bronchitis, sinusitis, mucus colitis, stomach and bowel troubles, high blood pressure, weight control, acute diabetes, and nephritis, and will eradicate and cause asthma and hay fever symptoms lastingly to "disappear as if by Magic in 36 hours."

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PAR. 6. Through the use of the aforesaid statements and representations hereinabove set forth, and other similar statements and representations not specifically set out herein, which purport to be descriptive of the therapeutic properties of respondents' medicinal preparation, "Anti-Spasm-Oyl," respondents further represent, directly and by implication, that said preparation is a cure and remedy and constitutes a safe and effective treatment for asthma, hay fever, bronchitis, sinusitis, pharyngitis, laryngitis, rhinitis, chest colds, head colds, and pneumonia, and that it will protect the mucus membrane against such diseases; that it will cleanse and disinfect the head cavities; that it is an intralung medicant possessing sedative, healing, and disinfecting properties.

PAR. 7. Through the use of the aforesaid statements and representations hereinabove set forth, and other similar statements and representations not specifically set out herein, which purport to be descriptive of the therapeutic properties of respondent's aforesaid medicinal preparation "Bowelkleen," respondents further represent, directly or by implication, that said preparation is a cure and remedy, and constitutes a safe and effective treatment for constipation; that it will eliminate gas, and act as a neutralizer and counteract gastric acidity; that it is a natural bowel and intestinal cleanser and eliminator; that it is a normalizer and natural blood remedy with tonic value; that it will correct the cause of intestinal putrescence and aid digestion.

PAR. 8. Respondents further represent, by the means and in the manner aforesaid, that "sour breath, coated tongue, indigestion, nausea, gas and bloating, acne, and unsightly skin eruptions, lack of energy, headaches, dizziness, upset stomach, loss of appetite or perverted appetite, catarrh, sinusitis, mucus colitis, and kindred ailments" are symptoms or manifestations of disease which may indicate constipation and intestinal putrescence, and that the existence of one or more of such symptoms indicates that constipation or intestinal putrescence is generally the basic cause of such symptoms, disorders, or conditions, and that their medicinal preparation "Bowelkleen" will overcome or "clear up" constipation and intestinal putrescence.

PAR. 9. The foregoing representations and advertisements and others similar thereto, but not specifically set out herein, are grossly exaggerated, false, and misleading.

Respondents' aforesaid "Regimen" or the individual items thereof, used separately or in any combination one with the other, is not a cure or remedy, and does not have sufficient therapeutic value to justify use for asthma, hay fever, neuritis, rheumatism, impaired circulation, catarrh, bronchitis, sinusitis, mucus colitis, stomach and bowel troubles, high blood pressure, weight control, diabetes, and nephritis. The

items constituting the treatment will not separately, jointly or in combination of any one with the other, eradicate and cause asthma and hay fever symptoms to disappear.

PAR. 10. The contents of respondents' brochure "Dr. A. M. Loughney's Dependable Guide to Self-Help" and supplemental mimeographed inserts when used alone or in conjunction with either one or both of respondents' aforesaid medicinal preparations, is not a cure or remedy, nor an effective treatment for asthma, hay fever, neuritis, rheumatism, impaired circulation, catarrh, bronchitis, sinusitis, mucus colitis, stomach and bowel troubles, high blood pressure, weight control, diabetes, and nephritis, and will not eradicate and cause asthma and hay fever symptoms to disappear.

PAR. 11. Respondents' medicinal preparation "Anti-Spsthma-Oyl" is nothing more than an emollient containing ineffectual amounts of certain volatile oils. This medicinal preparation used alone or in conjunction with the contents of respondents' item "Dr. A. M. Loughney's Dependable Guide to Self-Help" and supplemental mimeographed inserts and the medicinal preparation "Bowelkleen," separately, or in conjunction of one or both with the other, is not a cure or remedy for, and has no generally recognized therapeutic value in the treatment of athma, hay fever, bronchitis, sinusitis, pharyngitis, laryngitis, rhinitis, chest cold, head cold, and pneumonia. It will not protect the mucous membrane against such diseases. It will not cleanse and disinfect the head cavities. It is not a safe and effective intralung medicant and it does not possess sedative, healing or disinfectant properties.

PAR. 12. Respondents' medicinal preparation "Bowelkleen" is nothing more than a laxative-cathartic. This medicinal preparation used alone or in conjunction with the contents of respondents' item "Dr. A. M. Loughney's Dependable Guide to Self-Help" and the supplemental mimeographed inserts, and the medicinal preparation "Anti-Spsthma-Oyl," separately or in conjunction of one or both with the other, is not a cure or remedy for, and has no generally recognized therapeutic value in the treatment of, constipation other than the temporary effect it might have as a laxative-cathartic. It is not a competent and effective treatment for constipation. It will not eliminate gas. It will not act as a neutralizer and will not counteract gastric acidity. It is not a natural bowel and intestinal cleanser or eliminator. It is not a normalizer. It is not a natural blood remedy. It does not have any tonic value. It will not correct the cause of intestinal putrescence and it will not aid digestion.

PAR. 13. The disorders and conditions such as "sour breath, coated tongue, indigestion, nausea, gas and bloating, acne and unsightly skin

eruptions, lack of energy, headaches, dizziness, upset stomach, loss of appetite or perverted appetite, catarrh, sinusitis, mucus colitis and kindred ailments" are not symptoms or manifestations of constipation or intestinal putrescence, and the existence of one or more of such disorders are not generally symptoms or manifestations that constipation or intestinal putrescence is the basic cause of such disorders or conditions.

Catarrh, sinusitis, acne and unsightly skin eruptions, and kindred ailments, are diseases having no casual relationship to constipation and respondents' medicinal preparation "Bowelkleen" will have no generally recognized therapeutic effect in the treatment of any of these disorders and diseases.

The disease "mucus-colitis" may be caused by conditions other than constipation, but whatever the underlying factor causing this disease, a laxative is not a safe or sufficient treatment therefor. The use of respondents' medicinal preparation "Bowelkleen" would have no generally recognized beneficial value in the treatment of this disease, but may tend to aggravate it and prevent the successful treatment thereof.

The disorders, such as nausea and upset stomach may, and often do, accompany an attack of appendicitis. When such disorders are caused by appendicitis, a laxative is not a safe treatment therefor, and the use of respondents' medicinal preparation "Bowelkleen" under such circumstances, may be dangerous.

When the disorders, such as sour breath, nausea, coated tongue, indigestion, upset stomach, gas and bloating, headaches, lack of energy, dizziness, loss of appetite or perverted appetite, are due to causes other than constipation or intestinal putrescence, respondents' medicinal preparation "Bowelkleen" would have no therapeutic value in the treatment thereof. To the extent that constipation or intestinal putrescence is the contributing factor to, or the basic cause of, these disorders, respondents' medicinal preparation "Bowelkleen" would have no generally accepted therapeutic value in the treatment thereof in excess of that furnished by a laxative-cathartic.

PAR. 14. 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 therein contained and fail to reveal that the use of their "Dr. A. M. Loughney's Dependable Guide to Self-Help" and supplemental mimeographed inserts under the conditions prescribed in said advertisements or under such conditions as are customary or usual, or the use of said medicinal preparations "Anti-Spasm-Oyl" or "Bowelkleen" singly or in combination with the aforesaid "Dr. A. M. Loughney's

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Dependable Guide to Self-Help" and supplemental mimeographed inserts may result in serious injury to health.

The use of respondents' "Dr. A. M. Loughney's Dependable Guide to Self-Help" and supplemental mimeographed inserts, alone or in combination with either or both of said medicinal preparations, may, in case of undernourished persons or those suffering from diabetes, result in injury to health.

The use of respondents' "Anti-Spasm-Oyl" as prescribed may result in introducing or injecting small quantities of oil into the lower respiratory tract, and its frequent use may cause oil pneumonia and injury to health.

Respondents' advertisements of the medicinal preparation "Bowelkleen" as a treatment for nausea and upset stomach are false in that said advertisements fail to reveal that such disorders may, and often do, accompany an attack of appendicitis and that the use of said medicinal preparation "Bowelkleen" under such conditions may result in serious injury to health.

PAR. 15. The use by said respondents of the foregoing false, deceptive and misleading representations and advertisements 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 that the contents of "Dr. A. M. Loughney's Dependable Guide to Self-Help" and supplemental mimeographed inserts and said medicinal preparations are safe for use and will accomplish the results claimed for them as found in paragraphs 5, 6, 7, and 8 hereof, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' "Regimen" and to purchase their said medicinal preparations "Anti-Spasm-Oyl" and "Bowelkleen."

CONCLUSION

The aforesaid acts and practices of the said respondents as herein 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.

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 alle-

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

It is ordered, That respondents, Al Modey Loughney and Roger G. Loughney, their agents, representatives and employees, individually or when trading under any trade name or through any corporate or other device, in connection with the offering for sale, sale or distribution of a treatment for asthma, hay fever, constipation or various other diseases, disorders or conditions, consisting of the medicinal preparations "Anti-Spsthma-Oyl" and "Bowelkleen," or any other preparations, possessing substantially similar properties or substantially similar ingredients, to be used separately or in conjunction with the program set forth in the brochure and supplemental inserts entitled "Dr. A. M. Loughney's Dependable Guide to Self-Help," or in any other literature containing a substantially similar program, 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 mail 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 respondents' treatment, or the medicinal preparations "Anti-Spsthma-Oyl" or "Bowelkleen" used separately, jointly or in any combination with the program set out in "Dr. A. M. Loughney's Dependable Guide to Self-Help:"

(a) is a cure or remedy for, or has any therapeutic value in the treatment of, or constitutes a safe or effective treatment for, asthma, hay fever, neuritis, rheumatism, impaired circulation, catarrh, bronchitis, sinusitis, mucus-colitis, stomach trouble, bowel trouble, high blood pressure, weight control, diabetes, or nephritis.

(b) has any therapeutic value in the treatment of the symptoms of asthma or hay fever, or will cause such symptoms to disappear.

(B) That respondents' medicinal preparation "Anti-Spsthma-Oyl" used alone or in any combination with the medicinal preparation "Bowelkleen" and the program set out in the brochure "Dr. A. M. Loughney's Dependable Guide to Self-Help:"

(a) is a cure or remedy for, or has any therapeutic value in the treatment of, or constitutes a safe or effective treatment for, pharyngitis, laryngitis, rhinitis, chest cold, head cold or pneumonia.

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(b) will protect mucous membrane against asthma, hay fever, bronchitis, sinusitis, pharyngitis, laryngitis, rhinitis, chest cold, head cold or pneumonia.

(c) will cleanse or disinfect the head cavities; or,

(d) is a safe or effective intralung medicant, possessing sedative, healing or disinfectant properties.

(C) That respondents' medicinal preparation "Bowelkleen" used alone or in any combination with the medicinal preparation "Anti-Spasm-Oyl" and the program set out in the brochure "Dr. A. M. Loughney's Dependable Guide to Self-Help:"

(a) is a cure or remedy for or has any therapeutic value in the treatment of constipation or intestinal putrescence other than the temporary evacuation of the bowels.

(b) will eliminate gas, counteract gastric acidity, act as a normalizer, aid indigestion or correct the cause of intestinal putrescence.

(c) is a normalizer, a natural bowel or intestinal cleanser or eliminator, a natural bowel remedy or has any tonic value whatever.

(d) will have any therapeutic value whatever in the treatment of catarrh, sinusitis, acne and unsightly skin eruptions, mucus colitis or kindred ailments or that such conditions or ailments are symptoms or manifestations of constipation or intestinal putrescence.

(e) is a safe treatment for nausea or upset stomach.

(f) has any therapeutic value in the treatment of sour breath, coated tongue, indigestion, gas and bloating, headaches, lack of energy, dizziness, loss of appetite or perverted appetite except in those cases where constipation or intestinal putrescence is the basic cause of, or a contributing factor to, the disorder causing such symptoms in which event the therapeutic value must be limited to that furnished by a laxative-cathartic.

(D) That the existence of such symptoms as sour breath, coated tongue, indigestion, gas and bloating, nausea, lack of energy, headaches, dizziness, upset stomach, loss of appetite or perverted appetite are generally symptomatic of and indicate that constipation or intestinal putrescence is the basic cause of such symptoms.

2. Disseminating or causing to be disseminated, by means of the United States mail or by any means in commerce, as commerce is defined in the Federal Trade Commission Act, any advertisement:

(A) of the preparation "Anti-Spasm-Oyl," which advertisement fails to reveal that the frequent use of such preparation may cause oil pneumonia, provided, however, that if the directions for use, wherever they appear on the label, in the labeling, or both on the

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label and in the labeling, contain a warning of the potential dangers in the use of said preparation as herein set forth, such advertisement need contain only the cautionary statement: "CAUTION, USE ONLY AS DIRECTED."

(B) of the preparation "Bowelkleen" which advertisement fails to reveal that such preparation should not be used by persons suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis, provided, however, that if the directions for use, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain a warning of the potential dangers involved in the use of said preparation as herein set forth, such advertisement need contain only the cautionary statement: "CAUTION, USE ONLY AS DIRECTED."

(C) of the Brochure "Dr. A. M. Loughney's Dependable Guide to Self-Help" and the supplemental inserts for use in the treatment of any disease or as a system to be followed in restoring or regaining health, which advertisement fails to reveal that the program should not be used or followed by persons suffering from undernourishment or from diabetes.

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 respondents' "treatment" or the individual items or medicinal preparations of which said "treatment" is composed, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or fails to contain the affirmative warnings or cautionary statements required in paragraph 2 hereof.

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.

Complaint

IN THE MATTER OF

MERRITT FREEMAN BUTLER, TRADING AS FREEMAN'S
PRODUCTS

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

Docket 4615. Complaint, Oct. 10, 1941—Decision, Apr. 20, 1942

Where an individual, engaged in interstate sale and distribution of his "Freeman's Pyletts"; through advertisements by the mails, and in newspapers and periodicals, and circulars and other advertising literature, including testimonial advertisements, and through use of said trade name, directly and by inference—

- (a) Falsely represented that his said "Pyletts" constituted an effective treatment and cure for all forms of piles, hemorrhoids, and swelling capillaries in the lower bowels, relieving blind, bleeding, itching, internal or protruding piles; that use thereof eased pain quickly and produced amazing results; that it was equally effective for mild or long-standing cases of piles; and that use thereof promoted general good health;

The facts being preparation in question was of no therapeutic value in excess of its laxative properties; and

- (b) Failed to reveal facts material in the light of such representations, or with respect to consequences which might result from use of said product under usual or prescribed conditions, in that preparation was a laxative and dangerous when taken by one suffering from symptoms of appendicitis; frequent or continued use thereof might result in dependence on laxatives; and product contained the drug phosphorus, continued use of which might result in phosphorus poisoning and deterioration of the bones;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said representations were true, thereby inducing it, because of such mistaken belief, to purchase 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 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 Merritt Freeman Butler, an individual trading as Freeman's Products, 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, Merritt Freeman Butler, is an individual, trading as Freeman's Products, having his principal place of business located in Grand Rapids, Mich., his address being Post Office Box 274.

PAR. 2. 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 "Freeman's Pyletts" and advertised as a treatment for piles.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning his said product by United States mails and by various other means in commerce as commerce is defined in the Federal Trade Commission Act, and respondent 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 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 and other advertising literature, are the following:

* * * Freeman's Pyletts are taken internally—going right to the seat of the trouble to relieve blind, bleeding, itching, internal or protruding piles. Pain eases quickly and the beneficial results will amaze you.

What Freeman's Pyletts have done for others is best proof of what they will do for you.

End piles without surgery.

For lasting and quick results, try "Pyletts".

Bleeding, pains, and swelling go quickly.

Equally effective for mild or long standing cases.

Recommended for all forms of piles, hemorrhoids, and swelling capillaries in the lower part of the bowel.

Freeman's Pyletts aid nature to remove the cause and thus banish piles.

They heal and promote general good health.

I have been a sufferer with piles many years. Tried many treatments, I also resorted to four operations in the past years without any success. A friend advised me to use Freeman's Pyletts; after taking a four weeks course my trouble is completely ended.

PAR 4. By the use of the trade name "Pyletts" and the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, including advertisements in the form of testimonials, all of which purport to be descriptive of the thera-

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peutic properties of respondent's preparation, respondent represents directly and through inference that his preparation designated as "Freeman's Pyletts" or "Pyletts" is an effective treatment and cure for all forms of piles, hemorrhoids, and swelling capillaries in the lower part of the bowels; that it relieves blind, bleeding, itching, internal or protruding piles; that its use eases pain quickly and produces amazing results; that it is equally effective for mild or long-standing cases of piles; and that its use promotes general good health.

PAR. 5. The aforesaid representations and advertisements used and disseminated by the respondent, as hereinabove described, are grossly exaggerated, false and misleading.

In truth and in fact, respondent's preparation is not an effective treatment or cure for all forms or for any form of piles, hemorrhoids, and swelling capillaries in the lower part of the bowels; it is not an effective treatment for relieving blind, bleeding, itching, internal or protruding piles. The use of said preparation will not ease pain quickly or effectively or produce amazing results or any beneficial results in the treatment of the above-named ailments or conditions of the body. Said preparation is not an effective treatment for mild cases of piles or for long-standing cases of piles, and its use will not promote general good health. In fact, said preparation is of no substantial therapeutic value in the treatment of the above-named ailments and conditions, nor is it of any value in excess of its laxative properties.

PAR. 6. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they failed to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondent's said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, cholera, nausea, vomiting or other symptoms of appendicitis. Its frequent or continued use may result in dependence on laxatives.

Furthermore, respondent's said preparation contains phosphorus, which is a potentially dangerous drug and the repeated or continued use of said preparation may result in phosphorus poisoning and deterioration of the bones of the body.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to the

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therapeutic properties of said preparation has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and induce a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondent's preparation designated as Freeman's Pyletts.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 10, 1941, issued, and on October 16, 1941, served its complaint in this proceeding upon respondent, Merritt Freeman Butler, an individual, trading as Freeman's Products, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute thereof an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Merritt Freeman Butler, is an individual, trading as Freeman's Products, his principal place of business being formerly located at Grand Rapids, Mich., and now located at Howard City, Mich., address Post Office Box 89.

PAR. 2. Respondent, is now, and for more than 2 years last past has been engaged in the business of selling and distributing a medicinal preparation designated as "Freeman's Pyletts" and advertised as a treatment for piles.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning his said product by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act, and respondent 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 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 and other advertising literature, are the following:

* * * Freeman's Pyletts are taken internally—going right to the seat of the trouble to relieve blind, bleeding, itching, internal or protruding piles. Pain eases quickly and the beneficial results will amaze you.

What Freeman's Pyletts have done for others is best proof of what they will do for you.

End piles without surgery.

For lasting and quick results, try "Pyletts".

Bleeding, pains, and swelling go quickly.

Equally effective for mild or long standing cases.

Recommended for all forms of piles, hemorrhoids, and swelling capillaries in the lower part of the bowel.

Freeman's Pyletts aid nature to remove the cause and thus banish piles.

They heal and promote general good health.

I have been a sufferer with piles many years. Tried many treatments, I also resorted to four operations in the past years without any success. A friend advised me to use Freeman's Pyletts; after taking a four weeks course my trouble is completely ended.

PAR. 4. By the use of the trade name "Pyletts" and the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, including advertisements in the form of testimonials, all of which purport to be descriptive of the therapeutic properties of respondent's preparations, respondent represents directly and through inference that his preparation designated as "Freeman's Pyletts" or "Pyletts" is an effective treatment and cure for all forms of piles, hemorrhoids, and swelling capillaries in the lower part of the bowels; that it relieves blind, bleeding, itching, internal or protruding piles; that its use eases pain quickly and produces amazing results;

that it is equally effective for mild or long-standing cases of piles; and that its use promotes general good health.

PAR. 5. The aforesaid representations and advertisements used and disseminated by the respondent, as hereinabove described, are grossly exaggerated, false, and misleading.

In truth and in fact, respondent's preparation is not an effective treatment or cure for all forms or for any forms of piles, hemorrhoids, and swelling capillaries in the lower part of the bowels; it is not an effective treatment for relieving blind, bleeding, itching, internal or protruding piles. The use of said preparation will not ease pain quickly or effectively or produce amazing results or any beneficial results in the treatment of the above-named ailments or conditions of the body. Said preparation is not an effective treatment for mild cases of piles or for long-standing cases of piles, and its use will not promote general good health. In fact, said preparation is of no substantial therapeutic value in the treatment of the above-named ailments and conditions, nor is it of any value in excess of its laxative properties.

PAR. 6. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they failed to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondent's said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms, of appendicitis. Its frequent or continued use may result in dependence on laxatives.

Furthermore, respondent's said preparation contains phosphorus, which is a potentially dangerous drug and the repeated or continued use of said preparation may result in phosphorus poisoning and deterioration of the bones of the body.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to the therapeutic properties of said preparation has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and induce a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondent's preparation designated as Freeman's Pylets.

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CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and 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, Merritt Freeman Butler, an individual, trading as Freeman's Products, or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his medicinal preparation designated "Freeman's Pyletts" 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 by implication, that respondent's said preparation is a cure or remedy for, or constitutes a competent or effective treatment for piles, hemorrhoids or swelling capillaries in the lower part of the bowels, or that said preparation has any substantial therapeutic value in the treatment of said conditions; that said preparation will ease pain quickly or effectively, promote general good health, or that said preparation has any therapeutic value in the promotion of good health in excess of its laxative properties; or which advertisement fails to reveal that said preparation should not be used by persons suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, and further that the repeated and continued use may result in phosphorus poisoning and resulting deterioration of the bones of the body, provided, however, that if the directions for use, wherever they appear on the label, in the labeling or both on the label and in the labeling, contain

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a warning of the potential dangers in the use of said preparation as hereinabove set forth, such advertisement need contain only the cautionary statement: "CAUTION, USE ONLY AS DIRECTED."

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fails to comply with the affirmative requirements set forth in said paragraph 1.

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

Syllabus

IN THE MATTER OF
 NU-TONE LABORATORIES, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
 OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4645. Complaint, Nov. 25, 1941—Decision, Apr. 20, 1942

Where a corporation, engaged in the manufacture and competitive interstate distribution and sale of two devices to be attached to radio receiving sets which it described as "aerial eliminators" and "line noise eliminators"; through labels attached thereto and through counter cards which were conspicuously exhibited by retailers in connection with display of said devices, directly and by implication—

(a) Represented that said "aerial eliminator" constituted an indoor aerial for radio reception, use of which rendered perfect or improved the tone and selectivity of the radio to which attached, reducing noises due to static and other causes, enabling it to receive broadcasts from more distant stations than would otherwise be the case, and making it possible to dispense with any aerial without impairment of performance.

The facts being devices in question would not perform the functions of an aerial, reduce noises in question except at the expense of the incoming program, or accomplish results claimed above, but would, in a large majority of cases, result in less efficient reception and performance; and use thereof would not result in a radio performing without any aerial, but merely in the substitution of another instrumentality performing function of an aerial; and

(b) Represented that its "line noise eliminator," when attached to the power line of a radio receiving set, would reduce line noises or those due to static or electrical interference, and improve the tonal quality of the instrument;

The facts being that noises in question enter a set through the aerial and not the power line, so that such device used as directed would not be expected to accomplish results claimed therefor, though if used on some other electrical appliance causing interference, it would tend to reduce such static;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of causing it to purchase said devices, thereby unfairly diverting trade to respondent 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. James A. Purcell*, trial examiner.

Mr. Randolph W. Branch for the Commission.

Branower & Kornfeld, of Chicago, Ill., for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Nu-Tone Laboratories, 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, Nu-Tone Laboratories, Inc., is a corporation organized and existing under the laws of the State of Illinois, and having an office and principal place of business at 115 South Market Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for more than 5 years last past, engaged in the business of manufacturing, distributing, and selling, among other things, two devices designed to be attached to radio receiving sets and described by respondent as "aerial eliminators" and "line noise eliminators." In the course and conduct of its business, respondent sells the two said devices to various retail dealers, and causes said devices, when sold, to be transported from its aforesaid place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said devices 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 at all times mentioned herein has been, in substantial competition with other corporations and with firms, partnerships and individuals engaged in the sale and distribution of aerials and devices intended and sold for use in the reduction of "line noises" 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 character, effectiveness, or utility of their devices or the method of their use which is necessary to accomplish their purpose.

PAR. 4. In the course of its business and for the purpose of inducing the purchase of said devices, respondent has made and caused to be made various representations and claims concerning the character, effectiveness and utility thereof. By means of labels attached to the said devices and counter cards furnished to dealers which re-

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spondent intended to be, and were, conspicuously exhibited by retail dealers in connection with displays of said devices for sale.

PAR. 5. Respondent's said aerial eliminator was at different times constructed in two different ways. As first constructed it consisted of a hollow cylinder, with closed ends. From one end protruded short red and green wires, and from the other a short brown wire. The red and brown wires were joined together inside the cylinder to form a single continuous wire running through the cylinder, but with different colored ends. The end of the green wire inside the cylinder was wrapped three or four times around the other wire.

As later constructed the ends of the red and brown wires inside the cylinder were connected by a small grid condenser, consisting of a piece of mica fiber wrapped in lead foil and paper. The end of the green wire inside the cylinder was simply connected to a bit of wood.

Respondent's directions for the use of this device, regardless of the method of construction, were to connect the brown wire to a good ground, such as a water pipe or radiator, and the green and red wires respectively to the ground and aerial posts on the set.

PAR. 6. Among and typical of said representations and claims so made as to the aerial eliminator are the following:

Aerial Eliminator; Greater Distance;
Perfect Selectivity; Less Static;
Perfect Tone; Eliminates All Outside Wires;
Reduces Static and Noise; Indoor Radio Aerial.

Respondent also designated some of said devices by the names "Nu-Tone" and "Perfectone" which appear upon said labels.

PAR. 7. Through the use of the foregoing statements and designations respondent has represented, directly and through implication, that said device in itself constitutes an indoor aerial for radio reception; that by its use the tone and selectivity of the radio to which it is attached will be rendered perfect, or improved; that noises, due to static and other causes, will be reduced; that the radio will be enabled to receive broadcasts from stations more distant than would otherwise be the case, and that the use of an outside aerial, or any aerial, may be dispensed with without impairment of the performance of the radio.

PAR. 8. The foregoing claims and representations so made and disseminated by respondent in the course of its aforesaid business are exaggerated, misleading, and untrue as to the device, regardless of which method of construction is employed. In truth and in fact respondent's said device is not, in and of itself, an instrumentality

which will perform the function of a radio aerial. Its use will not render perfect nor improve the tonal quality or selectivity of radios to which it is attached. It will not reduce noises due to static or other causes, emanated from radios to which it is attached, except at the expense of the incoming program, nor will it render such radios capable of receiving broadcasts from stations more distant than would otherwise be the case. The use of the device in accordance with respondent's directions instead of an outside aerial, will, in the large majority of cases, result in less efficient reception and performance. The device, when used as directed, does not result in the radio set performing without any aerial, but merely in the substitution of another instrumentality for an outside aerial, or aerial of some other type, which performs to a greater or less degree, the function of such aerial.

PAR. 9. The said line noise eliminator consists of a closed cardboard cylinder containing a small condenser, consisting of a coil of lead foil and paper. At one end is a common knife connection, and at the other a receptacle for such a connection. The condenser is placed between and in contact with the two strips of metal which form the blades of the knife connection and which extend through the cylinder to enable contact to be made at the other end when another wire is plugged into the receptacle.

Respondent's directions for the use of this device both on radio sets and electric appliances were to plug the power wire of the set or appliance into the device and plug the device into the wall outlet.

PAR. 10. Among and typical of said representations and claims so made as to the "line noise eliminator" are the following:

Line Noise Eliminator
Reduces Static and Noise Due to Electrical Interference
For All Radio Sets

Respondent also designated some of said devices by the names "Clear-Tone," "Nu-Tone," and "Marvel."

PAR. 11. Through the use of the foregoing statements and designations respondent has represented, directly and through implication that said device will, when attached to a radio, eliminate noises entering the radio through the power line, improve the tone of the instrument, and reduce noises due to static and electrical interference.

PAR. 12. The foregoing claims and representations so made and disseminated by respondent in the course of its aforesaid business are exaggerated, misleading, and untrue. In truth and in fact, respondent's said device will not, when attached to a radio, eliminate noises entering through the power line. It will not improve the tone of the instrument, nor reduce noises due to static or electrical interference.

PAR. 13. The use by respondent of the designations and representations as set forth herein in connection with the offering for sale and sale of its said devices, has had, and now has, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the false and erroneous belief that such representations and designations were true and correct, and to induce them to purchase said devices on account thereof. Respondent, further, has likewise supplied to and placed in the hands of dealers and distributors, a means or instrumentality whereby they may mislead and deceive the purchasing public with respect to the quality, character, and performances of respondent's said devices.

As a result of respondent's 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 radio aeriels and devices for the reduction of line noises, 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 the various States of the United States and in the District of Columbia.

PAR. 14. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of respondent's competitors, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 25, 1941, issued its complaint in this proceeding and caused same to be served upon respondent, Nu-Tone Laboratories, 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 answer thereto by respondent, a hearing was held on February 26, 1942, at Chicago, Ill., before James A. Purcell, an examiner of the Commission theretofore duly designated by it. At the said hearing, the attorney for the Commission and counsel for the respondent stipulated and agreed that a certain statement of facts read into the transcript of hearing should constitute the record in the matter and 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 facts as stipulated to make

its report, stating its findings as to the facts (including inferences which it may draw from the said stipulated facts), and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Counsel for the respondent expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer and stipulation, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Nu-Tone Laboratories, Inc., is a corporation organized and existing under the laws of the State of Illinois, and having an office and principal place of business at 115 South Market Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for more than 5 years last past, engaged in the business of manufacturing, distributing, and selling, among other things, two devices designed to be attached to radio receiving sets and described by respondent as "aerial eliminators" and "line noise eliminators." In the course and conduct of its business, respondent sells the two said devices to various retail dealers, and causes said devices, when sold, to be transported from its aforesaid place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said devices 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 at all times mentioned herein has been in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution of aerials and devices intended and sold for use in the reduction of line noises 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 character, effectiveness or utility of their devices or the method of their use which is necessary to accomplish their purpose.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of said devices, respondent has made

and caused to be made various representations and claims concerning the character, effectiveness, and utility thereof by means of labels attached to the said devices and counter cards furnished to dealers which respondent intended to be, and were, conspicuously exhibited by retail dealers in connection with displays of said devices for sale.

PAR. 5. Respondent's said aerial eliminator was at different times constructed in two different ways. As first constructed it consisted of a hollow cylinder, with closed ends. From one end protruded short red and green wires, and from the other a short brown wire. The red and brown wires were joined together inside the cylinder to form a single continuous wire running through the cylinder, but with different colored ends. The end of the green wire inside the cylinder was wrapped three or four times around the other wire.

As later constructed the ends of the red and brown wires inside the cylinder were connected by a small grid condenser, consisting of a piece of mica fiber wrapped in lead foil and paper. The end of the green wire inside the cylinder was simply connected to a bit of wood.

Respondent's directions for the use of this device, regardless of the method of construction, were to connect the brown wire to a good ground, such as a water pipe or radiator, and the green and red wires respectively to the ground and aerial posts on the set.

PAR. 6. Among and typical of said representations and claims so made as to the aerial eliminator are the following:

Aerial Eliminator; Greater Distance.

Perfect Selectivity; Less Static.

Perfect Tone; Eliminates all Outside Wires; Reduces Static and Noise.

Indoor Radio Aerial.

Respondent also designated some of said devices by the names "Nu-Tone" and "Perfectone" which appear upon said labels.

PAR. 7. Through the use of the foregoing statements and designations respondent has represented, directly and through implication, that said device in itself constitutes an indoor aerial for radio reception; that by its use the tone and selectivity of the radio to which it is attached will be rendered perfect or improved; that noises, due to static and other causes, will be reduced; that the radio will be enabled to receive broadcasts from stations more distant than would otherwise be the case, and that the use of an outside aerial, or any aerial, may be dispensed with without impairment of the performance of the radio.

PAR. 8. Respondent's said device, however constructed, is not, in and of itself, an instrumentality which will perform the function of a radio aerial. Its use will not render perfect nor improve the tonal quality or selectivity of radios to which it is attached. It will not reduce

noises due to static or other causes, emanated from radios to which it is attached, except at the expense of the incoming program, nor will it render such radios capable of receiving broadcasts from stations more distant than would otherwise be the case.

The use of the device in accordance with respondent's directions instead of an outside aerial, will, in the large majority of cases, result in less efficient reception and performance. The device, when used as directed, does not result in the radio set performing without any aerial, but merely in the substitution of another instrumentality for an outside aerial, or aerial of some other type, which performs to a greater or less degree, the function of such aerial.

PAR. 9. The said line noise eliminator consists of a closed cardboard cylinder containing a small condenser, consisting of a coil of lead foil and paper. At one end is a common knife connection, and at the other a receptacle for such a connection. The condenser is placed between and in contact with the two strips of metal which form the blades of the knife connection and which extend through the cylinder to enable contact to be made at the other end when another wire is plugged into the receptacle.

Respondent's directions for the use of this device both on radio sets and electrical appliances were to plug the power wire of the set or appliance into the device and plug the device into the wall outlet.

PAR. 10. Among and typical of said representations and claims so made as to the "Line Noise Eliminator," are the following:

Line Noise Eliminator.

Reduces Static and Noise Due to Electrical Interference.

For All Radio Sets.

Respondent also designated some of said devices by the names "Clear-Tone," "Nu-Tone," and "Marvel."

Noises caused by static and the operation of other electrical appliances enter into a radio receiving set through the aerial, and not through the power line. In consequence, when the device is connected to the power line of a radio set, in accordance with respondent's directions, it will not be effective to eliminate line noises, will not improve the tone of the instrument or reduce noises due to static or electrical interference. When noises emitted from a radio set are caused by electrical interference due to the operation of some other electrical appliance, the use of the device on such other electrical appliance will tend to reduce the interference and static caused by its operation.

PAR. 11. The aforesaid representations have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said representations

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and implications are true and to cause a substantial number of members of the public to purchase respondent's devices, thereby diverting trade to respondent from its competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and a stipulation as to the facts entered into between the respondent herein and counsel for the Commission and read into the transcript of this proceeding at a hearing held on February 26, 1942, at Chicago, Ill., before James A. Purcell, an examiner of the Commission theretofore duly designated by it, which stipulation provides, among other things, that the Commission may proceed upon the facts as stipulated, without further evidence or other intervening procedure, to issue and serve upon the respondent herein 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 conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That respondent, Nu-Tone Laboratories, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its devices designated "aerial eliminators" and "line noise eliminators" or any other devices of substantially similar construction or possessing substantially similar properties, whether sold under the same names or any other names, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that said device designated "aerial eliminator" will improve the tonal quality or selectivity of radio receiving sets to which it is attached, render such sets capable of receiving broadcasts from stations more distant than would otherwise be the case, perform the function of a radio aerial, or reduce noises due to static or other causes except at the expense of the incoming program.

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2. Representing that said device designated "line noise eliminator" when attached to the power line of a radio receiving set will reduce line noises, or noises due to static or electrical interference, or improve the tonal quality of the instrument.

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

Complaint

IN THE MATTER OF

MERVIN WINEHOLT, TRADING AS WINEHOLT COMPANY
AND MERVIN WINEHOLT COMPANY

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

Docket 4691. Complaint, Jan. 30, 1942—Decision, Apr. 29, 1942

Where an individual, engaged in the interstate sale and distribution of watches and pistols, among other things; by advertisements in newspapers, magazines and trade journals, and by folders, pamphlets, circulars, and other advertising matter, directly or by implication—

- (a) Represented that the watch he sold at \$1.98 was unconditionally guaranteed to have a useful life and to render satisfactory service under normal usage for 5 years, its movement finely tested, and that the case contained gold; and
- (b) Represented through use of words "Locomotive" and "R. R. Dial" that it was a "Railroad watch" or comparable thereto, and enhanced such implication by pictorial representations showing large hands and large, distinct hour numerals, and, through use of words "Railroad engraved back," that its back was engraved;

The facts being said watch did not have a useful life, but repairs of parts would be necessary long before expiration of 5 years; back thereof was not engraved, but design was stamped thereon mechanically; movement was not finely tested; case contained no gold whatever; and product did not possess the desirable characteristics and dependability of a "Railroad" watch as long understood by purchasing public as an especially accurate and dependable watch required for use by railroad employees, but was only a cheap imitation thereof; and

- (c) Falsely represented that the pistols he sold at \$6.45 were regularly sold at retail at \$12, and that his price of \$6.45 was a special price available for a limited time only;

With effect of misleading and deceiving a substantial portion of the public into the belief that such statements were true, thereby causing it, because of such mistaken belief, to purchase substantial quantities 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.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Mervin Wineholt, an individual, trading as Wineholt Co., and Mervin Wineholt Co., hereinafter referred to as respondent, has violated the provisions of

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said act, and it appearing to the Commission that a proceeding by 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, Mervin Wineholt, is an individual, trading and doing business as Wineholt Co. and Mervin Wineholt Co., with his office and principal place of business located in Woodbine, State of Pennsylvania.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of various kinds of merchandise, including watches and pistols in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes his said products, when sold by him, to be transported from his aforesaid place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of the aforesaid watches and pistols, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false and misleading representations relative to his said products, such statements and representations being made by advertisements inserted in newspapers, magazines, and trade journals, and by means of folders, pamphlets, circulars, letters, and other advertising matter, circulated and distributed generally among prospective purchasers. Among and typical of such false and misleading representations relative to respondent's watches and pistols, respectively, are the following:

Watches:

\$1.98.

5 years guarantee.

* * * railroad engraved back * * *.

Finely tested quick train lever movement.

* * * Solid gold effect case * * *.

Locomotive Gilt—R. R. Dial * * *.

Pistols:

Final sale RUSH!

Only \$6.45.

* * * Cost \$12 elsewhere.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import, not specifically set out herein, the respondent has represented and now represents, directly or by im-

plication, that the watch sold by him at the price of \$1.98 is unconditionally guaranteed to have a useful life and to render satisfactory services under normal usage for a period of 5 years; that the back thereof is engraved; that the movement is finely tested and that the case contains gold.

Through the use of the words "Locomotive" and "R. R. Dial" in connection with and as descriptive of said watch respondent implies that said watch is a "Railroad Watch" or comparable to such grade of watch. "Railroad" watches are known and understood by the purchasing public to be watches possessing the accuracy and dependability required for use by railroad employees and are considered to be especially valuable and desirable. Respondent enhances the implication that said watches are "Railroad Watches" by pictorial representations showing large hands and large distinct hour numerals, which features are generally found in genuine "Railroad Watches." Through the use of the words "Railroad Engraved Back" respondent represents that the back of said watch is engraved. Engraving is understood by the public as describing a process whereby a design is cut or incised into the metal by hand.

Further, respondent represents that the pistols sold by him at the price of \$6.45 are regularly sold at retail at \$12 and that the price of \$6.45 is a special price available for a limited time only.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact the watches sold by respondent for \$1.98 do not have a useful life and will not render satisfactory service for a period of 5 years, but on the contrary the parts will wear to the extent that repairs will be necessary long before the 5-year period has expired. The back of said watch is not engraved, as engraving is commonly understood, but the design thereon is stamped mechanically by a die. The movement of said watch is not finely tested, but on the contrary any tests that are made are superficial and of small extent and short duration. The case of said watch contains no gold whatsoever. Said watch does not possess the desirable characteristics and dependability of a "Railroad" watch, but on the contrary is only a cheap imitation thereof.

The pistols advertised and sold by respondent are not regularly sold at retail for \$12 and \$6.45 is not a special price for a limited time, but is, in fact, the regular retail selling price of said pistol.

PAR. 6. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such

statements and representations are true and causes the public, because of such erroneous and mistaken belief to purchase substantial quantities of respondent's products.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 30, 1942, issued and thereafter served its complaint in this proceeding upon respondent Mervin Wineholt, an individual trading as Wineholt Co. and Mervin Wineholt 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. The respondent, Mervin Wineholt, is an individual trading and doing business as Wineholt Co. and Mervin Wineholt Co., with his office and principal place of business located in Woodbine, State of Pennsylvania.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of various kinds of merchandise, including watches and pistols, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes his products, when sold by him, to be transported from his aforesaid place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of

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trade in said products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of his business, and for the purpose of inducing the purchase of the watches and pistols, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false and misleading representations relative to his products, such statements and representations being made by advertisements inserted in newspapers, magazines and trade journals, and by means of folders, pamphlets, circulars, letters and other advertising matter, circulated and distributed generally among prospective purchasers. Among and typical of such false and misleading representations relative to respondent's watches and pistols, respectively, are the following:

Watches:

\$1.98

5 years guarantee.

* * * railroad engraved back * * *

Finely tested quick train lever movement

* * * Solid gold effect case * * *

Locomotive Gilt—R. R. Dial * * *

Pistols:

Final Sale Rush!

Only \$6.45

* * * Cost \$12 elsewhere.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import, not specifically set out herein, the respondent has represented and now represents, directly or by implication, that the watch sold by him at the price of \$1.98 is unconditionally guaranteed to have a useful life and to render satisfactory service under normal usage for a period of 5 years; that the back thereof is engraved; that the movement is finely tested and that the case contains gold.

Through the use of the words "Locomotive" and "R. R. Dial" in connection with and as descriptive of said watch respondent implies that said watch is a "Railroad Watch" or comparable to such grade of watch. "Railroad" watches are known and understood by the purchasing public to be watches possessing the accuracy and dependability required for use by railroad employees and are considered to be especially valuable and desirable. Respondent enhances the implication that watches are "Railroad Watches" by pictorial representations showing large hands and large distinct hour numerals, which features are generally found in genuine "Railroad Watches." Through the use of the words "Railroad Engraved Back" respondent represents

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that the back of said watch is engraved. Engraving is understood by the public as describing a process whereby a design is cut or incised into the metal by hand.

Further, respondent represents that the pistols sold by him at the price of \$6.45 are regularly sold at retail at \$12 and that the price of \$6.45 is a special price available for a limited time only.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact the watches sold by respondent for \$1.98 do not have a useful life and will not render satisfactory service for a period of 5 years, but on the contrary the parts will wear to the extent that repairs will be necessary long before the 5-year period has expired. The back of said watch is not engraved, as engraving is commonly understood, but the design thereon is stamped mechanically by a die. The movement of said watch is not finely tested, but on the contrary any tests that are made are superficial and of small extent and short duration. The case of said watch contains no gold whatsoever. Said watch does not possess the desirable characteristics and dependability of a "Railroad" watch, but on the contrary is only a cheap imitation thereof.

The pistols advertised and sold by respondent are not regularly sold at retail for \$12 and \$6.45 is not a special price for a limited time, but is, in fact, the regular retail selling price of said pistol.

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

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

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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, Mervin Wineholt, individually and trading as Wineholt Co. and Mervin Wineholt 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 and distribution of his merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent's watches will render satisfactory service for a period of 5 years, or for any other specified period of time in excess of that during which such watches will in fact render satisfactory service.

2. Representing that the cases of respondent's watches are engraved, unless the design is cut or incised into the metal by hand.

3. Representing that the movements of respondent's watches are finely tested, when any tests given such movements are superficial and of short duration.

4. Representing that the cases of respondent's watches contain gold or that they have a solid gold effect.

5. Using the words "Locomotive" or "Railroad" or the abbreviation "R. R.," or any other words or abbreviations of similar import, to designate, describe or refer to respondent's watches, or representing in any manner that respondent's watches are railroad watches.

6. Representing, directly or by implication, that the prices at which respondent offers his merchandise for sale are special or reduced prices, or that such prices are applicable for a limited time only, when in fact such prices are the usual and customary prices at which respondent sells such merchandise in the normal and usual course of business.

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

IN THE MATTER OF

THE SEBRONE COMPANY, FEDERAL COSMETIC SALES CORPORATION, ET AL.

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

Docket 4230. Complaint, Aug. 9, 1940—Decision, May 1, 1942

Where two corporations and several officers and directors thereof, who controlled their advertising policies and business activities, engaged in the manufacture and interstate sale and distribution of two cosmetic and medicinal preparations know as "Sebrone" and "Waft"; by means of advertisements through the mails and in newspapers and periodicals, and by radio continuities, circulars, leaflets, pamphlets, and other advertising literature, directly and by inference—

(a) Falsely represented that their preparation "Sebrone" was a new scientific discovery and a cure or remedy for dandruff which would destroy the germ which allegedly causes it, and would remove scar tissue and prevent baldness, tending, through use without proper qualification of such words as "Stops dandruff," "Ends dandruff," "Defeats dandruff," to mislead and deceive the public into the belief that product in question would permanently cure dandruff or the underlying condition responsible therefor;

The facts being said product was not a new scientific discovery but its ingredients have long been used by physicians in various combinations, and while its use was beneficial in assisting in the temporary removal of dandruff scales and in clearing up superficial infections associated with dandruff, its therapeutic value was limited thereto; it would not act as a permanent cure or remedy for dandruff, generally thought by the medical profession to be symptomatic of some underlying cause and often associated with various diseased conditions of the skin; and it had absolutely no value in connection with scar tissue, which nothing will remove except surgery; and

(b) Falsely represented that their preparation "Waft" was a new scientific discovery which would reduce excessive sweating to normal and remove and kill odors from the feet and body;

The facts being that product in question, by reason of its content of formaldehyde, long used by the medical profession as an antiseptic and deodorant, had value as an antiseptic, but was not a new scientific discovery; and its effect as a deodorant was limited to masking odors, which, however, it did not destroy; its astringent properties could have but slight effect upon condition of excessive sweating due to many causes, such as endocrine disorders, general malnutrition, debilitating diseases, and heredity; and it would not reduce such sweating to normal;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby inducing it, because of said mistaken belief, to purchase substantial quantities of said preparations:

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

Before *Mr. Andrew B. Dwall* and *Mr. Randolph Preston*, trial examiners.

Mr. Carrel F. Rhodes for the Commission.

Horsley, Manns & O'Brien, of Springfield, 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 Seboreen Laboratories, Inc., a corporation; Federal Cosmetic Sales Corporation, a corporation; Fred E. Schon, Henry M. Schoen, Virginia L. Cook, William Horsley, Lloyd M. Wendt, Ethel Cronson, and Evelyn Schon, 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, Seboreen Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois and having an office and principal place of business at 6912 Ravenswood Avenue, Chicago, Ill., and is engaged in the manufacture and in the sale and distribution of certain medicinal and cosmetic preparations.

Respondent, Federal Cosmetic Sales Corporation, is a corporation organized, existing and doing business under the laws of the State of Illinois and having a principal place of business at 126 North Seventh Street, Springfield, Ill., and is engaged in the sale and distribution of medicinal and cosmetic preparations manufactured by the respondent, Seboreen Laboratories, Inc.

Respondent, Fred E. Schon, is a graduate medical doctor and is an agent and director of the respondent, Seboreen Laboratories, Inc., and resides and has a principal place of business at 618 Belmont Avenue, Arlington Heights, Chicago, Ill.

Respondents, Lloyd M. Wendt, Ethel Cronson, and Evelyn Schon, are officers of the respondent, Seboreen Laboratories, Inc., and have their office and principal place of business at 6912 Ravenswood Avenue, Chicago, Ill.

Respondents, Henry M. Schoen, Virginia L. Cook, and William Horsley, are officers of the respondent, Federal Cosmetic Sales Cor-

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poration, and have their office and principal place of business at 126 North Seventh Street, Springfield, Ill.

Said individual respondents dominate and control the advertising policies and business activities of said corporate respondents, and all of said individual respondents and the corporate respondents have acted in conjunction and in cooperation with each other, in doing the acts and practices hereinafter alleged.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of certain cosmetics and medicinal preparations known and designated as "Sebrone" and "Waft." In the course and conduct of their business the respondents cause said cosmetic and medicinal preparations when sold to be transported from their respective places of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said cosmetics and medicinal preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the aforesaid business the respondents 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 or 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 and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by radio continuities and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

1. Representations made with reference to "Sebrone":

Sebrone is the modern, scientific way to stop dandruff. * * * With dandruff gone, scar tissue goes, infection halts. A healthy scalp means growing, luxuriant hair. Thousands of aggressive men use Sebrone to keep trim and well groomed and avoid the threat of baldness.

Save your hair with Sebrone.

Defeat dandruff with amazing new Sebrone.

Stop dandruff in one week with Sebrone.

Sebrone is a scientific preparation designed to end dandruff. * * * The antiseptic properties of Sebrone actually destroy the dandruff germ, ending inflammation. When inflammation is ended, the scar tissue caused by dandruff disappears and your scalp is again normal and healthy.

It is powerful, destroying the germs that infect your scalp.

Sebrone is a scientific preparation designed to end dandruff. It is made to do this job as simply and quickly as possible. The antiseptic properties of Sebrone actually destroy the dandruff germ.

2. Representations made with reference to "Waft":

Body and foot odors vanish. * * * This new scientific antiseptic deodorant stops odors immediately. * * * Waft is so powerful that it removes odors not only from the feet but from shoes and stockings as well. * * * Even the powerful odors of onions and garlic vanish when Waft is applied.

The perfect remedy for Athlete's Foot.

Kills strongest odors.

Room and closet odors, simply spray Waft into the air, odors will promptly disappear.

Waft reduces excessive sweating to normal.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of said products and the effectiveness of their use, respondents represent directly and by inference that their preparation "Sebrone" is a new, scientific discovery and is a cure or remedy for dandruff which will destroy the germ which allegedly causes dandruff, that said preparation will remove scar tissue, will prevent baldness, and will stimulate the growth of hair; that their preparation "Waft" is a new, scientific discovery and is a cure or remedy for Athlete's Foot, and will reduce excessive sweating to normal and remove and kill odors from the feet and body and will remove room and closet odors.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondents, as hereinabove described, are grossly exaggerated, misleading, and untrue. In truth and in fact the preparation designated as "Sebrone" is not a new discovery. It is not a cure or remedy for dandruff and will not destroy the germ which allegedly causes dandruff, as its therapeutic properties are limited to the temporary removal of dandruff scales and under conditions of use it would not kill a sufficient number of any germs which might be associated with dandruff to have any curative effect upon this condition. Said preparation will have no effect upon the removal of scar tissue, which when once formed never disappears. Said preparation "Sebrone"

will have no effect in the prevention of baldness, and will not stimulate the growth of hair.

Respondents' preparation "Waft" is composed essentially of a solution of formaldehyde which has long been used as a deodorant. Said preparation is not a cure or remedy for athlete's foot and will have no effect upon such a condition in excess of temporarily alleviating the itching symptom because of its antiseptic and counterirritant properties. As a deodorant this preparation will temporarily mask body odors but will not be effective in removing or destroying such odors or their cause. In the same manner said preparation will do no more than temporarily mask foot odors and will not be effective in destroying the cause of such odors. This preparation will not reduce excessive sweating to normal, as abnormal sweating is caused by conditions for which this preparation has no therapeutic value. Said preparation does not act as a neutralizing agent and will not destroy or eliminate closet or room odors and will have no effect other than temporarily masking such odors.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said preparations has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and induces a portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of said preparations.

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 August 9 A. D. 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Seboreen Laboratories, Inc., a corporation; Federal Cosmetic Sales Corporation, a corporation, Fred E. Schon, Henry M. Schoen, Virginia L. Cook, William Horsley, Lloyd M. Wendt, Ethel Cronson, and Evelyn Schon, 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 Carrel F. Rhodes, attorney for the Commission, and in opposition to the allegations of the complaint by G. W. Horsley, attorney for the respondents, before Andrew B. Duvall and Randolph Preston, trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiners upon the evidence and exceptions filed thereto, and brief in support of the complaint (no briefs having been filed by the respondents or oral argument requested); and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Seboreen Laboratories, 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 6912 Ravenswood Avenue, Chicago, Ill. On December 2, 1940, said respondent filed articles of amendment of its charter with the Secretary of State for the State of Illinois, changing the name of said respondent to "The Sebrone Company." Since the date of its incorporation March 16, 1937, said respondent has been engaged in the manufacture and in the sale and distribution of certain medicinal and cosmetic preparations.

Respondent, Federal Cosmetic Sales Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal place of business at 126 North Seventh Street, Springfield, Ill. At the time of the filing of the complaint herein, said respondent was engaged in the sale and distribution of medicinal and cosmetic preparations manufactured by respondent, the Sebrone Company (formerly known as Seboreen Laboratories, Inc.).

Respondent, Fred E. Schon, is an individual engaged in the practice of medicine as a physician and surgeon, and resides at 10 Dunton Street, Arlington Heights, Ill. Said respondent is a stockholder and director of respondent, the Sebrone Co. (formerly known as Seboreen

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Laboratories, Inc.), is technical adviser to said respondent corporation, and has actively participated in the preparation of advertisements for the products sold and distributed by said corporation.

Respondent, Lloyd M. Wendt, is an individual and is president and director of the Sebrone Co. (formerly known as Seboreen Laboratories, Inc.), having his office and place of business at 6912 Ravenswood Avenue, Chicago, Ill.

Respondent, Evelyn Schon, is an individual and is the wife of respondent, Fred E. Schon, and secretary and treasurer of the Sebrone Co. (formerly known as Seboreen Laboratories, Inc.), residing at 10 Dunton Street, Arlington Heights, Ill., and having her place of business at 6912 Ravenswood Avenue, Chicago, Ill.

Respondent, Ethel Cronson, is an individual and at the time of the filing of the complaint herein was a director of the Sebrone Co. (formerly known as Seboreen Laboratories, Inc.), with her place of business at 6912 Ravenswood Avenue, Chicago, Ill.

Respondent, Henry M. Schoen, is an individual and at the time of the filing of the complaint herein was the president and a director of the corporate respondent, Federal Cosmetic Sales Corporation. Said respondent died on or about June 15, 1941, subsequent to the issuance of the complaint herein.

Respondent, Virginia L. Cook, is an individual and at the time of the filing of the complaint herein, and for some time subsequent thereto, was secretary and treasurer and a director of the corporate respondent, Federal Cosmetic Sales Corporation.

Respondent, William Horsley, is an attorney and at the time of the filing of the complaint herein was a director of the corporate respondent, Federal Cosmetic Sales Corporation. Said individual respondent, in his capacity as attorney, organized said corporate respondent and acted as attorney for said corporate respondent but did not otherwise engage in the acts and practices of the respondents as hereinafter described.

Said individual respondents, Fred E. Schon, Lloyd M. Wendt, Evelyn Schon, and Ethel Cronson, dominated and controlled the advertising policies and business activities of said corporate respondent, The Sebrone Company (formerly known as Seboreen Laboratories, Inc.). Said individual respondent, Virginia L. Cook, together with Henry M. Schoen, dominated and controlled the advertising policies and business activities of said corporate respondent, Federal Cosmetic Sales Corporation. All of said individual respondents and the corporate respondents have acted in conjunction and cooperation with each other in doing the acts and practices hereinafter described.

PAR. 2. Respondents, for several years last past, have been engaged in the sale and distribution of certain cosmetic and medicinal preparations known and designated as "Sebrone" and "Waft." In the course and conduct of their business the respondents caused said cosmetic and medicinal preparations, when sold, to be transported from their respective places of business in the State of Illinois to the purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cosmetic and medicinal preparations in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and have caused the dissemination of, false advertisements concerning their said 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, false advertisements concerning their said preparations, by various means, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said preparations in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

1. Representations made with reference to "Sebrone":

Sebrone is the modern, scientific way to stop dandruff.

With dandruff gone, scar tissue goes; infection halts.

Thousands of aggressive, successful men use Sebrone to keep trim and well groomed, and to avoid the threat of baldness.

Save your hair with Sebrone.

Defeat dandruff with amazing new Sebrone.

Stop dandruff in one week with Sebrone.

Science's new, convenient remedy for dandruff.

Sebrone—new treatment puts an end to dandruff.

Sebrone—new scientific, sure—does one job—defeats dandruff.

Sebrone is a scientific preparation designed to end dandruff. It is made to do this job as simply and quickly as possible. The antiseptic properties of Sebrone actually destroy the dandruff germ.

Don't let dandruff and dandruff scar tissue make you bald. Get rid of messy dandruff flakes and dandruff infection now before it is too late. Dandruff or baldness may seriously affect your happiness or your job.

2. Representations made with reference to "Waft":

Body and foot odors vanish. * * * This new scientific, antiseptic deodorant stops odors immediately. * * * Waft is so powerful that it removes odors not only from the feet, but from shoes and stockings as well. * * * Even the powerful odors of onion and garlic vanish when Waft is applied.

Kills strongest odors.

Waft reduces excessive sweating to normal.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of said preparations and the effectiveness of their use, respondents represent, directly and by inference, that their preparation "Sebrone" is a new scientific discovery and is a cure or remedy for dandruff and will destroy the germ which allegedly causes dandruff; that said preparation will remove scar tissue and will prevent baldness; that their preparation "Waft" is a new scientific discovery; and that it will reduce excessive sweating to normal and remove and kill odors from the feet and body.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading, and untrue.

Respondents' preparation "Sebrone" is composed of the following ingredients:

	<i>Percent</i>
Monoacetate resorcinol.....	4
Acid Salicylic.....	2
Glycerine.....	4
Oil of rosemary.....	1½
Oil jasmine compound.....	1½
Alcohol	50
Water, Q. S.	

The ingredients used in this preparation are not new but have been used in various combinations by physicians for a great number of years, and, consequently, this preparation is not a new scientific discovery. Monoacetate resorcinol, which is otherwise known as euresol, appears in many scalp preparations. This ingredient acts both as an antiseptic and as an irritant, which may help to increase circulation. Salicylic acid tends to dissolve the scales of dandruff and to increase the circulation of the scalp through irritation. Glycerine has the property of softening the skin. The alcohol contained in this preparation would act as an antiseptic agent. The oil of rosemary and oil of jasmine compound are perfumes only and have no additional value.

PAR. 6. Dandruff is a scaly condition of the scalp which is normally present in practically all individuals. Excessive scaling, however, is

an abnormality, the most common form of which is pityriasis simplex capitis, the cause or origin of which is unknown. Dandruff is generally thought by the medical profession to be symptomatic or a manifestation of some underlying cause. It is often associated with various disease conditions of the skin, such as seborrhoeic dermatitis, dermatitis venenata, psoriasis, and other scaly conditions of the scalp and other portions of the body. Dandruff is sometimes accompanied by secondary infections caused from scratching. The use of the preparation "Sebrone" is beneficial in assisting in the temporary removal of dandruff scales, and its antiseptic properties are beneficial in clearing up superficial infections associated with dandruff. It will not act as a permanent cure for dandruff nor will it have any therapeutic value in reaching the underlying cause of the dandruff condition. The therapeutic value of this preparation is limited to the temporary removal of the dandruff scales and its antiseptic value where secondary superficial infections exist. It is not a cure or remedy for the condition of dandruff and has absolutely no value in connection with scar tissue, as nothing will remove scars or scar tissue except surgery. Respondent's preparation "Sebrone" has no value in the treatment of any disease or condition which causes baldness and is of no value in preventing baldness.

PAR. 7. The use by the respondents of such words as "stops dandruff," "ends dandruff," "defeats dandruff," and other words of similar import or meaning as appear in respondents' advertising hereinabove set forth, without proper qualification, has a tendency to mislead and deceive the public into the belief that the use of respondents' preparation will either permanently cure the condition of dandruff or the underlying condition which causes dandruff.

PAR. 8. Respondents' preparation "Waft" is composed of the following ingredients:

	<i>Percent</i>
Formaldehyde-----	1.5
Menthol-----	.01
Alcohol-----	2
Water-----	95

By reason of the existence of formaldehyde in this preparation, it has value as an antiseptic. Formaldehyde has long been used by the medical profession in varying percentages as an antiseptic and deodorant. Consequently this preparation is not a new scientific discovery. When used as a deodorant this preparation will not destroy odors, but its effect is limited to the masking of such odors as may be present.

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The astringent properties of this preparation will have but slight effect upon the condition of excessive sweating, and its use will not reduce excessive sweating to normal. Excessive sweating is due to many causes, such as endocrine disorders, general malnutrition, debilitating diseases, and, in some cases, heredity. There is nothing in this preparation which will have any effect upon the causes of sweating, and its value is limited to the slight effect produced by its astringent qualities. Body odors caused by decomposition of excretions of perspiration might be masked by this preparation.

PAR. 9. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said preparations has had, and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and induces a portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of said preparations.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence taken before Andrew B. Duvall and Randolph Preston, 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 brief filed in support of the complaint; and the Commission having made its findings as to the facts and its conclusion that respondents, the Sebrone Company (formerly known as Seboreen Laboratories, Inc.), a corporation; Federal Cosmetic Sales Corporation, a corporation; Fred E. Schon, Virginia L. Cook, Lloyd M. Wendt, Ethel Cronson, and Evelyn Schon have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, the Sebrone Co. (formerly known as Seboreen Laboratories, Inc.), a corporation; and Federal

Cosmetic Sales Corporation, a corporation; and their respective officers representatives, agents, and employees; and Fred E. Schon, Lloyd M. Wendt, Ethel Cronson, and Evelyn Schon, as individuals and as officers and directors of the Sebrone Co. (formerly known as Seboreen Laboratories, Inc.), a corporation; and their representatives, agents, and employees; and Virginia L. Cook, individually and as officers and director of Federal Cosmetic Sales Corporation, a corporation, and her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their preparations designated "Sebrone" and "Waft," or any other preparations of substantially similar composition or processing substantially similar properties, whether sold under the same names or under any other name or names, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails, or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference.

(a) That respondents' preparations are new discoveries or recent developments of scientific research.

(b) That respondents' preparation "Sebrone" is a cure or remedy for dandruff or that it has any therapeutic value in the treatment of dandruff in excess of assisting in the temporary removal of dandruff scales and beneficially affecting superficial infections of the scalp sometimes associated with the condition of dandruff.

(c) That the use of respondent's preparation "Sebrone" will have any beneficial effect upon scars or scar tissue or that it will remove scar tissue.

(d) Through the use of the words "stops dandruff," "ends dandruff," "defeats dandruff," or other words or phrases of similar import or meaning, that respondents' preparation "Sebrone" will permanently eliminate the condition of dandruff or constitute a cure or remedy for the underlying conditions which may cause dandruff.

(e) That respondents' preparation "Sebrone" has any therapeutic value in the treatment of any disease or condition which causes, baldness, or that its use will prevent baldness.

(f) That respondents' preparation "Waft" will destroy or have any effect upon unpleasant body and foot odors other than the temporary masking of such odors.

(g) That respondents' preparation "Waft" will have any therapeutic value in the treatment of any disease or condition causing excessive sweating, or that it will reduce excessive sweating to normal

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or have any effect upon the condition of sweating other than the temporary effect afforded by the use of an astringent.

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 and respective subdivisions thereof.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondents, Henry M. Schoen, deceased, and William Horsley.

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

Complaint

IN THE MATTER OF

PERCE P. GREEN AND HOWARD RAND, TRADING AS
GREEN SUPPLY COMPANY, NATIONAL MERCHANDIS-
ING COMPANY, AND NATIONAL 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 4480. Complaint, Apr. 3, 1941—Decision, May 5, 1942

Where two individuals, engaged in competitive interstate sale and distribution of fishing tackle, silverware, rifles, garments, blankets, radios, and other merchandise; in soliciting sale and distribution of their products—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes in sale and distribution to ultimate consumers, a typical plan involving a scheme by which the person by chance pushing from a push card disk the girl's name corresponding with that concealed under card's master seal received a fishing tackle set or choice of items listed on back of card, as did also the operator, customers punching from the card three designated numbers and the last punch each received other articles, and amount paid by various customers was dependent upon the particular number punched out; and thereby—

Supplied to and placed in the hands of others a means of conducting games of chance, gift enterprises, or lotteries in the sale of their merchandise in accordance with aforesaid plan, under which fact as to whether the purchaser received an article of merchandise or nothing for his money, and also the amount he paid for a punch, were determined wholly by lot or chance, and there was involved a game of chance to procure an article at much less than its normal retail price; in competition with many who, unwilling to use any method involving chance or 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 merchandise of said individuals in preference to that of their said competitors, and with tendency and capacity, by reason thereof, to unfairly divert substantial trade in commerce to such individuals from said competitors:

Held, That such acts and practices, under the circumstances set forth, were contrary to the established public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

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

Mr. J. W. Brookfield, Jr., for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Perce P. Green and Howard Rand, individuals, trading as Green Supply Co., National Merchan-

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

PARAGRAPH 1. Respondents, Perce P. Green and Howard Rand, are individuals, trading and doing business under the names of Green Supply Co., National Merchandising Co., and National Supply Co., with their office and principal place of business now located at 282 Sexton Building, Minneapolis, Minn. Respondents are now, and have been for several years last past, engaged in the sale and distribution of fishing tackle, silverware, rifles, garments, blankets, radios, and other merchandise. During the past several years, respondents have had places of business located at Minneapolis, Minn., Detroit, Mich., Pittsburgh, Pa., and Philadelphia, Pa., and they have caused said merchandise, when sold, to be transported from their places of business in the above said locations in the States of Minnesota, Michigan, and Pennsylvania, to purchasers thereof at their respective points of location in the various States of the United States other than Minnesota, Michigan, and Pennsylvania, and in the District of Columbia. There is now, and has been for several 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 their business, respondents are and have been in substantial 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, respondents, in soliciting the sale of and in selling and distributing their merchandise, furnish and have furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes when said merchandise is sold and distributed to the ultimate consumers thereof. The method or sales plan adopted and used by respondents is substantially as follows:

Respondents distribute and have distributed to operators and the purchasing public certain literature and instructions, including among other things, push cards, order blanks, illustrations of their said merchandise, and circulars explaining respondents' plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards, and to the purchasing and consuming

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public. One of respondents' push cards bears 54 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 54 partly perforated disks, on the face of each of which is printed the word "push." Each of said disks is set over one of the aforesaid feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives his choice of fishing tackle, silverware, a rifle, or a radio. The push card bears the following legend or instructions:

Seller and Party Selecting
Girl's Name Under Seal

[SEAL]

Each Receive a

FISHING TACKLE SET

Or Choice of Items Listed on Back of Card

EXTRA PRIZES—Numbers 20, 30, 40 and last number punched each receive a

PAIR (2) solid Copper "NIP CUPS."

(Depiction of Set)

ITEM NO. 1—BAIT CASTING SET

(Description of Set)

Numbers 1 to 29 Pay What You Draw.

Numbers Over 29 Pay Only 29¢.

TOTAL \$14.90"

Another of respondents' sales plans consists of circulars, letters, advertising statements, and a push card. This push card is similar to the one above described, except that it bears 47 feminine names and partly perforated disks. It bears the following legend or instructions:

2 JACKETS GIVEN

Seller And Winner Each Receive

[SEAL]

GENUINE LEATHER AND PURE WOOL OUTING JACKET

In Men's or Ladies' Styles

ILLUSTRATION AND DESCRIPTION ON BACK OF CARD

EXTRA WINNERS

Numbers 30 and 40 Each Receive

GENUINE LEATHER BILLFOLD

With Winner's Name in Gold Leaf

Numbers 11 to 29 Pay What You Draw.

Numbers over 29 Pay Only 29¢.

(TOTAL \$11.92)

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Sales of respondents' merchandise by means of said push cards are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above-described legends or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and the amount to be paid for any merchandise received, are 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 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 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.

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 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 thereby are induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents, because of said game of chance, has a tendency and capacity to 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 an equivalent method.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 3, 1941, issued, and thereafter served, its complaint in this proceeding upon the respondents, Perce P. Green and Howard Rand, individuals, trading as Green Supply Co., National Merchandising Co., and National Supply Co., charging them with unfair methods of competition in commerce and unfair and deceptive acts and practices in violation of the provisions of said act.

After the issuance of the complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission, and testimony and other evidence in opposition to the allegations of the complaint were introduced by the respondents, before John W. Addison, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding. The testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceedings regularly came on for final hearing before the Commission upon the complaint, the answers thereto, the testimony and other evidence, the report of the trial examiner 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 public interest and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Perce P. Green and Howard Rand, are individuals, trading and doing business under the names Green Supply Co., National Merchandising Co., and National Supply Co. Their office and principal place of business is now located at 282 Sexton Building in Minneapolis, Minn.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale and distribution of fishing tackle, silverware,

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rifles, garments, blankets, radios, and other merchandise. During the several years last past respondents had places of business located at Minneapolis, Minn.; Detroit, Mich., and Pittsburgh and Philadelphia, Pa., and have caused their said merchandise, when sold, to be transported from their said places of business to purchasers thereof located in various States of the United States other than the State of origin of the shipment.

Respondents, in the course and conduct of their business, have been in substantial 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 various States of the United States.

PAR. 3. Respondents, in soliciting the sale of and 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 such merchandise is sold and distributed to the ultimate consumer thereof. The method or sales plan adopted and used by respondents is substantially as follows:

Respondents distribute and have distributed to their operators and the purchasing public certain literature and instructions, including among other things push cards, order blanks, illustrations of their merchandise, and circulars explaining their 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 the push cards so distributed bears the following legend or instructions:

Seller and Party Selecting
 Girl's Name Under Seal
 Each Receive a
 FISHING TACKLE SET
 Or Choice of Items Listed
 on Back of Card.

[SEAL]

EXTRA PRIZES—Numbers 20, 30, 40 and
 Last Number Punched Each Receives a
 PAIR (2) Solid Copper NIP CUPS.
 (Depiction of Set)
 ITEM NO. 1—BAIT CASTING SET.
 (Description of Set)
 Numbers 1 to 29 Pay What You Draw
 Numbers Over 29 Pay Only 29¢
 TOTAL \$14.90

This push card has 54 disks so cut or stamped as to be readily pushed out; on the face of each disk is printed the word "Push," and below each disk is a feminine name, with a space in connection with the disk

so indicated for the insertion of the name of the person pushing the disk. When pushed out, the disk is revealed as two layers of cardboard which separate and disclose a number which indicates the amount to be paid in cents for the chance to obtain the article or articles offered as a prize, except that if the number disclosed is over 29, the amount to be paid is limited to 29 cents. The numbers of the disk do not appear on the card consecutively, from 1 to 54, but are diversified and distributed throughout the group of disks. When all the punches have been sold, this seal is removed and one of the feminine names appearing under the disks is revealed. The person who punched the disk designated by this name receives the fishing tackle, or choice of the items listed on the back of the card, and the operator of the push card also receives a similar prize or award. The other prizes mentioned are awarded in accordance with the statement in the legend.

Sales of respondents' merchandise by means of said push cards are made in accordance with the above-described legend or instructions. The said prizes or premiums are allotted to the customers or purchasers of punches in accordance with the above-described legend or instructions. Whether the purchaser receives an article of merchandise or receives nothing for the amount of money paid by him, and also the amount to be paid for the punch, are 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 games of chance, gift enterprises or lottery schemes. The sales plan or method involved in the sale of all of said merchandise by means of said other push cards is the same as that hereinabove described, varying only in detail.

PAR. 4. The persons to whom respondents furnish and have furnished 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 games of chance, gift enterprises, or lotteries in the sale of respondents' merchandise, in accordance with their sales plan.

PAR. 5. The sale of merchandise to the purchasing public by the herein-described method 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 respondents are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such com-

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petitors 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 the tendency and capacity to unfairly divert substantial 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 an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondents 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 answers of the respondents, the testimony, and other evidence taken before a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, the report of the trial examiner 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 the respondents, Perce P. Green and Howard Rand, individuals trading as Green Supply Co., National Merchandising Co. and National Supply Co., have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Perce P. Green and Howard Rand, trading as Green Supply Co., National Merchandising Co. and National Supply Co., or trading under any other name or designation, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fishing tackle, silverware, rifles, garments, blankets, radios, 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.

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

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

It is further ordered, That the 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.

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IN THE MATTER OF
CODRIN CORPORATION

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

Docket 4598. Complaint, Sept. 29, 1941—Decision, May 5, 1942

Where a corporation, engaged in interstate sale and distribution of its "Magnesia S. Pellegrino" medicinal preparation; by means of advertisements sent through the mails, by radio broadcasts, and otherwise, directly and by implication—

- (a) Falsely represented that said preparation acted as a disinfectant and would normalize the digestive system, and assure perfect digestion and health; that it would, regulate the intestines, was gentle and would not irritate the intestinal walls; and that a teaspoonful taken every morning and night was a sure and final remedy against constipation and stomach acidity;

The facts being it was not of any therapeutic value except as a laxative and cathartic which would temporarily evacuate the bowels and as an antacid which would temporarily reduce stomach acidity; and

- (b) Failed to reveal facts material in the light of such representations, or with respect to consequences which might result from use of preparation in question under prescribed or usual conditions, in that a laxative or cathartic, depending upon the dose, is potentially dangerous when taken by one suffering from abdominal pains, stomachache, cramps, nausea, vomiting, or other symptoms of appendicitis, while frequent or excessive use thereof may result in dependency on laxatives;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that such statements were true, thereby inducing it to purchase said preparation:

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

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

Mr. Joseph C. Fehr for the Commission.

Viault & Viault, 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 Codrin 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, Codrin Corporation, is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of New York, and it has its principal office and place of business located at 333 Sixth Avenue, New York, N. Y.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a medicinal preparation designated as "Magnesia S. Pellegrino," in commerce between and among the various States of the United States and the District of Columbia. Respondent causes and has caused said product, when sold, to be transported from its place of business in New York to purchasers thereof located in various States of the United States, and in the District of Columbia.

The respondent maintains, and at all times mentioned herein has maintained, a course of trade in its medicinal preparation in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations of and concerning said product contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Disinfectant.

In the morning normalize your digestive system by taking a teaspoon of Magnesia S. Pellegrino.

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In the morning before coffee take a teaspoon of Magnesia S. Pellegrino and you will assure yourself of a perfect digestion and thus of perfect health.

It is a sovereign remedy against constipation and stomach acidity. * * * a teaspoonful, every morning and every evening, in half a tumblerful of water or milk, will rid you forever of constipation and stomach acidity.

A teaspoonful, every morning and every night in half a tumblerful of water or milk, is the sure, final, and sovereign remedy against constipation and stomach acidity.

Against constipation and against other intestinal disturbances you must use Magnesia San Pellegrino * * * the only purgative with efficient and sure action without irritating the intestines.

* * * only its gentleness to the intestine walls.

* * * only one tablespoonful is sufficient regulator of intestines * * *.

Infallible action against any form of constipation, * * *.

Is guaranteed to possess * * * efficiency unequalled by any other magnesia. * * * acts surely as purgative * * * acts as regulator of intestines.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto, not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent represents, directly and by implication, that its preparation, Magnesia S. Pellegrino, acts as a disinfectant; that it will normalize the digestive system; that through its use one will be assured of perfect digestion and perfect health; that its use will regulate the intestines; that it is gentle to the intestines and that it will not irritate the intestinal walls; that it will rid one of constipation; that it will rid one of stomach acidity; and that a teaspoonful of said preparation taken every morning and every night is a sure and final remedy against constipation and stomach acidity.

PAR. 5. The aforesaid representations and advertisements used and disseminated by the respondent, as hereinabove described, are grossly exaggerated, false, and misleading.

In truth and in fact, respondent's preparation does not act as a disinfectant; it will not normalize the digestive system; its use will not assure one of perfect digestion or of perfect health; its use will not regulate the intestines; it is not gentle to the intestines and it will irritate the intestinal walls; it will not rid one of constipation; it will not rid one of stomach acidity; the taking of a teaspoonful of said preparation every morning and every night, or the frequent or continued taking of any dosage of said preparation is not a sure, final, or effective remedy against constipation and stomach acidity; nor is said preparation of any therapeutic value except as a laxative or a cathartic which will temporarily evacuate the bowels and as an antacid which will temporarily reduce stomach acidity.

PAR. 6. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations or material with respect to consequences which may result from use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondent's said preparation is a laxative or a cathartic, depending upon the dose, and is potentially dangerous when taken by one suffering from abdominal pains, stomachache, cramps, cholera, nausea, vomiting, or other symptoms of appendicitis. Its frequent or continued use may result in dependency on laxatives.

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

PAR. 8. 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 September 29, 1941, issued and subsequently served its complaint in this proceeding upon respondent Codrin 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, at a hearing before an examiner of the Commission theretofore duly designated by it, a stipulation was entered into between counsel for the respondent and counsel for the Commission whereby it was stipulated and agreed that, subject to the approval of the Commission, a statement of facts 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 statement of facts and the inferences drawn therefrom to make its report, stating

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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. Respondent 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, 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 this its findings as to the facts and its conclusion drawn therefrom.

. FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Codrin Corporation, is a corporation, organized, existing, 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 333 Sixth Avenue, New York, N. Y.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a medicinal preparation designated as "Magnesia S. Pellegrino." Respondent causes and has caused said product, when sold, to be transported from its place of business in New York to purchasers thereof located in various States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in its said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent has disseminated, and has caused to be disseminated, false advertisements concerning its said product by United States mails, by radio broadcasts, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product; and has disseminated, and has caused the dissemination of, advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations concerning said product contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Disinfectant.

In the morning normalize your digestive system by taking a teaspoon of Magnesia S. Pellegrino.

In the morning before coffee take a teaspoon of Magnesia S. Pellegrino and you will assure yourself of a perfect digestion and thus perfect health.

It is a sovereign remedy against constipation and stomach acidity. * * * a teaspoonful, every morning and every evening, in half a tumblerful of water or milk, will rid you forever of constipation and stomach acidity.

A teaspoonful every morning and every night in a half tumblerful of water or milk, is the sure, final, and sovereign remedy against constipation and stomach acidity.

Against constipation and against other intestinal disturbances you must use Magnesia San Pellegrino * * * the only purgative with efficient and sure action without irritating the intestines.

* * * only its gentleness to the intestine walls.

* * * only one tablespoonful is sufficient regulator of intestines * * *.

Infallible action against any form of constipation, * * *.

Is guaranteed to possess * * * efficiency unequalled by any other Magnesia. * * * acts surely as purgative * * * acts as regulator of intestines.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent has represented directly and by implication that its preparation, Magnesia S. Pellegrino, acts as a disinfectant; that it will normalize the digestive system; that through its use one will be assured a perfect digestion and perfect health; that its use will regulate the intestines; that it is gentle to the intestines and that it will not irritate the intestinal walls; that it will rid one of constipation; that it will rid one of stomach acidity; and that a teaspoonful of said preparation taken every morning and every night is a sure and final remedy against constipation and stomach acidity.

PAR. 5. The aforesaid representations and advertisements used and disseminated by the respondent, as hereinabove described, are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation does not act as a disinfectant; it will not normalize the digestive system; its use will not assure one of perfect digestion or of perfect health; its use will not regulate the intestines; it is not gentle to the intestines and it will irritate the intestinal walls; it will not rid one of constipation; it will not rid one of stomach acidity; the taking of a teaspoonful of said preparation every morning and every night, or the frequent or continued taking of any dosage of said preparation, is not a sure, final, or effective remedy against constipation and stomach acidity; nor is said preparation of any therapeutic value except as a laxative or a cathartic which will temporarily evacuate the bowels and as an antacid which will temporarily reduce stomach acidity.

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PAR. 6. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual. In truth and in fact, respondent's said preparation is a laxative or a cathartic, depending upon the dose, and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms of appendicitis. Its frequent or excessive use may result in dependency on laxatives.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and advertisements with respect to its said preparation, disseminated as aforesaid, has had the capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements were true, and induced a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said preparation.

CONCLUSION

The aforesaid acts and practices of respondent 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 as to the facts entered into between counsel for the respondent and counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding; and the Commission having made its findings as to the facts and conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Codrin 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 medicinal preparation Magnesia S. Pelle-

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grino, or any other product containing the same or similar ingredients or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, 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

(a) Represents, directly or through inference, that said preparation is a disinfectant.

(b) Represents, directly or through inference, that the use of said preparation will normalize the digestive system, or assure perfect digestion or perfect health.

(c) Represents, directly or through inference, that said preparation will not irritate the intestines of the user, or that its use will regulate the intestines, or that it is a sure or final cure for constipation, or that said preparation is a cure or remedy or a competent or effective treatment for, or has any therapeutic value in the treatment of constipation in excess of affording temporary relief therefrom.

(d) Represents, directly or through inference, that said preparation is a cure or remedy or a competent or effective treatment for stomach acidity, or has any therapeutic value in the treatment of such condition in excess of temporarily reducing stomach acidity.

(e) Represents, directly or through inference, that said preparation has therapeutic value in the treatment of any disease or condition in excess of temporarily relieving constipation and temporarily reducing stomach acidity.

(f) Fails to reveal that said preparation should not be used in cases of abdominal pains, stomachache, cramps, nausea, vomiting, or other symptoms of appendicitis, and, further, that its frequent or continued use may result in dependence upon laxatives: *Provided, however,* That if the directions for use, wherever they appear on the label, in the labeling, or both, contain a warning of the potential dangers in the use of said preparation as above set forth, such advertisement need contain only the statement, "CAUTION: Use Only as Directed."

2. Disseminating or causing to be disseminated, by any means, any advertisement 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 preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof or which fails to reveal, as required in paragraph 1 hereof, the dangerous consequences which may result from

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the use of said preparation or which does not in lieu of the statement of such consequences contain the affirmative cautionary statement as provided in said paragraph.

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

GENERAL SURVEYS, INC., JOHN H. THIES, PRESIDENT
OF GENERAL SURVEYS, INC., AND G. J. DOUCETTE, DI-
RECTOR OF GENERAL SURVEYS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4554. Complaint, Aug. 4, 1941—Decision, May 7, 1942*

Where a corporation, the president thereof who was its principal owner and controlled its policies and activities, and a second individual who was a director, stockholder, and salesman thereof, engaged in sale and interstate distribution of "The American Educator Encyclopedia," sold in sets of 10 or 20 volumes, and other books, and of a "quarterly loose-leaf extension service" and "research services" contemplating the answering of customers' questions, sold in various combinations with other books and a book case at prices ranging from \$59.50 to \$99.50;

In selling their said products under the practice by which all shipments were made on orders or contracts sent in by salesmen and canvassers, and all payments except initial payment to salesmen were remitted directly to their main office—

- (a) Represented to prospective purchasers that certain items were being given free to the particular customer for some special reason, through such statements, among others, as that books which were part of a regular combination offer were free and that purchaser paid for only the loose-leaf extension service, when in fact the price was that customarily and ordinarily charged for both books and service;
- (b) Represented to prospective purchasers, including teachers, clergymen, and students about to enter a profession, that for advertising purposes the books were given free or at an especially low price because of the purchaser's alleged prominence and in order to get his testimonial for later use in sales to the general public, or for some other reason appealing to him; the facts being said books were sold at their customary and ordinary price;
- (c) Failed to inform prospective purchasers that the securing of the loose-leaf extension service material included in said combination offer entailed an additional cost of 24 cents a copy in addition to the stated price, notwithstanding agent's representation that the price included cost of such material; and
- (d) Falsely represented to prospective purchasers generally that the usual price at which the extension service and books were being offered and sold was a special price, effective for a limited period only;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that aforesaid representations were true, and that it was securing some special advantage, and of thus inducing substantial number of members thereof to purchase their said books and services:

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

Mr. L. E. Creel, Jr. 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 General Surveys, Inc., a corporation, John H. Thies, individually, and as president of General Surveys, Inc., and G. J. Doucette, individually, and as a director of General Surveys, Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it with respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, General Surveys, Inc., is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 203 North Wabash Avenue, Chicago, Ill. Respondent, John H. Thies, is president of General Surveys, Inc., the principal owner of the common capital stock of said corporate respondent, and controls its policies and activities, including the conduct of sales and the character of advertising representations made in connection therewith. Respondent, G. J. Doucette, is a director and stockholder of General Surveys, Inc., and is a salesman of said corporate respondent.

PAR. 2. All of respondents are now, and for several years last past have been, engaged in the sale, transportation, and distribution in interstate commerce of sets of reference books known as The American Educator Encyclopedia and other books, and a so-called quarterly loose-leaf extension service for the encyclopedia, and certain so-called research services. The American Educator Encyclopedia is sold in sets of 10 or 20 volumes. Said encyclopedia, the loose-leaf extension service, and a 10-year membership in an organization known as General Research Foundation, which answers members' questions on general subjects within the scope of encyclopedic service, are sold in a combination with certain other designated books of general or special interest and a bookcase to house them at a combined total price of \$59.50 to \$99.50, depending on the number of volumes of the encyclopedia, the combination of other books selected, and whether a bookcase is included in the order.

PAR. 3. In the course and conduct of their business, as hereinbefore described, respondents utilize the services of approximately eight salesmen and solicitors, including the respondent, G. J. Doucette, who canvass individual prospective customers located in various States of the United States. When signed orders or contracts are received by such solicitors, the orders or contracts are forwarded to the Chicago offices of respondents and the wares called for therein are shipped directly to the purchasers located at various points in the several States of the United States and in the District of Columbia. All shipments of books are on orders or contracts sent in by such salesmen. All payments made for said books, except the initial payments made to the salesmen, are remitted directly to the respondents' offices in Chicago.

PAR. 4. Respondents' salesmen and solicitors, including the respondent, G. J. Doucette, have used the following means, methods, and practices in soliciting the sale of and in selling the said books to the purchasing public:

1. Said agents or solicitors have falsely represented to prospective purchasers that certain items, which were in fact a part of a regular combination offer and included in the price thereof, as above described, were being given free to the particular customer for some special reason, thereby influencing such customer to purchase said books. Among such representations was the representation that the books were free and that the prospective purchaser was to pay for and did pay for only the loose-leaf extension service, whereas, in truth and in fact, the price purported to be charged for the loose-leaf extension service was and is the customary and ordinary price charged for said books and the loose-leaf extension service.

2. Said agents or solicitors have falsely represented to prospective purchasers that, for advertising purposes and as a part of an advertising program, said books were given free, or at an especially low price, because of the alleged prominence of the prospective purchaser and in order to get his testimonial of their quality for later use in sales to the general public, or for some other reason appealing to such prospective purchaser, when in truth and in fact such books were not given free or at an especially low price to such prospective purchaser for any reason, but were sold at the price at which said books are customarily and ordinarily sold by the respondents. This representation was frequently made to teachers, to clergymen, and to students about to enter a profession, to whom it was represented that the said books were being given free or at an especially low price, the respondents representing that such special offer was being made to

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them in order that they might boost respondents' wares or give to the respondents a testimonial of value to respondents in a later sale of similar sets of books to the general public at a higher price.

3. Said agents or solicitors in many instances failed or neglected to inform prospective purchasers that the securing of the loose-leaf extension service material included in said combination offer entailed an additional cost of 24 cents a copy in addition to the price stated to such prospective purchasers, although said agents or solicitors represented that the stated price included such loose-leaf extension material.

4. Said agents or solicitors in many instances represented to prospective purchasers of said books generally that the price at which said loose-leaf extension service and said books were being offered for sale and sold was a special price effective for a limited period of time only, when in truth and in fact the price at which the said loose-leaf extension service and said books were offered for sale and sold was the usual and customary price at which they were generally and regularly sold.

PAR. 5. The effect of the use of the aforesaid means, methods and practices by the respondents is to lead the individual prospective purchaser to believe that he is securing some advantage in purchasing said books and services which is not available to members of the public generally, whereas, in truth and in fact, any member of the public can purchase said books and services on the identical terms and conditions at which they are offered such individual prospective purchasers.

PAR. 6. The use by the respondents of the aforesaid means, methods and practices in offering for sale and selling said books and services in said commerce has had, and now has, a capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true and into the erroneous and mistaken belief that they are securing some special advantage not available to all members of the purchasing public. As a result of this erroneous and mistaken belief, induced as aforesaid, a substantial number of members of the purchasing public have purchased respondents' said books and services.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 4, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, General Surveys, Inc., a corporation, John H. Thies, individually, and as president of General Surveys, Inc., and G. J. Doucette, individually, and as a director of General Surveys, 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 filing of respondents' answers, the Commission, by order entered herein, granted the motion of respondents, General Surveys, Inc., and G. J. Doucette, for permission to withdraw their said answers and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Said motion calls the attention of the Commission to the physical and mental incapacity of respondent, John H. Thies, to participate in this proceeding and is accompanied by a statement of a physician indicating permanent incapacity. 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, General Surveys, Inc., is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 203 North Wabash Avenue, Chicago, Ill. Respondent, John H. Thies, is President of General Surveys, Inc., the principal owner of the common capital stock of said corporate respondent, and controls its policies and activities, including the conduct of sales and the character of advertising representations made in connection therewith. Respondent, G. J. Doucette, is a director and stockholder of General Surveys, Inc., and is a salesman of said corporate respondent.

PAR. 2. All of respondents are now, and for several years last past have been, engaged in the sale, transportation and distribution in

interstate commerce of sets of reference books known as "The American Educator Encyclopedia" and other books, and a so-called quarterly loose-leaf extension service for the encyclopedia, and certain so-called research services. "The American Educator Encyclopedia" is sold in sets of ten or twenty volumes. Said encyclopedia, the loose-leaf extension service, and a 10-year membership in an organization known as General Research Foundation, which answers members' questions on general subjects within the scope of encyclopedic service, are sold in a combination with certain other designated books of general or special interest and a bookcase to house them at a combined total price of \$59.50 to \$99.50, depending on the number of volumes of the encyclopedia, the combination of other books selected, and whether a bookcase is included in the order.

PAR. 3. In the course and conduct of their business, as hereinbefore described, respondents utilize the services of approximately eight salesmen and solicitors, including the respondent, G. J. Doucette, who canvass individual prospective customers located in various States of the United States. When signed orders or contracts are received by such solicitors, the orders or contracts are forwarded to the Chicago offices of respondents and the wares called for therein are shipped directly to the purchasers located at various points in the several States of the United States and in the District of Columbia. All shipments of books are on orders or contracts sent in by such salesmen. All payments made for said books, except the initial payments made to the salesmen, are remitted directly to the respondents' offices in Chicago.

PAR. 4. Respondents' salesmen and solicitors, including the respondent, G. J. Doucette, have used numerous methods and practices in soliciting the sale of the said books to members of the purchasing public. Respondents' agents have falsely represented to prospective purchasers that certain items which were in fact a part of a regular combination offer and included in the price thereof, as above described, were being given free to the particular customer for some special reason, thereby influencing such customer to purchase said books. Among such representations made was the representation that the books were free and that the prospective purchaser was to pay for, and did pay for, only the loose-leaf extension service, whereas, in truth the price purported to be charged for the loose-leaf extension service was the customary and ordinary price charged for said books and the loose-leaf extension service.

Another method used by the agents of respondents in soliciting the sale of said books was the method of falsely representing to prospec-

tive purchasers that for advertising purposes and as a part of an advertising program said books were given free or at an especially low price, because of the alleged prominence of the prospective purchaser and in order to get his testimonial of their quality for later use in sales to the general public, or for some other reason appealing to such prospective purchaser, when in fact such books were not given free or at an especially low price to such prospective purchaser for any reason, but were sold at the price for which the books are customarily and ordinarily sold by the respondents. This representation was frequently made to teachers, clergymen, and to students about to enter a profession.

Another practice engaged in by the agents of respondents was the practice of failing or neglecting to inform prospective purchasers that the securing of the loose-leaf extension service material included in said combination offer entailed an additional cost of 24 cents a copy in addition to the price stated to such prospective purchasers, although said agents represented that the stated price included the cost of the loose-leaf extension material.

The agents of respondents in many instances represented to prospective purchasers of said books generally that the price at which said loose-leaf extension service and said books were being offered for sale and sold was a special price, effective only for a limited period of time, when in fact the price at which such extension service and books were offered for sale and sold was the usual and customary price at which they were generally and regularly sold.

PAR. 5. The effect of the use of the aforesaid means, methods and practices by the respondents is to lead the individual prospective purchaser to believe that he is securing some advantage in purchasing said books and services which is not available to members of the public generally, whereas, in truth and in fact, any member of the public can purchase said books and services on the identical terms and conditions at which they are offered such individual prospective purchasers.

PAR. 6. The use by the respondents of the aforesaid means, methods and practices in offering for sale and selling said books and services in said commerce has had, and now has, a capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true and into the erroneous and mistaken belief that they are securing some special advantage not available to all members of the purchasing public. As a result of this erroneous and mistaken belief, induced as aforesaid, a substantial number of members of the purchasing public have purchased respondents' said books and services.

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CONCLUSION

The foregoing acts and practices of the respondents, General Surveys, Inc., and G. J. Doucette, 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, General Surveys, Inc., and G. J. Doucette, in which answer said respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that respondents, General Surveys, Inc., and G. J. Doucette have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, General Surveys, Inc., a corporation, its officers, representatives, agents, and employees, and respondent, G. J. Doucette, individually and as a director of General Surveys, Inc., his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of books, loose-leaf material, or other merchandise 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 any books, loose-leaf material, or other merchandise the cost of which is included in the purchase price of articles in combination with which any such books, loose-leaf material, or other merchandise are offered, are "free," either by the use of the term stated or by any other word or words of similar import or meaning.

2. That the price at which any books, loose-leaf material, or other merchandise are customarily or regularly offered for sale or sold, separately or in combination, in the ordinary course of business, is lower than the customary or regular price, or is a special or reduced price to selected customers, or is a special or reduced price available only to particular groups or classes of persons, or is available only for a limited time.

3. That any books, loose-leaf material, or other merchandise or services for which payment is later demanded or collected will be

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furnished to purchasers of other articles or services without additional charge.

It is further ordered, That respondents, General Surveys, Inc., and G. J. Doucette, 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 in view of the showing made as to the probable permanent incapacity of respondent, John H. Thies, this proceeding be, and the same hereby is, closed as to said respondent without prejudice to the right of the Commission, should future facts so warrant, to reopen the same as to said respondent and resume trial in accordance with its regular procedure.

IN THE MATTER OF
STEVEN ANGELL AND ASIMO LIAMPOS, TRADING AS
S. ANGELL & COMPANY

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

Docket 4520. Complaint, June 12, 1941—Decision, May 11, 1942

Where two individuals, engaged in competitive interstate sale and distribution of furs and fur garments—

- (a) Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes in sale and distribution thereof to the ultimate consumer; typical plan involving a push card and scheme, in accordance with which the person selecting from 100 feminine names displayed thereon that corresponding with name under card's master seal became entitled to one of their fur garments, and the amount of money paid for a chance was determined by the number pushed from the card; and thereby

Supplied to and placed in the hands of their agents and operators and members of the purchasing public the means of conducting lotteries in the sale of their furs and fur garments in accordance with said plan involving sale of chance to procure such a product at much less than its normal retail price, contrary to an established public policy of the United States Government, and in competition with many who, unwilling to use any such or other method 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 their said furs and fur garments in preference to those offered by their said competitors, from whom substantial trade in commerce was unfairly diverted to them; to the substantial injury of competition in commerce; and

Where said individuals, by means of tags and labels attached to their products, advertisements in magazines and newspapers, and circulars, price lists, and other advertising material distributed among prospective purchasers—

- (b) Represented that certain of such products were made from mink or seal peltries, respectively, through use of such designations as "Minkolet," "Minkolene," and "Marmink;" and "Nubian Seal," "V Shape Seal," "Hud-seal," and "Sealine;"
- (c) Represented that certain of their products were made from beaver, or Silvertone muskrat peltries, respectively, through designations "Beaverette" and "Mendoza Beaver," and "Silvertone Muskrat;"
- (d) Represented that certain of their products were made from skunk or sable peltries through use of such terms as "Skunkette" and "Skunkolene" and "Sabellette" to designate them; and
- (e) Represented that certain of their products were made from squirrel or broadtail lamb peltries through use of such terms as "Squirrellette" and "Broadtail;"

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The facts being peltries represented as "Silvertone Muskrat" were made from muskrat peltries dyed in silvertone; and others were made from rabbit or other peltries dressed and dyed to resemble, respectively, mink, seal, beaver, skunk, sable, squirrel, and broadtail;

- (f) Falsely represented through use of word "Norwegian" that certain of their said products were made from peltries imported from Norway; and
- (g) Failed to disclose the true nature and origin of their said fur products made of rabbit peltries which, when dyed and processed to resemble those of mink, seal, beaver, skunk, squirrel, and other more valuable fur-bearing animals, so closely resembled the genuine as to be indistinguishable therefrom insofar as members of the purchasing public were concerned;

With tendency and capacity to mislead and deceive a substantial part of said public—which prefers fur products made from the peltries of seal, mink, beaver, muskrat, sable, squirrel, and broadtail lamb over those made from rabbit peltries so dressed, dyed and processed as to simulate the same, and prefers fur products made from the peltries of foxes obtained from Norway over those made from others—with respect to the nature and origin of their products, and with result of causing it thereby to purchase substantial quantities thereof:

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

Before *Mr. Andrew B. Duvall*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Harry A. Lieb, 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 Steven Angell and Asimo Liampos, individuals, trading as S. Angell & Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Steven Angell and Asimo Liampos, are individuals, trading and doing business under the name and style of S. Angell & Co., with their office and principal place of business located at 236 West Twenty-seventh Street in the city of New York, State of New York. Respondents are now, and have been for more than 1 year last past, engaged in the business of manufacturing furs and fur garments, and selling and distributing such products to purchasers thereof located in the various States of the United States and in the District of Columbia.

Respondents cause and have caused said merchandise, when sold, to be shipped and transported from their place of business in the State of New York to purchasers thereof at their respective points of location in various States of the United States other than New York, and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by respondents in such furs and fur garments in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondents are now and have been in competition with other individuals and firms and with corporations engaged in the sale and distribution of furs and fur garments in commerce 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 products, 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 their agents and operators and to members of 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 public. One of respondents' push cards bears 100 feminine names, with ruled columns on the back of said card for writing in the name of the purchaser opposite the name selected. Said push card has 100 small partially perforated disks, on the face of which is printed the word "push." Each of said 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 under 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 his choice of a fur coat or a fur bolero. The push card bears a legend or instruction as follows:

GORGEOUS

V Shape Sealine or V Shape
Mendoza Beaver Fur Coats

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Swagger Styles
 20 Inch Skunkolene Boleros
 In Black, Brown or Grey
 OR—CARACULS
 Sizes 12 to 40
 GIVEN AWAY
 FREE

Nos. 1 to 49 Pay what you draw.
 All above 49 pay 49 cents.

Sales of respondents' merchandise by means of said push cards are made in accordance with the above-described legend or instructions. Said prizes of furs are allotted to the customers or purchasers in accordance with the above legend or instructions. The amount of money paid by the purchaser, and the fact as to whether the purchaser receives a fur garment or nothing for the amount of money paid, are 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 garments by means of a game of chance, gift enterprise, or lottery scheme. The sales plan involved in the sale of all of said garments 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' furs and fur garments 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 furs and fur garments in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their fur products and the sale of said fur 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 furs and fur garments to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a fur or fur garment at a price much less than the normal retail price thereof. Many persons, firms and corporations who sell or distribute furs and fur garments 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

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persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their furs and fur garments and the element of chance involved therein, and are thereby induced to buy and sell respondents' furs and fur garments in preference to furs and fur garments 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. In the course and conduct of their business as aforesaid, respondents have also engaged and are now engaged in the practice of failing to disclose the true nature and origin of their fur products, and of affirmatively misrepresenting the nature and origin of their products, such false representations being made by means of tags and labels attached to such products, by means of advertisements in magazines and newspapers, and by means of circulars, price lists, and other advertising material distributed among prospective purchasers of such products.

Among and typical of such acts and practices, the respondents have caused certain of their furs and fur garments to be designated or described by the terms "Minkolet," "Minkolene," and "Marmink," thereby representing that the products so designated are made from mink peltries. In truth and in fact, such products are not made from mink peltries, but are made from rabbit or other peltries which have been dressed and dyed in such manner that they resemble mink peltries.

Respondents also use the terms "Nubian Seal," "V Shape Seal," "Hudseal," and "Sealine" to designate certain of their products, thereby representing that such products are made from seal peltries. Such products are in fact made from rabbit peltries which have been so dressed and dyed as to resemble seal peltries.

Respondents also use the terms "Beaverette" and "Mendoza Beaver" to designate certain of their products, thereby representing that the products so designated are made from beaver peltries. Such products are in fact made from rabbit peltries which have been dressed and dyed in such manner as to resemble beaver peltries.

Respondents also use the term "Silvertone Muskrat" to designate certain of their products, thereby representing that such products are made from muskrat peltries. Such products are in fact made from

rabbit peltries which have been so dressed and dyed as to resemble muskrat peltries.

Respondents also use the terms "Skunkette" and "Skunkolene" to designate certain of their products, thereby representing that such products are made from skunk peltries. Said products are in fact made from rabbit peltries which have been so dressed and dyed as to resemble skunk peltries.

Respondents also use the term "Sabellette" to designate certain of their products, thereby representing that such products are made from sable peltries. Such products are in fact made from rabbit peltries which have been so dressed and dyed as to resemble sable peltries.

Respondents also use the term "Squirrellette" to designate certain of their products, thereby representing that such products are made from squirrel peltries. Such products are in fact made from rabbit peltries, which have been so dressed and dyed as to resemble squirrel peltries.

Respondents have also used the term "Broadtail" to designate certain of their products, thus representing that the products so designated are made from the peltries of broadtail lambs. Such products are not in fact made from the peltries of broadtail lambs, but are made from other peltries which have been so dressed and dyed as to resemble broadtail peltries.

Respondents have also used the word "Norwegian" to designate certain of their products, thereby representing that such products are made from peltries imported from Norway. Such products are not in fact made from peltries imported from Norway, but are made from peltries obtained from other sources.

Respondents' products when dyed and processed as hereinabove described closely resemble in appearance garments made from the peltries of the respective fur-bearing animals above referred to and, insofar as the members of the purchasing public are concerned, are indistinguishable from garments actually made from the peltries of the various fur-bearing animals whose pelts have been simulated in the manner above described.

PAR. 6. There is a preference on the part of a substantial portion of the purchasing public for fur products made from the peltries of seal, mink, beaver, muskrat, skunk, sable, squirrel, and broadtail lamb, as compared to fur products made from the peltries of rabbits so dressed, dyed, and processed as to simulate in appearance the peltries of seal, mink, beaver, muskrat, skunk, sable, squirrel, and broadtail lamb. There is also a preference on the part of a substantial portion of the purchasing public for fur products made from

the peltries of foxes obtained from Norway over fur products made from peltries obtained from other sources.

PAR. 7. The aforesaid acts and practices of the respondents in offering for sale and selling garments made from rabbit peltries which have been dyed and processed so as to resemble the peltries of mink, seal, squirrel, skunk, and other more valuable fur-bearing animals without disclosing or revealing the fact that such garments are made from rabbit peltries dyed and processed in the manner hereinabove described, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that the furs and fur garments sold by the respondents are made from the peltries of seal, mink, beaver, muskrat, skunk, sable, squirrel, or broadtail lamb, when in fact they are made from dyed rabbit peltries.

PAR. 8. The aforesaid acts and practices of the respondents have the tendency to mislead and deceive a substantial portion of the purchasing public with respect to the nature and origin of respondents' products, and to cause such portion of the public to purchase substantial quantities of respondents' products as a result of the erroneous and mistaken belief so engendered.

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 June 12, 1941, issued and subsequently served its complaint in this proceeding upon respondents, Steven Angell and Asimo Liampos, individuals, trading as S. Angell & 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 were introduced and certain stipulated facts were read into the record at a hearing before an examiner of the Commission theretofore duly designated by it, and said stipulated facts, 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 stipulated facts, testimony and other evidence, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested); and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Steven Angell and Asimo Liampos, are individuals, trading and doing business under the name and style of S. Angell & Co. and having their office and principal place of business at 236 West Twenty-seventh Street, New York, N. Y. Respondents are now, and for several years last past have been, engaged in the sale and distribution of furs and fur garments.

PAR. 2. In the course and conduct of their aforesaid business, respondents cause, and have caused, furs and fur garments, when sold, to be transported from their place of business in the State of New York to purchasers thereof at their respective points of location in various States of the United States other than New York and in the District of Columbia, and have maintained, and now maintain, a course of trade in such furs and fur garments in commerce between and among the various States of the United States and in the District of Columbia. In the operation of said business respondents are now, and have been, in competition with other individuals, firms, and corporations engaged in the sale and distribution of furs and fur garments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business respondents, in soliciting the sale of and in selling and distributing their products, 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 of sales plan adopted and used by respondents was, and is, substantially as follows:

Respondents distribute, and have distributed, to their agents and operators and to members of the purchasing public certain literature and instructions, including, among other things, push cards, order blanks, illustrations of their said merchandise, and circulars explain-

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ing respondents' plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing public. One of respondents' push cards bears 100 feminine names, with ruled columns on the back of said card for writing in the name of the purchaser opposite the name selected. Said push card has 100 small partially perforated disks on the face of which is printed the word "Push." Each of said 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 under 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 his choice of a fur coat or a fur bolero. The push card bears a legend or instructions as follows:

GORGEOUS
 V Shape Sealine or V Shape
 Mendoza Beaver Fur Coats
 —Swagger Styles—
 20 Inch Skunkolene Boleros
 In Black, Brown or Grey
 OR—CARACULS
 Sizes 12 to 40
 GIVEN AWAY
 FREE

Nos. 1 to 49 Pay what you draw.
 All above 49 pay 49 cents.

Sales of respondents' merchandise by means of said push cards are made in accordance with the above-described legend or instructions. Said prizes of furs are allotted to the customers or purchasers in accordance with the above legend or instructions. The amount of money paid by the purchaser, and the fact as to whether the purchaser receives a fur garment or nothing for the amount of money paid, are 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 garments by means of a game of chance, gift enterprise, or lottery scheme. The sales plan involved in the sale of all of said garments by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 4. The persons to whom respondents furnish the said push cards use the same in purchasing, selling, and distributing respond-

ents' furs and fur garments 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 furs and fur garments in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their fur products, and the sale of said fur 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. 5. The sale of furs and fur garments to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a fur or fur garment at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute furs and fur garments in competition with the respondents, as above set forth, 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 furs and fur garments and the element of chance involved therein, and are thereby induced to buy and sell respondents' furs and fur garments in preference to furs and fur garments 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 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. 6. In the course and conduct of their business as aforesaid, respondents have also engaged in and are now engaged, in the practice of failing to disclose the true nature and origin of their fur products, and of affirmatively misrepresenting the nature and origin of their products, such false representations being made by means of tags and labels attached to such products, by means of advertisements in magazines and newspapers, and by means of circulars, price lists, and other advertising material distributed among prospective purchasers of such products.

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Among and typical of such acts and practices, the respondents have caused certain of their furs and fur garments to be designated or described by the terms "Minkolet," "Minkolene," and "Marmink," thereby representing that the products so designated are made from mink peltries. In truth and in fact, such products are not made from mink peltries, but are made from rabbit or other peltries which have been dressed and dyed in such manner that they resemble mink peltries.

Respondents also use the terms "Nubian Seal," "V Shape Seal," "Hudseal," and "Sealine" to designate certain of their products, thereby representing that such products are made from seal peltries. Such products are in fact made from rabbit peltries which have been so dressed and dyed as to resemble seal peltries.

Respondents also use the terms "Beaverette" and "Mendoza Beaver" to designate certain of their products, thereby representing that the products so designated are made from beaver peltries. Such products are in fact made from rabbit peltries which have been dressed and dyed in such manner as to resemble beaver peltries.

Respondents also use the term "Silvertone Muskrat" to designate certain of their products, thereby representing that such products are made of "Silvertone Muskrats." Such products are in fact made from muskrat peltries which have been dyed and dressed in "Silver-tone."

Respondents also use the terms "Skunkette" and "Skunkolene" to designate certain of their products, thereby representing that such products are made from skunk peltries. Such products are in fact made from rabbit peltries which have been so dressed and dyed as to resemble skunk peltries.

Respondents also use the term "Sabellette" to designate certain of their products, thereby representing that such products are made from sable peltries. Such products are in fact made from rabbit peltries which have been so dressed and dyed as to resemble sable peltries.

Respondents also use the term "Squirrellette" to designate certain of their products, thereby representing that such products are made from squirrel peltries. Such products are in fact made from rabbit peltries which have been so dressed and dyed as to resemble squirrel peltries.

Respondents have also used the term "Broadtail" to designate certain of their products, thus representing that the products so designated are made from the peltries of broadtail lambs. Such products are not in fact made from the peltries of broadtail lambs, but are

made from other peltries which have been so dressed and dyed as to resemble broadtail peltries.

Respondents have also used the word "Norwegian" to designate certain of their products, thereby representing that such products are made from peltries imported from Norway. Such products are not in fact made from peltries imported from Norway, but are made from peltries obtained from other sources.

Respondents' products, when dyed and processed as hereinabove described, closely resemble in appearance garments made from the peltries of the respective fur-bearing animals above referred to, and, insofar as the members of the purchasing public are concerned, are indistinguishable from garments actually made from the peltries of the various fur-bearing animals whose pelts have been simulated in the manner above described.

PAR. 7. There is a preference on the part of a substantial portion of the purchasing public for fur products made from the peltries of seal, mink, beaver, muskrat, skunk, sable, squirrel, and broadtail lamb as compared to fur products made from the peltries of rabbits so dressed, dyed, and processed as to simulate in appearance the peltries of seal, mink, beaver, muskrat, skunk, sable, squirrel, and broadtail lamb. There is also a preference on the part of a substantial portion of the purchasing public for fur products made from the peltries of foxes obtained from Norway over fur products made from peltries obtained from other sources.

PAR. 8. The acts and practices of respondents in offering for sale and selling garments made from rabbit peltries which have been dyed and processed so as to resemble the peltries of mink, seal, beaver, skunk, squirrel, and other more valuable fur-bearing animals without disclosing or revealing the fact that such garments are made from rabbit peltries dyed and processed in the manner described have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that the furs and fur garments sold by respondents are made from the peltries of seal, mink, beaver, muskrat, skunk, sable, squirrel, or broadtail lamb when in fact they are made from dyed rabbit peltries. The acts and practices of respondents further have the tendency to mislead and deceive a substantial portion of the purchasing public with respect to the nature and origin of respondents' products and to cause such portion of the public to purchase substantial quantities of respondents' products as a result of such erroneous and mistaken belief.

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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 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 introduced before an examiner of the Commission theretofore duly designated by it, 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 Steven Angell and Asimo Liampos, individuals, trading at S. Angell & Co., or trading 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, and distribution of furs, fur garments, or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. 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, punch boards, or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, punch boards, or other lottery devices are to be used, or may be used, in selling or distributing 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.

4. Using the words or terms "Hudseal," "Sealine," "Nubian Seal," or "V Shape Seal," or other words or terms of similar import or meaning, either alone or in connection, combination, or conjunction with any other word or words, to designate, describe, or refer to furs or fur garments made from rabbit peltries or from any peltries other than seal peltries, unless such words or terms are compounded with the word "dyed" or the word "processed" and when so compounded are immediately followed by the true name of the fur.

5. Using the words or terms "Minkolet," "Minkolene," or "Marmink," or any other words or terms of similar import or meaning, either alone or in connection, combination, or conjunction with any other word or words, to designate, describe, or refer to furs or fur garments made from rabbit peltries or from any peltries other than mink peltries, unless such words or terms are compounded with the word "dyed" or the word "processed" and when so compounded are immediately followed by the true name of the fur.

6. Using the words or terms "Beaverette" or "Mendoza Beaver," or any other words or terms of similar import or meaning, either alone or in connection, combination, or conjunction with any other word or words, to designate, describe, or refer to furs or fur garments made from rabbit peltries or any peltries other than beaver peltries, unless such words or terms are compounded with the word "dyed" or the word "processed" and when so compounded are immediately followed by the true name of the fur.

7. Using the words or terms "Skunkette" or "Skunkolene," or other words or terms of similar meaning, either alone or in connection, combination, or conjunction with any other word or words, to designate, describe, or refer to furs or fur garments made from rabbit peltries or any peltries other than skunk peltries, unless such words or terms are compounded with the word "dyed" or the word "processed" and when so compounded are immediately followed by the true name of the fur.

8. Using the word "Sabellette," or other word or term of similar import or meaning, either alone or in connection, combination or conjunction with any other word or words, to designate, describe, or refer to furs or fur garments made from rabbit peltries or any peltries other than sable peltries, unless such word or term is compounded with the word "dyed" or the word "processed" and when so compounded is immediately followed by the true name of the fur.

9. Using the word "Squirrellette," or other word or term of similar import or meaning either alone or in connection, combination, or conjunction with any other word or words, to designate, describe, or refer to furs or fur garments made from rabbit peltries or any peltries other than squirrel peltries, unless such word or term is compounded with the word "dyed" or the word "processed" and when so compounded is immediately followed by the true name of the fur.

10. Using the word "Broadtail," or other word or term of similar import or meaning, either alone or in connection, combination, or conjunction with any other word or words, to designate, describe, or refer to furs or fur garments made from rabbit peltries or any peltries

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other than peltries of the broadtail lamb, unless such word or term is compounded with the word "dyed" or the word "processed" and when so compounded is immediately followed by the true name of the fur.

11. Designating or describing furs or fur garments in any way other than by the use of the true name of the fur as the last word of the designation or description thereof.

12. Designating or describing furs or fur garments wherein the fur has been dyed or processed to simulate another fur without using the true name of the fur as the last word of the designation or description thereof immediately preceded by the word "dyed" or the word "processed" compounded with the name of the fur simulated.

13. Representing by the use of the word "Norwegian," or in any other manner, that furs or fur garments not made of peltries of Norwegian origin are made of peltries of such origin.

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

CHARLES ROEHM, TRADING AS CHUMANIE MEDICINE
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4530. Complaint, July 7, 1941—Decision, May 11, 1942

Where an individual, engaged in interstate sale and distribution of his "Chumanie's Triple XXX Tablets," "Chumanie's Iron Tonic Pills," and various other medicinal preparations; by means of advertisements in newspapers, periodicals, circulars, and other advertising literature—

- (a) Represented, directly and by implication, that his said "Triple XXX Tablets" constituted an effective treatment for irregular and delayed menstruation, and aided functioning when there was delay due to cold feet, nutritional lack of iron, or functional inactivity;

The facts being it was not a competent treatment for said condition, and cold feet or lack of iron have no substantial influence in delaying or preventing menstruation;

- (b) Failed to reveal facts material in the light of the representations contained in said advertisements, and with respect to consequences which might result from use of said tablets under usual or prescribed conditions, in that they contained extract of ergot and oil of savin in quantities sufficient, if used as aforesaid by nonpregnant women, to cause gastrointestinal disturbances, such as catharsis, enteritis, nausea, and vomiting with pelvic congestion, and lead to excessive uterine hemorrhages; while use thereof by pregnant women might result in abortion or miscarriage, which might be followed by local or systemic infection;

- (c) Represented that his said "Iron Tonic Pills" were an effective treatment for anemia which would build rich blood and afford relief to the person who felt old, played out, or who was nervous or looked anemic; and that his "Yellow Jacket Pills" were a "diuretic * * * stimulant to the kidneys" and an effective treatment for kidney and bladder disorders, nagging backache, leg pains, and eye puffing;

The facts being "Iron Tonic Pills" were not such a treatment except in the comparatively rare cases of anemia resulting from deficiency of iron in the diet, which symptoms of feeling tired, played out or nervous do not indicate; and except as a mild diuretic, said "Yellow Jacket" preparation was not such a stimulant or effective treatment for ailments mentioned; and, contrary to implication of his said advertisements, only in exceptional cases are backache, pains in the leg and swollen eyes caused by kidney and bladder disorders; and

- (d) Represented that his "Double RR Tablets" constituted an effective treatment for rheumatism and inflamed, painful joints, and would mitigate the distress and discomfort of rheumatism; and that his "Plantation C. M. Q. Capsules" were an effective treatment for the common cold;

The facts being said "Double RR Tablets" preparation would have no therapeutic effect in treatment of aforesaid conditions in excess of mitigating

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their distress and discomforts; stiff or painful joints may not be identified in all instances with a rheumatic condition, and not all of the great number of human ailments commonly embraced by use of term "rheumatism" may be safely or effectively treated alike; and aforesaid capsules were not a treatment for the common cold;

With effect of causing a substantial portion of the purchasing public to believe, contrary to fact, that preparations in question possessed certain therapeutic properties and values and that certain of them were safe for use; and inducing said public, as a result of such belief, to purchase substantial quantities thereof:

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

Before *Mr. William C. Reeves* and *Mr. Lewis C. Russell*, trial examiners.

Mr. J. V. Buffington and *Mr. John W. Carter, Jr.*, for the Commission.

Mr. Jack Glenn Williams, 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 Charles Roehm, individually, and trading under the name Chumanie Medicine Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Charles Roehm, is an individual, trading under the name Chumanie Medicine Co., with his principal place of business located in New Richmond, Ohio. Said respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of various medicinal preparations. Among such preparations are the following: Chumanie's Triple XXX Tablets; Chumanie's Iron Tonic Pills; Chumanie's Yellow Jacket Pills; Chumanie's Double RR Tablets; and Chumanie's Plantation C. M. Q. Capsules.

PAR. 2. Respondent causes said preparations, when sold, to be transported from his place of business in the State of Ohio to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, 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 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 preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and other periodicals, and by circulars and other advertising literature, are the following:

Women! Periods irregular? Delayed? Chumanie Triple XXX Aids Functioning, \$2 (3 boxes \$5).

PERIOD DELAY Try Chumanie's Triple XXX Capsules. The action of these capsules is such that they tend to increase menstruation when there is delay due to cold feet, nutritional lack of iron, or functional inactivity.

Feel Old? Played out, Nervous, Look anemic?—Iron Tonic Pills Relieve or Money Back. \$2 (3 boxes \$5).

Anemia? Rundown? Lack Vigor?—Iron Tonic Pills Build Rich Blood or Money Back. \$2 (3 boxes \$5).

Kidney & Bladder Disorder? Nagging Backache? Leg Pains? Eye Puffiness? Up nights?—Yellow Jacket Tab's relieve or money back. \$2 (3 boxes \$5).

KIDNEY & BLADDER DISORDER. Try Chumanie's Yellow Jacket Capsules. A Diuretic (increase renal secretion) Stimulant to the Kidneys. Order a box by mail today! Price \$1 per box (3 boxes, \$2.00).

Rheumatism! Inflamed, Painful Joints?—Get Double RR Tablets and Get Relief, 25¢ (6 boxes \$1).

RHEUMATISM. Try Chumanie's Double RR Tablets for Mitigating the Distress and Discomfort of Rheumatism. Order a box by mail today! Price \$1 per box (3 boxes, \$2).

MALARIA AND COMMON COLD. Try Chumanie's Plantation C. M. Q. (Malaria and Common Cold) * * * Also for the Common Cold. Order a box by mail today! Price \$1 per box (3 boxes, \$2.00).

PAR. 4. Through the use of the foregoing statements and representations, and others similar thereto not specifically set forth herein, the respondent represents and has represented, directly and by implication:

That respondent's preparation Chumanie's Triple XXX Tablets is an effective treatment for irregular menstruation and delayed men-

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struation which aids functioning and a treatment which tends to increase menstruation when there is delay due to cold feet, nutritional lack of iron, or functional inactivity;

That Chumanie's Iron Tonic Pills is an effective treatment for anemia and that said treatment will build rich blood and afford relief to the person who feels old, played out, or who is nervous, or who looks anemic;

That respondent's preparation Chumanie's Yellow Jacket Pills is a "diuretic * * * stimulant to the kidneys" and an effective treatment for kidney and bladder disorders, nagging backache, leg pains, and eye puffing;

That respondent's preparation Chumanie's Double RR Tablets is an effective treatment for rheumatism and inflamed, painful joints which will mitigate the distress and discomfort of rheumatism; and

That respondent's preparation Chumanie's Plantation C. M. Q. Capsules is an effective treatment for the relief of the Common Cold.

PAR. 5. The foregoing representations and advertisements are grossly exaggerated, false, and misleading, and constitute false advertisements.

In truth and in fact respondent's preparation Chumanie's Triple XXX Tablets is not an effective treatment for irregular menstruation periods and delayed periods which aids functioning, and it is not a treatment which tends to increase menstruation which is delayed due to cold feet, nutritional lack of iron, or functional inactivity.

Furthermore, cold feet, nutritional lack of iron, or functional inactivity have little or no influence in delaying or preventing the onset of menstruation.

In truth and in fact respondent's preparation Chumanie's Iron Tonic Pills is not an effective treatment for anemia and said preparation will not build rich blood and will not afford relief to persons who feel old, played out, or who are nervous, or who look anemic.

In truth and in fact respondent's preparation Chumanie's Yellow Jacket Pills is not a diuretic * * * stimulant to the kidneys and is not a treatment for kidney and bladder disorders, nagging backache, leg pains, and eye puffing.

Respondent's advertisements with respect to said Yellow Jacket Pills are further false and misleading for the reason that they carry the implication that backache, pains in the legs, and swollen eyes are caused in all instances by kidney or bladder disorders, whereas in truth and in fact such conditions are often the result of diseases entirely dissociated from kidney and bladder disorders.

In truth and in fact respondent's preparation Chumanie's Double RR Tablets is not an effective treatment for rheumatism and inflamed, painful joints.

Respondent's advertisements with respect to said Double RR Tablets are false and misleading for the further reason that the term "rheumatism" is commonly used to designate a very great number of human ailments, all of which may not be safely or effectively treated alike, and because stiff or painful joints may not be identified in all instances with a rheumatic condition of the human body.

In truth and in fact respondent's preparation Chumanie's Plantation C. M. Q. Capsules is not a treatment for the relief of the common cold.

PAR. 6. The aforesaid advertisements and representations with respect to respondent's preparation Chumanie's Triple XXX Tablets constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations contained in said advertisements and material with respect to consequences which may result from the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

The said preparation is not safe or harmless to take because it contains the drugs extract of black hellebore, aloes, extract of cotton-root bark, extract of ergot, 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 if used in connection with delayed menstruation.

The use of the aforesaid preparation by nonpregnant women as a treatment for delayed menstruation, as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may result in gastrointestinal disturbances such as catharsis, enteritis, nausea and vomiting, with pelvic congestion and may lead to excessive uterine hemorrhages.

The use of the aforesaid preparation by pregnant women may result in abortion or miscarriage which may be followed by infection which may remain local to the pelvic organs or become systemic as in "blood poison."

PAR. 7. The use by the respondent of said false advertisements has the tendency and capacity to, and does, cause a substantial portion of the purchasing public to believe that respondent's preparations 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 has the tendency and capacity to, and does, induce the purchasing public to purchase substantial quantities of respondent's said preparations as a result of such mistaken and erroneous belief.

PAR. 8. 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 July 7, 1941, issued and on July 11, 1941, served its complaint in this proceeding upon respondent, Charles Roehm, individually, and trading under the name Chumanie Medicine Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On July 29, 1941, the respondent filed his answer in this proceeding. Thereafter, a stipulation was entered into by and between counsel for the Commission and counsel for the respondent whereby it was stipulated and agreed that, subject to the approval of the Commission, a statement of facts stipulated 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 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 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. Charles Roehm is an individual trading under the name "Chumanie Medicine Co.," with his principal place of business located in New Richmond, Ohio, and is the respondent in this case.

Said respondent is now, and for more than 1 year past has been engaged in the sale and distribution of various medicinal preparations. Among such preparations are the following: Chumanie's

Triple XXX Tablets; Chumanie's Iron Tonic Pills; Chumanie's Yellow Jacket Pills; Chumanie's Double RR Tablets.

Said respondent, until May 1, 1941, was also engaged in the sale and distribution of another medicinal preparation designated: Chumanie's Plantation C. M. Q. Capsules.

PAR. 2. Respondent causes said preparations, when sold, to be transported from his place of business, in the State of Ohio, to the purchasers thereof, located in various other States of the United States.

Respondent maintains, and at all times mentioned herein has maintained a course of trade in the said preparations in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and has caused the dissemination of certain advertisements, hereinafter referred to, concerning the said 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 certain advertisements, hereinafter referred to, 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 statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, and other periodicals, and by circulars and other advertising literature, are the following:

WOMEN! Periods irregular? Delayed. Chumanie's Triple XXX aids functioning. (\$2.) (3 boxes, \$5.)

PERIOD DELAY? Try Chumanie's Triple XXX Capsules. The action of these capsules is such that they tend to increase menstruation when there is delay due to cold feet, nutritional lack of iron or functional inactivity.

FEEL OLD? Played out? Nervous, Look Anemic? Iron Tonic Pills relieve or money back. \$2. (3 boxes \$5.)

ANEMIA? Run down? Lack vigor? Iron Tonic Pills build rich blood or money back. \$2. (3 boxes, \$5.)

KIDNEY and Bladder Disorders? Nagging Backache? Leg Pains? Eye Puffiness? Up nights? Yellow Jacket Tablets, relieve or money back. \$2. (3 boxes, \$5.)

KIDNEY AND BLADDER DISORDER? Try Chumanie's Yellow Jacket Capsules: a diuretic (Increases renal secretion) stimulant to the kidneys. Order a box by mail today! Price, \$1 per box; (3 boxes, \$2).

RHEUMATISM? Inflamed, painful joints? Get Chumanie's Double RR Tablets and get relief. (25 cents; 6 boxes \$1.)

RHEUMATISM? Try Chumanie's Double RR Tablets for mitigating the distress and discomfort of Rheumatism. Order a box by mail today! Price \$1 per box. (3 boxes for \$2.)

MALARIA AND COMMON COLD? Try Chumanie's Plantation C. M. Q. (Malaria and Common Cold) * * * Also for the Common Cold. Order a box by mail today! Price \$1 per box, 3 boxes, \$2.

PAR. 4. Through the use of the foregoing statements and representations, the respondent represents, and has represented, directly and by implication:

That respondent's preparation Chumanie's Triple XXX Tablets is effective treatment for irregular menstruation and delayed menstruation which aids functioning and treatment which tends to increase menstruation when there is delay due to cold feet, nutritional lack of iron or functional inactivity.

That Chumanie's Iron Tonic Pills, is an effective treatment for anemia and that said treatment will build rich blood and afford relief to the person who feels old, played out, or who is nervous or who looks anemic.

That respondent's preparation, Chumanie's Yellow Jacket Pills is a "diuretic * * * stimulant to the kidneys" and an effective treatment for kidney and bladder disorders, nagging backache, leg pains, and eye puffing.

That respondent's preparation Chumanie's Double RR Tablets is an effective treatment for Rheumatism and inflamed, painful joints, which will mitigate the distress and discomfort of Rheumatism.

That Respondent's preparation, Chumanie's Plantation C. M. Q. Capsules, is an effective treatment for the relief of Common Cold.

PAR. 5. The foregoing representations, statements, and advertisements are grossly exaggerated, false, and misleading.

In truth and in fact, respondent's preparation, Chumanie's Triple XXX Tablets, each of which contains the following:

Iron Sulphate Dried, 1 gr.
 Extract Black Hellebore, 1 gr.
 Aloes, 1 gr.
 Extract cotton-root bark, 1 gr.
 Extract Ergot, 1 gr.
 Oil of Savin, one-fourth min.

is not a competent treatment for irregular or delayed menstruation and is not a safe treatment for such condition. Cold feet or nutritional lack of iron has no substantial influence in delaying or preventing the onset of menstruation.

In truth and in fact, respondent's preparation, Chumanie's Iron Tonic Pills, is not an effective treatment for anemia or the condition

of looking anemic, except in cases of anemia resulting from a deficiency of iron in the diet. Anemia, or a lack of rich blood resulting from a deficiency of iron in the diet, is a comparatively rare condition; and the symptoms of feeling old, played out, or nervousness do not indicate a deficiency of iron in the diet.

In truth and in fact, respondent's preparation, Chumanie's Yellow Jacket Pills, is not a stimulant to the kidneys, except as a mild diuretic, and is not an effective treatment for kidney or bladder disorders, nagging backache, leg pains, or eye puffing. Respondent's advertisements with respect to said Yellow Jacket Pills carry the implication that backache, pains in the legs, and swollen eyes are caused by kidney or bladder disorders, it is only in exceptional cases that such conditions are caused by kidney or bladder disorders.

In truth and in fact, respondent's preparation Chumanie's Double RR Tablets, is not an effective treatment for rheumatism and inflamed, painful joints, and will have no therapeutic effect in the treatment of said maladies, in excess of mitigating the distress and discomforts thereof.

Respondent's advertisements with respect to said Double RR Tablets are misleading for the further reason that the term "Rheumatism," used alone, is commonly employed to designate a very great number of human ailments, all of which may not be safely or effectively treated alike, and because stiff or painful joints may not be identified, in all instances, with a Rheumatic condition of the human body.

In truth and in fact, respondent's preparation, Chumanie's Plantation C. M. Q. Capsules, is not a treatment for the relief of the common cold.

PAR. 6. The aforesaid advertisements and representations with respect to respondent's preparation, Chumanie's Triple XXX Tablets, fail to reveal facts, hereinafter mentioned, material in the light of the representations contained in said advertisements, and material with respect to consequences which may result from the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

The said preparation is not harmless to take because it contains the drug extract of ergot, and the drug oil of savin, in quantities sufficient to cause possible 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 if used in connection with delayed menstruation.

The use of the aforesaid preparation by nonpregnant women as treatment for delayed menstruation as prescribed in the aforesaid

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advertisements, or its use under such conditions as are customary or usual, may result in gastrointestinal disturbances, such as catharsis, enteritis, nausea, and vomiting with pelvic congestion, and may lead to excessive uterine hemorrhages.

The use of the aforesaid preparation by pregnant women may result in abortion or miscarriage, which may be followed by infection, which may remain local, to the pelvic organs, or become systemic, as in "blood poison."

PAR. 7. The use by the respondent of said advertisements has the tendency and capacity to, and does, cause a substantial portion of the purchasing public to believe that respondent's preparations possess certain therapeutic properties and values which they do not in fact possess, and that certain of said preparations are safe for use in cases when such is not the fact, and has the tendency and capacity to, and does, induce the purchasing public to purchase substantial quantities of respondent's said preparations as a result of such belief.

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 DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into by and between counsel for the Commission, and counsel for the respondent,

¹ Above order was modified slightly in Commission order dated July 1, 1942, which granted in part and denied in part respondent's motion to modify said order, as follows:

This matter coming on to be heard by the Commission upon the respondent's motion to modify the order to cease and desist heretofore issued by the Commission on May 11, 1942, and the Commission having duly considered said motion and the record herein and being now fully advised in the premises;

It is ordered, That respondent's motion for an order modifying the order to cease and desist be, and the same hereby is, granted insofar as said motion moves the deletion of the words "or nutritional lack of iron" in lines 4 and 5 or printed line 3 of subsection (a) of paragraph 1 of the order to cease and desist issued on May 11, 1942.

It is further ordered, That respondent's motion be, and the same hereby is, denied insofar as it moves the deletion of the word "competent" from the second line of subsection (a) of paragraph 1 and the insertion of the clause "or that the nutritional lack of iron has any influence in delaying or preventing the onset of menstruation other than confined to certain well defined limits" immediately preceding the semicolon in line 7 of subsection (a) of paragraph 1.

It is still further ordered, That except as hereinabove modified the order to cease and desist issued by the Commission on May 11, 1942, remain in full force and effect.

which stipulation provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Charles Roehm, individually, and trading under the name Chumanie Medicine Co., or trading under any other name or names, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his medicinal preparation now known as Chumanie's Triple XXX Tablets, Chumanie's Iron Tonic Pills, Chumanie's Yellow Jacket Pills, Chumanie's Double RR Tablets, and Chumanie's Plantation C. M. Q. Capsules, or of any other preparations of substantially similar properties, whether sold under the same names or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference:

(a) That the preparation, Chumanie's Triple XXX Tablets, is a safe or competent treatment for irregular or delayed menstruation; or that cold feet or nutritional lack of iron has any substantial influence in delaying or preventing the onset of menstruation; or which advertisement fails to reveal that the use of said preparation may cause gastrointestinal disturbances, pelvic congestion, excessive uterine hemorrhages and, in cases of pregnancy, infection of the pelvic organs and blood poisoning.

(b) That said preparation Chumanie's Iron Tonic Pills, is an effective treatment for anemia, except in cases of anemia resulting from a deficiency of iron in the diet; or that the symptoms of feeling old, played out, or nervousness indicate a deficiency of iron in the diet.

(c) That said preparation, Chumanie's Yellow Jacket Pills, is a stimulant to the kidneys, except as a mild diuretic, or is an effective treatment for kidney or bladder disorders, or for such symptoms as backache, leg pains, puffy or swollen eyes, or that such symptoms indicate kidney or bladder disorders.

(d) That said preparation Chumanie's Double RR Tablets is an effective treatment for rheumatism or inflamed, painful joints or that

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it will have any therapeutic effect in the treatment of said conditions in excess of mitigating the distress and discomforts thereof; or that stiff or painful joints are caused only by a rheumatic condition of the human body.

(e) That said preparation Chumanie's plantation C. M. Q. Capsules is a treatment for the relief of the common cold.

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, or any of them, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement with respect to the preparation Chumanie's Triple XXX Tablets fails to reveal the dangerous consequences which may result from the use of said preparation, as required in paragraph 1 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.

Syllabus

IN THE MATTER OF

BLUE RIBBON HATCHERIES CORPORATION, TRADING
AS BOCKENSTETTE'S BLUE RIBBON FARMS, AND AS
SUBSTITUTED RESPONDENTS THEREFOR, J. A. BOCK-
ENSTETTE AND ROSE BOCKENSTETTE, TRADING AS
AFORESAID

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

Docket 4537. Complaint, July 10, 1941—Decision, May 11, 1942

Where two individuals, successors to the corporate business which they theretofore owned and conducted, engaged in breeding and hatching and in the interstate sale and distribution of baby chicks; by means of advertisements in newspapers and trade journals, folders, pamphlets, circular letters, and other advertising matter, directly or by implication—

- (a) Falsely represented that they were "R. O. P." poultry breeders, and operated a poultry farm under the supervision of an official from the agency supervising "U. S. Record of Performance" work of the Department of Agriculture; and
- (b) Represented that the average production of hens grown from their chicks exceeded that of hens generally, by 94 eggs per annum; that each hen grown from their chicks could be depended upon to lay an egg daily and produced eggs at from one-third to one-half the cost of producing them from birds of ordinary breeding; and
- (c) Represented that they would fully indemnify purchasers of baby chicks against all losses for 4 weeks from date of shipment;

The facts being the average egg production of such hens did not exceed by 94 per annum, or by any appreciable number, the average production of hens generally; such hens would not lay for any considerable period of time, nor were their eggs produced at appreciably less cost than average cost of eggs laid by hens of so-called ordinary breeding; and said individuals did not replace, without charge, chicks which died after 3 days after shipment, but beyond that time and up to 4 weeks made replacement only if buyer paid half the purchase price;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such advertisements were true, thereby inducing it, because of such belief, to purchase substantial quantities of said poultry products:

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. W. W. Sheppard*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Wheeler, Brewster, Hunt & Goodell, of Topeka, Kans., for respondents.

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COMPLAINT¹

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Blue Ribbon Hatcheries Corporation, a corporation trading as Bockenstette's Blue Ribbon Farms, 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, Blue Ribbon Hatcheries Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas with its office and principal place of business located at Sabetha, Kans. Respondent also trades under the name Bockenstette's Blue Ribbon Farms.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the business of hatching, breeding, and selling chickens, especially baby chicks. Respondent causes its said baby chicks and chickens when sold by it to be transported from its aforesaid place of business in the State of Kansas to purchasers thereof located in the various other States of the United States and in the District of Columbia.

¹ The Commission by order of September 9, 1941, approved stipulation, substituting parties respondent and permitting withdrawal of answer and filing of substitute answer, as follows:

This matter coming on for consideration by the Commission upon the motion of J. A. Bockenstette and Rose M. Bockenstette, that they be substituted as parties respondent in this proceeding in lieu and instead of Blue Ribbon Hatcheries Corporation, a corporation, and a stipulation by and between counsel for the Commission and said individuals whereby it is agreed that they may be substituted as parties respondent in this proceeding, and the motion of said individuals that they be permitted to withdraw the answer heretofore filed and to file a substitute answer in lieu thereof, and it appearing to the Commission that said Blue Ribbon Hatcheries Corporation, a corporation, named as respondent in this proceeding, has been dissolved and is no longer in existence, and that said individuals were the principal stockholders in, and directed and controlled the business of, said corporation, and were served with a copy of the complaint in this proceeding, and that said individuals have conducted, since the dissolution of said corporation, and are now conducting the business formerly operated by said corporation, and the Commission having considered said motions and stipulation and the record herein, and being now fully advised in the premises.

It is ordered, That J. A. Bockenstette and Rose M. Bockenstette, individuals trading and doing business under the name Bockenstette's Blue Ribbon Farms, be, and they hereby are, substituted as parties respondent in this proceeding in lieu and instead of Blue Ribbon Hatcheries Corporation, the respondent named in the complaint in this proceeding.

It is further ordered, That the stipulation entered into by counsel for the Commission and counsel for said individuals on August 14, 1941, be, and the same hereby is, approved and made a part of the record herein.

It is further ordered, That the respondents be permitted to withdraw the answer filed herein on August 4, 1941, and file in lieu thereof answer submitted to the Commission on August 27, 1941.

It is further ordered, That the title of this proceeding be changed to reflect the change in parties respondent.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said baby chicks and chickens in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the aforesaid business and for the purpose of inducing the purchase of its baby chicks and chickens, respondent has circulated and is now circulating among prospective purchasers throughout the United States, by United States mails, by advertisements in newspapers and trade journals, and by advertising folders, pamphlets, circular letters, and other advertising matter, many false statements and representations concerning its said products.

Among and typical of such false statements and representations disseminated as aforesaid are the following:

Each female has made her egg record in a previous year in an egg-laying contest under the R. O. P. supervision, or has our home-trapped record.

They are a choice group of individually wing banded females from a select group of R. O. P. Rhode Island Whites and individually pedigreed hens produced by our Contest Pen Mating.

Individually pedigreed males from R. O. P. trap nested Dams head these matings.

9400 More Eggs Per Year From Each 100 Hens!

These Gratifying Results Are Being Obtained By Our Customers, With Blue Ribbon Chicks!

Every Hen In These Flocks Lay An Egg Daily.

Based on Actual Unsolicited Letters, We Don't Believe There Is a Breeding Farm or Hatchery Anywhere That Can Duplicate Our Record For Customer Results. Figures taken from these customers' letters prove that Blue Ribbon Breeding is enabling our customers to produce eggs at from $\frac{1}{4}$ to $\frac{1}{2}$ the cost of producing them with birds of ordinary breeding. Our 1940 chicks will do even better.

4 Weeks Insurance Chick Buyers' Protection against Losses up to 4 weeks.

Through the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented directly or by implication that it is a United States record of performance poultry breeder and that it operates a poultry plant under the supervision of an official from the agency supervising United States record of performance work; that the average egg production from chicks sold by it exceeds an average egg production of hens generally by 94 eggs per annum; that each hen in flocks of hens grown from chicks sold by it can be depended upon to lay an egg daily; that eggs laid by hens grown from chicks sold by it generally have been or will be produced at a cost of from one-third to one-half the average cost of eggs laid by hens of ordinary breeding;

and that respondent will fully indemnify purchasers of baby chicks against all losses up to and including a period of 4 weeks from date of purchase.

PAR. 4. A United States record of performance breeder is understood by members of the poultry industry to be one operating a poultry breeding plant under the official state agency cooperating with the Bureau of Animal Industry, U. S. Department of Agriculture. United States record of performance embraces records of egg production and body weight made on the breeders' premises under official supervision and similar records made at officially conducted egg-laying contests, when such records are passed upon by the official state inspector or official state supervisor and when the individual birds meet other United States record of performance requirements.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, the respondent is not a United States record of performance poultry breeder and does not operate a poultry breeding plant under the supervision of an official for the agency supervising United States record of performance work. The average egg production of hens grown from chicks sold by respondent does not exceed the average egg production of hens generally by 94 eggs per annum or by any appreciable number of eggs. Not all hens in flocks of hens grown from chicks sold by respondent will lay an egg daily for any considerable duration of time. Eggs laid by respondent's hens are not generally produced at a cost of from one-third to one-half or any appreciable less cost than the average cost of eggs laid by hens of so-called ordinary breeding. Respondent does not provide 4 weeks' insurance for the protection of chick-buyers. Respondent in fact replaces without charge those chicks which died within 3 days after being placed in the brooder, and if there is further loss after the 3-day period and up to 4 weeks, replacement is made only if the buyer pays half the purchase price for additional ones.

PAR. 6. The use by respondent of the foregoing false and misleading advertising 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 do induce the purchasing public to purchase substantial quantities of respondents' products as a result of such belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 10 A. D. 1941, issued and thereafter served its complaint in this proceeding upon the respondent, Blue Ribbon Hatcheries Corporation, a corporation, trading as Bockenstette's Blue Ribbon Farms, charging it with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of the Federal Trade Commission Act.

After the issuance and service of the complaint a stipulation was entered into between counsel for the Commission and counsel for J. A. Bockenstette and Rose M. Bockenstette. Said stipulation recites that respondent, Blue Ribbon Hatcheries Corporation, ceased to be a corporation in the latter part of 1940; that J. A. Bockenstette and Rose M. Bockenstette, were the owners of the stock of said corporation; that said individuals have been and now are operating the business conducted under the name "Bockenstette's Blue Ribbon Farms," and, by the terms of said stipulation it was agreed that the answer filed by respondent, Blue Ribbon Hatcheries Corporation, be withdrawn and a substitute answer be filed by J. A. Bockenstette and Rose M. Bockenstette, trading as Bockenstette's Blue Ribbon Farms, and that said individuals be substituted as parties respondent in this proceeding for all purposes, in lieu of the Blue Ribbon Hatcheries Corporation; and the said J. A. Bockenstette and Rose M. Bockenstette, waived issuance and service of an amended complaint naming them as individual respondents herein.

By order of the Commission issued on September 9, 1941, the said stipulation was approved and made part of the record herein, and J. A. Bockenstette and Rose M. Bockenstette, individuals, trading and doing business under the name Bockenstette's Blue Ribbon Farms, were substituted as parties respondent in this proceeding in lieu and stead of Blue Ribbon Hatcheries Corporation, and leave was granted to withdraw the answer filed herein by Blue Ribbon Hatcheries Corporation, and to file the answer submitted to the Commission on August 27, 1941, by J. A. Bockenstette and Rose M. Bockenstette.

After issuance of the Commission's said order, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced by the attorney for the Commission and the attorneys for respondents before W. W. Sheppard, a duly appointed trial examiner of the Commission theretofore designated by it to serve in this proceeding, and the said testimony and other evidence were duly recorded and filed in the office of the Commission.

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Thereafter, the proceedings regularly came on for final hearing before the Commission on the complaint, the stipulation approved by the Commission on September 9, 1941, the joint answer of respondents, J. A. Bockenstette and Rose M. Bockenstette, individuals, trading and doing business under the name "Bockenstette's Blue Ribbon Farms," the testimony and other evidence, the report of the trial examiner upon the evidence 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 public interest and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, J. A. Bockenstette and Rose M. Bockenstette, are individuals, trading and doing business under the name "Bockenstette's Blue Ribbon Farms"; their principal place of business adjoins the city of Sabetha, in the State of Kansas. For some time prior to December 1940 the business now conducted by respondents was conducted by Blue Ribbon Hatcheries Corporation, a corporation, trading as "Bockenstette's Blue Ribbon Farms." The stock of this corporation was owned by respondents, J. A. Bockenstette and Rose M. Bockenstette, who, since the dissolution of the corporation in December 1940 have continued the business under the name "Bockenstette's Blue Ribbon Farms." The original respondent was, and the substituted respondents, since December 1940 have been and are, engaged in the business of breeding, hatching and selling chickens, especially baby chicks. Respondents cause and have caused their baby chicks and chickens, when sold by them, to be transported from their principal place of business in the State of Kansas to purchasers thereof located in various States of the United States and in the District of Columbia. The substituted respondents, who will hereafter be called the respondents, maintain and have maintained a course of trade in said baby chicks and chickens in commerce between and among various States of the United States and in the District of Columbia.

PAR. 2. Respondents, in the course and conduct of their business, and for the purpose of inducing the purchase of their baby chicks and chickens, have circulated and are now circulating among prospective purchasers throughout the United States, by means of the United States mails, by advertisements in newspapers and trade jour-

nals, and by advertising folders, pamphlets, circular letters, and other advertising matter, many false statements and representations concerning their said products. Among and typical of such false statements and representations disseminated as aforesaid, are the following:

Each female has made her egg record in a previous year in an egg-laying contest under the R.O.P. supervision, or has our home trapped record.

They are a choice group of individually wing banded females from a select group of R.O.P. Rhode Island Whites and individually pedigreed hens produced by our Contest Pen Mating.

Individually pedigreed males from R.O.P. trap nested dams head these matings.

9400 More Eggs Per Year from Each 100 Hens.

These Gratifying Results Are Being Obtained by Our Customers with Blue Ribbon Chicks.

Every Hen in These Flocks Lay An Egg Daily.

Based on Actual Unsolicited Letters, We Don't Believe There Is a Breeding Farm or Hatchery Anywhere That Can Duplicate Our Record for Customer Results. Figures Taken from These Customers' Letters Prove That Blue Ribbon Breeding Is Enabling Our Customers to Produce Eggs at from $\frac{1}{3}$ to $\frac{1}{2}$ the Cost of Producing Them with Birds of Ordinary Breeding. Our 1940 Chicks Will Do Even Better.

4 Weeks' Insurance Chick Buyers' Protection against Losses Up to 4 Weeks.

PAR. 3. A plan for the administration of regulations for the improvement of poultry, poultry products and hatcheries, known as the "National Poultry Improvement Plan," has been administered by the Bureau of Animal Industry of the Department of Agriculture for a number of years, in cooperation with State authorities. In Kansas this cooperation authority is known as Kansas Poultry Improvement Association. Included in this plan is what is known as "United States Record of Performance," which is usually referred to as "U.S. R.O.P.," or "R.O.P.," and such designations are known generally to those engaged in the business of hatching, breeding and selling chicks. R.O.P. breeders are understood by the poultry industry to be those operating a poultry breeding plant under the official State agency cooperating with the Bureau of Animal Industry of the Department of Agriculture. The following are among the numerous requirements imposed upon an R.O.P. breeder.

The hens must be trap nested at regular intervals each day throughout the year.

R.O.P. Official State Inspectors make at least seven unannounced visits to R.O.P. Hatchery plants every year.

Poultry Plants are required to be kept open at all times, to permit such unannounced inspections.

During these inspections, the inspector takes charge of the trapping and checking, and records the individuals who have met the requirements of R.O.P. poultry breeders.

The hens are required to lay 200 or more eggs a year in a trap nest, the eggs to average 24 ounces or more to the dozen in weight throughout the year. Records of egg production, egg weight and body weight, under official supervision, must be kept, and must be open to inspection at all times. Except in 2 enumerated instances, R. O. P. eggs and chicks must be produced on R. O. P. breeder's premises. Any chicken not meeting the standards of the R. O. P. may be removed from the R. O. P. flock by the official State inspector at any time. The term "Record of Performance," or "R. O. P.," has an advertising value which is national in its scope.

PAR. 4. Respondents, by their statements set forth in paragraph 2 hereof, have represented, either directly or by implication, that they are R. O. P. poultry breeders, and that they operate a poultry plant under the supervision of an official from the agency supervising U. S. record of performance work; when, in truth, respondents are not R. O. P. poultry breeders and do not operate a poultry plant under such supervision. Respondents, by means of the statements set forth in paragraph 2 hereof, represent that the average production of hens grown from chicks sold by them exceeds an average production of hens generally, by 94 eggs per annum; that each hen in flocks of hens grown from chicks sold by them can be depended upon to lay an egg daily; that hens grown from chicks purchased from respondents enable respondents' customers to produce eggs at from one-third to one-half the cost of producing them from birds of ordinary breeding; and that respondents will fully indemnify purchasers of baby chicks against all losses, up to and including a period of four weeks from date of shipment.

The average egg production of hens grown from chicks sold by respondent does not exceed 94 eggs per annum, or by any appreciable number of eggs, the average egg production of hens generally; nor will all hens in flocks grown from chicks sold by respondents lay an egg daily for any considerable period of time. Eggs laid by respondents' hens are not generally produced at a cost of from one-third to one-half the cost, or at any appreciably less cost, than the average cost of eggs laid by hens of so-called ordinary breeding. Respondents do not provide four weeks' insurance for the protection of chick buyers; respondents, in fact, replace without charge those chicks which die within three days after being shipped, and

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if there is further loss after the three days period, and up to four weeks, replacement is made only if the buyer pay half the purchase price for the additional chicks.

PAR. 5. The use by respondents of the foregoing false and misleading advertising, disseminated as aforesaid, has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false advertisements are true, and the purchasing public, because of such belief, has been induced to purchase substantial quantities of respondent's poultry products.

CONCLUSION

The acts and practices of the respondent, as set forth in the foregoing findings as to the facts, are to the injury and prejudice of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answer of the substituted respondents, J. A. Bockenstette and Rose M. Bockenstette, trading as Bockenstette's Blue Ribbon Farms, 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 the Commission having made its findings as to the facts and its conclusion that the substituted respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the substituted respondents, J. A. Bockenstette and Rose M. Bockenstette, trading as Bockenstette's Blue Ribbon Farms, 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 chicks or chickens, 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 other means, in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication.

(a) That respondents are R. O. P. poultry breeders, or that they operate a poultry plant under the supervision of an official from the agency supervising United States Record of Performance work.

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(b) That the average egg production of hens grown from chicks sold by respondents exceeds the average egg production from an equal number of hens generally, by 94 eggs each, per annum, or by any other appreciable amount.

(c) That hens in respondents' flocks lay an egg daily.

(d) That purchasers of respondents' products are enabled to produce eggs at from one-third to one-half the cost of producing them with birds of ordinary breeding.

(e) That respondents protect purchasers of their chicks against losses, up to 4 weeks.

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' product, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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

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IN THE MATTER OF

CHARLES OF THE RITZ DISTRIBUTORS CORPORATION

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

Docket 3923. Complaint, Oct. 12, 1939—Decision, May 12, 1942

Where a corporation, engaged in interstate sale and distribution of a cosmetic preparation which it designated "Charles of the Ritz Rejuvenescence Cream" or "Rejuvenescence Cream Ritz"—

Falsely represented, through use of term "Rejuvenescence Cream" and statements in advertisements, directly or by implication, that its said preparation would rejuvenate the skin and restore youth of the appearance thereof to skin to which applied, regardless of the condition thereof or user's age;

The facts being that a skin which has become dry or harsh because of external conditions can be improved by the application of an emollient or lubricant, but not skin conditions due to systemic causes; and there is no treatment known to medical science by which skin changes due to the passage of time can be erased or an aged skin rejuvenated or restored to youthful condition;

With capacity and tendency of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby causing it to purchase said preparation because 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. John W. Addison*, trial examiner.

Mr. S. Brogdyne Teu, II for the Commission.

Mock & Blum, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Charles of the Ritz Distributors 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, Charles of the Ritz Distributors Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having its principal office and place of business at 9 University Place, city of New York, State of New York.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution of a cosmetic preparation designated "Charles of the Ritz Rejuvenescence Cream." Respondent causes said cosmetic preparation, when sold, to be distributed from its place of business in the State of New York to the purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said cosmetic preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said cosmetic preparation by United States mails by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are disseminated in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said cosmetic preparation, and has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said cosmetic preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated by respondent as aforesaid, and which purport to describe the effectiveness in use of said preparation are the following:

Charles of the Ritz Rejuvenescence Cream.

Used again at night when you are relaxed, It is constantly active in keeping your skin clear, radiant and young looking.

Charles of the Ritz Rejuvenescence Cream aids your skin in retaining that fresh, dewy look.

Charles of the Ritz Rejuvenescence Cream contains a vital organic ingredient that preserves and restores natural moisture so necessary to healthy skin. It will improve the texture and quality of your skin and make it radiant and beautiful.

Through the use of the above statements and representations and through the use of the word "Rejuvenescence" in the aforesaid advertisements as part of the designation of the respondent's said cosmetic preparation, respondent has represented and now represents that

said cosmetic preparation will rejuvenate the skin of the user thereof and will restore youth and the appearance of youth to skin to which it is applied regardless of the condition of the skin or the age of the user.

PAR. 4. The aforesaid statements and representations by respondent are misleading and untrue. In truth and in fact said cosmetic preparation will not rejuvenate the skin of the user thereof. Said preparation will not restore youth or the appearance of youth to the skin to which it is applied.

PAR. 5. The use by respondent of the aforesaid false and misleading statements and representations has had, and now has, the tendency and capacity to, and does, mislead and deceive members of the purchasing public into the erroneous belief that said statements and representations are true and into the purchase of substantial quantities of respondent's said cosmetic preparation designated "Charles of the Ritz Rejuvenescence Cream" because of such erroneous and mistaken belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 12, 1939, issued and subsequently served its complaint in this proceeding upon respondent, Charles of the Ritz Distributors 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 were introduced 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, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Charles of the Ritz Distributors Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at 9 University Place, New York, N. Y.

PAR. 2. Respondent is now, and for a number of years last past, has been, engaged in the sale and distribution of a cosmetic preparation designated as "Charles of the Ritz Rejuvenescence Cream" or as "Rejuvenescence Cream Ritz." Respondent causes said cosmetic preparation, when sold, to be distributed from its place of business in New York, N. Y., to purchasers thereof located in various States of the United States and in the District of Columbia, and maintains, and has maintained, a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent, by means of the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said cosmetic preparation; and respondent, by various means, has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said cosmetic preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated as aforesaid are the following:

CHARLES OF THE RITZ REJUVENESCENCE CREAM

* * *

Used again at night when you are relaxed, it is constantly active in keeping your skin clear, radiant and young looking.

* * *

Charles of the Ritz Rejuvenescence Cream aids your skin in retaining that fresh, dewy look.

* * *

Charles of the Ritz Rejuvenescence Cream contains a vital organic ingredient that preserves and restores natural moisture so necessary to a healthy skin. It will improve the texture and quality of your skin and make it radiant and beautiful.

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Rejuvenescence Cream Ritz is a unique product * * * made of essences and compounds which restore the natural humidity to the skin, giving it a bloom which is wonderfully rejuvenating. A single application makes a noticeable difference.

* * *

Now, year after year, as you yourself grow lovelier, rich in charm, warm in understanding * * * you also can keep the freshness of your skin! Your face need know no drought years! Its bloom cannot wilt as long as you are wearing Rejuvenescence Cream Ritz.

PAR. 4. Respondent's "Rejuvenescence Cream" is a type of product generally known in the trade as a "powder base" or as foundation for make-up. It has been marketed by respondent under the aforesaid designation since 1933, and the sales of this product by respondent during the 6 years beginning with 1934 have totalled approximately \$1,000,000.

In the conduct of said business, respondent, by the use of the term "Rejuvenescence Cream" to designate its said cosmetic preparation and by the use of statements such as those set forth in the preceding paragraph, has represented, directly and by implication, that its cosmetic preparation variously designated as "Charles of the Ritz Rejuvenescence Cream" and as "Rejuvenescence Cream Ritz" will rejuvenate the skin of the user thereof and will restore youth or the appearance of youth to the skin to which it is applied, regardless of the condition of the skin or the age of the user.

The passage of time brings about physiological changes in the skin of human beings, and there is no treatment known to medical science by which these changes in the skin of an individual can be arrested or by which an aged skin can be rejuvenated or restored to a youthful condition. In instances where the skin of an individual, because of external conditions, has become dry or harsh, its condition and appearance can be improved by the application of an emollient or lubricant. However, external applications of such preparations cannot overcome skin conditions which are due to system causes present in the individual. Respondent's said cosmetic product does not keep the skin of the user "clear, radiant and young looking" or "make it radiant and beautiful"; nor does the use of respondent's said cosmetic preparation arrest the effects of age or disease upon the skin of the user or restore the condition or appearance of youth to a skin from which, because of age, such condition and appearance have departed.

PAR. 5. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and implications with respect to its said cosmetic preparation and the effects of the use thereof has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and

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mistaken belief that such statements, representations, and implications are true, and into the purchase of respondent's said preparation because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices, as herein 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondent, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, 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, Charles of the Ritz Distributors Corporation, a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a cosmetic preparation designated as "Charles of the Ritz Rejuvenescence Cream" or as "Rejuvenescence Cream Ritz," or any other cosmetic preparation or preparations which are substantially similar in composition or possess substantially similar properties, whether sold under the same names or any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, 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

(a) in which the word "Rejuvenescence," or any other word or term of similar import or meaning, is used to designate, describe, or refer to respondent's said cosmetic preparation; or

(b) which represents, directly or by inference, that respondent's said cosmetic preparation will rejuvenate the skin of the user thereof or restore youth or the appearance of youth to the skin of the user.

2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing, or which is likely to

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induce, directly or indirectly, the purchase of said cosmetic preparation 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 respondent shall, within 60 days after the service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

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IN THE MATTER OF
DAVIDSON ENAMEL COMPANY

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

Docket 4001. Complaint, Jan 27, 1940—Decision, May 12, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of an interior wall covering which consisted of small unit metal plates covered with a vitreous enamel such as that commonly applied to bathtubs, kitchen sinks, etc., and which, when applied to a wall as contemplated, presented an appearance practically identical with that of glazed clay tile, and which it particularly recommended for modernizing bathrooms and kitchens in old buildings because it could be used where the greater weight of clay tile might impose undue strain; in advertisements, folders, and circulars, and in periodicals and newspapers of general circulation—

Represented and described its said product as "Veos Tile" and "Veos Porcelain Tile," "Veos Porcelain Wall Tile" and "Veos Porcelain on Steel Wall Tile"; the facts being that its said product was not a "porcelain tile" or one composed entirely of porcelain—a homogeneous clay product capable of being self-sustaining through the forming and firing process and matured at temperatures which would be destructive to the metal base to which said corporation applied its vitreous enamel—nor adequately and correctly described by word "tile," namely, a baked clay product and not a metal one, but was, as above set forth, a steel or metal shape to which had been applied a thin, opaque glass-like surface of vitreous enamel;

With effect of misleading a substantial portion of the purchasing public into the mistaken belief that such statements were true, and thereby causing it to purchase substantial quantities of said product:

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

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

Mr. Randolph W. Branch for the Commission.

Miller, McManus, Hagerty & Shoemaker, of Toledo, 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 Davidson Enamel 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 thereto would be in the public interest,

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hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Davidson Enamel Co., is a corporation, organized under the laws of the State of Ohio, and having its principal office and place of business at Clyde, Ohio.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of manufacturing, distributing and selling a certain interior wall covering described by respondent as "Tile" or "Porcelain Tile." Respondent causes and has caused its said product, when sold, to be transported from its aforesaid place of business in the State of Ohio to purchasers thereof located in various States of the United States other than the State of Ohio and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said interior wall covering among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said interior wall covering, respondent has made, by means of advertising folders and circulars and by means of advertisements inserted in magazines and newspapers having a general circulation throughout the various States of the United States, claims and representations concerning the composition of its product. Among and typical of the claims and representations so made are the following:

"Veos Tile"

"VEOS PORCELAIN WALL TILE"

"Veos Porcelain Tile"

"The advantages of genuine porcelain are well known—but VEOS Porcelain Tile—is comparatively new."

"VEOS Porcelain on Steel WALL TILE"

PAR. 4. Through the use of the statements, representations, and designations hereinabove set forth, and others similar thereto not herein set out, all of which purport to be descriptive of the said interior wall covering and its composition, respondent directly and by implication has represented that the said interior wall covering is a "tile" or "porcelain tile," or is composed of porcelain on steel.

PAR. 5. The aforesaid representations made by respondent, directly and by implication, with respect to its product and the composition thereof, are misleading and untrue. The word "tile," standing alone and without descriptive words, is generally understood in various trades and by the general public to mean a hard, homogeneous clay product which has been baked in kilns and, in its final form, shaped

into comparatively small sized units; "porcelain" is similarly understood to mean a fine, baked, homogeneous earthenware product. Respondent's product consists of a vitreous or glassy enamel applied to a steel base. Such enamels, when fused at high temperatures to metal bases, acquire a finish which has many qualities desirable where a hard, durable and easily cleaned surface is to be obtained. Articles such as refrigerators, bath tubs, lavatories, and kitchen sinks made of metal to which such enamels have been so fused, are understood and accepted by various trades and the general public as "porcelain enamel," where the surface, as does that of the respondent's product, possesses many of the qualities of porcelain. Such a surface, however, is not porcelain. Respondent's product is not "tile" as that word, in the absence of other descriptive words, is generally understood in various trades and by the general public, nor is it a "porcelain tile."

PAR. 6. The use by the respondent of the foregoing false and misleading statements, representations and designations with respect to its interior wall covering, 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 and misleading statements, representations and designations are true, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of the said product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 27, 1940. issued and subsequently served its complaint in this proceeding upon respondent, Davidson Enamel Co., a corporation, charging it with the use of 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 thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced 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 Com-

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mission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of and in opposition to the complaint, and oral arguments of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Davidson Enamel Co., is a corporation, organized under the laws of the State of Ohio and having its principal office and place of business at Clyde, Ohio.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of an interior wall covering designated by it under various names, including "Veos Tile" and "Veos Porcelain Tile." Respondent causes, and has caused, said product, when sold, to be transported from its place of business in the State of Ohio to purchasers located in various States of the United States other than the State of Ohio and in the District of Columbia. Respondent maintains, and has maintained a course of trade in commerce in said interior wall covering among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its said interior wall covering, respondent, by means of advertising folders and circulars and by means of advertisements inserted in magazines and newspapers having a general circulation throughout the various States of the United States, has made claims and representations concerning the composition of its product, among and typical of which are the following:

VEOS TILE
* * *
VEOS PORCELAIN TILE
* * *
VEOS PORCELAIN WALL TILE
* * *

The advantages of genuine porcelain are well known—but Veos Porcelain Tile * * * is comparatively new.

* * *
Veos Porcelain on Steel WALL TILE

PAR. 4. The wall covering sold and distributed by respondent consists of sheet metal surfaced with a vitreous enamel. In fact, the term "Veos," sometimes used by respondent in referring to its product,

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is made up of the initial letters of the words "Vitreous Enamel On Steel." This product is made in small units, standardized in size in multiples of $1\frac{1}{2}$ inches up to a maximum of 6 inches by 12 inches. These shapes are stamped from sheet steel of approximately 20 gage and are put through a pickling or cleaning process to prepare the surface for the application of vitreous enamel. The shapes are then dipped into a liquid containing principally feldspar, blended clays, borax, cryolite, tin oxide and other color oxides according to the color to be obtained, then dried at a temperature of 200° to 300° F., and then baked or fired in a furnace at a temperature of $1,580^{\circ}$ to $1,600^{\circ}$ F. for a few minutes, during which firing the material applied to the surface of the metal becomes fused to that surface. The shapes are then sprayed with a liquid consisting of substantially the same materials as contained in the first coat except for the addition of color oxides to obtain the color desired, again dried as in the case of the first coat, and fired for a few minutes in a furnace at a temperature of $1,540^{\circ}$ to $1,560^{\circ}$ F., which firing fuses the second coat. The result of this process is a metal plate covered with a vitreous enamel such as that commonly applied to bathtubs, kitchen sinks, and other articles in general domestic use, and frequently referred to as porcelain enamel. These shapes are applied by first attaching to the wall to be covered a special composition foundation board which is grooved to form a pattern of raised $1\frac{1}{2}$ -inch squares. The shapes are affixed to this foundation board by covering the back of the shapes with an adhesive and then fitting the curved edges of such shapes into the grooves in the foundation board, after which the joints between the shapes are grouted.

The product made in the manner described is used in the construction of new buildings and in the repair and modernization of old buildings. It is particularly recommended by respondent for modernizing bathrooms and kitchens in old buildings because it is much lighter in weight than clay tile and can be used where the greater weight of clay tile might impose an undue strain upon a building not designed to support heavy weights.

PAR. 5. The surface applied to respondent's product in the aforesaid manner is a ceramic glaze; it is not true porcelain. Porcelain is essentially a clay product which is capable of being self-sustaining through the forming and firing, or maturing process, and must be matured at temperatures above $2,000^{\circ}$ F., which temperatures would be destructive to the metal base to which respondent applies the vitreous enamel. In addition, true porcelain is a homogeneous product, whereas the base of respondent's product is sheet metal to which a vitreous

enamel approximately 0.012 to 0.020 of an inch in thickness has been fused. However, for a number of years last past manufacturers of various products surfaced with a vitreous enamel similar to that used by respondent have advertised and represented their products as having a porcelain or porcelain enamel finish, and such surfaces have come to be widely accepted and understood by members of the consuming public as porcelain enamel.

PAR. 6. For some thousands of years tiles ordinarily and generally have been made from clay or mixtures of clay shaped into small units and fired so as to obtain a hard, durable, dense, and impervious mass. Tiles have also been made of marble, stone, and other products, but until relatively recent years the usual and principal type of tile has been that made from clay or mixtures of clay. The word "tile," when not accompanied by qualifying words indicating the composition thereof, has been, and is now, understood in the building trade, by architects, and by members of the purchasing public to mean tiles made from clay. When applied to tiles made of materials other than clay or mixtures of clay the term "tile" has been, and is, customarily accompanied by other words descriptive of the composition of the tile, such as "glass tile," "rubber tile," "cement tile," and "linoleum tile."

When applied to a wall in the manner heretofore described respondent's product presents a surface substantially identical in appearance to that presented by a wall finished with glazed clay tile and has the same characteristics of size of units and of grouted joints between units as does a wall finished with glazed clay tile. Respondent's product, however, is not "porcelain tile" because such description designates and describes tile composed entirely of porcelain, whereas respondent's product is in fact a steel or metal shape to which has been fused a thin opaque glasslike surface known as vitreous enamel. Neither does the term "tile" adequately and correctly describe said product because the word "tile," when used without qualifying words, connotes a baked clay product or clay tile and not a metal tile such as respondent's product.

PAR. 7. The use by respondent of the term "tile," without qualifying words descriptive of the base of said product, or of the term "porcelain tile," to designate and describe its interior wall covering has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading statements, representations, and designations are true, and causes, and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of said product.

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CONCLUSION

The aforesaid acts and practices of respondent are all to the prejudice 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, the answer of respondent, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, briefs filed herein, and oral arguments by 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, Davidson Enamel Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its product designated as "Veos Tile" and by other names, or any substantially similar product under the same or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "tile," either separately or with any other word or words, to designate, describe, or refer to respondent's said product unless in immediate connection or conjunction with the word "tile" other word or words are used which disclose the metal or other base of respondent's said product.

2. Using the word "porcelain," either separately or with any other word or words, to designate, describe, or refer to respondent's said product except in a manner which clearly discloses that the word "porcelain" refers only to the vitreous enamel surface of such product.

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
JAMES MACDONALD, LTD., 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 4618. Complaint, Oct. 21, 1941—Decision, May 19, 1942

Where four corporations and three partners, with principal places of business in Scotland, producers of "Harris Tweed"—distinctive and favorably known cloth or fabric made from pure virgin wool produced in Scotland, spun, dyed and finished in the Outer Hebrides and hand woven by the inhabitants of said islands in their own homes—who had long sold and delivered a substantial part of the product in question in the United States, directly and through certain agents and representatives; and said agents and representatives, who, as competition in "Harris Tweed" developed in the United States, formed a voluntary association known as "Harris Tweed Agents Committee," membership of which always included agents and representatives of some or all of aforesaid producers; in competition, prior to and but for acts and practices below set forth, directly and through their said agents, with each other and with other members of the industry, and holding a dominant position in the substantial trade in said "Harris Tweed" between Great Britain and the United States—

- (a) Entered into and carried out understandings, agreements, combinations and conspiracies with intent and effect of monopolizing trade and suppressing competition in sale of the fabric in question in trade and commerce between Great Britain and the United States; and the several States and in the District of Columbia; and

Where aforesaid producers, with the active cooperation of said agents and representatives and others, and in pursuance of and to effectuate said understandings, etc.—

- (b) Fixed, established and maintained minimum prices, terms, and conditions of sale in connection with the marketing of "Harris Tweed" in the United States; and

Where three of said sales agents, with the active cooperation of producers aforesaid and others, and pursuant to and in order to effectuate said understandings, etc.—

- (c) Inaugurated a plan to fix and maintain prices by clothing manufacturers and resale prices by retailers selling garments made of "Harris Tweed" in the United States, and selected one of their number as their common agent in the United States to enter into agreements with the garment manufacturers and retailers, to the effect that such manufacturers would not sell garments made from "Harris Tweed" purchased from producers and agents involved at prices lower than those fixed by them, or sell to any retailer who would not bind himself similarly to respect the resale prices which they fixed; that the retailers themselves would respect such prices; and that each garment manufacturer and retailer would submit to said common selling agent list of prices at which sales were being made and customers; and

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(d) Compiled and circulated among themselves a list of clothing manufacturers not to be sold "Harris Tweed" because of their cutting the prices so fixed: *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 hinder and prevent competition in price and terms of sale between and among producers involved and other producers; placed in said producers and sales agents power to control and enhance prices of their products; tended dangerously to create in them a monopoly thereof in commerce aforesaid, unreasonably restrained such commerce, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. George W. Williams for the Commission.

Hervey, Barber & McKee, of New York City, for Kenneth MacKenzie, Ltd., Kenneth MacLeod, Ltd., S. A. Newall and Sons, Ltd., Thomas Smith and Co. and M. Stanley Brown, and, along with *Steedman, Ramage & Co.*, of Edinburgh, Scotland, for James MacDonald, Ltd.

Parker, Chapin & Flattau, of New York City, for Folkard and Lawrence, Inc.

Mr. Walter W. Padwe, of New York City, for E. Yorke Stroud.

COMPLAINT

Pursuant to the provisions of the Federal 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 referred to in the caption hereof have violated the provisions of section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, James MacDonald, Ltd., is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Stornoway, Scotland.

Respondent, Kenneth Mackenzie, Ltd., is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Stornoway, Scotland.

Respondent, Kenneth Macleod, Ltd., is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Shawbost, Scotland.

Respondent, S. A. Newall and Sons, Ltd., is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Stornoway, Scotland.

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Respondents, W. A. Smith, John Smith, and A. P. C. Lawrence, are copartners, doing business under the firm name and style of Thomas Smith and Co., with their office and principal place of business located in Stornoway, Scotland.

PAR. 2. Respondent, Miles L. Finch, sales agent and representative of respondent, James MacDonald, Ltd., is an individual, doing business under the name and style of Associate British Manufacturers, with his office and principal place of business located at 200 Fifth Avenue, New York, N. Y.

Respondent, Folkard and Lawrence, Inc., sales agent and representative of respondent, Kenneth Mackenzie, Ltd., is a corporation, organized, existing and doing business under the laws of the State of New York, with its office and principal place of business located at 51 Madison Avenue, New York, N. Y.

Respondent, Biddle-Bernstein, sales agent and representative of respondent, Kenneth Mackenzie, Ltd., is a corporation, organized, existing and doing business under the laws of the State of Pennsylvania, with its office and principal place of business located at 112 North Twelfth Street, Philadelphia, Pa.

Respondent, R. J. Beneville, sales agent and representative of respondent, Kenneth Macleod, Ltd., is an individual, with his office and principal place of business located at 23 East Twenty-sixth Street, New York, N. Y.

Respondent, E. Yorke Stroud, sales agent and representative of respondent, S. A. Newall and Sons, Ltd., is an individual, with his office and principal place of business located at 200 Fifth Avenue, New York, N. Y.

Respondent, Walter Bradshaw, is an individual, doing business under the name and style of Bradshaw Linen Co., with his office and principal place of business located at 1182 Broadway, New York, N. Y.

Respondent, M. Stanley Brown, general representative of said producer respondents, is an individual, with his office and principal place of business located at 103 Park Avenue, New York, N. Y.

Said respondent agents are generally informed in respect to the business matters of their principals and are fully acquainted with the conditions of the trade in the United States and keep their principals constantly informed as to trade conditions in the United States and advised as to their best interests in relation thereto and cooperate with them in promoting and effecting the same.

PAR. 3. The respondents named in paragraph 1 hereof are, and have been for many years, producers, among other things, of a woolen cloth or fabric known as "Harris Tweed," a material generally known

for its durability and fine wearing quality, which has a distinctive place in the opinion of the general public for those qualities, and which is, therefore, preferred by the general public for many purposes.

The original "Harris Tweed" was for many years produced in the Islands of Lewis, Harris, Uist, Barra, all a part of the group of Islands known as the Outer Hebrides, lying about 60 miles west of the mainland of Scotland, in the North Atlantic Ocean. By reason of the relatively small area only a relatively small quantity of such material was produced. The said cloth or fabric, as originally introduced and generally known to the purchasing public was a cloth or fabric entirely the handiwork of the crofters of said islands in that the wool was sheared, carded, dyed, spun, woven, shrunken, and finished by hand and the dyes used were produced locally from various forms of vegetable matter. The wool used in the cloth or fabric was coarse but very strong, and the cloth or fabric made from it was also coarse and was of great durable wearing quality, as well as possessing water-repellent qualities to a remarkable degree. Furthermore, said cloth or fabric had a characteristic odor which it took from the crude manufacturing process and from the peat smoke which circulated freely throughout the cottages in which the wool was fabricated into cloth or fabric.

As said cloth or fabric became known to the general public there was developed a large demand for it in the United States and elsewhere for certain purposes, such as the making of coats, suits and sportswear for men and women, and for various other like purposes. The supply being limited as aforesaid, and the same being brought to the attention of the British Board of Trade, the definition of "Harris Tweed" was liberalized in 1934 so that now, in the British Isles, at least, "Harris Tweed" is defined as follows:

"HARRIS TWEED" means a Tweed made from pure virgin wool produced in Scotland, spun, dyed and finished in the Outer Hebrides and hand-woven by the Islanders at their own homes in the Islands of Lewis, Harris, Uist, Barra and their several appurtenances and all known as the Outer Hebrides.

As a result of such definition of "Harris Tweed" the wool from which the same is made need not now come from the said Outer Hebrides but may come from anywhere on the mainland of Scotland. Furthermore, the yarns are not necessarily any longer hand-spun nor are they necessarily dyed with the native dye nor, therefore, is the finishing any longer necessarily a process carried out by the community as a whole, but is, or may be done in finishing plants thereof, though the cloth or fabric carries the characteristic odor of peat smoke, as it appears that it is sufficient if the cloth or fabric is made

from pure virgin wool produced in Scotland and spun, dyed and finished in said Outer Hebrides and hand-woven by the inhabitants of said islands in their own homes.

PAR. 4. The producers named in paragraph 1 as respondents herein sell and deliver, and have for many years sold and delivered, a substantial part of the said product, namely, "Harris Tweed" cloth or fabric, hereinafter referred to as "Harris Tweed," and maintained a constant course of trade and commerce in said product in the United States, directly and through the agents and representatives named as respondents in paragraph 2 hereof. "Harris Tweed," as the same has been redefined as above set forth, is also sold and delivered in the United States by other producers, and through other agents and representatives to various dealers and manufacturers, and others, for the purposes aforesaid. As competition developed in the sale and delivery of said "Harris Tweed" in the United States, a voluntary association was formed by the said agents and representatives known as Harris Tweed Agents' Committee (hereinafter referred to as "Agents Committee") for their mutual protection and the furtherance of the mutual interests of themselves and their principals (who constituted the Advisory Committee of the producers otherwise known as H. S. A. C.). The membership in said committee has changed from time to time but has always included the agents and representatives of said respondent producers.

Prior to the adoption of the practices hereinafter described, said respondent producers, directly and through said aforesaid agents, were in active and substantial competition with each other, and with other members of the industry, in making and seeking to make sales and deliveries of said "Harris Tweed" in trade and commerce between Great Britain and the United States and but for the practices hereinafter described, such active and substantial competition would have continued until the present, and said respondent producers, acting directly and through their aforesaid agents, would now be in active and substantial competition with each other and with other members of the industry.

The trade of respondent producers in the United States is substantial and respondent producers hold a dominant position in the sale of "Harris Tweed" in the United States or such a position as to enable them at least from time to time to effect and carry out the purpose hereinafter set forth.

PAR. 5. Within the past 5 years respondent producers, in cooperation with respondent agents and representatives, entered into understandings, agreements, combinations and conspiracies and carried out the same for the purpose and with the effect of restricting, restrain-

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ing and monopolizing, and suppressing and eliminating competition in, the sale of said "Harris Tweed" in trade and commerce between Great Britain and the United States and between the several States of the United States and in the District of Columbia.

PAR. 6. Pursuant to, in furtherance of, and to effectuate said understandings, agreements, combinations and conspiracies, said respondent producers with the active cooperation of respondent agents and representatives and with others have adopted, put into effect and carried out the following methods of competition, policies and practices:

(a) Fixed, established and maintained minimum prices, terms and conditions of sale in connection with the marketing of "Harris Tweed" in the United States.

(b) Prepared and inaugurated in the year 1939 a plan to fix and maintain prices by clothing manufacturers and resale prices by retailers selling garments made of said "Harris Tweed" in the United States whereby respondent agents and representatives agreed with the respondent producers as to what such prices and resale prices should be, and selected respondent Brown as a common agent in the United States to represent respondents, who in turn would enter into agreements with garment manufacturers and retail dealers as follows, to wit:

1. That the garment manufacturers would sell garments manufactured from "Harris Tweed" purchased from the respondents at prices lower than those fixed by the respondents; and
2. That the garment manufacturers would not sell "Harris Tweed" garments to any retailer who would not bind himself to sell garments manufactured from "Harris Tweed" at said fixed resale prices or at retail prices not less than the said fixed resale prices; and
3. That retail dealers would not sell such garments at prices less than the resale prices fixed by respondents as aforesaid; and
4. That each garment manufacturer and retail dealer should submit to the said common selling agent a list of prices at which sales were being made, together with the names of the customers being sold.

(c) Compiled and circulated among each other a list of clothing manufacturers which said respondents agreed should not be sold "Harris Tweed" because they were cutting the prices fixed by said respondents as aforesaid.

PAR. 7. Each of said respondents, within the time hereinabove mentioned, acted in concert with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations and conspiracies.

PAR. 8. The acts and practices of said respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, competition in price and terms of sale between and among said respondent producers and between said respondent producers and other producers in the sale of their said products in commerce within the intent and meaning of section 4 of the Federal Trade Commission Act; and placed in said respondents power to control and enhance prices of their said products; have a dangerous tendency to create in respondents a monopoly in said products in such commerce; have unreasonably restrained such commerce in their said products, and constitute unfair methods of competition and unfair and deceptive acts and practices, in said commerce, within the intent and meaning of section 5 of the Federal Trade Commission 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 21, 1941, issued, and on various dates from October 21, 1941, to November 26, 1941, served its complaint in this proceeding upon the following respondents, namely: James MacDonald, Ltd., a corporation; Kenneth MacKenzie, Ltd., a corporation; Kenneth MacLeod, Ltd., a corporation; S. A. Newall and Sons, Ltd., a corporation; W. A. Smith, John Smith, and A. P. C. Lawrence, copartners, doing business under the firm name and style of Thomas Smith and Co.; Miles L. Finch, individually and doing business under the name and style of Associate British Manufacturers; Folkard and Lawrence, Inc., a corporation; E. Yorke Stroud, an individual; Walter Bradshaw, individually, and doing business under the name and style of Bradshaw Linen Co.; M. Stanley Brown, an individual, and Biddle-Bernstein, a corporation, charging them with the use of unfair methods of competition and unfair and deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing by respondents, E. Yorke Stroud, Walter Bradshaw, and Folkard & Lawrence, Inc., of their respective answers, the Commission, by orders herein, granted the motion of each of said respondents for permission to withdraw their respective answers, and to substitute therefor answers admitting all the material allegations of fact set forth in said complaint, except as hereinafter set forth, and waiving all intervening procedure and further hearing as to said facts. The substitute answers were duly filed in the office of the Commission. Respondents,

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James MacDonald, Ltd., Kenneth MacKenzie, Ltd., S. A. Newall and Sons, Ltd., and W. A. Smith, John Smith, and A. P. C. Lawrence, copartners, doing business under the firm name and style of Thomas Smith and Co., filed a joint answer, and respondents, Kenneth MacLeod, Ltd., M. Stanley Brown, an individual, and Miles L. Finch, an individual, filed separate answers, admitting all the material allegations of fact set forth in said complaint, except as hereinafter set forth, and waiving all intervening procedure and further hearing as to said facts. Respondent, Biddle-Bernstein, a corporation, filed its answer denying the allegations of the complaint. Respondent, R. J. Beneville, an individual, having died prior to the service of the complaint, filed no answer. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and substitute answers, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts, and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, James MacDonald, Ltd., is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Stornoway, Scotland.

Respondent, Kenneth MacKenzie, Ltd., is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Stornoway, Scotland.

Respondent, Kenneth MacLeod, Ltd., is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Shawbost, Scotland.

Respondent, S. A. Newall and Sons, Ltd., is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Stornoway, Scotland.

Respondents, W. A. Smith, John Smith, and A. P. C. Lawrence, are copartners, doing business under the firm name and style of Thomas Smith and Co., with their office and principal place of business located in Stornoway, Scotland.

PAR. 2. Respondent, Miles L. Finch, sales agent and representative of respondent, James MacDonald, Ltd., is an individual, doing business under the name and style of Associate British Manufacturers, with his office and principal place of business located at 200 Fifth Avenue, New York, N. Y.

Respondent, Folkard and Lawrence, Inc., sales agent and representative of respondent, Kenneth MacKenzie, Ltd., is a corporation, organized, existing and doing business under the laws of the State of New York, with its office and principal place of business located at 51 Madison Avenue, New York, N. Y.

Respondent, E. Yorke Stroud, sales agent and representative of respondent, S. A. Newall and Sons, Ltd., is an individual, with his office and principal place of business located at 200 Fifth Avenue, New York, N. Y.

Respondent, Walter Bradshaw, is an individual, doing business under the name and style of Bradshaw Linen Co., with his office and principal place of business located at 1182 Broadway, New York, N. Y.

Respondent, M. Stanley Brown, general representative of said producer respondents, is an individual, with his office and principal place of business located at 103 Park Avenue, New York, N. Y.

Respondent, Biddle-Bernstein (Co.), a corporation, located at 112 North 12th Street, Philadelphia, Pa., was never in fact an agent or representative of any Harris Tweed producer in Scotland, but purchased outright all Harris Tweed products handled by it. Said respondent was not a party to any of the understandings, agreements, combinations, conspiracies, methods, or practices hereinafter mentioned, and none of the facts hereinafter set forth refers to said respondent.

PAR. 3. The answers of the various respondents admit all the material allegations of fact set forth in the complaint with the following exceptions and qualifications, to wit:

Respondent, Folkard & Lawrence, Inc., states that on November 1, 1938, it resigned from membership in the Agents' Committee and did not thereafter act as member thereof.

Respondent, Walter Bradshaw, denied that he was at any time a member of the Harris Tweed Agents' Committee or had any connection whatsoever therewith.

Respondent, E. Yorke Stroud, stated "If it be material, * * * that at all times he acted under the direction of and instructions from his producer, the respondent, S. A. Newall & Sons, Ltd."

The joint answer of respondents, James MacDonald, Ltd., Kenneth Mackenzie, Ltd., S. A. Newall & Sons, Ltd., and W. A. Smith, John Smith and A. P. C. Lawrence, copartners, as aforesaid, stated that "if it be material, respondents deny that they have information or knowledge sufficient to form a belief as to the truth of the allegations contained in the complaint regarding the Harris Tweed Agents'

Committee, except that they admit that they knew of the existence thereof, and that the committee was attempting to protect the good will of Harris Tweed in the United States.

Respondent, MacLeod, stated that "if it be material, respondent denies that it has any information or knowledge sufficient to form a belief as to the truth of the allegations contained in the complaint regarding the Harris Tweed Agents' Committee."

Respondent, M. Stanley Brown, stated that "if it be material, respondent denies that he was at any time a member of the voluntary association known as the Harris Tweed Agents' Committee, or had any connection whatever therewith."

None of said answers admitted that any acts therein admitted were done with intention to violate the law.

PAR. 4. The respondents named in paragraph 1 hereof are, and have been for many years, producers, among other things, of a woolen cloth or fabric known as "Harris Tweed," a material generally known for its durability and fine wearing quality, which has a distinctive place in the opinion of the general public for those qualities, and which is, therefore, preferred by the general public for many purposes.

The original "Harris Tweed" was for many years produced in the Islands of Lewis, Harris, Uist, Barra, all a part of the group of islands known as the Outer Hebrides, lying about 60 miles west of the mainland of Scotland, in the North Atlantic Ocean. By reason of the relatively small area only a relatively small quantity of such material was produced. The said cloth or fabric, as originally introduced and generally known to the purchasing public, was a cloth or fabric entirely the handiwork of the crofters of said islands in that the wool was sheared, carded, dyed, spun, woven, shrunken, and finished by hand and the dyes were produced locally from various forms of vegetable matter. The wool used in the cloth or fabric was coarse but very strong, and the cloth or fabric made from it was also coarse and was of great durable wearing quality, as well as possessing water-repellent qualities to a remarkable degree. Furthermore, said cloth or fabric had a characteristic odor which it took from the crude manufacturing process and from the peat smoke which circulated freely throughout the cottages in which the wool was fabricated into cloth or fabric.

As said cloth or fabric became known to the general public there was developed a large demand for it in the United States and elsewhere for certain purposes, such as the making of coats, suits and sportswear for men and women, and for various other like purposes. The supply being limited as aforesaid, and the same being brought

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to the attention of the British Board of Trade, the definition of "Harris Tweed" was liberalized in 1934, so that now, in the British Isles, at least, "Harris Tweed" is defined as follows:

"Harris Tweed" means a tweed made from pure virgin wool produced in Scotland, spun, dyed, and finished in the Outer Hebrides and hand-woven by the Islanders in their own homes in the Islands of Lewis, Harris, Uist, Barra, and their several appurtenances and all known as the Outer Hebrides.

As a result of such definition of "Harris Tweed" the wool from which the same is made need not now come from the said Outer Hebrides but may come from any where on the mainland of Scotland. Furthermore, the yarns are not necessarily any longer hand-spun nor are they necessarily dyed with the native dye nor, therefore, is the finishing any longer necessarily a process carried out by the community as a whole, but is, or may be done in finishing plants thereof, though the cloth or fabric carries the characteristic odor of peat smoke, as it appears that it is sufficient if the cloth or fabric is made from pure virgin wool produced in Scotland and spun, dyed, and finished in said Outer Hebrides and hand-woven by the inhabitants of said islands in their own homes.

PAR. 5. The producers named in paragraph 1 as respondents herein sell and deliver, and have for many years sold and delivered, a substantial part of the said product, namely, Harris Tweed cloth or fabric, hereinafter referred to as Harris Tweed, and maintained a constant course of trade and commerce in said product in the United States, directly and through the agents and representatives named as respondents in paragraph 2 hereof. Harris Tweed, as the same has been redefined as above set forth, is also sold and delivered in the United States by other producers, and through other agents and representatives to various dealers and manufacturers, and others, for the purposes aforesaid. As competition developed in the sale and delivery of said Harris Tweed in the United States, a voluntary association was formed by the said agents and representatives known as Harris Tweed Agents' Committee (hereinafter referred to as "Agents Committee") except respondent, Walter Bradshaw, for their mutual protection and the furtherance of the mutual interests of themselves and their principals (who constituted the advisory committee of the producers otherwise known as H. S. A. C.). The membership in said committee has changed from time to time but has always included agents and representatives of some or all of said respondent producers.

Prior to the adoption of the practices hereinafter described, said respondent producers, directly and through the aforesaid agents, were in active and substantial competition with each other, and with

other members of the industry, in making and seeking to make sales and deliveries of said Harris Tweed in trade and commerce between Great Britain and the United States and but for the practices hereinafter described, such active and substantial competition would have continued until the present, and said respondent producers, acting directly and through their aforesaid agents, would now be in active and substantial competition with each other and with other members of the industry.

The trade of respondent producers in the United States is substantial, and respondent producers hold a dominant position in the sale of Harris Tweed in the United States or such a position as to enable them at least from time to time to effect and carry out the purpose hereinafter set forth.

PAR. 6. Within the past 5 years respondent producers, in cooperation with respondent agents and representatives, entered into understandings, agreements, combinations, and conspiracies and carried out the same for the purpose and with the effect of restricting, restraining, and monopolizing, and suppressing and eliminating competition in, the sale of said Harris Tweed in trade and commerce between Great Britain and the United States and between the several States of the United States and in the District of Columbia.

PAR. 7. Pursuant to, in furtherance of, and to effectuate said understandings, agreements, combinations, and conspiracies, said respondent producers, with the active cooperation of respondent agents and representatives, and with others, fixed, established, and maintained, minimum prices, terms, and conditions of sale in connection with the marketing of Harris Tweed in the United States.

PAR. 8. Pursuant to, in furtherance of, and to effectuate said understandings, agreements, combinations, and conspiracies, respondent sales agent and representative, Miles L. Finch, doing business under the name and style of Associate British Manufacturers, and respondent individuals, E. Yorke Stroud and M. Stanley Brown, with the active cooperation of respondent producers, and with others, have adopted and put into effect the following methods of competition, policies and practices:

(a) Prepared and inaugurated in the year 1939 a plan to fix and maintain prices by clothing manufacturers and resale prices by retailers selling garments made of said Harris Tweed in the United States, whereby respondent agents and representatives agreed with the respondent producers as to what such prices and resale prices should be, and selected respondent Brown as a common agent in the United States to represent respondents, who in turn would enter into

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agreements with garment manufacturers and retail dealers as follows, to wit:

1. That the garment manufacturers would not sell garments manufactured from Harris Tweed purchased from the respondents at prices lower than those fixed by the respondents; and

2. That the garment manufacturers would not sell Harris Tweed garments to any retailer who would not bind himself to sell garments manufactured from Harris Tweed at said fixed resale prices or at retail prices not less than the said fixed resale prices; and

3. That retail dealers would not sell such garments at prices less than the resale prices fixed by respondents as aforesaid; and

4. That each garment manufacturer and retail dealer should submit to the said common selling agent a list of prices at which sales were being made, together with the names of the customers being sold.

(b) Compiled and circulated among each other a list of clothing manufacturers which said respondents agreed should not be sold Harris Tweed because they were cutting the prices fixed by said respondents as aforesaid.

PAR. 9. Each of said respondents, within the time hereinabove mentioned, acted in concert with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations and conspiracies.

CONCLUSION

The acts and practices of said respondents, as herein set forth, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, competition in price and terms of sale between and among said respondent producers and between said respondent producers and other producers in the sale of their said products in commerce within the intent and meaning of section 4 of the Federal Trade Commission Act; and placed in said respondents power to control and enhance prices of their said products; have a dangerous tendency to create in respondents a monopoly in said products in such commerce; have unreasonably restrained such commerce in their said products, and constitute unfair methods of competition and unfair and deceptive acts and practices, in said 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 and the various answers

of respondents, in which answers respondents (excepting respondent, Biddle-Bernstein, a corporation) admit all of the material allegations of fact set forth in said complaint, except as set forth in the findings as to the facts, and the answers of all of said respondents (excepting respondent, Biddle-Bernstein, a corporation) stating that they waive all intervening procedure and further hearing as to said fact, and the Commission having made its findings as to the facts and conclusion that said respondents (excepting respondent Biddle-Bernstein, a corporation) have violated the provisions of section 5 of the Federal Trade Commission Act.

It is ordered, That the respondents, James MacDonald, Ltd., a corporation; Kenneth MacKenzie, Ltd., a corporation; Kenneth MacLeod, Ltd., a corporation; S. A. Newall & Sons, Ltd., a corporation; W. A. Smith, John Smith, and A. P. C. Lawrence, copartners, doing business under the firm name and style of Thomas Smith & Co.; Miles L. Finch, individually, and doing business under the name and style of Associate British Manufacturers; Folkard & Lawrence, Inc., a corporation; E. Yorke Stroud, an individual; Walter Bradshaw, individually, and doing business under the name and style of Bradshaw Linen Co.; and M. Stanley Brown, an individual, 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 Harris Tweed in commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist by any form of cooperative, concerted or collective action, from fixing, establishing and maintaining minimum prices, and the terms and conditions of sale, in connection with the marketing of the cloth or fabric known as "Harris Tweed" in the United States.

It is further ordered, That the respondents, James MacDonald, Ltd., a corporation; Kenneth MacKenzie, Ltd., a corporation; Kenneth MacLeod, Ltd., a corporation; S. A. Newall & Sons, Ltd., a corporation; W. A. Smith, John Smith, and A. P. C. Lawrence, copartners, doing business under the firm name and style of Thomas Smith & Co.; Miles L. Finch, individually, and doing business under the name and style of Associate British Manufacturers; E. Yorke Stroud, an individual; and M. Stanley Brown, an individual, their officers, representatives, agents, and employees, directly or through any corporate or other device, cease and desist from agreeing or cooperating with each other or with others, in negotiating, arranging or carrying out a plan or policy to fix and maintain the prices of clothing manufacturers or the resale prices of retailers selling garments made of said Harris Tweed in said commerce in the United States and from engaging in any form of cooperative, concerted or

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collective action or entering into arrangements or agreements among themselves and with garment manufacturers and retail dealers to the following effect:

1. That garment manufacturers will not sell garments manufactured of Harris Tweed purchased from the respondents or any of them at prices lower than those fixed or indicated by the said respondents; or

2. That the garment manufacturers will not sell Harris Tweed garments to any retailer who does not bind himself to sell such garments at certain fixed resale prices or at retail prices not less than the same; or

3. That said retail dealers will not sell such garments at prices less than the resale prices fixed or indicated by said respondents; or

4. That each garment manufacturer and retail dealer will submit to the respondents or anyone designated by them a list of prices at which sales are made, together with the names of the customers sold; or

5. That respondents will compile and circulate among themselves a list or other information as to the identity of clothing manufacturers which cut the prices fixed or indicated by said respondents for the purpose of facilitating refusals by respondents to sell such manufacturers.

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

It is further ordered, That the said complaint be, and the same hereby is, dismissed as to respondents, Biddle-Bernstein, a corporation, and R. J. Beneville, an individual, deceased.

IN THE MATTER OF
ETABLISSEMENTS RIGAUD, INC., ET AL.

MODIFIED CEASE AND DESIST ORDER

. Docket 3337. Order, May 20, 1942

Modified order, pursuant to provisions of section 5 (i) of Federal Trade Commission Act, and in accordance with decree below referred to, in proceeding in question, in which original order issued on September 27, 1939, 29 F. T. C. 1032, and in which Circuit Court of Appeals for Second Circuit, on February 4, 1942, in *Etablissements Rigaud, Inc., et al. v. Federal Trade Commission*, 125 F. (2d) 590, rendered its opinion and on February 24, 1942 issued its final decree affirming aforesaid order of Commission by modifying same in certain particulars—

Requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of perfumes, to cease and desist from (1) representing, through use of term "Paris" or "Paris, France," or any other terms, words, symbols, or picturizations indicative of French or other foreign origin of such products, or in any manner that perfumes that are made or compounded in the United States are made or compounded in France or in any other foreign country, subject to proviso in order set forth with respect to permitting statement of country of origin of the various ingredients; and (2) using the terms "Un Air Embaume," "Rigaud," "Igora," or any other French or other foreign words or terms as brand or trade names for perfumes made or compounded in the United States without clearly and conspicuously stating, as in order specified, said fact.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on September 27, 1939, the Commission made its findings as to the facts herein and concluded therefrom that the respondents, Etablissements Rigaud, Inc. and E. Fougera & Co., Inc., corporations, have violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on February 4, 1942 the United States Circuit Court of Appeals for the Second Circuit rendered its opinion, and on February 24, 1942, issued its final decree affirming the aforesaid order of the Commission by modifying said order in certain particulars.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said decree.

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It is ordered, That the respondents, Etablissements Rigaud, Inc. and E. Fougera & Co., Inc., their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of perfumes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the term "Paris," or "Paris, France" or any other terms, words, symbols, or picturization indicative of French or other foreign origin of such products, or in any manner that perfumes which are made or compounded in United States are made or compounded in France or in any other foreign country: *Provided, however,* That the country of origin of the various ingredients thereof may be stated when immediately accompanied by a statement that such products are made or compounded in the United States.

2. Using the terms "Un Air Embaume," "Rigaud," "Igora," or any other French or other foreign words or terms as brand on trade names for perfumes made or compounded in the United States without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are made or compounded in the United States.

It is further ordered, That the respondents, Etablissements Rigaud, Inc. and E. Fougera & Co., Inc., 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

HYMAN LANGSAM AND ABRAHAM LANGSAM, TRADING
AS MODEL HOME SUPPLY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3507. Complaint, July 22, 1938—Decision, May 25, 1942*

Where two individuals, engaged in competitive interstate sale and distribution of jewelry, cosmetics, clothing, bedding, and other merchandise—

- (a) Sold and distributed, under their sales plan, various assortments thereof together with pull cards, for use in their sale and distribution, which concealed the name and price of one of said articles beneath each of their tabs, so that which article purchaser received and price paid, and whether or not the value of the particular article was greater than the price designated therefor, were determined wholly by lot or chance; and compensated by a premium, after remission to said individuals of amounts collected, card's operator; and

Thereby supplied to and placed in the hands of others the means of conducting a game of chance, gift enterprise, or lottery scheme in the sale of their merchandise; with the result that many persons were attracted by said sales method and the element of chance involved therein, and were thereby induced to buy and sell their merchandise in preference to that offered and sold by competitors who are unwilling to and do not use such methods; whereby trade was unfairly diverted to them from their competitors aforesaid; and

- (b) Represented through circulars and advertising matter accompanying said pull cards that their so-called premiums or gifts were given away free through such statements as "Beautiful, useful household gifts at absolutely no cost," "How to get your gifts without cost to you"; and that they paid all shipping charges;

When in fact premiums were not given away, but were either purchased by the labor or services of their representatives, or price thereof was included in prices of the other articles which representative was required to sell or procure sale of before he could obtain premiums; and they did not pay all shipping charges, but required specific sums of money to be paid as such by representatives on a number of their articles;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true; as a result whereof it purchased substantial quantities of their products and trade was unfairly diverted to them from their competitors, including those who do not make such misrepresentations, to the substantial injury of competition in commerce:

Held, That such sales methods were contrary to the public policy of the Government, and 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.

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Complaint

Before *Mr. Randolph Preston, Mr. Miles J. Furnas, Mr. John W. Addison, Mr. Arthur F. Thomas, and Mr. Andrew B. Duwall*, trial examiners.

Mr. D. C. Daniel and Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Arthur D. Herrick, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Hyman Langsam and Abraham Langsam, individually, and as copartners, trading under the firm name and style Model Home Supply 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, Hyman Langsam and Abraham Langsam, are individuals, doing business as a copartnership under the firm name and style Model Home Supply Co., with their principal office and place of business located at 34 East Twelfth Street, New York, N. Y. The present address of respondent, Hyman Langsam, is 993 Mission Street, San Francisco, Calif. The present address of Abraham Langsam is 1370 East Eighteenth Street, Brooklyn, N. Y. Respondents are now, and for some time last past have been, engaged in the sale and distribution of jewelry, cosmetics, clothing, bedding, kitchenware, clocks, watches, electrical appliances, razors, chinaware, silverware, 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 said place of business to purchasers thereof in the various States of the United States and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are and have been in competition with other partnerships and individuals and with corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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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 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 purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for and remitted the sums to the respondents, said respondents thereupon ship to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from

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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 above-described plan or method is illustrative of the principle involved.

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

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell 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

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aforesaid, of which the following are examples but are not all-inclusive:

Beautiful useful Household Gifts at absolutely No Cost.

How To Get Your Gifts without cost to You.

Special Offer: 2 Extra Gifts Free.

All Shipping Charges Paid by Us.

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" or "without cost," to said representatives, are either purchased with labor by them, or the price of said so-called 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 so-called premiums or gifts can be procured by them. For a number of said so-called premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered. Respondents do not pay all shipping charges on their said products, but said representatives are required to pay certain specified sums of money as shipping charges on a number of respondents' said articles of merchandise.

PAR. 7. The use by respondents of the false, deceptive, and misleading statements 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 the distribution of 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.

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Findings

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 22d day of July A. D. 1938, issued and thereafter served its complaint in this proceeding upon the respondents, Hyman Langsam and Abraham Langsam, individually, and as copartners, trading under the firm name and style, Model Home Supply 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 Abraham Langsam's answer admitting all the material allegations of the complaint, testimony, and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission, and testimony in opposition to the allegations of the complaint was introduced by the 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 the complaint, answer of respondent, Abraham Langsam, the testimony and other evidence, report of the trial examiners and exceptions thereto, and brief in support of the complaint. And the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Hyman Langsam and Abraham Langsam, are individuals and copartners, trading under the firm name and style "Model Home Supply Co." with their principal place of business located at 34 East Twelfth Street, in the city and State of New York.

PAR. 2. Respondents are now, and since some time prior to the issuance of the complaint herein have been engaged in the business of selling and distributing jewelry, cosmetics, clothing, bedding, kitchenware, clocks, watches, electrical appliances, razors, china ware, silverware, and other articles of merchandise, in commerce between and among various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their 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. Respondents, during all of the time mentioned herein have maintained a course of trade in such merchandise in commerce between and among various States of the United States and in the District of Columbia, and during all of said time have been in competition with other individuals and partnerships, and with corporations, engaged in the sale and distribution of similar articles of merchandise between and among various States of the United States and in the District of Columbia.

PAR. 3. Respondents, in the conduct of their business, distribute or cause to be distributed to representatives and prospective representatives certain advertising literature, including sales circulars describing their method of conducting business. The sales circulars contain a list of 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," which consists of a number of tabs under each of which is the name of an article of merchandise and the price thereof, so concealed that the purchaser or prospective purchaser of a tab, or the right to pull a tab, is unable to ascertain either the article he is to receive or the price to be paid therefor until the tab is separated from the card. After the tab has been separated from the card the purchaser's name is written on the list opposite the article of merchandise revealed when the tab has been pulled. Some of the articles of merchandise have a retail value greater than the price designated for them on the tabs, but are distributed to the pullers of the tabs for the prices disclosed when the respective tabs are pulled. Whether the purchaser of a pull tab receives an article of greater value than the price designated for same on such tab, and which of said articles of merchandise he is to receive and the amount of money he is required to pay, are determined wholly by lot or chance.

The person or representative operating a pull card, after selling all of the pull tabs or the right to pull the tabs, collects the amounts called for and remits same to the respondents, who thereupon ship to said representative the merchandise designated on the pull cards together with a premium to be retained by the representative as compensation for his services in disposing of respondents' merchandise. Respondents' representative delivers the merchandise to the pullers of the tabs, in accordance with the hereinbefore-described plan.

Respondents, by the use of the hereinbefore described sales method, sell and distribute and have sold and distributed various assortments of merchandise, and furnished and have furnished various pull cards which vary only in detail from the one herein described, for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme.

PAR. 4. The persons to whom respondents have furnished their pull cards have used the same in purchasing, selling, and distributing respondents' merchandise in accordance with the hereinbefore-mentioned sales plan. Respondents thus supply to and place in the hands of others the means of conducting a game of chance, gift enterprise, or lottery scheme in the sale of their merchandise in accordance with the said sales plan.

PAR. 5. Many persons are attracted by respondents' sales method and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to that offered for sale and sold by competitors of respondents who are unwilling to use and do not use the same or an equivalent method, and as a result, trade is unfairly diverted to respondents from their said competitors.

PAR. 6. Respondents, in their circulars and advertising matter described in paragraph 3 hereof, make the following representations:

Beautiful, Useful Household Gifts at absolutely no cost;
How to get your gifts without cost to you;
Special Offer two extra gifts free;
All shipping charges paid by us.

The said representations, and each of them, are false, deceptive, and misleading. In truth and in fact, none of respondents' so-called premiums or gifts are given away free, or without cost; they are either purchased by the labor or services of respondents' representatives, or the price of the so-called "premiums" or "gifts" is included in the prices of the other articles of merchandise which the representative must sell or procure the sale of before the so-called premiums or gifts can be procured by him. A certain sum of money must be paid by respondents' representatives for a number of the so-called premiums or gifts, in addition to the labor performed or the service rendered.

Respondents do not pay all shipping charges on their products, their representatives being required to pay certain specific sums of money as shipping charges on a number of respondents' articles of merchandise.

PAR. 7. The use by respondents of the false, deceptive, and misleading representations set forth in paragraph 6 hereof has misled and deceived a substantial portion of the purchasing public into the erroneous belief that such representations are true, and as a result, they have purchased substantial quantities of respondents' products. Among the competitors of respondents mentioned in paragraph 2 hereof are those who do not make such false, deceptive, and misleading representations.

By reason of the said false, deceptive, and misleading representations trade has been unfairly diverted to respondent from such com-

petitors, and as a result substantial injury has been and is being done by respondents 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 respondents are 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, and respondents' sales methods are contrary to the public policy of the Government of the United States.

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 Abraham Langsam, testimony and other evidence taken before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, the reports of the trial examiners and exceptions thereto, and brief in support of the complaint. 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 respondents, Hyman Langsam and Abraham Langsam, individually and as copartners, trading under the firm name and style of Modern Home Supply Co., or under any other name or designation, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of jewelry, cosmetics, clothing, bedding, kitchenware, clocks, watches, electrical appliances, razors, china ware, silverware, or any other article 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 and assembled that sales of such merchandise to the public are to be made or may be made, by means of a game of chance, gift enterprise or lottery scheme.
2. Supplying to, or placing in the hands of others, push or pull cards, punchboards or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, punchboards or other lottery devices are to be used, or may be used, in selling or distributing any merchandise to the public.
3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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4. Representing, by means of circulars, advertising matter, or by any other means, that merchandise is given by the respondents to their representatives free, or without cost.

5. Representing by means of circulars and advertising matter, or by any other means, that all shipping charges are paid by respondents.

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

Complaint

34 F. T. C.

IN THE MATTER OF

STERLING PRODUCTS AND VITA-RAY CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4197. Complaint, July 26, 1940—Decision, May 25, 1942*

Where a corporation and its subsidiary, engaged in interstate sale and distribution of a line of cosmetic products made by latter; by means of advertisements in newspapers and periodicals, radio continuities, and circulars, leaflets, pamphlets, and other advertising literature—

Represented that vitamins A and D constituted a basic need for the health of the skin which was satisfied through application of such vitamins locally by means of cold cream; and that a vitamin deficiency, of which dryness and coarse pores might be symptoms, would be relieved through the use of their cosmetic "Vita-Ray Vitamin Cream" containing said vitamins;

The facts being that the skin does not require vitamins A and D by means of local application, and while said vitamins may be absorbed to some extent through the skin under certain conditions of application, there is no scientific basis for the claim that there is any local or systemic effect whatever; dryness of skin due to vitamin deficiency constitutes a secondary symptom which becomes manifest only after serious deficiency has depleted the vitamin stores and presents a pathological condition requiring treatment by a physician; and their said cream has no beneficial or therapeutic effect because of the addition of such vitamins;

With effect of misleading and deceiving the purchasing public into the erroneous belief that such representations were true:

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

Mr. William L. Pencke for the Commission.

Rogers, Hoge & Hills, 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 Sterling Products, a corporation, and Vita-Ray Corporation, a corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Sterling Products, is a corporation, organized, existing, and doing business under the laws of the State

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of Delaware, with its principal office and place of business at 170 Varick Street in the city of New York, State of New York. Respondent, Vita-Ray Corporation, is a corporation, organized, existing, and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 176 Middle Avenue in the city of Lowell, State of Massachusetts, and is a subsidiary of respondent, Sterling Products.

Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a line of cosmetic products manufactured by respondent, Vita-Ray Corporation, in commerce between and among the various States of the United States and in the District of Columbia. They cause said products, when sold, to be shipped from respondent, Vita-Ray Corporation's place of business in the State of Massachusetts to purchasers thereof, located in States of the United States other than the State of Massachusetts and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained a course of trade in said cosmetic 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 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 and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

VITA-RAY VITAMIN CREAM * * *

All purpose cream containing Vitamins A and D which helps nourish and stimulate skin cells—relieves dryness and helps recede enlarged pores.

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Vita-Ray Doveskin Oil

Compounds of highly beneficial oils * * * vitamized. Aids in bringing relief to dry sensitive skin—helps overcome tightness of the skin. Delicately perfumed. Postpaid.

The noted Boston doctor promised nothing. He knew that dryness, lines wrinkles, coarse pores might indicate lack of Vitamins A and D. No cosmetic could succeed until *both* vitamins were replaced.

BUT HOW? Not by diet! Vitamins must be fed where needed—*through the skin*. "Suppose," he reasoned, "I combine vitamins with *vitaescence*—one element skin *can* absorb. Perhaps vitamins will be *absorbed with it* * * * to revitalize tissues."

HIS THEORY WORKED! * * * On the 28th day she stood before him—radiantly happy, her skin youthfully *fresh* and smooth. News spread. Women begged treatment. His discovery of Vita-Ray was praised by Beauty Editors—*honored in the HALL OF SCIENCE*.

Why Vita-Ray Cream Corrects Dry Skin—Wrinkles * * * Coarse Texture.

Praise of Beauty Editors—published articles on the "beauty" value of vitamins, *signed by Doctors of world-famed universities*—will be sent you on request to Vita-Ray.

To you, and to *your physician*, they reveal tests on thousands of skins, both dry and oily—on wrinkles, lines, coarse pores. You can know *why* neither Vitamin A nor D *alone* is sufficient—why Vita-Ray combines *both* Vitamins A and D in *vitaescense*, to *revitalize* tissues.

Vita-Ray is sold only by leading stores, under guarantee that you will see a noticeable improvement in 28 days or prompt refund of your money. If your favorite store hasn't yet been selected, mail coupon below.

USE VITA-RAY

Vitamin All-Purpose Cream

TO MAKE YOUR SKIN GROW YOUNG AGAIN.

Because it carries a rich supply of vitamin D direct to the capillaries—the *only* source of skin nourishment—Vita-Ray All-Purpose Cream actually helps nature to make the skin grow young again!

Vita-Ray All-Purpose Cream was discovered by a scientist. It conforms to natural laws so wonderfully that microphotographs of skin *before and after* its use show a basic change in the skin structure in a few weeks. Pores are actually *finer*—lines *fainter*—dryness *less*. It is a veritable "gift of science" to women with wrinkles and crepey throat.

PAR. 3. All of said statements, together with many similar statements appearing in respondents' advertising literature, purport to be descriptive of respondents' products and their efficacy in use. In all of their advertising literature respondents represent, through the statements and representations herein set out and other statements of similar import and effect, that a basic need for the health of the skin is vitamins A and D and that by applying said vitamins locally by means of cold cream such need is satisfied, in that the skin will be stimulated and nourished; that dryness, lines, wrinkles, and coarse pores may be symptoms of vitamin deficiency and that such deficiency

may be relieved through the use of respondents' cosmetic cream containing vitamins A and D.

PAR. 4. In truth and in fact said statements and representations are false, misleading, and grossly exaggerated. Respondents' cosmetic cream will have no beneficial or therapeutic effect, either with or without the addition of vitamins A and D, beyond the soothing, emollient, and cleansing effects inherent in any cold cream. The skin does not require vitamins A and D by means of local application. Where dryness of the skin is due to vitamin deficiency it is a secondary symptom which becomes manifest only after serious deficiency has depleted the vitamin stores in the body and presents a pathological condition requiring treatment by a physician. In such cases the use of respondents' cream containing vitamins A and D applied topically will have no therapeutic effect, nor will it improve the appearance of the skin.

PAR. 5. While vitamins A and D may be absorbed to some extent through the skin if contained in a suitable vehicle and under certain conditions of application, there is no scientific basis for the claim that there is any local, direct, or selective action at the site of application, or that there is any local or systemic effect whatever unless a sufficient quantity of said vitamins is administered. Except in cases of burns, wounds, and other similar pathological conditions, vitamins A or D applied to the skin will have not local effect, but the action will be systemic because of the absorption through the skin into the blood stream. Lines and wrinkles are the result of advancing age due to the gradual breakdown of tissue, and will not be affected by any treatment with cosmetic creams containing vitamins.

PAR. 6. The aforesaid false, misleading, and deceptive statements and representations hereinabove set forth, made by the respondents in selling said cosmetic preparations, have the capacity and tendency to, and do, mislead and deceive the purchasing public into purchasing said cosmetic preparations in the erroneous belief that such representations are true, and that the use of said products will accomplish the results indicated in said advertisements.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 26, 1940, issued, and subsequently served its complaint in this proceeding upon respondents, Ster-

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ling Products, a corporation, and Vita-Ray Corporation, 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 September 24, 1940, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and their counsel, 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 oppositon thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Sterling Products, is a corporation, organized, existing, and doing business under the laws of the State of Delaware, with its principal office and place of business at 170 Varick Street in the city of New York, State of New York. Respondent, Vita-Ray Corporation, is a corporation, organized, existing, and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 176 Middle Avenue in the city of Lowell, State of Massachusetts, and is a subsidiary of respondent Sterling Products.

Respondent, Vita-Ray Corporation, is now, and for more than 1 year last past has been, engaged in the sale and distribution of a line of cosmetic products manufactured by respondent, Vita-Ray Corporation, in commerce between and among the various States of the United States and in the District of Columbia. It causes said products, when sold, to be shipped from respondent, Vita-Ray Corporation's place of business in the State of Massachusetts to purchasers thereof located in States of the United States other than the State of Massachusetts and in the District of Columbia. Respondent, Vita-Ray Corporation maintains, and at all times mentioned herein has maintained, a course

of trade in said cosmetic 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 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 and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, is the following:

VITA-RAY VITAMIN CREAM * * *

All-purpose cream containing vitamins A and D which helps nourish and stimulate skin cells—relieves dryness and helps recede enlarged pores.

PAR. 3. All of said statements, together with many similar statements appearing in respondents' advertising literature, purport to be descriptive of respondents' products and their efficacy in use. In all of their advertising literature respondents represent, through the statements and representations herein set out and other statements of similar import and effect, that a basic need for the health of the skin is vitamins A and D and that by applying said vitamins locally by means of cold cream such need is satisfied, in that the skin will be stimulated and nourished; that dryness and coarse pores may be symptoms of vitamin deficiency and that such deficiency may be relieved through the use of respondents' cosmetic cream containing vitamins A and D.

PAR. 4. In truth and in fact said statements and representations are false and misleading and grossly exaggerated. Respondents' cosmetic cream will have no beneficial or therapeutic effect because of the addition of vitamins A and D. The skin does not require vitamins A and D by means of local application. Where dryness of the skin is due to vitamin deficiency it is a secondary symptom which becomes manifest only after serious deficiency has depleted the vitamin stores

in the body and presents a pathological condition requiring treatment by a physician. In such cases the use of respondents' cream containing vitamins A and D applied locally has no therapeutic effect, nor will it improve the appearance of the skin.

PAR. 5. While vitamins A and D may be absorbed to some extent through the skin if contained in a suitable vehicle and under certain conditions of application, there is no scientific basis for the claim that there is any local, direct or selective action at the site of application, or that there is any local or systemic effect whatever.

PAR. 6. The aforesaid false, misleading, and deceptive statements and representations hereinabove set forth, made by the respondents in selling said cosmetic preparations, have the capacity and tendency to, and do, mislead and deceive the purchasing public into purchasing said cosmetic preparations in the erroneous belief that such representations are true, and that the use of said products will accomplish the results indicated in said advertisements.

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, Sterling Products, a corporation, and Vita-Ray Corporation, 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 cosmetic creams and oils do forthwith cease and desist from directly or indirectly:

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1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that respondents' cosmetic creams and oils have any added beneficial value upon the skin by reason of their vitamin content.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of said product, which 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.

Complaint

34 F. T. C.

IN THE MATTER OF

BIGELOW-SANFORD CARPET 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 4207. Complaint, July 31, 1940—Decision, May 26, 1942

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution to wholesale and retail dealers of rugs and carpets—

(a) Made use of names "Persiamar" and "Kashamar" to designate certain lines of its domestic, machine-made rugs which had many points of resemblance to genuine Orientals, and thereby caused the purchasing public to believe that they were hand-made Orientals, some of which are known as "Kashmir," "Cashmere," or "Kashan," or simply as "Persian," and which—long made in certain parts of the Orient by hand, with pile of wool or silk and wool, and threads individually knotted in special manner—have long been held in great public esteem by virtue of their beauty, durability, and other qualities; and

(b) Represented that its said rugs were replicas or duplicates of original Orientals through use, in advertising copy furnished to dealer-buyers for their use in newspapers and other publications of general circulation, of such words as "true copies," "perfect copies," or "reproductions," and labels displaying, along with aforesaid designations, trade-mark employed by it on all its rugs and carpets, depicting two hands tying a knot in yarn, causing purchasing public to believe that its said rugs were hand-made or made in the same way as the genuine Orientals, of which they were not true or perfect copies or reproductions, though so closely simulating them as to be indistinguishable therefrom by a portion of the purchasing public;

With tendency and capacity to mislead and deceive the purchasing public into the mistaken belief that such representations were true, thereby inducing it to purchase said rugs because of such belief; and with effect of placing in the hands of dealer-purchasers means and instrumentality of misleading and deceiving the public as aforesaid, whereby trade was unfairly diverted to it from its competitors engaged in sale of rugs, including both the Oriental and domestic products, and who truthfully represent their products as aforesaid; 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 and unfair and deceptive acts and practices in commerce.

Mr. Randolph W. Branch for the Commission.

Wright, Gordon, Zachry, Parlin & Cahill, of Washington, D. C., for respondent.

COMPLAINT

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

Trade Commission, having reason to believe that Bigelow-Sanford Carpet 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, Bigelow-Sanford Carpet Co., Inc., is a corporation, organized and existing under the laws of the Commonwealth of Massachusetts, having an office and principal place of business at 140 Madison Avenue in the city and State of New York, and manufacturing plants at Thompsonville, Conn., and Amsterdam, N. Y.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, distributing, and selling rugs and carpets. In the course and conduct of its business, respondent sells said rugs and carpets to various wholesale and retail dealers, and causes such rugs and carpets, when sold, to be transported from its aforesaid places of business in the States of New York and Connecticut 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 and carpets 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 and carpets 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 either the place or method of manufacture of their products and who do not furnish their dealer-customers with means or instrumentalities for deceiving the public.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient, or more particularly in certain parts of Southwestern Asia, by hand, of pleasing texture and original and beautiful design and having a pile of wool or silk and wool, the threads of which are individually knotted in a special manner. Such rugs are usually designated by names which are indicative of the Orient and Oriental origin and manufacture. Oriental rugs have been for many years, and still are, held in great public esteem because

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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 rugs in appearance, by the names of "Persiamar" and "Kashamar." Such names connote places in the Orient which are places of origin of true Oriental rugs, and have the tendency and capacity to create the mistaken and erroneous belief that the rugs so designated are made in such places, or in the Orient, by hand, and are in all respects true Oriental rugs. Respondent uses said designations in invoices and in otherwise referring to the same in the sale thereof to dealers, and also causes labels, bearing one or the other of said names, to be securely attached to said rugs so as to be plainly discernible to members of the purchasing public when such rugs are displayed for sale by retail dealers. Respondent also uses said names in advertising copy furnished to dealers buying the said rugs, in the manner and for the purposes hereinafter set forth.

In truth and in fact, respondent's rugs referred to herein are woven on power looms in its factories in the United States. They are not made by hand; the individual threads are not knotted in the distinctive manner of the true Oriental rug. They do not possess all the characteristics of the true Oriental rug, but do, in fact, so closely simulate true Oriental rugs in appearance as to be indistinguishable from them by a large portion of the purchasing public and are in consequence readily accepted as being true Oriental rugs.

PAR. 6. In the course and conduct of its business, respondent has engaged in the practice of furnishing to dealers buying certain of its rugs, made as aforesaid, advertising copy which is intended to be, and is, inserted by such dealers in newspapers and other publications of general circulation among the purchasing public. Such advertisements contain many misleading statements which represent and imply that said rugs are in all respects reproductions and copies of true Oriental rugs. Among and typical of such statements are the following:

- True copies of Sarouks, Kirmans and Persians.
- Perfect copies of collectors' Orientals.
- True copies of museum Orientals.
- Oriental rugs reproduced by those clever Bigelow weavers.
- Amazing reproductions from the original Orientals.

In truth and in fact, said rugs are not exact copies or reproductions of true Orientals in structure or method of manufacture, but merely simulate Orientals in appearance.

PAR. 7. The use by respondent of the designations and representations as set forth herein in connection with the offering for sale and sale of its said rugs has had, and now has, the tendency and capacity to 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 both genuine 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. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 31st day of July A. D. 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Bigelow-Sanford Carpet 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 the complaint and the filing of respondent's answer thereto, a stipulation as to the facts was entered into between the attorney for the Commission and the attorneys for respondent, which was approved by the Commission. Thereafter, the proceeding

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regularly came on for final hearing before the Commission on the complaint, the answer, stipulation, and briefs in support of the complaint and in opposition thereto:

And the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Bigelow-Sanford Carpet Co., Inc., is a corporation, organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business at 140 Madison Avenue, in the city and State of New York, and manufacturing plants located at Thompsonville, Conn., and Amsterdam, N. Y.

PAR. 2. Respondent is now, and for more than 3 years last past has been, engaged in the business of manufacturing, selling, and distributing rugs and carpets. In the course and conduct of its business respondent sells rugs and carpets to various wholesale and retail dealers, and causes same, when sold, to be transported from its places of business in the States of New York and Connecticut to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in such rugs and carpets in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business, is now and has been at all times mentioned herein, in substantial competition with other corporations, and with firms, partnerships, and individuals also engaged in the sale and distribution of rugs and carpets in commerce between and among the various States of the United States and in the District of Columbia. Among such competitors are many who sell to wholesale and retail dealers and who do not misrepresent either the place or method of manufacture of their products.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years have understood, Oriental rugs to be rugs made in the Orient, or more particularly, in certain parts of Asia from Turkey to the Yellow Sea, by hand, and having a pile of wool, or silk and wool, the threads of which are individually knotted in a special manner.

In general, Oriental rugs for many years have been, and still are, held in great public esteem, because of their beauty, durability, and

other qualities, and by reason of this there is a demand on the part of many of the purchasing public for such rugs.

Oriental rugs are not woven, but are built, tied, or knotted, by hand, the knots being tied around the warp threads and the rows of knots held by weft threads. Oriental hand-made rugs are designated by names which are generally—but not always—geographical or tribal, and in noun and adjective form are indicative of actual geographic or tribal origin in the Orient.

PAR. 5. Respondent, between 1935 and 1938, used the name "Persiamar," and between 1935 and the present have used the name "Kashamar," to designate certain lines of rugs in various sizes, patterns, and colors. Said rugs are woven on power looms in respondent's factories in the United States. They are not made by hand and the individual threads are not knotted in the distinctive manner of the Oriental rugs; in pattern and design some are copies, so far as is possible when power looms are used, of genuine Oriental rugs, and others have patterns and designs adapted from genuine Oriental rugs which embody Oriental designs, motifs, color, and treatment.

Respondent's "Kashamar" rugs are so woven that the colors and patterns show through the back of the rug, a feature which, until about 1927, was found only in carpets and in genuine Oriental rugs. The name "Kashamar" is a coined word or name. The name "Persiamar" is made by the addition of the suffix "mar" to the word "Persia," the name of a country which for centuries has been identified with Oriental rugs, and is one of the places of origin thereof. Many Oriental rugs are described and known simply as "Persian." The respondent's rugs have many points of resemblance in design, color, and general appearance to genuine Oriental rugs.

PAR. 6. There are true Oriental rugs known as "Kashmir" or "Cashmere"; there are also true Oriental rugs known as "Kashan." Respondent, by the use of the words "Persiamar" and "Kashamar," in describing its rugs, has caused the purchasing public to believe that its rugs are hand-made Oriental rugs, when in fact they are machine-made and produced in the United States.

PAR. 7. Respondent causes a label to be firmly sewn on the rugs sold by it as "Persiamar" or "Kashamar." The label used on the "Persiamar" rugs up to 1938—the date when this name was last used—bore the following legend:

PERSIAMAR
BY
BIGELOW-SANFORD
Guaranteed Pure Wool Face

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The label used in connection with respondent's "Kashamar" rugs, prior to March 1941, contained the legend:

KASHAMAR
by
Bigelow-Sanford
Guaranteed Pure Wool Face

and depicted two hands tying a knot in a piece of yarn; the label used on this rug since March 1941, bears the legend:

KASHAMAR
Woven on Power Looms
in U. S. A. by
Bigelow-Sanford
Guaranteed Pure Wool Face

Respondent also attached to its rugs a label depicting two hands tying a knot and bearing the words:

Woven by the
BIGELOW
WEAVERS
Reg. U. S. Pat. Off,
Patents No. 1885031, 1885032,
1885033, 1885034, Re. 18783
Other Patents Pending
Made in U. S. A.

The depiction of two hands tying a knot in yarn is respondent's trade-mark, which has been used by it for the past 10 years on all its rugs and carpets.

PAR. 8. Respondent has used the names "Persiamar" and "Kashamar" in its invoices and in otherwise referring to said rugs in the sale thereof to dealers and in advertising copy furnished to dealers buying said rugs, and which was intended to be, and was, inserted by such dealers in newspapers and other publications of general circulation among the purchasing public.

PAR. 9. Respondent, by the application of the names "Persiamar" and "Kashamar" to its rugs, has caused the purchasing public to believe that such rugs are, in fact, Oriental rugs; and respondent, by the use of the labels hereinbefore referred to which depict two hands tying a knot on a piece of yarn, has caused the purchasing public to believe that the respondent's rugs were hand-made, or were made in the same way that genuine Oriental rugs are made.

PAR. 10. Respondent, prior to about May 1940, furnished to dealers buying its rugs, advertising copy which was intended to be, and was, inserted by such dealers in newspapers and other publications of general circulation among the purchasing public. Contained in certain

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of such advertising copy were one or more of the following statements, which referred to respondent's "Persiamar" and "Kashamar" rugs:

True copies of Sarouks, Kirmans and Persians. Perfect Copies of Collectors' Orientals.

Oriental rugs reproduced by those clever Bigelow weavers.

True copies of museum Orientals.

Amazing reproductions from the original Orientals.

PAR. 11. The rugs to which the statements appearing in paragraph 10 refer are woven on power looms. Some of them, in color and pattern, follow, as closely as is possible when respondent's method of power-loom weaving is used—but not exactly—the colors and patterns of original hand-made rugs from the Orient. Such rugs may be made in the same size as the original rug, or in sizes smaller or larger than the original. Others of such rugs are, in color and pattern, adaptations and combinations of colors, motifs and patterns found in genuine Oriental rugs. The manufacture of these rugs does not involve the copying of the color and design of any particular genuine Oriental rug, and the designs of these rugs, as a whole, are entirely new.

PAR. 12. The rugs manufactured by respondent are not true copies, perfect copies, or reproductions of Oriental rugs; but so closely simulate true Oriental rugs in appearance as to be indistinguishable from them by a portion of the purchasing public.

PAR. 13. The use by respondent of the designations and representations as set forth herein, in connection with the offering for sale and sale of its 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 of such belief.

PAR. 14. Respondent's said acts and practices have the effect of placing in the hands of dealers who purchase respondent's rugs and resell them to the purchasing public, the means and instrumentality of misleading and deceiving the public as aforesaid, and as a result of respondent's acts and practices as herein set forth, trade has been unfairly diverted to respondent from its competitors engaged in the sale of rugs, including both Oriental and domestic rugs, in commerce between and among the various States of the United States and in the District of Columbia, who truthfully represent their products as set forth in paragraph 3 hereof. In consequence thereof, injury has been and is now being done by the respondent to competition in

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

CONCLUSION

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

ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, a stipulation as to the facts entered into between the attorney for the Commission and attorneys for the respondent which was approved by the Commission, and briefs in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Bigelow-Sanford Carpet Co., Inc., a corporation, its officers, directors, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of rugs or carpets in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

(1) Using the word "Persiamar," or "Kashamar," or any other word or name indicative of the Orient, 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.

(2) Representing by the use of the words "true copies," "perfect copies," or "reproductions," or by the use of any similar words which import that the rug to which such words are applied is a replica or duplicate of an original Oriental rug.

(3) Representing in any manner that the rugs manufactured and sold by it are true copies of museum Oriental rugs, or that they are reproductions of Oriental rugs.

¹The Commission, by order of September 4, 1942, modified as "indefinite and incomplete" paragraph (2) of order in question, so as to require respondent corporation, its officers, etc., to cease and desist from—

"(2) The use of the words 'true copies,' 'perfect copies,' 'reproductions,' or any other words of similar import, to designate or describe rugs which are not replicas or duplicates of original Oriental rugs in every respect."

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(4) Furnishing dealers buying its rugs with advertising copy intended to be inserted by such dealers in newspapers and other publications of general circulation, which contain one or more of the following statements with reference to respondent's rugs:

True copies of Sarouks, Kirmans and Persians.

Perfect copies of collector's Orientals.

Oriental rugs reproduced by those clever Bigelow weavers.

True copies of museum Orientals.

Amazing reproductions from the original Orientals.

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

GIBSON-THOMSEN CO., INC., AND S. H. KRESS CO.

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

Docket 3714. Complaint, Feb. 14, 1939—Decision, June 1, 1942

Where a corporation, engaged in the manufacture and competitive interstate sale of tooth brushes; importing tooth brush handles from Japan—

- (a) Obliterated the word "Japan" on the bristle end thereof by boring holes therein and filling them with bristles in the process of manufacture, and, in compliance with instructions from the corporate operator of retail stores to whom it sold said products, imprinted on the handles the word "Kress" or "Kress, U. S. A.," and, until January 1938, printed on the ends of cartons enclosing such brushes the words "Made in U. S. A.";

Thereby placing in the hands of retailers a means of misleading and deceiving the purchasing public into the erroneous belief that its said brushes and all the parts thereof, lacking the original markings required by law, were wholly of domestic origin—substantially preferred thereby over those made from materials or parts imported from Japan, against the goods of which there is a substantial prejudice—with the result that said public purchased such products in the aforesaid erroneous belief and trade was thereby diverted to it from its competitors who do not so misrepresent their tooth brush products; and

Where said corporate operator, engaged in the competitive offer and sale of tooth brushes and other items direct to the purchasing public through its retail stores in the United States and the Territory of Hawaii, with full knowledge of the facts above set forth—

- (b) Sold and continued to sell such tooth brushes in its branch stores with no other marking, printing, or labeling thereon or in connection therewith to inform the purchasing public that said products were of Japanese and not of domestic origin;

With effect of deceiving the purchasing public as aforesaid, and of diverting trade unfairly thereby to it from its Hawaiian competitors who do not misrepresent the country of origin of the whole or part of their said products:

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

Before *Mr. John L. Hornor* and *Mr. James A. Purcell*, trial examiners.

Mr. Jay L. Jackson and *Mr. Carrel F. Rhodes*, for the Commission.
Mr. James W. Bevans, 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

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Trade Commission having reason to believe that Gibson-Thomsen Co., Inc., and S. H. Kress & 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, Gibson-Thomsen Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 10 East Thirty-ninth Street, in the city of New York of said State, and with a manufacturing plant located in the city of Newark, in the State of New Jersey. For the past several years said respondent has been, and now is, engaged in the business of making, among other things, tooth brushes, and in offering for sale and selling the same in commerce among and between the various States of the United States and in the District of Columbia, and in causing the same, when sold or ordered, to be shipped and transported from its places of business in the States of New York and New Jersey to purchasers thereof located in States other than the States of New York and New Jersey, and to purchasers located in the District of Columbia.

In the course and conduct of its said business, and at all times herein referred to, said respondent has been, and now is, in competition with other corporations, firms, partnerships, and individuals engaged in offering for sale and selling tooth brushes in commerce among and between the various States of the United States and in the District of Columbia, who do not use the methods and practices used by respondent and herein set forth and complained of.

PAR. 2. Respondent, S. H. Kress & Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 114 Fifth Avenue, in the city of New York of said State. For several years past said respondent has been, and now is, engaged in the business of offering for sale and selling, among other things, tooth brushes direct to the purchasing public through its retail stores located in various States of the United States, in the District of Columbia and in the Territory of Hawaii, and in causing said tooth brushes to be made, marked, labeled, and imprinted by the maker thereof, as hereinafter more fully set forth and complained of, and in causing said tooth brushes to be shipped and transported from the States of New York and New Jersey to its retail stores in and throughout the various States of the United States, in the District of Columbia, and in the Territory of Hawaii.

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PAR. 3. In the making of its aforesaid tooth brushes, respondent, Gibson-Thomsen Co., Inc., uses constituent parts and materials of foreign and domestic origin, the foreign parts of which, when imported and received by said respondent, are marked and imprinted in such manner as to indicate the country of origin thereof. Among such foreign-made parts used by said respondent are tooth brush handles which are made in, and imported from, the country of Japan.

In the course and conduct of its aforesaid business, and in the process of making tooth brushes in which said Japanese-made handles are used, it has been, and is, the practice of respondent, Gibson-Thomsen Co., Inc., to conceal, obscure, and obliterate the word "Japan" and mark of origin on said handles, which word and marking appeared on said handles when imported and received by respondent, and thereafter to offer for sale, sell, and distribute the same to purchasers, in commerce as aforesaid, without any marking, printing, labeling, or other indication thereon, or in connection therewith, sufficient to inform members of the buying and consuming public that the handles, or a substantial part, of said brushes are of Japanese or foreign origin, and not of domestic origin.

PAR. 4. Respondents jointly caused and cause tooth brushes to be made in the manner aforesaid, and further caused and cause the same to be marked and imprinted with the word "Kress" and with the word and letters "Kress U. S. A." appearing on the handles of said brushes. Pursuant to the purchase of such brushes by respondent, S. H. Kress & Co., and to its order, respondents further caused and cause said brushes to be shipped and transported in commerce as aforesaid and to be offered for sale and sold to members of the buying and consuming public with the word "Japan" and mark of origin concealed, obscured and obliterated from the handles of said brushes, and with the word "Kress" and the words and letters "Kress U. S. A." appearing thereon, and without any other marking, printing, or labeling thereon or in connection therewith sufficient to inform members of the buying and consuming public that the said handles or a substantial part of said brushes were and are of Japanese or foreign origin and not of domestic origin.

PAR. 5. By virtue of the practice, heretofore and now established of imprinting or otherwise marking products of foreign origin, and their containers, with the name of the country of their origin, in legible English words in a conspicuous place, and as required by law, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting or marking, and is influenced thereby, to distinguish and discriminate between products of foreign and domestic origin. When products composed in whole or

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substantial part of imported articles are offered for sale and sold in the channels of trade and 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 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 members of the buying and consuming public, including purchasers and users of tooth brushes 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 domestic in manufacture and 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. 6. The practices of respondents, as aforesaid, in causing the word "Japan" and mark of origin to be concealed, obscured, and obliterated from the Japanese handles used in the making of the said tooth brushes, and in causing the word and letters "Kress U. S. A.", and the word "Kress," to appear on said handles, have had and have, and each of said practices 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 tooth brushes, and all the parts thereof, are wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief, in consequence of which injury has been and is done to competition in commerce among and between the various States of the United States and in its territorial possessions, and in the District of Columbia, and in consequence of which trade in tooth brushes is unfairly diverted to respondents from their competitors who do not misrepresent the country of manufacture or origin of the whole or a substantial part of their said tooth brush products.

PAR. 7. The practices of respondent, Gibson-Thomsen Co., Inc., as alleged and set forth in paragraph 3 above, place in the hands of jobbers and retail sellers, who deal in the said products of respondent, a means wherewith to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that the tooth brushes 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. 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 and unfair and deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 14, A. D., 1939, issued and thereafter served its complaint in this proceeding upon the respondents, Gibson-Thomsen Co., Inc., and S. H. Kress & Co., corporations, charging them, with 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 the complaint and the filing of respondents' answers, testimony, and other evidence in support of the allegations of the complaint were introduced by the attorneys for the Commission before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, and such 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, answers, testimony, and other evidence, the original and supplemental trial examiners' reports, exceptions to the supplemental report, 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, Gibson-Thomsen 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 in the city and State of New York, and having manufacturing plant located in the city of Newark, State of New Jersey.

Respondent, S. H. Kress & 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 and State of New York, and with branch stores located in various States of the United States and in the Territory of Hawaii.

PAR. 2. Respondent, Gibson-Thomsen Co., Inc., is now and for several years last past has been engaged in the business of making tooth brushes which it offers for sale and sells to purchasers located in various States of the United States, and when sold, causes the same to be shipped and transported from its places of business in the States of New York and New Jersey to purchasers thereof located in various other States of the United States. Said respondent, during all of the time herein mentioned, has been, and now is, in competition with other corporations and with firms, partnerships, and individuals engaged in offering for sale and selling tooth brushes in commerce between and among various States of the United States.

PAR. 3. Respondent S. H. Kress & Co., is now, and has been for several years last past, engaged in the business of offering for sale and selling tooth brushes and other items, direct to the purchasing public, through its retail stores located in various States of the United States and in the Territory of Hawaii. Said respondent has been and now is in competition with other corporations and with firms, partnerships, and individuals engaged in selling tooth brushes in the Territory of Hawaii.

PAR. 4. Respondent, Gibson-Thomsen Co., Inc., in connection with its manufacture and sale of tooth brushes, imports from Japan tooth brush handles which are made in said country and which, when received by said respondent, have stamped on the end where the bristles are to be inserted, the word "Japan"; but the respondent obliterates the word "Japan" by boring holes in the portion of the handle where the word appears and filling same with knots of bristles put in by automatic machines and held in place by a wire staple; and said respondent, in compliance with instructions of respondent, S. H. Kress & Co., has imprinted on the handles of said tooth brushes the word "Kress," or "Kress U. S. A.," and until January 1938, printed on the ends of the cartons in which the tooth brushes were packed and sold, the words, "Made in U. S. A."

PAR. 5. Respondent, S. H. Kress & Co., during the times herein mentioned, with full knowledge of the matters set forth in paragraph 4 hereof, has sold, and continues to sell, tooth brushes manufactured and sold to it by respondent, Gibson-Thomsen Co., Inc., in its branch stores located in various States of the United States and in the Territory of Hawaii, without any other marking, printing, or labeling thereon, or in connection therewith, sufficient to inform the consuming public that the handles of said tooth brushes were and are of Japanese origin and not of domestic origin.

PAR. 6. By virtue of the law requiring foreign products to be marked with the names of the country of their origin, a substantial

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portion of the purchasing public rely upon such markings, and are influenced thereby to distinguish and discriminate between products of foreign and of domestic origin, and products are accepted by the purchasing public to be of domestic manufacture unless the same are imprinted or marked in a manner which informs purchasers that such products are of foreign origin. There is a substantial and subsisting preference on the part of the purchasing public throughout the United States and its territorial possessions for products which are wholly domestic in manufacture and origin, as distinguished from products made from materials or parts imported from Japan, and there is a substantial prejudice on the part of the purchasing public against goods made in Japan.

PAR. 7. Respondent, Gibson-Thomsen Co., Inc., by its acts and practices herein set forth, places in the hands of retail dealers the means wherewith to mislead and deceive the purchasing public into the false and erroneous belief that said respondent's tooth brushes and all the parts thereof are wholly of domestic origin, thereby inducing the consuming public to purchase respondent's product under such erroneous belief; and as a result thereof, trade has been unfairly diverted to said respondent from its competitors who do not misrepresent the country of manufacture or origin, of the whole or a substantial part of their tooth brush products.

PAR. 8. Respondent, S. H. Kress & Co., by its acts and practices herein set forth, has misled and deceived the purchasing public into the false and erroneous belief that the tooth brushes purchased by it from respondent, Gibson-Thomsen Co., Inc., and all the parts thereof, are wholly of domestic origin, and the purchasing public, because of such erroneous belief, has purchased said respondent's tooth brushes; as a result, trade in tooth brushes has been unfairly diverted to respondent from its competitors located in the Territory of Hawaii who do not misrepresent the country of manufacture or origin of the whole, or a substantial part of their tooth brush products.

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, the testimony and other evidence in support of the allegations of the complaint introduced by the attorneys for the Commission before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, the original and supplemental trial examiners' reports, exceptions to the supplemental report, 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 the respondents, Gibson-Thomsen Co., Inc., and S. H. Kress & Co., corporations, their 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 tooth brushes in commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Representing, directly or by implication through the use of the word "Kress," or "Kress U. S. A.," or any other word or words of similar import or meaning stamped or imprinted on the handles of the brushes, that tooth brushes having imported handles are of domestic manufacture.

2. Using the words "Made in U. S. A.," or any other words of similar import or meaning, on cartons containing tooth brushes having imported handles.

3. Representing through the medium of labeling, stamping, or imprinting, upon the handles of brushes or on the cartons containing same, that the tooth brushes are made wholly in the United States, when in fact, the handles are imported.

4. Representing through the medium of labeling, stamping, or imprinting upon the handles of tooth brushes, or on the carton containing same, that such brushes are made in the United States, when in fact, the handles of such brushes have been imported and the name of the country of origin has been effectively obliterated or obscured.

5. Selling or distributing tooth brushes, the handles of which are imported, unless such fact is conspicuously stamped or imprinted on the tooth brush or its container.

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

IN THE MATTER OF

S. REIFFE & SONS, INC., TRADING AS FAIRMOUNT MER-
CHANDISE COMPANY AND CROWN MAIL ORDER
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4665. Complaint, Jan. 7, 1942—Decision, June 1, 1942*

Where a corporation, engaged in buying old, worn, and previously used articles of clothing, including dresses, overcoats, men's suits, hats and shoes, and in interstate resale thereof by mail order; by means of statements in catalogues, letters, pamphlets, advertisements in newspapers and periodicals, and other printed and written material—

- (a) Represented, through such statements as "Silk dresses—10¢," that products advertised by it were made of silk, and that one or any other reasonable number thereof might be purchased for 10 cents; the facts being that many of such dresses were made in whole or in part from rayon, and could not be purchased at 10 cents except in lots of 25;
- (b) Represented that its products were obtained from companies or individuals in bankruptcy, and were in such condition and of such style and size as to be wearable by the purchaser; notwithstanding fact that most of its products were old and worn, only a small portion thereof had been obtained as aforesaid, and many of them were so out of style, of such improper sizes and in such condition as to be unsuitable for wear when received by purchaser;
- (c) Represented that in case of dissatisfaction refunds would be made without delay and without expense or inconvenience to dissatisfied customers, and that goods ordered would be delivered within a reasonable time without inconvenience or expense to purchaser; notwithstanding fact that customers were obliged to bear the expense of returning goods before receiving refunds, and, frequently, delivery was delayed for 2 months or longer, and in many instances customers were obliged to communicate repeatedly with said corporation and apply to Better Business Bureaus and other agencies for assistance in order to secure refunds or delivery; and
- (d) Further represented its products as silk through failure to disclose their content of rayon which, when made to simulate silk, is practically indistinguishable therefrom by the purchasing public, which accepted such products as silk in whole or part;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said statements were true, thereby inducing it to purchase a substantial volume of the products in question:

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

Mr. Donovan Divet for the Commission.

Kopf & Rosenbluth, of New York City, for respondent.

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Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, any by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that S. Reiffe & Sons, Inc., a corporation, individually, and doing business under the trade names, Fairmount Merchandise Co. and Crown Mail Order Co., hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint in that respect as follows:

PARAGRAPH 1. The respondent, S. Reiffe & Sons, Inc., is a corporation, organized and existing by virtue of the laws of the State of New York, doing business under the trade names, Fairmount Merchandise Co. and Crown Mail Order Co., and having its principal place of business at 160-166 Monroe Street in the city of New York, State of New York.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the business of buying and of reselling by mail order old, worn, and previously used articles of clothing, including dresses, overcoats, men's suits, hats, and shoes. Respondent causes said products, when sold, to be transported from its place of business in the State of New York to the purchasers thereof at their respective points of location in various 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 respondent has engaged in the practice of falsely representing the constituent fiber or material of which its products are made, as well as the newness, the sources of supply and physical condition of such products, the circumstances and conditions under which it makes refunds and the time within which it fills orders, such false representations being made by means of statements appearing in catalogues, letters, pamphlets, advertisements published in newspapers and magazines, and other printed and written material.

Among and typical of said false, misleading, and deceptive statements are the following:

SILK DRESSES—10¢

Men's suits \$2.00; Overcoats \$1 00; Ladies' shoes 50¢; Hats 40¢. Many other low-priced BARGAINS. FREE CATALOGUE. Send name on postcard. Write today.

BANKRUPT BARGAINS

Every time we succeed in capturing another big bankrupt stock, loaded with every variety of fine, clean, stylish apparel for men, women, boys and girls, we are happy in feeling that here's another joyous money-saving feast of sterling values for our many friends.

Just remember there's no possible chance for you to have any dissatisfaction with what you buy because of our guarantee to promptly return your money for anything that doesn't please you!

The word "silk" has been long and favorably known to the purchasing and consuming public as descriptive of goods made from the product of the cocoon of the silkworm.

By means of the aforesaid representations and others of similar import or meaning not herein specifically set forth, the respondent represents that its products advertised as silk are made from silk, the product of the cocoon of the silkworm, and that one or any other reasonable number of its dresses described as silk may be purchased for 10 cents; that its products are new and unused; that its products are obtained from companies or individuals in bankruptcy; that its products are in such condition and of such a style and size to be wearable by the purchaser; that in case of dissatisfaction refunds will be made to dissatisfied customers without delay and without expense or inconvenience to such dissatisfied purchasers, and that goods ordered will be delivered within a reasonable time without inconvenience or expense to the purchaser.

Such representations are false and misleading. In truth and in fact, many of the respondent's products advertised and represented as silk are made in whole or in part from rayon; dresses advertised as silk and as being for sale at 10 cents cannot be purchased except in lots of 25; although respondent sells some new clothing, most of its products are old, worn, and previously used; only a small portion of respondent's products are obtained from persons or concerns in bankruptcy; many of respondent's products are so out of style, of such improper sizes and in such physical condition as to be unsuitable for wear when received by the purchaser; dissatisfied customers before obtaining a refund are obliged to bear the expense of returning the goods, and in many instances are put to the inconvenience of repeatedly communicating with respondent and of applying to Better Business Bureaus and other agencies for assistance before receiving refunds; in many instances, goods ordered are not delivered within a reasonable time, but instead delivery is delayed for 2 months and longer, and in many instances customers are obliged to communicate repeatedly with respondent and to apply to Better Business Bureaus and other agencies for assistance in order to secure delivery.

Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate silk. When manufactured to simulate silk, it has the appearance and feel of silk. By reason of these qualities rayon, when manufactured to simulate silk and not designated as rayon, is by the purchasing public practically indistinguishable from silk. Products made from rayon resembling silk are accepted by the public as silk even though such products may not be designated by terms representing or implying that they are silk.

In addition to misrepresenting certain of its products by use of the word "silk" as heretofore alleged, the respondent by failing to disclose the rayon content of said products, which resemble silk, represents that said products are composed entirely of silk, the product of the cocoon of the silkworm, whereas in truth and in fact said products are in some cases composed entirely of rayon and in other cases partly of rayon.

PAR. 4. 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 said statements and representations are true. On account of these erroneous beliefs, a number of the consuming and purchasing public purchases a substantial volume of respondent's products.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 7, 1942, issued and on January 14, 1942, served its complaint in this proceeding upon respondent, S. Reiffe & Sons, Inc., a corporation, individually, and doing business under the trade names, Fairmount Merchandise Co. and Crown Mail Order Co., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission by order entered herein granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this pro-

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, S. Reiffe & Sons, Inc., is a corporation, organized and existing by virtue of the laws of the State of New York, doing business under the trade names, Fairmount Merchandise Co. and Crown Mail Order Co., and having its principal place of business at 160-166 Monroe Street in the city of New York, State of New York.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the business of buying and of reselling by mail order, old, worn, and previously used articles of clothing, including dresses, overcoats, men's suits, hats, and shoes. Respondent causes said products, when sold, to be transported from its place of business in the State of New York to the purchasers thereof at their respective points of location in various 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 respondent has engaged in the practice of falsely representing the constituent fiber or material of which its products are made, as well as the newness, the sources of supply and physical condition of such products, the circumstances and conditions under which it makes refunds and the time within which it fills orders, such false representations being made by means of statements appearing in catalogs, letters, pamphlets, advertisements published in newspapers and magazines, and other printed and written material.

Among and typical of said false, misleading, and deceptive statements are the following:

SILK DRESSES—10¢

Men's suits \$2.00; Overcoats \$1.00; Ladies' shoes 50¢; Hats 40¢. Many other low-priced BARGAINS. FREE CATALOGUE. Send name on postcard. Write today.

BANKRUPT BARGAINS

Every time we succeed in capturing another big bankrupt stock, loaded with every variety of fine, clean, stylish apparel for men, women, boys and girls,

we are happy in feeling that here's another joyous money-saving feast of sterling values for our many friends.

Just remember there's no possible chance for you to have any dissatisfaction with what you buy because of our guarantee to promptly return your money for anything that doesn't please you!

The word "silk" has been long and favorably known to the purchasing and consuming public as descriptive of goods made from the product of the cocoon of the silkworm.

By means of the aforesaid representations and others of similar import or meaning not herein specifically set forth, the respondent represents that its products advertised as silk are made from silk, the product of the cocoon of the silkworm, and that one or any other reasonable number of its dresses described as silk may be purchased for 10 cents; that its products are new and unused; that its products are obtained from companies or individuals in bankruptcy; that its products are in such condition and of such a style and size as to be wearable by the purchaser; that in case of dissatisfaction refunds will be made to dissatisfied customers without delay and without expense or inconvenience to such dissatisfied purchasers, and that goods ordered will be delivered within a reasonable time without inconvenience or expense to the purchaser.

Such representations are false and misleading. In truth and in fact, many of the respondent's products advertised and represented as silk are made in whole or in part from rayon; dresses advertised as silk and as being for sale at 10 cents cannot be purchased except in lots of 25; although respondent sells some new clothing, most of its products are old, worn, and previously used; only a small portion of respondent's products are obtained from persons or concerns in bankruptcy; many of respondent's products are so out of style, of such improper sizes and in such physical condition as to be unsuitable for wear when received by the purchaser; dissatisfied customers before obtaining a refund are obliged to bear the expense of returning the goods and in many instances are put to the inconvenience of repeatedly communicating with respondent and of applying to Better Business Bureaus and other agencies for assistance before receiving refunds; in many instances, goods ordered are not delivered within a reasonable time, but instead delivery is delayed for 2 months or longer, and in many instances customers are obliged to communicate repeatedly with respondent and to apply to Better Business Bureaus and other agencies for assistance in order to secure delivery.

Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate silk. When manufactured to simulate silk, it has the appearance and feel of silk. By reason of these quali-

ties rayon, when manufactured to simulate silk and not designated as rayon, is by the purchasing public practically indistinguishable from silk. Products made from rayon resembling silk are accepted by the public as silk even though such products may not be designated by terms representing or implying that they are silk.

In addition to misrepresenting certain of its products by use of the word "silk," as heretofore found, the respondent by failing to disclose the rayon content of said products, which resemble silk, represents that said products are composed entirely of silk, the product of the cocoon of the silkworm; where in truth and in fact said products are in some cases composed entirely of rayon and in other cases partly of rayon.

PAR. 4. 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 said statements and representations are true. On account of said erroneous belief, a number of the consuming and purchasing public purchases a substantial volume of respondent's products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of 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, S. Reiffe & Sons, Inc., a corporation, individually, and doing business under the trade names, Fairmount Merchandise Co. and Crown Mail Order 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 clothing in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Using the term "silk" or any other term or terms of similar import or meaning indicative of silk to describe or designate any garment which is not composed wholly of silk, the product of the cocoon of the silkworm; *Provided, however,* That in the case of a garment composed in part of silk and in part of materials other than silk, such term or terms may be used as descriptive of the silk content if there are used in immediate connection or conjunction therewith in letters of at least equal size and conspicuousness words truthfully describing and designating each constituent fiber thereof.

2. Representing that any garment may be purchased for 10 cents or any other sum, when in fact such garment may be purchased at the price mentioned only in lots of more than one, without clearly disclosing the number of garments which must be purchased to obtain said garments for 10 cents or any other sum each.

3. Representing that old, used, worn, or secondhand garments are new.

4. Representing that garments secured from sources other than bankrupt estates have been obtained from companies or individuals in bankruptcy.

5. Representing that garments not in a wearable physical condition, not of a current mode for the type of article sold, or not of the size indicated by the purchaser are suitable for wear, and from including in the fulfilment of any order for garments represented as suitable for wear, any garment which is not in such condition and of such style as to be wearable by the purchaser without change or alteration or which is not of the size ordered by the purchaser.

6. Representing that refunds will be made to purchasers without delay, expense, or inconvenience to the purchaser unless and until respondent establishes and maintains the uniform practice of making all refunds in such manner, and from failing to make any refunds so represented, without expense and without unusual delay and without unusual inconvenience to the purchaser.

7. Representing that garments ordered will be delivered within a reasonable time or without inconvenience or expense to the purchaser unless and until respondent establishes and maintains the uniform practice of making all deliveries in such manner, and from failing to deliver garments so represented without expense, to the purchaser, within a reasonable time, and without unusual inconvenience to the purchaser.

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

Complaint

34 F. T. C.

IN THE MATTER OF
RADIO WIRE TELEVISION, INC.

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

Docket 4491. Complaint, Apr. 19, 1941—Decision, June 2, 1942

Where a corporation, engaged in the competitive interstate sale and distribution of radio receiving sets, accessories, and parts, and kits for use in home construction; by means of advertisements in catalogues, pamphlets, and other advertising matter—

Represented that its "One-tube battery operated all-wave set" had the power or capacity to "tune in the world"; and by the designations "Two-tube AC-DC kit" and "Two-tube AC-DC set" that such sets were two tube sets;

The facts being that such so-called "all-wave sets" did not have the power and capacity to bring in all-wave radio programs from wherever broadcast and it was not possible for the "one tube battery set," "to tune in the world," or bring in programs broadcast from stations located throughout the world; while so-called "two-tube" kits and sets were not equipped with two fully functioning tubes, but were equipped with one detecting, amplifying or receiving tube and one tuning or rectifying tube;

With effect of misleading and deceiving a substantial number of members of the purchasing public—which believes that the greater number of actually functioning tubes there are in a set the better the performance, and buys radios in the belief that an all-wave set has power and capacity to and will bring in programs broadcast on all wave lengths from stations throughout the world—into the mistaken belief that aforesaid representations were true, with result that they purchased substantial volume of said products, thereby unfairly diverting trade to it from its competitors; to the injury of competition in commerce:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. S. Brogdyne Tew, II for the Commission.

Baar, Bennett & Fullen, 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 Radio Wire Television, Inc., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest,

hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Radio Wire Television, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 100 Sixth Avenue, New York, N. Y. The respondent also maintains branch offices in Chicago, Ill., Boston, Mass., and Atlanta, Ga. The respondent is engaged in the sale and distribution of radio receiving sets, parts, kits for home construction of radio sets, and other radio accessories to the purchasing public located in the United States and in foreign countries.

PAR. 2. The respondent now maintains and for more than one year last past has maintained a course of trade in said products so sold and distributed by it in commerce among and between the various States of the United States, in the District of Columbia, and in foreign countries.

In the course and conduct of its said business the respondent is now and for more than one year last past has been in competition with other corporations and with individuals and partnerships engaged in the business of manufacturing, selling and distributing radio receiving sets, radio parts and like products in commerce among and between the various States of the United States, in the District of Columbia, and in foreign countries.

PAR. 3. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its radio receiving sets, radio parts, and like products, respondent has circulated and distributed among prospective customers throughout the United States, in the District of Columbia, and in foreign countries, by mail, advertisements, catalogues, pamphlets, and advertising broadsides containing many statements and representations concerning its said radio receiving sets and parts thereof. In said advertising material so disseminated said respondent has made various false and misleading statements and representations in describing said radio receiving sets and their power and capacity for reception and concerning the number of active functioning tubes in said radio sets. Among said statements and representations so made by respondent are the following:

One-tube battery operated all-wave set.

One-tube battery set, with this one tube battery set you can tune in the world.

Two-tube AC-DC kit.

Two-tube AC-DC set.

The aforesaid statements and representations, together with similar statements and representations not herein specifically set out, purport

to be descriptive of said respondent's radio receiving sets, radio parts, and like products, the number of necessary functioning tubes with which they are equipped and the power and capacity for world wide reception of radio receiving sets. Said statements serve as representations on the part of the respondent to members of the purchasing public that said radio receiving sets are equipped with fully functioning tubes, and that said radio receiving sets have the power and capacity to bring in and will bring in programs broadcast from stations located throughout the world.

A substantial number of the purchasing public believe that the greater the number of actually functioning tubes in a radio receiving set, the better it performs and the greater and clearer its power of detecting, amplifying and receiving radio waves, and a substantial number of the purchasing public buy radio sets under that belief, and, further believe that an all-wave radio set has the power and capacity to and will bring in programs broadcast on all waves from stations located throughout the world.

PAR. 4. In truth and in fact the respondent's "One-tube battery operated all-wave set" is not an all-wave radio set. It does not have the power and capacity to bring in all-wave radio programs from wherever broadcast. It is impossible with the respondent's one-tube battery set to tune in the world. Said set does not have the power and capacity to bring in radio programs broadcast from stations located throughout the world. Further, in truth and in fact the respondent's so-called "Two-tube AC-DC kit" and "Two-tube AC-DC set" are not two-tube radio sets. The said sets are not equipped with two fully functioning tubes, respectively, but are on the contrary, merely equipped with one detecting, amplifying or receiving tube and with one nonfunctioning or tuning beacon tube or rectifying tube. The said rectifier tubes do not serve as amplifying or detecting tubes and do not perform any recognized and customary function of a radio receiving tube in the detection, amplification and reception of radio signals or programs.

PAR. 5. Each and all of the foregoing false and misleading statements and representations made by the respondent as aforesaid in describing its said radio receiving sets, radio parts and like products as hereinabove set out were and are calculated to and have had and now have a tendency and capacity to and do mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such representations are true. As a result of such erroneous and mistaken belief, so induced, a substantial portion of the purchasing public has purchased a substantial volume of re-

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spondent's said products, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of selling and distributing radio receiving sets and parts therefor. As a consequence thereof, injury has been done and is now being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 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 19, 1941, issued and subsequently served its complaint in this proceeding upon respondent, Radio Wire Television, 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, no answer thereto having been filed by respondent, a hearing was held before an examiner of the Commission theretofore duly designated by it, and certain facts agreed upon by respondent and counsel for the Commission were read into the record and 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 agreed statement of facts, and brief in support of the complaint (respondent having waived the filing of brief 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. Respondent, Radio Wire Television, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, and has its principal place of business at 100 Sixth Avenue, New York, N. Y. Respondent is engaged in the sale and distribution of radio receiving sets, radio accessories, and parts and kits for use in the home construction of

radio sets. In the course of this business respondent maintains branch offices in Chicago, Ill., Boston, Mass., and Atlanta, Ga.

PAR. 2. In the course and conduct of its aforesaid business respondent maintains, and for more than 1 year last past 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 conduct of this business respondent has been and is in competition with other corporations, and with individuals and partnerships engaged in the sale and distribution of radio receiving sets, radio parts and like products in commerce throughout the United States and in the District of Columbia.

PAR. 3. For the purpose of inducing the purchase of its radio receiving sets, radio parts, kits, and other radio accessories, respondent has circulated and distributed among prospective purchasers throughout the United States and in the District of Columbia, advertisements, catalogs, pamphlets, and other advertising material containing statements and representations concerning its said products. In such advertisements, catalogs, pamphlets, and other advertising material distributed as aforesaid, respondent has made various false and misleading statements and representations in describing radio receiving sets and their power and capacity for the reception of radio signals and broadcasts, and also concerning the number of active, functioning tubes in such radio sets. Typical of said statements and representations are the following:

One-tube battery operated all-wave set.

One-tube battery set, with this one tube battery set you can tune in the world.

Two-tube AC-DC kit.

Two-tube AC-DC set.

The foregoing statements and representations by respondent, together with similar statements and representations not specifically set out herein, purport to be descriptive of its radio receiving sets and parts, the number of necessary functioning tubes with which they are equipped, and the power and capacity of such sets for world-wide reception of radio broadcasts. These statements serve as representations by respondent to members of the purchasing public that its radio receiving sets are equipped with fully functioning tubes and have the power and capacity to bring in programs broadcast from stations located throughout the world.

PAR. 4. A substantial number of members of the purchasing public believes that the greater the number of the actually functioning tubes in a radio receiving set the better it performs, and the greater and

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clearer is its power of detecting, amplifying, and receiving radio waves, and such members of the purchasing public buy radios under the belief that an all-wave radio set has the power and capacity to and will bring in programs broadcast on all wave lengths from stations located throughout the world.

PAR. 5. Respondent's radio receiving set described as "One-tube battery operated all-wave set" is not an all-wave radio set. It does not have the power and capacity to bring in all-wave radio programs from wherever broadcast, and it is impossible with this one-tube battery set to "tune in the world." This set does not have the power and capacity to bring in radio programs broadcast from stations located throughout the world.

Respondent's radio receiving sets designated as "Two-tube AC-DC Kit" and "Two-tube AC-DC set" are not two-tube radio receiving sets. These sets are not equipped with two fully functioning tubes. They are in fact equipped with one detecting, amplifying, or receiving tube and with one tuning tube or rectifying tube. The tuning or rectifying tube does not serve as an amplifying or detecting tube, and does not perform any recognized and customary function in a radio set in the detection, amplification, and reception of radio signals or radio broadcasts.

PAR. 6. The aforesaid false and misleading statements and representations made by respondent in describing its radio receiving sets and radio parts were and are calculated to, and have had and now have the tendency and capacity to and do, mislead, and deceive a substantial number of members of the purchasing public into the mistaken belief that such representations are true. As a result of such mistaken belief, such members of the purchasing public have purchased a substantial volume of respondent's products, with the result that trade has been unfairly diverted to respondent from its competitors; and, as a consequence thereof, injury has been done and is now being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The 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

34 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, certain facts agreed upon by respondent and counsel for the Commission and read into the record at a hearing before an examiner of the Commission therefore duly designated by it, 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 respondent, Radio Wire Television, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale, and distribution of radio receiving sets, parts, or accessories 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 radio receiving set designated as "One-tube battery operated all-wave set" has the power or capacity to "tune in the world" or bring in radio programs from wherever broadcast; or that said set or any other receiving set has power or capacity to receive broadcast programs in excess of its actual power and capacity to receive such programs.

2. That respondent's radio receiving sets designated as "Two-tube AC-DC kit" and "Two-tube AC-DC set" are two-tube sets; or that said sets or any other receiving sets have a number of tubes in excess of the actual number of fully functioning tubes in such sets which perform recognized and customary functions in the detection, amplification and reception of radio signals or programs.

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

Complaint

IN THE MATTER OF

THE SEAMLESS 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 4509. Complaint, May 27, 1941—Decision, June 2, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of electrical heating pads composed principally of flat, flexible networks of fine wire embedded in asbestos or rubber with one or more built-in automatic heating thermostats, a four-position switch labeled "Off," "L," "M," and "H," extension cord and plug; by means of advertisements disseminated through the mails, circulars, and leaflets, and in catalogues and other advertising literature, directly or by inference—

Represented that its said heating pads were capable of generating three different sustained levels of temperature, and that temperature thereof might be controlled and the desired uniform heat obtained simply by setting the switches at points marked "L," "M," or "H";

The facts being that temperature of said pads could not be thus controlled, but if connected and turned on, the pads eventually attained the maximum temperature and were thermostatically controlled at said level, regardless of how the switches were set, sole function of which was to regulate the wattage of electric current used by the pads and thus control to some extent the speed with which the maximum temperature would be attained;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said advertisements were true, thereby inducing it to purchase substantial quantities 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. James M. Hammond for the Commission.

Mr. William F. Davis, Jr. and *Mr. Benjamin H. Dorman*, of Boston, Mass., and *Mr. Richard A. Mahar*, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Seamless Rubber 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Seamless Rubber Co., is a corporation, organized, existing, and doing business under and by virtue

of the laws of the State of Connecticut, with its office and principal place of business located in the city of New Haven and State of Connecticut.

Said respondent, is now, and for more than 1 year last past, has been, engaged in the manufacture and in the sale and distribution of electrical heating pads, which said pads are intended for use in the cure, mitigation, and treatment and prevention of diseases in man, and which constitute a "device" within the meaning of the Federal Trade Commission Act. Said pads are composed principally of flat, flexible net-works of fine wire embedded in asbestos or rubber, with one or more built-in automatic heat regulating devices called thermostats connected thereto and a four position through switch labeled "Off," "L," "M," and "H" attached, and each pad is equipped with an extension cord and a plug.

PAR. 2. Respondent causes and has caused said products, when sold, to be transported from place of business in the State of Connecticut 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 heating pads 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; 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 circulars and leaflets and by advertisements in catalogs and other advertising literature, are the following:

Three heats with dual thermostatic control.

Turn the pointer to the desired heat, "L" meaning "low," "M" meaning "medium" and "H" meaning "high" heat.

By a mere flick of the thumb the user can set the switch, in a second, to "high," "medium," "low" or "off."

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 through inference, that its said heating pads are capable of generating and maintaining three different sustained levels of temperature, and that the temperature of said pads may be controlled and the desired uniform heat obtained by simply setting the switches at the points marked "L," "M," or "H."

PAR. 5. Such representations on the part of the respondent are confusing, false, and misleading. In truth and in fact, respondent's said heating pads are not and have never been capable of generating and maintaining three different sustained levels of temperature. The temperature of said pads cannot be controlled, nor can the desired uniform heat be obtained, by setting the switches at the points marked "L," "M," or "H," or in any other manner, except by alternately attaching and detaching the connecting cords of said pads to the electric current outlets. Said pads, on the contrary, if connected to electric current and turned on, eventually attain their maximum levels of temperature and are thermostatically controlled at said levels regardless of whether the switches are set at "L," "M," or "H." The sole function of the switches attached to said pads is to regulate the input or wattage of electric current used by the pads and thus to some extent control the speed with which the maximum temperatures will be attained.

PAR. 6. The use by the respondent of said false advertisements with respect to its said products, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said advertisements are true, and has had, and now has, the tendency and capacity to, and does, induce such portion of the public to purchase substantial quantities of respondent's said products because of such erroneous and mistaken belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 27, 1941, issued and on May 29, 1941, served its complaint in this proceeding upon respondent, The Seamless Rubber Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of

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the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The Seamless Rubber Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located in the city of New Haven, State of Connecticut.

Said respondent is now, and for more than one year last past has been engaged in the manufacture and in the sale and distribution of electrical heating pads, which are intended for use in the cure, mitigation, treatment, and prevention of diseases in man, and which constitute a "device" within the meaning of the Federal Trade Commission Act. Said pads are composed principally of flat, flexible networks of fine wire embedded in asbestos or rubber with one or more built-in automatic heat-regulating devices called thermostats connected thereto and a four-position switch labeled "Off," "L," "M," and "H" attached, and each pad is equipped with an extension cord and a plug.

PAR. 2. The respondent causes and has caused said products, when sold, to be transported from its place of business in the State of Connecticut 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 heating pads 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 con-

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cerning 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; 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 circulars and leaflets and by advertisements in catalogs and other advertising literature, are the following:

Three heats with dual thermostatic control.

Turn the pointer to the desired heat, "L" meaning "Low," "M" meaning "Medium," and "H" meaning "High" heat.

By a mere flick of the thumb the user can set the switch, in a second, to "High," "Medium," "Low" or "Off."

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 through inference, that its said heating pads are capable of generating and maintaining three different sustained levels of temperature, and that the temperature of said pads may be controlled and the desired uniform heat obtained by simply setting the switches at the points marked "L," "M," or "H."

PAR. 5. Such representations on the part of the respondent are confusing, false, and misleading. In truth and in fact, respondent's said heating pads are not and have never been capable of generating and maintaining three different sustained levels of temperature. The temperature of said pads cannot be controlled, nor can the desired uniform heat be obtained by setting the switches at the points marked "L," "M," or "H" or in any other manner, except by alternately attaching and detaching the connecting cords of said pads to the electric current outlets. Said pads, on the contrary, if connected to electric current and turned on, eventually obtain the maximum level of temperature and are thermostatically controlled at said level regardless of whether the switches are set at "L," "M," or "H." The sole function of the switches attached to said pads is to regulate the input or wattage of electric current used by the pads and thus to some extent control the speed with which the maximum temperature will be attained.

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PAR. 6. The use by the respondent of said false advertisements with respect to its said products, 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 said advertisements are true, and has had, and now has, the tendency and capacity to, and does, induce the purchase of substantial quantities of respondent's said products because of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, The Seamless Rubber 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 electrical heating pads, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement:
 - (a) By means of the United States mails, or
 - (b) By any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that its electrical heating pads are each provided with a switch or other heat regulating apparatus which may be set in a manner which will provide for the maintenance of heat in said heating pads at more than one sustained level of temperature.
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"

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is defined in the Federal Trade Commission Act, of said electrical heating pads, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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

IN THE MATTER OF

W. A. HOUSTON, TRADING AS HOUSTON'S MINERAL WELL

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

Docket 4567. Complaint, Aug. 14, 1941—Decision, June 2, 1942

Where an individual, engaged in interstate sale and distribution of a mineral water; by means of advertisements in newspapers and other periodicals, and by circular letters, pamphlets, and other advertising literature, directly and by implication—

(a) Represented that his said "Houston's Mineral Water" constituted an effective treatment for and control of diabetes, use of which would enable person suffering therefrom to discontinue use of insulin;

The facts being his said water had no therapeutic value whatever in the treatment or control of said condition, and contained no ingredient which could in any way supply a deficiency of insulin, the only treatment for diabetes known to modern medicine; while use thereof by a sufferer would be exceedingly dangerous in that failure or delay in supplying insulin might increase the severity of the condition and result in diabetic coma or death;

(b) Represented falsely that his said mineral water was an effective treatment for disorders of the kidneys, kidney stones, and gall bladder disorders;

When, in fact, it had no therapeutic value in treatment thereof, and its use in the large quantities recommended might be definitely harmful where a dropsical condition existed, in aggravating it to the point where circulation was impeded, with possibly fatal results:

(c) Represented that its said water was an effective treatment for stomach disorders, indigestion, and ulcerated stomach;

The facts being it had no therapeutic value for such purposes and, as respects last named condition, lacked sufficient sodium, calcium, and magnesia to neutralize the acid of the stomach juices;

(d) Represented that said water was an effective treatment for high blood pressure, general run-down condition and ailments of the prostate gland, aided in building up the blood, and would restore health and supply most of the minerals required by the body to sustain good health;

The facts being it contained no minerals in quantities sufficient to build up the blood or benefit any general run-down condition, and no ingredient which would have any therapeutic effect upon the prostate gland; and use thereof would not restore health or supply needed minerals, and it had no greater therapeutic value than ordinary potable water; and

(e) Represented directly that his said water contained various minerals in quantities sufficient to be effective in the treatment of a large number of diseases, ailments, and conditions, listed with the minerals required therefor in parallel columns;

When in fact the minerals contained in said water were in too minute quantities to be of any therapeutic value;

With tendency and capacity of causing purchasing public to believe said water possessed therapeutic properties and values which it did not possess, there-

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by inducing it to purchase substantial quantities thereof because of such mistaken belief:

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

Before *Mr. James A. Purcell*, trial examiner.

Mr. J. V. Buffington, *Mr. D. C. Daniel* and *Mr. Carrel F. Rhodes* for the Commission.

Mr. Forrest Andrews, of Knoxville, Tenn., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that W. A. Houston, individually and trading under the name Houston's Mineral Well, hereinafter referred to as respondent has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, W. A. Houston, is an individual, trading under the name Houston's Mineral Well, with his principal places of business located at New Market, Tenn. Said respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a mineral water, so-called, intended for use in the treatment of certain ailments of the human body.

PAR. 2. Respondent has caused and now causes said water, when sold, to be transported from his place of business in the State of Tennessee 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 products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act.

Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and other periodicals, and by circular letters, pamphlets, and other advertising literature distributed among purchasers and prospective purchasers, are the following:

ATTENTION DIABETICS!

LEARN how to control diabetes in your own home. No need to use a needle. Write for news of this most marvelous discovery today! At NO COST TO YOU.

DIABETICS

It costs you nothing to learn how to control diabetes in your own home without needle. Information on request.

REBUILD YOUR HEALTH WITH NATURE'S MINERAL WATER.

I have a Mineral Water that will stop Diabetes.

Houston's Mineral Water is a Natural Mineral Water. I know it will stop Sugar Diabetes.

DO YOU SUFFER FROM

DIABETES—Thousands of persons are suffering from this most dreaded disease. If you are one of the many, try drinking this wonderful water. We can furnish you copies of testimonials as to this water in the treatment of Diabetes.

KIDNEYS—The kidneys are one of the most important organs of the human system; they throw off and eliminate the impurities that have gathered in your system; they do their work with water. Houston's Mineral Water helps the kidneys do their work.

KIDNEY STONES—If you are one who suffers from kidney stones, give this water a trial. We feel that you, too, should be benefited as others have. Also **GALL BLADDER**.

STOMACH—In the case of stomach disorder, and **ULCERED STOMACH**, people who drink the water for these ailments report benefited in a short period of time.

BLOOD BUILDING—Houston's Mineral Water is an aid in building up the blood. It gives you the minerals needed to build the blood.

Indigestion—If you suffer from this common ailment, give this water a trial. You will notice improvement in a short period of time.

Prostate Trouble—We find that this water in the treatment of prostate trouble is wonderful. If you suffer from this ailment try the water a short period of time and notice improvement.

High Blood Pressure—If you suffer from this ailment we feel that it is caused from the kidneys and the condition of your blood. This water has benefited many who have suffered from this ailment.

General Run-Down Condition—That simply means down and out if you are in that state of health. Why not try this mineral water just as in all cases. Drink it instead of your regular drinking water.

So as to obtain the required minerals for the body, the easiest and most satisfactory way is to drink Houston's Mineral Water, which contains the majority of the minerals required by the human body to sustain good health.

PAR. 4. Through the use of the aforesaid representations, and others similar thereto not specifically set out herein, the respondent has represented, and now represents, directly and by implication, that his said water constitutes an effective treatment for the control of diabetes; that its use will enable a person suffering from diabetes to discontinue the use of insulin, and that it will stop sugar diabetes; that said water is an effective treatment for disorders of the kidney, kidney stones, indigestion, gall bladder, ailments of the prostate gland, high blood pressure, ulcered stomach, other stomach disorders and general run-down condition of the body; and that it aids in building up the blood and will rebuild health, and that it is a mineral water and contains a majority of the minerals required or needed by the body to sustain good health.

PAR. 5. The aforesaid representations are grossly exaggerated, false and misleading, and constitute false advertisements.

In truth and in fact, respondent's said water is not an effective treatment for or control of diabetes. It will not enable a person suffering from diabetes to discontinue the use of insulin in the treatment of said disease, and will not stop sugar diabetes. Respondent's said water is not an effective treatment for disorders of the kidney, kidney stones, indigestion, gall bladder, ailments of the prostate gland, high blood pressure, ulcered stomach, or even any other stomach disorder or general run-down condition of the body. It will not aid in the building up of the blood, and it will not rebuild health. Said water contains minerals in such insignificant amounts that it may not properly be termed a mineral water. It does not contain a majority of the minerals required or needed for the sustaining of good health. Said water is of no therapeutic value in excess of ordinary potable water.

PAR. 6. Respondent's advertisements disseminated as aforesaid are false and misleading for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements, or under such conditions as are scribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondent's advertisements fail to reveal that the only treatment for diabetes which has been accepted by the medical profession consists in the use of insulin and the regulation of diet. If the accepted treatment for insulin is carefully followed, a diabetic person may live out his normal life expectancy. On the other hand, if a diabetic person is induced by false and misleading

advertisements, or otherwise, to abandon the accepted treatment, or fail to take advantage thereof, and to take in place of said accepted treatment respondent's so-called mineral water, he may expect to meet an untimely death.

PAR. 7. The use by the respondent of the aforesaid false and misleading advertisements has had, and now has, the tendency and capacity to, and does, cause a substantial portion of the purchasing public to believe the respondent's said water possesses therapeutic properties and values which it does not in fact possess, and has had, and now has, the tendency and capacity to, and does, induce the purchasing public to purchase substantial quantities of said water as a result of such mistaken and erroneous belief.

PAR. 8. 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 August 14, 1941, issued and subsequently served its complaint upon the respondent, W. A. Houston, individually, and trading under the name of Houston's Mineral Well, 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 D. C. Daniel, attorney for the Commission, and in opposition to the allegations of the complaint by Forrest Andrews, attorney for the respondent, before James A. Purcell, 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 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, W. A. Houston, is an individual, trading under the name Houston's Mineral Well, with his principal place of business located at Newmarket in the State of Tennessee.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution of a mineral water designated "Houston's Mineral Water" among and between the various States of the United States. Respondent causes said mineral water, when sold, to be transported from his place of business in the State of Tennessee 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 mineral water in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business the respondent has disseminated, and has caused the dissemination of, false advertisements concerning his said 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 were likely to induce, directly or indirectly, the purchase of his said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by United States mails, by advertisements in newspapers and other periodicals, and by circular letters, pamphlets, and other advertising literature, are the following:

ATTENTION DIABETICS!

LEARN how to control diabetes in your own home. NO need to use a needle. Write for news of this most marvelous discovery today! AT NO COST TO YOU.

* * * * *

DIABETICS

It costs you nothing to learn how to control diabetes in your own home without needle. Information on request.

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In drinking Houston's Mineral Water you get the essential minerals which go to make up the human body—get a real MINERAL water. Hundreds have been helped back to health by drinking this wonderful water.

* * * * *

DO YOU SUFFER FROM

DIABETES—Thousands of persons are suffering from this most dreaded disease. If you are one of the many, try drinking this wonderful water. We can furnish you copies of testimonials as to this water in the treatment of Diabetes.

KIDNEYS—The kidneys are one of the most important organs of the human system; they throw off and eliminate the impurities that have gathered in your system; they do their work with water. Houston's Mineral Water helps the kidneys do their work.

KIDNEY STONES—If you are one who suffers from kidney stones, give this water a trial. We feel that you, too, should be benefited as others have. Also **GALL BLADDER**.

STOMACH—In the case of stomach disorder, and **ULCERED STOMACH**, people who drink the water for these ailments report benefited in a short period of time.

BLOOD BUILDING—Houston's Mineral Water is an aid in building up the blood. It gives you the minerals needed to build the blood.

Indigestion—If you suffer from this common ailment, give this water a trial. You will notice improvement in a short period of time.

Prostate Trouble—We find that this water in the treatment of prostate trouble is wonderful. If you suffer from this ailment, try the water a short period of time and notice improvement.

High Blood Pressure—If you suffer from this ailment, we feel that it is caused from the kidneys and the condition of your blood. This water has benefited many who have suffered from this ailment.

General Run-Down Condition—That simply means down and out if you are in that state of health. Why not try this mineral water just as in all cases. Drink it instead of your regular drinking water.

So as to obtain the required minerals for the body, the easiest and most satisfactory way is to drink Houston's Mineral Water, which contains the majority of the minerals required by the human body to sustain good health.

* * * * *

REBUILD YOUR HEALTH WITH NATURE'S MINERAL WATER

PAR. 4. Through the use of the aforesaid representations, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that his said mineral water constitutes an effective treatment for, and control of, diabetes; that its use will enable a person suffering from diabetes to discontinue the use of insulin; that said mineral water is an effective treatment for disorders of the kidneys, kidney stones, gall bladder disorders, stomach disorders, ulcerated stomach, indigestion, ailments of the prostate gland, high blood pressure, and general run-down condition

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of the body; that said mineral water aids in building up the blood; and that its use will restore health and supply most of the minerals required by the human body to sustain good health.

PAR. 5. Respondent's mineral water contains the following ingredients, as indicated by an analysis of said mineral water set out by respondent in his advertising circulars, copy of which has been received in evidence as Commission Exhibit No. 5:

	Parts per million	Grains per gallon		Parts per million	Grains per gallon
Turbidity.....	none	none	Sulphate.....	11.5	.66
Silica.....	9.0	0.52	Chlorine.....	3.0	.17
Iron and Aluminum.....	.5	.03	Lithium.....	trace	trace
Calcium.....	53.5	3.10	Strontium.....	trace	trace
Magnesium.....	25.2	1.46			
Sodium and Potassium.....	5.4	.30	Total.....	260.0	15.8
Alkalinity.....	146.0	8.46			

The minerals in respondent's mineral water are present in such insignificant amounts that it has no therapeutic value or any beneficial effect upon any condition of the human body in excess of that which might be supplied through the use of ordinary drinking water.

PAR. 6. The aforesaid representations are grossly exaggerated, false, and misleading, and constitute false advertisements.

Respondent's mineral water has no therapeutic value whatever in the treatment or control of diabetes. Diabetes is a disturbance of carbohydrate metabolism in which the blood sugar is elevated to abnormally high levels due to decrease in the internal secretion of the pancreas, among the most serious complications of which are acidosis, perforated ulcers of the bowel, and gangrene, often leading to diabetic coma and sometimes death.

The pancreas is a secreting gland which secretes insulin into the blood stream for the handling of carbohydrates through the body. This insulin is produced by certain small structures in the pancreas known as Islands of Langerhans, which are part of the endocrine system of 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 deterioration in the pancreas by reason of destruction of all or a part of the Islands of Langerhans, it is necessary that needed insulin be supplied artificially.

There are various degrees of diabetes, depending upon the extent of the deterioration of the pancreas or its ability to function. In mild cases the condition can usually be controlled by diet. However, when the extent of the destruction of the Islands of Langerhans is such that sufficient insulin cannot be supplied for the needs of the body,

there is only one treatment known to modern medicine, which is the artificial supplying of needed insulin. The treatment of diabetes with insulin does not affect the structure of the pancreas or restore the activity of the Islands of Langerhans. Respondent's mineral water preparation contains no ingredient which can in any way supply a deficiency of insulin or have any therapeutic value in the treatment of diabetes.

In addition to being valueless in the treatment of diabetes, the use of this mineral water preparation by a person suffering from diabetes is exceedingly dangerous in that the failure or delay in supplying needed insulin might increase the severity of the diabetic condition and result in diabetic coma or death.

PAR. 7. Respondent's said mineral water preparation has no therapeutic value in the treatment of disorders of the kidneys, kidney stones, or disorders of the gall bladder. In certain diseased conditions of the kidneys the water control of the body is interfered with and the water, instead of passing out through the kidneys, bowels, and skin, begins to pass out through the blood vessels into the tissues of the body, resulting in a dropsical condition. In such circumstances it is necessary to limit the intake of water. The use of respondent's mineral water in the large quantities recommended might be definitely harmful where a dropsical condition exists, resulting in aggravating such condition to the point where the circulation cannot carry on, with possible fatal results.

PAR. 8. Respondent's mineral water has no therapeutic value in the treatment of stomach disorders, indigestion, or ulcerated stomach. In the case of ulcerated stomach, neutralizing of the acid of the stomach juices is a treatment generally used to heal the ulcer. In order to obtain a sufficient amount of sodium, calcium, and magnesia to accomplish such results through the use of respondent's mineral water would require the intake of approximately a bathtub full daily.

PAR. 9. Respondent's mineral water has no value in the treatment of high blood pressure and contains no minerals in quantities sufficient to have any effect in building up the blood. In fact, the minerals in respondent's water which might have any beneficial action on the condition of the blood are present in such insignificant amounts that an ingestion of 50 gallons of this water a day would be necessary to secure the required amount of minerals.

For the same reason the use of this water will have no beneficial effect upon any general run-down condition of the body. There is no ingredient or property of this water which will have any therapeutic value or beneficial effect upon ailments of the prostate gland.

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Findings

The use of respondent's mineral water will not restore health or supply the minerals required or needed for the sustaining of health. It has no greater therapeutic value than that of ordinary potable water.

PAR. 10. In connection with respondent's representation that his mineral water will supply most of the minerals required or needed by the body to restore and sustain good health, the respondent placed the following statement in his circular disseminated as above described:

MINERALS ARE REQUIRED TO TREAT AILMENTS OF THE HUMAN BODY

Through chemistry, the medical authorities have learned that in order to treat the various ailments, we must treat them with the different minerals which go to make up our body.

Below is a list of some of the various ailments, also a list containing the various minerals required in the treatment of these ailments; also a list of the minerals our water contains. In this list you will notice that HOUSTON'S MINERAL WATER is 100% in the various minerals required.

<i>Ailments</i>	<i>Minerals required</i>
Acidity-----	Potassium, Magnesium, Iron, Chlorine.
Acne-----	Iron, Chlorine, Sodium, Magnesium, Potassium.
Apoplexy-----	Iron, Calcium, Sodium.
Anemia-----	Chlorine, Iron, Magnesium, Sodium, Potassium.
Bed Wetting-----	Potassium, Chlorine, Iron.
Blood Building-----	Calcium, Iron, Sodium, Potassium, Chlorine.
Bright's Disease-----	Potassium, Sodium, Calcium, Chlorine.
Colitis-----	Potassium, Chlorine, Sodium, Magnesium.
Constipation-----	Magnesium, Chlorine, Potassium, Sodium.
Cystitis-----	Potassium.
Diabetes-----	Magnesium, Potassium, Calcium, Iron.
Diarrhoea-----	Magnesium.
Epilepsy-----	Calcium, Iron, Chlorine, Magnesium.
Gall Bladder-----	Chlorine, Iron, Sodium, Potassium, Magnesium.
Gall Stones-----	Magnesium, Iron, Chlorine, Potassium, Sodium.
Indigestion-----	Magnesium, Sodium, Potassium, Iron, Chlorine.
Jaundice-----	Sodium, Chlorine, Silicon, Iron, Magnesium, Potassium.
Jerking in Limbs-----	Potassium, Silicon.
Liver Enlarged-----	Iron, Potassium, Silicon, Sodium, Chlorine, Magnesium.

<i>Ailments</i>	Findings	34 F. T. C.
	<i>Minerals required</i>	
Liver Trouble-----	Potassium, Iron, Silicon, Sodium, Chlorine, Magnesium.	
Liver Tumors-----	Chlorine, Iron, Sodium, Silicon, Magnesium.	
Lumbago-----	Calcium, Chlorine, Iron, Sodium, Potassium.	
Low Blood Pressure-----	Potassium, Iron, Sodium.	
Nerve Nourishment-----	Sodium, Iron.	
Neuritis-----	Potassium, Magnesium, Chlorine, Sodium.	
Stools Bloody-----	Iron, Silicon; Potassium, Sodium.	
Acid Stomach-----	Magnesium, Potassium, Chlorine, Iron, So- dium.	
Cannot Digest-----	Potassium, Sodium, Chlorine.	
Under Weight-----	Magnesium, Chlorine, Potassium, Sodium.	
Weakness-----	Magnesium, Potassium, Chlorine, Sodium.	

In This List Houston's Mineral Water Contains the Greater Per-
cent of Minerals Needed.

<i>Ailments</i>	<i>Minerals required</i>
Arthritis-----	Magnesium, Potassium, Silicon, Fluorine, Sodium, Chlorine.
Bone Building-----	Calcium, Silicon, Phosphorus.
Complexion-----	Iron, Fluorine, Silicon, Chlorine, Sulphur.
Eczema-----	Silicon, Fluorine, Iodine, Calcium, Chlorine.
Gas and Gastritis-----	Magnesium, Potassium, Iron, Sulphur, Sil- con.
Goitre-----	Chlorine, Iodine, Iron, Magnesium, Potas- sium.
Heart Trouble-----	Iodine, Potassium, Magnesium, Iron, Chlo- rine, Calcium, Sodium.
Insomnia-----	Magnesium, Sodium, Fluorine, Silicon.
Kidney Stones-----	Sodium, Potassium, Chlorine, Silicon, Fluo- rine.
Kidney Trouble-----	Sodium, Fluorine, Chlorine.
Rheumatism-----	Chlorine, Sodium, Manganese, Silicon, Fluo- rine.
Tumors (Intestinal)-----	Chlorine, Sodium, Manganese, Silicon, Fluo- rine.

By means of the above statements the respondent represents that his mineral water contains various minerals in quantities sufficient to be effective in the treatment of the above-listed diseases and conditions, when in truth and in fact the minerals contained in respondent's mineral water are in such minute quantities that the use of said water has no value in supplying such minerals, and said mineral water has no therapeutic value in the treatment of any of the diseases and conditions above listed.

PAR. 11. The use by the respondent of the aforesaid false and misleading advertisements has the tendency and capacity to cause a substantial portion of the purchasing public to believe the respondent's

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said water possesses therapeutic properties and values which it does not in fact possess, and to induce the purchasing public to purchase substantial quantities of said water as a result of such mistaken and erroneous belief.

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, testimony and other evidence taken before James A. Purcell, 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 in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, W. A. Houston, and individual trading as Houston's Mineral Well, 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 mineral water known as Houston's Mineral Well, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference,

(a) That respondent's mineral water has any therapeutic value in the treatment or control of diabetes, or that said mineral water contains any ingredient which can in any way supply a deficiency of insulin or enable a person suffering from diabetes to discontinue the use of insulin.

(b) That respondent's mineral water has any therapeutic value in the treatment of disorders of the kidneys, kidney stones, disorders

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of the gall bladder, stomach disorders, indigestion, ulcerated stomach, or any general run-down condition of the body.

(c) That respondent's mineral water has any value in the treatment of high blood pressure or that its use will have any effect in building up the blood.

(d) That respondent's mineral water has any therapeutic value or beneficial effect in the treatment of ailments of the prostate gland.

(e) That the use of respondent's mineral water will restore health or supply any minerals needed for the sustaining of health.

(f) That respondent's mineral water contains any minerals in quantities sufficient to be of any value in the treatment of acidity, acne, apoplexy, anemia, bed wetting, bright's disease, colitis, constipation, cystitis, diarrhea, epilepsy, jaundice, jerking in limbs, enlarged liver, liver trouble, liver tumors, lumbago, low blood pressure, nerve nourishment, neuritis, bloody stools, acid stomach, inability to digest food, underweight, weakness, arthritis, bone building, bad complexion, eczema, gas and gastritis, goiter, heart trouble, insomnia, rheumatism, or intestinal tumors.

(g) That the respondent's mineral water has any therapeutic value in the treatment of any disease or condition of the human body in excess of that afforded through the use of ordinary drinking water.

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 mineral water, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof.

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

Syllabus

IN THE MATTER OF

THE THOMAS MANAGEMENT CORPORATION, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 4422. Complaint, Dec. 18, 1940—Decision, June 5, 1942

Where two organizations and six individuals, engaged in sale and distribution of hair preparations for external and internal use, to wit—

I. A corporation to which, in consideration of certain payments, a common law trust granted the exclusive right to manufacture and sell all chemicals, products, and supplies used in the administration of the so-called "The Thomas Hair and Scalp Treatment," and which, in turn, agreed to sell and deliver supplies to any one licensed or authorized by said trust to give such treatments, and to no other, excepting sales by mail to individuals for home treatment; and which, furthermore, prepared newspaper advertisements to be purchased and used by owners of the various hair treatment offices, and, when desired, for a fee also performed services of selecting advertising media, selecting advertisements to be run, preparing financial statements, and buying certain supplies for such owners;

II. Said common law trust, owner of all the stock of said corporation and holder also of certain trade names, copyrights, formulae, and secret processes used by its licensees in the treatment of the hair and scalp according to "The Thomas" system, and which, as above noted, granted said corporation exclusive right to manufacture and sell all chemicals, etc. used in administration of hair and scalp treatment in question, and which also granted to others the exclusive right in designated territories to use said formulae, etc., in the administration of the treatment to the purchasing public; and

III. Six individuals, namely, the president of said corporation and life beneficiary of said trust, and five others, i. e., his wife, two sons and two daughters-in-law, themselves engaged, either separately or with others, in operating hair treatment offices in various cities under the name "The Thomas," which offices bought from said corporation all their supplies and all the home treatment kits which they sold;

In advertisements purchased by said individuals and widely disseminated through the mails, in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, directly and by implication—

(a) Represented that said preparations and treatments constituted a cure or remedy for dandruff or itching scalp and were effective in destroying the "fask bacillus of Unna," which was responsible for dandruff; would stop abnormal loss of hair, cause new hair to grow, and promote hair growth on thin and bald spots, preventing and curing baldness;

The facts being they had no therapeutic value in treatment of dandruff in excess of removal of dandruff scales, were not an effective treatment except in furnishing relief in cases which were not caused in systemic or constitutional conditions; would not destroy the germ in question, which,

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furthermore, had not been proven to be an etiological factor of dandruff; and had no therapeutic properties which would otherwise be effective in bringing about the results above set forth; and

- (b) Falsely represented that their preparation "Trichovita" for internal use supplied elements essential to healthful growth of hair, and that their other preparation for such use, "Trichotone," rejuvenated the formative cells from which the hair grows, and that both were effective in stimulating hair growth;

With effect of misleading and deceiving a substantial portion of the purchasing public into the belief that such statements were true, thereby inducing it, because of such mistaken belief, to purchase the treatments and products in question:

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. C. A. Vilas*, trial examiner.

Mr. Karl Stecher, for the Commission.

Pope, Ballard & Loos, of Washington, D. C., and *Rogers, Woodson & Rogers* and *Eckert & Peterson*, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that The Thomas Management Corporation, a corporation, and Paul A. Thomas, Sr., Catherine M. Thomas, Paul A. Thomas, Jr., and Norbert J. Thomas, as individuals, and as officers of said corporation; Paul A. Thomas Trust, and Paul A. Thomas, Sr., Catherine M. Thomas, and Norbert J. Thomas, as individuals, and as trustees of said trust; and Ruth Thomas and Madeline Thomas, as individuals, 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 Thomas Management Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago and State of Illinois. All of the stock of said corporation is owned by Paul A. Thomas Trust, hereinafter referred to. Paul A. Thomas, Sr., is president, Catherine M. Thomas is vice president, Paul A. Thomas, Jr., is treasurer, and Norbert J. Thomas is secretary of said corporation.

Paul A. Thomas Trust, is a common law trust, of which Paul A. Thomas, Sr., Catherine M. Thomas, and Norbert J. Thomas are trustees. Paul A. Thomas, Sr. is the sole beneficiary of said trust.

The principal office of said trust is in Chicago, Ill. Said trust owns all of the stock of The Thomas Management corporation, hereinabove referred to.

Paul A. Thomas, Sr., as an individual, operates places of business under the name "The Thomas" in the cities of Denver, Colo., Atlanta, Ga., Seattle, Wash., Minneapolis, Minn., Toledo, Ohio, and Portland, Oreg.

Paul A. Thomas, Jr. and Ruth Thomas, his wife, trading as copartners operate a place or places, of business under the name "The Thomas" in the city of Cleveland, Ohio.

Norbert J. Thomas, and Madeline Thomas, his wife, trading as copartners, operate a place, or places, of business under the name "The Thomas'" in the city of Detroit, Mich.

Catherine M. Thomas, as an individual, operates a place or places of business under the name "The Thomas'" in the city of Milwaukee, Wis.

Norbert J. Thomas and Paul A. Thomas, Jr., trading as copartners, operate places of business under the name "The Thomas'" in the cities of Chicago, Ill., New York, N. Y., Brooklyn, N. Y., Buffalo, N. Y., Rochester, N. Y., Los Angeles, Calif., Oakland, Calif., San Francisco, Calif., Baltimore, Md., Newark, N. J., Philadelphia, Pa., Pittsburgh, Pa., St. Louis, Mo., and Washington, D. C.

The respondent, The Thomas Management Corporation, also maintains and operates retail stores in the cities of Cincinnati, Ohio, Columbus, Ohio, Dayton, Ohio, Indianapolis, Ind., Louisville, Ky, Albany, N. Y., Boston, Mass., Milwaukee, Wis., New Orleans, La., Providence, R. I., and Syracuse, N. Y., which places of business are operated under the name "The Thomas'" and which deal exclusively in the products sold and distributed by the respondents.

The individual respondents, acting in conjunction and cooperation with the corporate respondent, direct and control all the business activities and policies of the various retail stores including the various stores operated by the individual respondents, either individually or as copartnerships. In connection with the control of the business activities of the various stores, the respondents prepare all advertising copy to be used by such stores which is forwarded by the corporate respondent to the various stores for insertion in newspapers and periodicals as directed by the respondents. Other and similar advertising is placed with newspapers and periodicals directly by the respondents.

PAR. 2. In the course and conduct of their business the respondents, for several years last past, have been engaged in the sale and distribution of various cosmetic and medicinal preparations for external and

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internal use in the treatment of conditions of the hair and scalp. Respondents cause said preparations, when sold, to be transported from the place of business of the corporate respondent in the State of Illinois to the various retail stores, owned and operated as hereinabove set forth and 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 cosmetic and medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondents' methods of sale of their cosmetic preparations for the hair for external use fall into two classes. In the first class, respondents through extensive advertising to the effect that they can diagnose and cure scalp trouble, stop falling hair, and re-grow hair, induce persons to come to their places of business where the various cosmetic preparations for the hair are administered and sold to the purchaser. In the second class of cases, where it is not possible to have the purchaser come to their place of business at intervals to purchase their cosmetic preparations or have them administered by respondents, an assortment of products known as "Home Treatment Kits" are sold. These "Kits" contain the same cosmetic preparations for the hair as are sold and administered to the first class of customers herein referred to, and the purchaser of the Home Treatment Kit then administers the preparation himself. Respondents likewise sell to their customers medicinal preparations for internal use.

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

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(At the side of this printing is a picture of a man in laboratory attire looking into a compound microscope.)

SO YOU WILL NEVER BE BALD.

Eighteen years ago Paul A. Thomas devised the first accurate, reliable method of treating local scalp disorders. Then, as today, Thomas treatment ended dandruff, stopped abnormal hairfall and promoted hair growth on thin and bald spots. It consistently produces these results—and because of its success, The Thomas' have grown to an organization with 45 offices throughout the United States and Canada.

Today Thomas treatment is more effective than it has ever been. New methods are constantly being tested and when something is proved to be of definite value, Thomas clients are the first to receive benefit. Basically, however, Thomas treatment remains the same, because no method has ever been found which produces results as consistently as does the original Thomas method.

Call for a free scalp examination today and see for yourself just how Thomas treatment ends dandruff, stops falling hair and promotes hair growth. Examination and treatment are always in private.

THE THOMAS

World's Leading Hair and Scalp Specialists—Forty-Five Offices

THESE MEN KNOW HOW TO END YOUR SCALP TROUBLES

Thomas Experts *know* that 14 local scalp conditions cause 90% of all baldness. They *know* how to recognize and overcome these local causes of hair-loss. They *know* how to effectively treat the three types of dandruff; how to rid your scalp of the causes of intense itching; and how to help promote normal hair growth on thin and bald spots.

Why continue, then to worry and waste your hair experimenting with "cure-alls?" Consult a Thomas expert today. See for yourself how The Thomas' twenty years of experience in treating a quarter-million persons has endowed Thomas experts with unmatchable skill and ability in solving your particular scalp problem. Learn how Thomas treatment ends dandruff and promotes normal hair growth. No charge is ever made for a complete scalp examination. Come in today.

THE THOMAS'

World's
Leading Hair
& Scalp Experts
Forty Five
Offices

WHY BE BALD?
SEE THOMAS TODAY

Modern science has made it unnecessary for any man to fear baldness. It is known that baldness results from one or more of 14 local scalp disorders. Thomas experts recognize each of these 14 conditions and adapt the reliable, proved Thomas treatment to overcome the ones which are specifically causing your loss of hair. * * *

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Within a remarkably short time after you start Thomas treatment your dandruff disappears, hair-fall stops, and new hair starts to grow in the thin and bald spots.

 WHY BECOME BALD?

HEED THESE DANGER SIGNALS

BALDNESS can be prevented! When your scalp becomes sick, obvious danger signals such as (1) thinning hair, (2) itching scalp, and (3) dandruff, warn you that a baldness-producing condition exists. You can prevent baldness by heeding these positive warnings and ridding your scalp of the local causes of hair loss which are attacking your hair-growing structure.

More than a quarter-million persons have avoided baldness by permitting The Thomas' to rid their scalps of local scalp ills. The Thomas' 20 years of experience endows them with unusual knowledge, skill, and ability to overcome any of the 14 local conditions which cause 90% of all baldness.

Over one-quarter million persons had Thomas' treatment. Today they enjoy healthy heads of hair.

It has been clearly demonstrated for twenty years that THOMAS' can re-grow hair.

 BALDNESS FOLLOWS DANDRUFF

Eight of the next ten bald-headed persons you meet became bald because they failed to rid their scalps of dandruff infection.

 THOMAS ENDS DANDRUFF GROWS HAIR

Dandruff clogs the hair follicle, causes itchy scalp, falling hair, and keeps new hair from replacing hair which has dropped out. Because there are several types of dandruff, cure-all surface remedies usually do not correct the trouble. One of the most dangerous types of dandruff is caused by a germ deep in the scalp, known as flask bacillia of Unna!

Thomas treatment attacks this destructive germ by modern therapeutic agents and restores the scalp to a normal healthy condition. When your scalp is once rid of baldness producing germs, hairfall stops, and new hair starts to grow again.

 BALDNESS IS NOT INHERITED

Scientists who study the laws of inheritance have found that "acquired characteristics" are not inherited. Baldness is in all cases acquired many years after birth and it is therefore agreed that it is not inherited.

* * * * *

Forget the superstitious notion that hair can NEVER be regrown on thin or bald spots. Hair roots seldom die. Science tells us that more than 85% of all cases of hair loss are the "local" type—and consequently will respond to proper scalp treatment.

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(A picture of a man with a beautiful head of dark hair, dressed in a white coat, beneath which is the following:)

BALDNESS

WORRY YOU

SEE ME TODAY! I am a Thomas scalp expert. I *know* how to recognize and treat the 14 local scalp troubles which cause 90% of all baldness. I *know* how to end your dandruff; how to stop your abnormal hair-fall; and how to promote normal hair growth for you. My knowledge and skill in treating local scalp conditions is based on The Thomas' 20 years of success.

Quit worrying about baldness! Thomas treatment has helped a quarter-million other persons to end scalp troubles, and Thomas can help you, too.

With respect to respondents' medicinal preparations for internal use, respondents make the following representations:

TRICHOVITA

LIFE FOR THE HAIR

A scientifically prepared mineralization product. Taken as directed re-mineralizes the system, supplying those elements essential to the healthful growth of the hair.

TRICHOTONE

A scientifically prepared hair stimulant. Taken as directed rejuvenates the matrix (the mother of the hair) from which the hair of the scalp grows.

PAR. 5. Through the use of the aforesaid statements and representations and others similar thereto not specifically set out herein, respondents represent directly and by implication that said preparations constitute a cure or remedy for dandruff and constitute a competent and effective treatment for all forms of dandruff and itching scalp; that said preparations have therapeutic properties which are effective in destroying the germ causing dandruff; that the use of said preparations will stop abnormal loss of hair, and cause new hair to grow, and promote the normal growth of hair on thin or bald spots; and that the use of said preparations will revive the growth of hair, prevent baldness and constitutes a cure or remedy for baldness and a competent and effective treatment therefor. Respondents further represent that the internal use of their preparation "Trichovita" supplies elements essential to the healthful growth of hair and that the internal use of their preparation "Trichotone" stimulates the hair and rejuvenates the formative cells from which the hair grows; and that both of said preparations are effective in stimulating the growth of hair.

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PAR. 6. The aforesaid representations used and designated by the respondents as hereinbefore set out are grossly exaggerated, misleading and untrue. Respondents' preparations are composed of the following ingredients in various combinations:

Petrolatum,	Soft Soap,
Wool fat,	Resorcinol,
Mineral Oil,	Alcohol,
Castor Oil,	Phenolic material,
Glycerine,	Salicylic Acid,
Sulphur,	Boric Acid,
Calomel,	Quinine Bisulphate,
Oxyquinoline Sylphate,	Capsicum,
Pilocarpine,	Cantharides.

Respondents' preparations do not constitute a cure or remedy for dandruff or a competent or effective treatment for any form of dandruff or itching scalp in excess of furnishing temporary relief from the symptoms of itching and the temporary removing of dandruff scales. Said preparations, while having some therapeutic and germicidal qualities will not destroy the germ which allegedly causes dandruff. Said preparations have no therapeutic properties which would be effective in causing new hair to grow and their use will not stop the abnormal loss of hair or promote a normal growth of hair on thin and bald spots. Respondents' preparations will not revive the growth of hair and will not prevent baldness and are not a cure or remedy for baldness and have no therapeutic value in the treatment of baldness.

Respondents' preparations "Trichovita" and "Trichotone" do not supply elements essential to the growth of hair and have no therapeutic value whatsoever in stimulating the growth of hair and will not rejuvenate the formative cells from which hair grows.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations are true, and induces a substantial portion of the purchasing public to purchase respondents' products hereinabove referred to because of such erroneous and mistaken belief, engendered as above set forth.

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 December 18, 1940, issued and subsequently served its complaint in this proceeding upon respondents, The Thomas Management Corporation, a corporation, and Paul A. Thomas, Sr., Catherine M. Thomas, Paul A. Thomas, Jr., and Norbert J. Thomas, individually, and as officers of said corporation; Paul A. Thomas Trust, and Paul A. Thomas, Sr., Catherine M. Thomas, and Norbert J. Thomas, individually, and as trustees of said trust; and Ruth Thomas and Madeline Thomas, 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 respondent's answers thereto, testimony and other evidence were introduced before an examiner of the Commission theretofore duly designated by it. Thereafter, a stipulation was entered into whereby it was agreed that a statement of the facts signed and executed by counsel for respondents and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as facts in this proceeding in lieu of the taking of additional testimony and evidence 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 and the record herein to make its report, stating its findings as to the facts and its conclusion based thereon (including inferences which it may draw from said stipulated facts and the evidence and record already made herein), and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondents 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, stipulation, and record, 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, The Thomas Management Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, having its principal place of business and office in Chicago, Ill.

Respondent, Paul A. Thomas, Sr., is president of The Thomas Management Corporation and a trustee of respondent, Paul A. Thomas Trust.

Respondent, Catherine M. Thomas is vice president of The Thomas Management Corporation, and a trustee of respondent, Paul A. Thomas Trust.

Respondent, Paul A. Thomas, Jr., is treasurer of The Thomas Management Corporation.

Respondent, Norbert J. Thomas is secretary of The Thomas Management Corporation, and a trustee of the respondent, Paul A. Thomas Trust.

Respondent, Paul A. Thomas Trust is a common law trust having its principal office in Chicago, Ill. Paul A. Thomas, Sr., Catherine M. Thomas, and Norbert J. Thomas are trustees of said respondent and Paul A. Thomas, Sr., is the beneficiary for life of said trust. Said trust owns all of the stock of respondent The Thomas Management Corporation, and controls and directs, and has controlled and directed the policies and operations of said corporation.

Respondent, Paul A. Thomas, Sr., is the father of Paul A. Thomas, Jr., and Norbert J. Thomas, and is the husband of respondent, Catherine M. Thomas. Madeline Thomas is the divorced wife of Norbert J. Thomas. Ruth Thomas is the wife of Paul A. Thomas, Jr.

PAR. 2. Respondent, Paul A. Thomas Trust, in addition to owning all of the stock of respondent The Thomas Management Corporation, is the holder of certain trade names, copyrights, formulae, and secret processes used by its licensees in the treatment of conditions of the hair and scalp according to a system usually designated as "The Thomas'." In consideration of certain payments, it has granted to respondent The Thomas Management Corporation the exclusive right to manufacture and sell all chemicals, products, and supplies used in the administration of The Thomas' hair and scalp treatment. The Thomas Management Corporation has agreed that it will sell and deliver the necessary chemicals and supplies to any person, firm, or corporation licensed or authorized by the Paul A. Thomas Trust to give Thomas treatments for hair and scalp and will not sell any of such chemicals or supplies to any person, firm, or corporation not so licensed or authorized by said trust, except that this does not prohibit The Thomas Management Corporation from selling chemicals or supplies by mail to individuals for home treatment.

In return for certain specified payments, the Paul A. Thomas Trust grants to others the exclusive right in designated territories to use the formulae, trade names, copyright names, and secret processes

owned by the Trust in the conduct of the treatment offices for the administration of The Thomas' hair and scalp treatments to members of the public. Such agreements provide that the licensee shall use in such business only chemicals, products, and supplies furnished or authorized by said trust and that the licensee shall not charge less than certain minimum prices for various hair and scalp treatments offered to the public. The agreement contains provisions for securing payment of amounts which may be due under the terms thereof to the Paul A. Thomas Trust.

Pursuant to licenses from Paul A. Thomas Trust, the individual respondents in this proceeding, either separately or in conjunction with other respondents or in conjunction with others not respondents in this proceeding, operate hair treatment offices under the name The Thomas' in the following places:

- Paul A. Thomas, Sr.----- Atlanta, Georgia; Seattle, Washington; Minneapolis, Minnesota; Toledo, Ohio; and Portland, Oregon.
- Paul A. Thomas, Jr., and Ruth Thomas----- Cleveland, Ohio.
- Norbert J. Thomas and Madeline Thomas----- Detroit, Michigan.
- Norbert J. Thomas, Paul A. Thomas, Jr., and Paul A. Thomas, Sr.----- Chicago, Illinois.
- Norbert J. Thomas, Paul A. Thomas, Jr., and F. Mills----- Brooklyn, Rochester, Buffalo, and New York, New York.
- Norbert J. Thomas, Paul A. Thomas, Jr., and Ruth Thomas----- Los Angeles, Oakland, and San Francisco, California.
- Norbert J. Thomas, Paul A. Thomas, Jr., and C. R. Swinehart----- Baltimore, Maryland.
- Norbert J. Thomas, Paul A. Thomas, Jr., and Catherine M. Thomas----- Newark, New Jersey.
- Norbert J. Thomas, Paul A. Thomas, Jr., and L. Mills----- Pittsburgh, and Philadelphia, Pennsylvania.
- Norbert J. Thomas, Paul A. Thomas, Jr., and E. Meyer----- St. Louis, Missouri.
- Norbert J. Thomas, Paul A. Thomas, Jr., and J. Kroll----- Washington, D. C.

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Also pursuant to licenses from Paul A. Thomas Trust, the following parties conduct hair treatment offices under the name The Thomas' in the places designated:

G. L. McClellan-----	Cincinnati, Columbus, and Dayton, Ohio; Indianapolis, Indiana; and Louisville, Kentucky.
M. F. Gerrigaty-----	Albany, New York.
F. Mills-----	Boston, Massachusetts.
J. G. Stample-----	New Orleans, Louisiana.
W. T. Graham-----	Providence, Rhode Island.
H. P. Phares-----	Syracuse, New York.

Respondent, The Thomas Management Corporation, prepares advertisements relating to The Thomas' hair and scalp treatments and offers the same for sale to the owner or owners of the various hair treatment offices listed above, but does not itself advertise to the general public. Such of the advertisements so offered as may be desired by the owner or owners of the various treatment offices are purchased by them and run in newspapers of their selection. The owner or owners of some of the treatment offices employ The Thomas Management Corporation to select advertising media, select advertisements to be run, prepare financial statements, and buy certain supplies. For some offices the services performed by The Thomas Management Corporation include all those mentioned, and for other offices they are more limited. The services rendered to individual treatment offices are determined by the owner or owners thereof, and when The Thomas Management Corporation is employed it charges a fee for the services rendered.

Pursuant to the license from Paul A. Thomas Trust, the local treatment offices buy from The Thomas Management Corporation all of the products used by them in rendering hair and scalp treatments and also all of the "Home Treatment Kits" which they sell. The Thomas Management Corporation, pursuant to license from the Paul A. Thomas Trust, pays to said trust royalties on such sales for said license privileges.

Paul A. Thomas Trust does not control the business activities, policies, or advertising of the hair treatment offices owned by respondents, or by respondents and others not respondents except to maintain such inspection and supervision as may be necessary to insure that licensees conform to the terms of the license and pay the said trust such royalties as may be due it thereunder.

PAR. 3. Respondents who own and operate hair treatment offices have purchased from The Thomas Management Corporation advertisements prepared by that corporation, and the respondent purchasers have caused the advertisements so purchased to be run in

newspapers circulated by the United States mails and in States other than the States in which such newspapers are published. As a result of such advertisements some persons have and do, come from States other than the State in which such treatment offices are located to respondents' treatment offices to purchase Thomas treatments, and after coming to such treatment offices some of them purchase Thomas "Home Treatment Kits."

PAR. 4. The persons rendering Thomas treatments for the respondents operating treatment offices at the places heretofore specified, and the individual respondents themselves, are not doctors, dermatologists, hair and scalp specialists, or experts in the medical sense; cannot diagnose scalp and hair diseases; do not of themselves know that fourteen local scalp conditions cause ninety percent of all baldness; and do not of themselves know how to recognize the etiological factors of hair loss.

PAR. 5. In the course and conduct of its business, respondent, The Thomas Management Corporation, for several years last past has been engaged in the sale and distribution of various cosmetic and medicinal preparations for external and internal use in the treatment of conditions of the hair and scalp. Said respondent, causes said preparations, when sold to be transported from the place of business of the said respondent in the State of Illinois to the various treatment offices located, owned, and operated as hereinabove set forth.

Said respondent, The Thomas Management Corporation, has also shipped direct from its place of business in Chicago, Ill., to the ultimate purchasers or consumers thereof some "Home Treatment Kits" to persons in the State of Illinois, and has also shipped a few "Home Treatment Kits" to the ultimate purchasers or consumers thereof in States other than the State of Illinois who had previously purchased treatments or products from some one of the aforesaid Thomas treatment offices.

PAR. 6. Through extensive advertising to the effect that they can diagnose and cure scalp trouble, stop falling hair, and re-grow hair, respondents who operate treatment offices induce persons to come to their treatment offices. This business falls into two classes: (a) The sale of a course of treatment to persons coming to the treatment offices, in the course of which treatment most of the various preparations for the hair and scalp are administered and a few cosmetic preparations are given to the persons to be self-administered at home between treatments; and (b) the sale of an assortment of products

known as a "Home Treatment Kit" to persons who are unable to come to their place of business at intervals to have the cosmetic preparations administered by said respondents. These kits contain the same preparations for the hair and scalp as are sold and administered to the first class of customers herein referred to, and the purchaser of the "Home Treatment Kit" administers the preparations himself.

In addition to the preparations hereinabove referred to, respondents sell and deliver medicinal preparations for internal use known as "Trichotone" and "Trichovita."

PAR. 7. In the course and conduct of their aforesaid business, respondents who operate treatment offices have disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning their said treatments, as specified in paragraph 3; and said respondents, by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning their said treatments for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said treatments and products.

Among and typical of the statements and representations contained in said advertisements prepared by respondent, The Thomas Management Corporation, and disseminated and cause to be disseminated, as hereinabove set forth, by advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

So you will never be
BALD

(Picture of man in laboratory attire
looking into a compound microscope)

Eighteen years ago Paul A. Thomas devised the first accurate, reliable method of treating local scalp disorders. Then, as today, Thomas treatment ended dandruff, stopped abnormal hairfall and promoted hair growth on thin and bald spots. It consistently produces these results—and because of its success, The Thomas' have grown to an organization with 45 offices throughout the United States and Canada.

Today Thomas treatment is more effective than it has ever been. New methods are constantly being tested and when something is proved to be of definite value, Thomas clients are the first to receive benefit.

Basically, however, Thomas treatment remains the same, because no method has ever been found which produces results as consistently as does the original Thomas method.

Call for a free scalp examination today and see for yourself just how Thomas treatment ends dandruff, stop falling hair and promotes hair growth. Examination and treatment are always in private.

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THE THOMAS'

World's Leading Hair and Scalp Specialists—Forty Five Offices

* * * * *

THESE MEN KNOW HOW TO END YOUR SCALP TROUBLES

Thomas Experts *know* that 14 local scalp conditions cause 90% of all baldness. They *know* how to recognize and overcome these local causes of hair-loss. They *know* how to effectively treat the three types of dandruff; how to rid your scalp of the causes of intense itching; and how to help promote normal hair growth on thin and bald spots.

Why continue, then to worry and waste your hair experimenting with "cure-alls?" Consult a Thomas expert today. See for yourself how The Thomas' twenty years of experience in treating a quarter-million persons has endowed Thomas Experts with unmatched skill and ability in solving your particular scalp problem. Learn how Thomas treatment ends dandruff and promotes normal hair growth. No charge is ever made for a complete scalp examination. Come in today.

THE THOMAS'

World's Leading Hair & Scalp Experts. Forty-Five Offices

* * * * *

WHY BE BALD?

SEE THOMAS TODAY

Modern science has made it unnecessary for any man to fear baldness. It is known that baldness results from one or more of 14 local scalp disorders. Thomas experts recognize each of these 14 conditions and adapt the reliable, proved Thomas treatment to overcome the ones which are specifically causing your loss of hair.

Within a remarkably short time after you start Thomas treatment your dandruff disappears, hair-fall stops, and new hair starts to grow on the thin and bald spots. * * *

* * * * *

WHY BECOME BALD?

Heed these Danger Signals—
Avoid the Road to Baldness

BALDNESS can be prevented! When your scalp becomes sick, obvious danger signals such as (1) thinning hair, (2) itching scalp, and (3) dandruff, warn you that a baldness-producing condition exists. You can prevent baldness by heeding these positive warnings and ridding your scalp of the local causes of hair loss which are attacking your hair-growing structure.

More than a quarter-million persons have avoided baldness by permitting The Thomas' to rid their scalps of local scalp ills. The Thomas' 20 years of experience endows them with unusual knowledge, skill, and ability to overcome any of the 14 local conditions which cause 90% of all baldness.

* * * * *

Over one-quarter million persons had THOMAS' treatment. Today they enjoy healthy heads of hair.

* * * * *

It has been clearly demonstrated for twenty years that THOMAS' can re-grow hair.

* * * * *

BALDNESS FOLLOWS DANDRUFF

Eight of the next ten bald-headed persons you meet became bald because they failed to rid their scalps of dandruff infection.

* * * * *

THOMAS ENDS DANDRUFF GROWS HAIR

Dandruff clogs the hair follicle, causes itchy scalp, falling hair, and keeps new hair from replacing hair which has dropped out. Because there are several types of dandruff, cure-all surface remedies usually do not correct the trouble. One of the most dangerous types of dandruff is caused by a germ deep in the scalp, known as flask bacilli of Unna.

Thomas treatment attacks this destructive germ by modern therapeutic agents and restores the scalp to a normal healthy condition. When your scalp is once rid of baldness producing germs, hair-fall stops, and new hair starts to grow again.

* * * * *

BALDNESS IS NOT INHERITED

Scientists who study the laws of inheritance have found that "acquired characteristics" are not inherited. Baldness is in all cases acquired many years after birth and it is therefore agreed that it is not inherited.

* * * * *

Forget the superstitious notion that hair can NEVER be regrown on thin or bald spots. Hair roots seldom die. Science tells us that more than 85% of all cases of hair loss are the "local" type—and consequently will respond to proper scalp treatment.

* * * * *

BALDNESS WORRY YOU?

(Picture of white-coated man with a beautiful head of dark hair)

SEE ME TODAY. I am a Thomas scalp expert. I know how to recognize and treat the 14 local scalp troubles which cause 90% of all baldness. I know how to end your dandruff; how to stop your abnormal hair-fall; and how to promote normal hair growth for you. My knowledge and skill in treating local scalp conditions is based on The Thomas' 20 years of success.

Quit worrying about baldness! Thomas treatment has helped a quarter-million other persons to end scalp troubles, and Thomas can help you, too.

With respect to respondents' medicinal preparations for internal use, respondents make the following representations:

TRICHOVITA

LIFE FOR THE HAIR

A scientifically prepared mineralization product. Taken as directed re-mineralizes the system, supplying those elements essential to the healthful growth of the hair.

* * * * *

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TRICHOTONE

A scientifically prepared hair stimulant. Taken as directed rejuvenates the matrix (the mother of the hair) from which the hair of the scalp grows.

The advertisements and excerpts from advertisements set out above are not all-inclusive but are merely illustrative of the statements and representations contained in respondents' advertising matter.

PAR. 8. The ingredients contained in various combinations in respondents' preparations for external application for the hair and scalp herein referred to are as follows:

Acid Boric	Coconut Oil Soap
Acid Lactic	Liquor Carbonis.
Acid Linoleic and Linolenic	Methyl Salicylate.
Acid Salicylic	Menthol.
Alcohol—Benzyl	Oil—Castor.
Alcohol—Cetyl	Oil—Sulphonated Castor.
Balsam Peru	Oil—Cadeberry.
Betanaphthol—Medicinal	Oil—Mineral
Calomel	Alcohol—Ethyl
Cantharides	Oil—Olive Edible
Capsicum	Oil—Olive Sulphonated
Ceresin	Oil—Pine Needles (Siberian)
Cholestrin	Oil—Theobroma
Ethyl Acetate	Osyquinoline Sulphate
Eucalyptol	Petrolatum
Glycerin	Pilocarpine Hydrochloride
Glycerin Monosterate	Quinine Sulphate
Lanolin	Resoreinol
Lecithin	Resorcinol Monacetate
Vitamin "D"	Sulphur
	Thymol

The ingredients contained in the preparations for internal use are as follows:

Trichotone:	Trichovita:
Calcarea Phos. 3x.	Calcium Phosphate.
Magnesia Phos. 3x.	Precipitated Sulphur.
Ferrum Phos. 3x.	Silica.
Natrum Phos. 3x.	Reduced Iron.
Kali Phos. 3x.	Calcium Fluoride.
	Magnesium Phosphate.
	Magnesium Peroxide.

PAR. 9. Through the use of the aforesaid statements and representations, and others similar thereto not specifically set out herein, respondents represent directly and by implication, that said preparations and treatments constitute a cure or remedy for dandruff and constitute a competent and effective treatment for dandruff and itching scalp; that said preparations and treatments have therapeutic

properties which are effective in destroying the germ allegedly causing dandruff (the flask bacillus of Unna); that the use of said preparations and treatments will stop abnormal loss of hair, cause new hair to grow, and promote the normal growth of hair on thin or bald spots; and that the use of said preparations and treatments will revive the growth of hair, prevent baldness, and constitute a cure or remedy for baldness and a competent and effective treatment therefor. Respondents further represent that the internal use of their preparation "Trichovita" supplies elements essential to the healthful growth of hair, and that the internal use of their preparation "Trichotone" stimulates the hair and rejuvenates the formative cells from which the hair grows; and that both of said preparations are effective in stimulating the growth of hair.

PAR. 10. Respondents' preparations do not constitute a cure or remedy for dandruff, or have therapeutic value in the treatment of dandruff in excess of the removal of the dandruff scales; nor are they an effective treatment for any form of itching scalp in excess of furnishing relief in cases which are not caused by systemic or constitutional conditions. Said preparations will not destroy the germ which allegedly causes dandruff (the flask bacillus of Unna), nor has it been proved that the flask bacillus of Unna is an etiological factor of dandruff. Said preparations have no therapeutic properties which would be effective in causing new hair to grow and their use will not prevent the abnormal loss of hair or promote a normal growth of hair on thin and bald spots. Respondents' preparations will not induce the growth of hair, will not prevent baldness, are not a cure or remedy for baldness, and have no effective therapeutic value in the treatment of baldness.

Respondents' preparations "Trichovita" and "Trichotone" do not supply elements essential to the growth of hair, have no therapeutic value whatsoever in stimulating the growth of hair, and will not rejuvenate the formative cells from which the hair grows.

PAR. 11. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead a substantial portion of the purchasing public into the belief that all such statements and representations are true, and because of such mistaken and erroneous belief engendered as above set forth, induces a substantial portion of the purchasing public to purchase respondents' treatments and products hereinabove referred to.

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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, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, and a stipulation as to the facts entered into between counsel for 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 the respondents, The Thomas Management Corporation, a corporation, and Paul A. Thomas, Sr., Catherine M. Thomas, Paul A. Thomas, Jr., and Norbert J. Thomas, individually, and as officers of said corporation; Paul A. Thomas Trust, and Paul A. Thomas, Sr., Catherine M. Thomas, and Norbert J. Thomas, individually, and as trustees of said trust; and Ruth Thomas and Madeline Thomas, individuals; 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 various cosmetic and medicinal preparations for external and internal use in the treatment of conditions of the hair and scalp, or any other preparations of substantially similar composition or possessing substantially similar properties, whether sold under the names now used or any other name or names, do forthwith cease and desist from directly or indirectly:

1. 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 represents, directly or through inferencé:

- (a) That respondents' preparations constitute a cure or remedy for dandruff, or have therapeutic value in the treatment of dandruff,

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in excess of the removal of dandruff scales; or are an effective treatment for any form of itching scalp in excess of affording temporary relief from the symptom of itching when such itching is not caused by systemic or constitutional conditions.

(b) That dandruff is caused by the flask bacilli of Unna and that said preparations will destroy such germs.

(c) That said preparations have therapeutic properties which are effective in inducing the growth of hair or in causing new hair to grow.

(d) That the use of said preparations will prevent the abnormal loss of hair or induce a normal growth of hair on thin and bald spots.

(e) That said preparations will prevent baldness, or are a cure or remedy for baldness, or have any effective therapeutic value in the treatment of baldness.

(f) That respondents' preparations "Trichovita" and "Trichoton" supply elements essential to the growth of hair, or have any therapeutic value in stimulating the growth of hair.

(g) That said preparations "Trichovita" and "Trichotone" will rejuvenate the formative cells from which hair grows.

2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparations 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 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

ULTRA-VIOLET PRODUCTS, INC.

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

Docket 4407. Complaint, Dec. 7, 1940—Decision, June 8, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of its "Life Lite" ultraviolet lamp; by means of advertisements in newspaper and periodicals, and other media, directly and by implication—

(a) Represented that its said product was a sun lamp which would afford benefits to the skin and to the general health comparable to those afforded by natural sunlight;

The facts being that sun lamps, as known and designated by physicians and chemists, emit ultraviolet rays within the range of natural sunlight, of from 2,900 to 3,900 angstrom units, while the wave length of 89.2 percent of the rays emitted by said "Life Lite" lamp was approximately 2,540 angstroms, placing it within the category of therapeutic lamps, rays of which are more intense and consequently harsher and more irritating to the skin than those emitted by the sun lamp; and benefits afforded by its said lamp to skin and general health could not be compared with natural sunlight because of said wide variation between the rays emanating from the two sources;

(b) Represented that use of its said lamp constituted a cure or competent treatment for such conditions as barber's itch, ringworm, athlete's foot, acne, eczema, psoriasis, shingles and erysipelas, and for sores and ulcers;

The facts being that while ultraviolet rays of the wave length emitted by said lamp possess bactericidal properties, such properties are effective only where the infection is limited to the surface of the skin, and while the lamp might stimulate healing of sores and ulcers, it would do so only where infection causing the condition was confined to the surface; and the other ailments and conditions above mentioned were due to bacteria or fungi existing below the surface of the skin where said rays were incapable of penetrating;

(c) Represented that its said lamp constituted a cure or competent treatment for asthma, hay fever, bronchitis, colds, sinus trouble, discharges from the ears, and anemia; and that it stimulated the tissues of the skin, built up resistance to disease, produced chemical reaction which kept the blood stream in balance, aided in overcoming a deficiency of either white or red corpuscles, produced a tonic effect upon the blood, and stimulated the endocrine glands;

The facts being it was incapable of building up resistance to disease, produced no chemical reaction with respect to the blood stream, aside from its said irritating effect afforded no stimulation to the skin and other claims above set forth were false; and

(d) Represented that its said lamp quieted and soothed the nerves, particularly the nerve endings in the skin; acted as an antacid by its alkalinizing effect upon the body; improved metabolism, making the body strong, increasing vitality, and building new tissues; and improved general tone of the body and mental resistance, toning up the nervous system, inducing sleep, normalizing the chemistry of the body, and relieving pain;

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The facts being such claims were false; said lamp was incapable of normalizing body chemistry or affecting metabolism except insofar as use thereof might activate cholesterol in the skin, resulting in production of Vitamin D and consequent absorption and deposition of calcium and phosphorus, particularly in the bone tissues; and any building of new tissues was limited to such effect as might result from the production of said vitamins; and

- (e) Failed to reveal facts material in the light of the representations contained in said advertisements, and that use of its said lamp under usual or prescribed conditions might result in serious injury, in that while directions accompanying said products contained cautionary statements with respect to some of the potential dangers in the use thereof, its said advertisements made no reference to potentialities for injury in excessive exposure, need for care due to fact that persons with fair skin and young children are hypersensitive to such rays, nor to fact that certain types of skin disorders are aggravated rather than helped by ultraviolet rays, which are also contraindicated in cases of pellagra, or danger of resulting severe conjunctivitis from use thereof unless suitable goggles are worn;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said lamp possessed therapeutic values which it did not, and was entirely safe for use in all cases, thereby inducing it to purchase lamp in question because of such mistaken beliefs:

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

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

Mr. Merle P. Lyon for the Commission.

Mr. Ernest A. Tolin, 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 Ultra-Violet Products, 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, Ultra-Violet Products, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 6158 Santa Monica Boulevard, in the city of Los Angeles, State of California. It is now, and for more than 2 years last past has been, engaged in the manufacture of a device designated as "Life Lite" and in the sale and distribution of such device in commerce between and among the various States of the

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United States and in the District of Columbia. Said device is a quartz lamp of the so-called "cold" type, whereby a mercury arc is burned in quartz. It is sold, designed, and intended for home use by the lay individual as an artificial means of obtaining the ultra-violet rays of natural sunlight, and for the alleged prevention, treatment and alleviation of various ailments, diseases, and abnormal conditions of the human body.

PAR. 2. Respondent, being engaged in business as aforesaid, causes and has caused its said device, "Life Lite," when sold, to be transported from its said place of business in the State of California to purchasers thereof located in States of the United States other than the State of California, and in the District of Columbia. Respondent maintains, and at all the times herein mentioned has maintained, a course of trade in said device in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product by the United States mails, and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, and by other advertising literature, are the following:

Life Lite ultra-violet rays clear up many of the chronic skin disorders which have failed to respond to other methods of treatment * * * Most infections of the skin respond quickly to the germ killing effects of the rays. Furthermore, they stimulate the skin tissue to build a high degree of disease resistance.

Ultra-Violet helps to set up a chemical reaction that keeps the blood stream in balance. It aids in overcoming a deficiency of either white or red blood corpuscles * * * As well as deficiencies of the red coloring matter that is so important as an oxygen carrying agent. Thus, this tonic effect on the blood not only builds direct resistance to infection but also stimulates the endocrine glands that are so vital to health.

The chemical action of ultra-violet rays soothes the nerve endings in the skin and alleviates many internal conditions. The anti-acid or alkalizing effect of ultra-violet rays, plus their ability to increase the general resistance, help to correct many forms of illness.

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Build Better Health with Life Lite * * * A full quota of sunlight whether obtained from natural or artificial sources means a better functioning of the human body. It helps build resistance against disease, improves metabolism and increases capacity for work or play.

Many disorders of the catarrhal type, such as asthma, hay-fever, bronchitis, colds, sinus trouble, and discharge from the ears, are corrected more rapidly if daily treatment is given with the cold ultra-violet ray lamp.

Many skin diseases, where fungi are present, such as barber's itch, ringworm, and impetigo, also disappear when the proper dosages of the rays are used * * *

Great improvement in cases of athlete's foot will quickly be noted. * * * In acne, eczema, psoriasis, shingles and erysipelas, ultra-violet can often be used with marked benefit. The ultra-violet rays destroy germs and also hasten the growth of new, clean tissue * * *

Life Lite is indispensable for the home treatment of a great many skin diseases and for relieving many types of illness. It is without doubt the finest means of building up the general resistance, overcoming low vitality, and quickening convalescence of any known natural treatment.

Patients with anemia should receive ultra-violet light treatments in addition to dietary changes. The light-ray applications have a tendency to increase both the hemoglobin and red corpuscles of the blood.

You will find our quartz ultra-violet lamps to be the safest and most efficient on the market. The intensity is correctly regulated so that there is no danger of serious over-exposure.

These rays are absolutely necessary to vigorous, normal existence as well as a powerful aid in healing disease. It has been shown that the ultra-violet rays are one of the main factors which produce improved tone, increased resistance and better mental reaction. They tone up the nervous system and induce restful sleep by a regulatory influence on the metabolism in all cases showing a calcium and phosphorus deficiency.

Quartz ultra-violet rays normalize body chemistry! Life Lite rebuilds your resistance to colds, increases vitality and heals most skin diseases.

Skin Diseases, acne, eczema, psoriasis, sores, ulcers, infections, etc. Life Lite quartz ultra-violet lamps heal most skin diseases safely, quickly and easily at home.

Get your quota of sunlight with Life Lite * * * clear up most of your chronic skin disorders * * * build resistance against disease * * * and relieve pain. Sufferers from psoriasis, acne, eczema, ulcers, and impetigo have obtained noticeable improvement after consistent use of Life Lite.

PAR. 4. By the use of the above and similar representations not set out herein respondent has directly and by implication represented to the general public that its said device designated "Life Lite" is a sun lamp; that it is safe for use in the home for self-treatment without the supervision of a qualified physician; and that it will give benefits to the skin and to the general health of the individual comparable to that given by natural sunlight. Respondent has further represented to the general public, as aforesaid, that the use of said device provides a cure, remedy, or competent and adequate treatment for chronic, infectious, and bacterial skin diseases and ailments, as well as those of

fungus origin, asthma, hay-fever, bronchitis, colds, sinus trouble, discharges from the ears, barber's itch, ringworm, impetigo, athlete's foot, acne, eczema, psoriasis, shingles, erysipelas, anemia, sores and ulcers, and that it will give relief in all of such conditions, diseases, and ailments. Respondent has also represented to the general public, as aforesaid, that the use of said device stimulates the tissues of the skin; that it builds up in the body resistance to disease; that it produces a chemical reaction that keeps the blood stream in balance; that it aids in overcoming a deficiency of either white or red corpuscles; that it produces a tonic effect upon the blood; that it builds up the body's resistance to infection; that it stimulates the endocrine glands; that it quiets and soothes the nerves, especially the nerve endings in the skin; that it acts as an antacid and has an alkalizing effect upon the body; that it improves metabolism; that it makes the body strong, increases vitality, and builds new tissues; that it improves the general tone of the body and improves mental reactions; that it tones up the nervous system and induces sleep; that it normalizes body chemistry and that it relieves pain.

PAR. 5. Ultraviolet rays are measured in angstrom units. The ultraviolet rays emitted from natural sunlight range in wave lengths from 2,800 to 3,150 angstrom units. A lamp which emits ultraviolet rays within this range is properly understood and designated by members of the medical profession generally as a sun lamp. Lamps which emit ultraviolet rays of less than 2,800 angstrom units are considered by the medical profession generally as therapeutic lamps rather than as sun lamps for the reason that the rays emitted therefrom possess bactericidal properties and are not comparable to the rays emitted by natural sunlight. Such therapeutic lamps are not suitable for the same type of uses as are sun lamps and are not suitable for home use for therapeutic purposes without the supervision of a trained and skilled operator because of the danger of overexposure and severe burns. Respondent's lamp is in the category of therapeutic lamps by reason of its emission of ultraviolet rays of approximately 2,540 angstrom units.

Respondent's device will not give benefits to the skin and to the general health of the individual comparable to that given by natural sunlight for the reason that the ultraviolet rays emitted therefrom are not, in turn, comparable to the ultraviolet rays emitted by natural sunlight. The therapeutic value of respondent's device is limited to the possible destruction of bacteria when present on the surface of the skin and it would be of no value in the treatment of chronic infections, asthma, hay-fever, bronchitis, colds, sinus trouble, discharges from the

ears, barber's itch, ringworm, impetigo, athlete's foot, acne, eczema, psoriasis, shingles, erysipelas, anemia, sores, or ulcers. Said device has little or no value in the treatment of bacterial skin diseases or those of fungus origin because of its inability to penetrate the layers of the skin to reach such germs or organisms which are not found generally on the surface of the skin. Furthermore, the use of said device will not stimulate the tissues in the skin or build up resistance in the body against disease. Said device will not produce a chemical reaction in the body, keep the blood stream in balance, or aid in overcoming a deficiency of the white or red blood corpuscles, nor does it produce a tonic effect on the blood. It does not build up the body's resistance against infection, stimulate the endocrine glands or quiet and soothe the nerves or the nerve endings in the skin. Said device does not act as an antacid or have an alkalizing effect upon the body. The use of said device does not result in an improvement in the process of metabolism nor does it make the body strong or increase vitality or build new tissue. It does not improve the general tone of the body or improve mental reactions. The use of said device does not tone up the nervous system, induce sleep, normalize the body chemistry, or relieve pain.

PAR. 6. In addition to the false and misleading statements hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements as aforesaid in that said advertisements fail to reveal facts material in the light of the representations contained therein and fail to reveal that the unsupervised use of respondent's device for therapeutic purposes by persons not trained in the operation of such device and not skilled in the diagnosis, analysis and methods of treatment of diseases may result in severe burns and other serious and irreparable injury to health.

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 7, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Ultra-Violet Products, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony, and other evidence in support of the allegations of the complaint were introduced by Merle P. Lyon, attorney for the Commission, and in opposition thereto by Ernest A. Tolin, attorney for the respondent, 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, the answer of the respondent, 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 Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest 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, Ultra-Violet Products, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 5205 Santa Monica Boulevard, Los Angeles, Calif. Respondent is now and for some 10 years last past has been engaged in the manufacture and in the sale and distribution of a certain device known as a therapeutic lamp, used for the radiation of ultraviolet rays. The lamp is sold by respondent under the trade name "Life Lite," and is intended by respondent for use in the treatment of various ailments, diseases, and conditions of the human body.

PAR. 2. The respondent causes and has caused its lamps, 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. Respondent maintains and for some 10 years last past has maintained a course of trade in its lamps in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of promoting the sale of its lamps, the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of, various advertisements concerning its lamps 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 its lamps by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its lamps in commerce, as commerce is defined in the Federal Trade Commission Act.

Among the representations appearing in respondent's advertisements, disseminated and caused to be disseminated as set forth above, by the United States mails, in newspapers and periodicals, and by other media, are the following:

Life Lite ultra-violet rays clear up many of the chronic skin disorders which have failed to respond to other methods of treatment * * * Most infections of the skin respond quickly to the germ killing effects of the rays. Furthermore, they stimulate the skin tissue to build a high degree of disease resistance.

Ultra-Violet helps to set up a chemical reaction that keeps the blood stream in balance. It aids in overcoming a deficiency of either white or red blood corpuscles. * * * As well as deficiencies of the red coloring matter that is so important as an oxygen carrying agent. Thus, this tonic effect on the blood not only builds direct resistance to infection but also stimulates the endocrine glands that are so vital to health.

The chemical action of ultra-violet rays soothes the nerve endings in the skin and alleviates many internal conditions. The anti-acid or alkalinizing effect of ultra-violet rays, plus their ability to increase the general resistance, help to correct many forms of illness.

Build Better Health with Life Lite. * * * A full quota of sunlight whether obtained from natural or artificial sources means a better functioning of the human body. It helps build resistance against disease, improve metabolism and increases capacity for work or play.

Many disorders of the catarrhal type, such as asthma, hay-fever, bronchitis, colds, sinus trouble, and discharge from the ears, are corrected more rapidly if daily treatment is given with the cold ultra-violet ray lamp.

Many skin diseases, where fungi are present, such as barber's itch, ringworm, and impetigo, also disappear when the proper dosages of the rays are used. * * * Great improvement in cases of athlete's foot will quickly be noted.

* * * In acne, eczema, psoriasis, shingles and erysipelas, ultra-violet can often be used with marked benefit. The ultra-violet rays destroy germs and also hasten the growth of new, clean tissue. * * *

Life Lite is indispensable for the home treatment of a great many skin diseases and for relieving many types of illness. It is without doubt the finest means of building up the general resistance, overcoming low vitality, and quickening convalescence of any known natural treatment.

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Patients with anemia should receive ultra-violet light treatments in addition to dietary changes. The light-ray applications have a tendency to increase both the hemoglobin and red corpuscles of the blood.

You will find our quartz ultra-violet lamps to be the safest and most efficient on the market. The intensity is correctly regulated so that there is no danger of serious over-exposure.

These rays are absolutely necessary to vigorous, normal existence as well as a powerful aid in healing disease. It has been shown that the ultra-violet rays are one of the main factors which produce improved tone, increased resistance and better mental reaction. They tone up the nervous system and induce restful sleep by a regulatory influence on the metabolism in all cases showing a calcium and phosphorus deficiency.

Quartz ultra-violet rays normalize body chemistry! Life Lite rebuilds your resistance to colds, increases vitality and heals most skin diseases.

Skin Diseases, acne, eczema, psoriasis, sores, ulcers, infections, etc. Life Lite quartz ultra-violet lamps heal most skin diseases safely, quickly and easily at home.

"Get your quota of sunlight with Life Lite * * * clear up most of your chronic skin disorders * * * build resistance against disease * * * and relieve pain. Sufferers from psoriasis, acne, eczema, ulcers, and impetigo have obtained noticeable improvement after consistent use of Life Lite.

PAR. 4. Through the use of these representations and others of a similar nature the respondent has represented, directly or by implication, that its lamp is a sun lamp, and that the lamp will afford benefits to the skin and to the general health of the user comparable to those afforded by natural sunlight; that the use of the lamp constitutes a cure or remedy, or a competent and adequate treatment for asthma, hay fever, bronchitis, colds, sinus trouble, discharges from the ears, barber's itch, ringworm, athlete's foot, acne, eczema, psoriasis, shingles, erysipelas, anemia, sores, and ulcers; that it stimulates the tissues of the skin; that it builds up in the body resistance to disease; that it produces a chemical reaction which keeps the blood stream in balance; that it aids in overcoming a deficiency of either white or red corpuscles; that it produces a tonic effect upon the blood; that it builds up the resistance of the body to infection; that it stimulates the endocrine glands; that it quiets and smoothes the nerves, particularly the nerve endings in the skin; that it acts as an antacid and has an alkalizing effect upon the body; that it improves metabolism; that it makes the body strong, increases vitality, and builds new tissues; that it improves the general tone of the body and improves mental reactions; that it tones up the nervous system and induces sleep; that it normalizes the chemistry of the body; and that it relieves pain.

PAR. 5. Respondent's lamp is made in some seven different models, divided generally into hand lamps and stand lamps, that is, lamps which are mounted upon a stand. With the exception of one or two of the models which are intended for use by physicians exclusively, the

lamps are designed primarily for use by the general public for self-application in the home. The lamps are sold principally through dealers, except in the trade area around Los Angeles, where respondent contacts the purchasing public direct by means of sales agents.

The lamp is of the type known as the cold quartz lamp. The essential part of the device is a quartz tube, which contains a mixture of certain gases, together with a small amount of mercury. The tube is hermetically sealed to prevent the escape of the gases, and to prevent the entrance into the tube of any air from the outside. When the tube is subjected to electric current the ionization of the mercury vapor results in the radiation from the tube of ultraviolet rays. Each lamp is equipped with a time clock for regulating the use of the lamp. This clock may be set for such period of time as the user may desire, and upon the lapse of the fixed period of time the lamp is shut off automatically. The maximum period of time permitted by the clock is 6 minutes.

Along with each lamp sold, respondent supplies to the purchaser a pair of goggles for use while the lamp is in operation. Printed instructions for the use of the lamp are also supplied by respondent to each purchaser, the pertinent portions of such instructions being, in the case of the hand lamp, as follows:

CAUTION: Goggles must be worn to protect the eyes from sunburn all the time the light is on.

* * *

DIRECTIONS FOR USE

Goggles are furnished with every lamp and it is vitally important to wear them as the ultra-violet rays will sunburn unprotected eyes which makes them inflamed and painful but which causes no other harm or injury.

Uncover the portion of the body to be exposed, as the passage of ultra-violet through clothing is very limited.

Best results may be expected if your physician is consulted concerning frequency and length of treatment. This particularly applies to infants and children. Your physician is the proper guardian of your health.

* * *

TREAT THE ABDOMEN

The ultra-violet rays have very slight penetration and for this reason it is desirable to treat that part of the body in which the blood stream is closest to the surface. Best results are obtained by treating the abdomen and chest areas because 70 percent of the blood that goes into the skin capillaries comes to the surface in these areas. It is advisable to take treatments in a warm room, as the blood will be closer to the surface of the body than when exposed to a chilly temperature. Under these conditions it is possible to receive a much better reaction than if the cold air is striking the skin and causing the blood to remain in the deeper tissues.

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TYPES OF PEOPLE

Blonds and brunettes react differently to the ultra-violet. A brunette will usually require longer exposures while the fair-skinned blonde generally reacts readily. Age must also be considered; the very old and the very young demanding greater caution. Children up to four or five should be given shorter treatments and it is best to give the treatments in the mornings. Some adults also find it preferable to take treatments in the morning rather than in the evening because of the stimulative effect of the rays.

TREATMENTS

For a general body sunbath: Turn the lamp on for one minute, hold the lamp about one-half inch from the skin and pass the lamp over the chest and stomach. One or two minutes distributed over the chest and stomach is enough for the first treatment. Infants, and young children, or very fair-skinned adults should be started at from one-quarter to one-half of the above exposure times. The time may be increased one minute each day until a light pinkish flush of the skin is obtained, which will show up about six hours after the treatment. Once the desired reaction is established, continue the daily treatments with this same length of time as long as the reddening continues. If the skin becomes accustomed to the rays the time may be increased until the desired effects are obtained.

KEEP THE LIGHT MOVING

Keep it moving slowly over the body all the time. This gives an even distribution of the rays and prevents spot sunburning. Never give a long enough treatment to get an extreme reaction; if you should, allow an interval of three or four days before the next treatment. One person may receive the beneficial effects of the ultra-violet rays in a two-minute or three-minute treatment, while another person will require a six-minute or seven-minute treatment over a selected area, such as the abdomen and chest. It is obvious that it is not the length of time that determines the treatments, but the required reaction through an amount sufficient to produce the slight reddening of the skin.

It is important to use the lamp always at the same distance from the skin; for the intensity is greatly affected by a change in distance because the intensity varies inversely as the square of the distance.

The directions for the use of the stand lamp are identical with those for the hand lamp, except that the portion captioned "Treatments" reads as follows:

For a general body sunbath use the lamp 20 to 24 inches from the body. The tube in this lamp is genuine quartz and the first treatment should be for not more than a one-minute exposure. The greater the distance, the longer the exposure, the ratio of distance and time being approximately proportional according to the inverse square law. Example: 2 minutes at 20 inches equals approximately 4 minutes at 30 inches.

If it is desired to treat small areas of the body the lamp may be placed closer and the treatment time reduced accordingly. Infants and young children, or very fair skinned adults should be started at from one-quarter to one-half of the above exposure time.

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The time may be increased one minute each day until a light pinkish flush of the skin is obtained, which will show up about six hours after the treatment. Once the desired reaction is established, continue the daily treatments with this same length of time as long as the reddening continues. If the skin becomes accustomed to the rays the time may be increased until the desired effects are obtained. Never give a long enough treatment to get an extreme reaction; if you should, allow an interval of three or four days before the next treatment. One person may receive the beneficial effects of the ultra-violet rays in a two-minute or three-minute treatment, while another person will require a six-minute or seven-minute treatment over a selected area, such as the abdomen and chest. It is obvious that it is not the length of time that determines the treatments, but the required reaction through an amount sufficient to produce the slight reddening of the skin.

It is important to use the lamp always at the same distance from the skin for the intensity is greatly affected by a change in distance.

There is attached to each lamp, when sold, a large red tag, which reads as follows:

CAUTION

To be used only by or on the prescription of a physician fully licensed and qualified by training and experience in the use of ultra-violet radiation.

A survey of accepted medical literature indicates that treatment of certain pathological conditions with ultra-violet radiation may be harmful.

In those conditions in which treatment is not contra-indicated, the physician will consider the type and extent of pathology present, and make such modifications of treatment as may be indicated.

Treatment may be contra-indicated in the following conditions:

Active and progressive pulmonary tuberculosis.

Advanced heart disease without compensation or myocarditis in the aged.

Advanced arteriosclerosis.

Gross renal or hepatic insufficiency.

Certain types of generalized dermatitis.

Acute or chronic nephritis.

Diabetes, hyperthyroidism and photosensitization.

DO NOT expose the eyes to the direct light from this lamp. Wear suitable goggles.

PAR. 6. The unit of measurement for the wave length of light rays is the angstrom. The wave lengths of ultra-violet rays emitted from natural sunlight range from 2,900 to 3,900 angstrom units. Lamps which emit ultra-violet rays within this range are known and designated by physicians and chemists as sun lamps, while lamps which emit ultra-violet rays of less than 2,900 angstroms are known and designated as therapeutic lamps. The wave length of 89.2 per cent of the rays emitted by respondent's lamp is approximately 2,540 angstroms, and the lamp therefore is not a sun lamp but falls within the category of therapeutic lamps. The principal difference between the effects produced by the two types of lamp is that the rays emitted

by the therapeutic lamp are more intense and consequently harsher and more irritating to the skin than those emitted by the sun lamp.

The benefits afforded by respondent's lamp to the skin and to the general health cannot properly be compared with those afforded by natural sunlight because of the wide variation between the rays emanating from the two sources. Those emitted from natural sunlight range from 2,900 angstroms in the ultraviolet rays, as pointed out above, to approximately 50,000 angstroms in the infrared rays.

PAR. 7. While ultraviolet rays of the wave length emitted by respondent's lamp possess bactericidal properties, such properties are effective only in those cases where the infection sought to be attacked is limited to the surface of the skin. The rays are incapable of penetrating the surface of the skin and destroying bacteria or fungi present below the surface. The use of respondent's lamp therefore does not constitute a cure or remedy or a competent or adequate treatment for such conditions as barber's itch, ringworm, athlete's foot, acne, eczema, psoriasis, shingles, or erysipelas, all of which are due to causes existing below the surface of the skin. In the case of sores and ulcers, the lamp may possibly stimulate the healing process but only in those instances in which the infection causing the condition is confined to the surface of the skin.

The lamp possesses no therapeutic value in the treatment of asthma, hay fever, bronchitis, colds, sinus trouble, or discharges from the ears. It is likewise ineffectual in the treatment of anemia. It is incapable of building up in the body resistance to disease. It does not produce any chemical reaction with respect to the blood stream, nor is it of any assistance in overcoming a deficiency of either white or red corpuscles. It has no tonic effect upon the blood. It is incapable of building up the body's resistance to infection or stimulating the endocrine glands. Aside from its irritating effect, the lamp affords no stimulation to the tissue of the skin.

The lamp has no therapeutic effect upon the nerves or upon the nerve endings in the skin. It does not act as an antacid and has no alkalizing effect upon the body. It is incapable of improving the general tone of the body, making the body strong, increasing vitality, or improving mental reaction. It does not tone up the nervous system or induce sleep. It does not relieve pain. The lamp is incapable of normalizing body chemistry or affective metabolism, except insofar as its use may activate cholesterol in the skin, resulting in the production of vitamin D and the consequent absorption and disposition of calcium and phosphorus in the tissues, particularly in the bone tissues. Likewise, any effect which the lamp may have with respect

to the building of new tissues is limited to such effect as may result from the production of vitamin D.

The Commission therefore finds that the representations made by respondent with respect to the therapeutic value of its lamp are erroneous and misleading, and constitute false advertisements.

PAR. 8. Unless used with due care, respondent's lamp possesses potentialities for injury to the user, in that excessive exposure to the lamp either with respect to proximity or length of time may result in severe erythema (sunburn). A further need for care in the use of the lamp arises by reason of the fact that certain types of persons are hypersensitive to ultraviolet rays, this being particularly true in the case of fair-skinned persons and young children. Moreover, certain types of skin disorders, particularly lupus erythematosus and some types of eczema, are aggravated rather than helped by ultraviolet rays. Such rays are also contraindicated in the case of pellagra.

Another of the principal dangers in the use of respondent's lamp is that unless suitable goggles are worn to protect the eyes from the ultraviolet rays the use of the lamp may result in severe conjunctivitis.

While the directions for use accompanying respondent's lamp contain certain precautionary statements with respect to some of the potential dangers in the use of the lamp, respondent's advertisements make no reference to any of such dangers, nor do they contain any reference to the cautionary statements appearing in the directions for use. The Commission therefore finds that respondent's advertisements are false 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 respondent's lamp under the conditions prescribed in the advertisements or under such conditions as are customary or usual may result in substantial injury to the user.

PAR. 9. The Commission further finds that the use by the respondent of the false advertisements herein referred to 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 lamp possesses therapeutic values which it does not in fact possess, and that such lamp is entirely safe for use in all cases, when such is not the fact, and the tendency and capacity to cause such portion of the public to purchase such lamp 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 of the public and constitute unfair and deceptive acts

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before a 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, 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, Ultra-Violet Products, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondent's therapeutic lamp designated as "Life Lite," or any other lamp of substantially similar construction, 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 represents, directly or by implication:

(a) That said lamp is a sun lamp, or that it affords benefits to the skin or to the general health of the user comparable to those afforded by natural sunlight.

(b) That said lamp constitutes a cure or remedy or a competent or adequate treatment for barber's itch, ringworm, athlete's foot, acne, eczema, psoriasis, shingles, or erysipelas.

(c) That said lamp constitutes a cure or remedy for sores or ulcers, or that it constitutes a competent treatment therefor except insofar as it may stimulate the healing process in those cases in which the infection causing such conditions is confined to the surface of the skin.

(d) That said lamp possesses any therapeutic value in the treatment of asthma, hay fever, bronchitis, colds, sinus trouble, or discharge from the ears.

(e) That said lamp possesses any therapeutic value in the treatment of anemia.

(f) That said lamp builds up in the body resistance to disease.

(g) That said lamp has any tonic effect upon the blood, that it

produces any chemical reaction with respect to the blood stream, or that it is of any assistance in overcoming a deficiency of white or red corpuscles.

(h) That said lamp builds up the resistance of the body to infection, or that it stimulates the endocrine glands.

(i) That said lamp affords any stimulation to the tissues of the skin in excess of such stimulation as may result from its irritating effect.

(j) That said lamp quiets or soothes the nerves or the nerve endings in the skin.

(k) That said lamp acts as an antacid or has any alkalizing effect upon the body.

(l) That said lamp improves the general tone of the body, makes the body strong, increases vitality, or improves mental reaction.

(m) That said lamp tones up the nervous system, induces sleep, or relieves pain.

(n) That said lamp normalizes the chemistry of the body, improves metabolism, or builds new tissues, except insofar as its use may result in the production of vitamin D.

2. 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 fails to reveal that excessive exposure to said lamp either with respect to proximity or length of time may result in injury to the user; that said lamp should not be used in the case of pellagra, lupus erythematosus, or certain types of eczema; and that said lamp should never be used unless goggles are worn to protect the eyes; provided, however, that such advertisement need contain only the statement, "Caution: Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling, or both on the label and in labeling, contain a warning to the above effect.

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 lamp, which contains any representation prohibited in paragraph 1 hereof, or which fails to comply with the affirmative requirements set forth in paragraph 2 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.

Complaint

IN THE MATTER OF
 WEBSTER ELECTRIC COMPANY

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

Docket 4456. Complaint, Feb. 1 1941—Decision, June 8, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution to oil burner manufacturers of fuel units for oil burners—

Falsely represented, through letters and circulars and advertisements in periodicals of general circulation, that its fuel unit was the only device of its kind which had the outboard bearing outside of the seal, and that it had the largest capacity of any on the market;

With effect of misleading and deceiving the purchasing public in such respects and thereby inducing it to purchase, in preference to others, such fuel units and oil burners equipped 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.

Before *Mr. James A. Purcell*, trial examiner.

Mr. D. E. Hoopingarner for the Commission.

Fischel, Kahn & Heart, 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 Webster Electric 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Webster Electric Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office, factory, and place of business at DeKoven Avenue and Clark Street, Racine, Wis.

For more than 2 years last past respondent has been, and is now, engaged in the manufacture, sale, and distribution of fuel units for oil burners. Fuel units are purchased by oil burner manufacturers who take such units and the various other units or parts making up an oil burner, and assemble them into oil burners, and thereupon sell the completed oil burners to dealers and consumers. In the course and conduct of its said business, respondent has been and is now caus-

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ing its said fuel units, when sold, to be transported from its said factory in the State of Wisconsin 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 its said fuel units in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent has made, published, and caused to be made and published, by means of letters and circulars transmitted by United States mails and otherwise into various States of the United States and the District of Columbia, and by means of advertisements in periodicals having a general circulation, statements, claims, and representations with reference to its said fuel units, among which are those following, for the purpose of inducing, and which were likely to induce, directly and indirectly, the purchase of its said fuel units:

(a) The Webster Electric Fuel Unit is the only device of its kind which has the outboard bearing outside of the seal.

(b) The Webster Electric has the largest capacity of any unit on the market.

(c) An Improved Two-Stage Fuel Unit embodying all the characteristic Webster Electric features plus, an exceptional ease of servicing that is not to be had in any similar device in the oil burner field.

(d) No other has proven itself so unfailingly dependable in performance.

(e) This year more oil burners will be equipped with the Webster Electric Two-Stage Fuel Unit than with any other.

Through said statements, claims and representations, made and published as aforesaid, and others of similar import and meaning not herein set out, respondent has represented and implied that its said fuel unit is the only device of its kind having the outboard bearing outside of the seal; that the capacity of its said unit is greater than that of any other fuel unit on the market; that its said fuel unit is more easily serviced than are all similar devices; that the dependability of its said fuel unit exceeds that of similar devices; and that, during the year that the last statement above was made by respondent, more oil burners would be equipped with its said fuel unit than would be equipped with the fuel unit of any competing manufacturer during such year.

PAR. 3. In truth and in fact, respondent's fuel unit is not the only device of its kind which has the outboard bearing outside of the seal. The capacity of respondent's fuel unit does not exceed that of any of a number of other units on the market, it is not easier to service than all similar devices, and it is not more dependable than all similar devices. The claim that more oil burners would be equipped,

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during the year that the claim was made, with its two-stage fuel unit than with the fuel unit of any competing manufacturers is deceptive and misleading insofar as it imports or implies that more oil burners would be equipped during such year with respondent's fuel unit than with the fuel unit of any competing manufacturer.

The aforesaid representations and implications made and published by respondent as aforesaid are grossly exaggerated, false, misleading, and deceptive.

PAR. 4. The use by the respondent of the acts and practices hereinabove mentioned in connection with the sale and distribution of its said fuel units 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 cause many members of the purchasing public, because of said mistaken and erroneous belief, to purchase respondent's fuel units, and oil burners equipped with them.

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 February 1 A. D. 1941, issued and thereafter served its complaint in this proceeding upon the respondent, Webster Electric 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 the complaint and filing of respondent's answer, 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 attorneys for the respondent, before James A. Purcell, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding. Said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final hearing before the Commission, on the complaint, the answer, the testimony, and other evidence, the trial examiner's report 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, Webster Electric Co., is a corporation, organized and existing under the laws of the State of Delaware, with its principal office and place of business at Racine, Wis. Respondent, for more than 2 years prior to February 1, 1941, has been and now is engaged in the manufacture, sale, and distribution of fuel units for oil burners. Fuel units are purchased by oil burner manufacturers, who take such units and the various other units or parts making up an oil burner and assemble them into oil burners, and thereupon sell the completed oil burners to dealers and consumers.

Respondent, in the conduct of its business, has been and now is causing its said fuel units, when sold, to be transported from its place of business in Wisconsin 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 its said fuel units in commerce between and among various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in order to promote the sale of its fuel units, represented that its fuel unit is the only device of its kind which has the outboard bearing outside of the seal, and that its unit has the largest capacity of any unit on the market. These representations were made by respondent up to the fall of 1938, in letters and circulars transmitted by means of the United States mails and otherwise, into various States of the United States, and in advertisements placed by it in periodicals having a general circulation.

PAR. 3. The representations and implications made and published by respondent, as set forth in paragraph 2 hereof, are grossly exaggerated, false and misleading, and deceptive. Respondent's fuel unit, in fact is not the only device of its kind which has the outboard bearing outside of the seal; the capacity of respondent's fuel unit does not, in fact, exceed that of any other unit on the market.

PAR. 4. Respondent, by its acts and practices herein set forth, has misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's fuel unit is the only device of its kind which has the outboard bearing outside of the seal, and that its fuel unit has the largest capacity of any unit on the market; and as a result, many members of the purchasing public, because of such erroneous and mistaken belief have purchased

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respondent's fuel units, and oil burners equipped with them in preference to other fuel units and oil burners equipped with other fuel units.

CONCLUSION

The aforesaid acts and practices of respondent, as set forth in the foregoing findings as to the facts, are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding, having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony and other evidence in support of and in opposition to the allegations of the complaint introduced by the attorney for the Commission and attorney for respondent before James A. Purcell, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, the report of the trial examiner and briefs in support of and in opposition to the complaint. And the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Webster Electric Co., a corporation, its officers, directors, agents, representatives, and employees, jointly or severally, or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fuel units for oil burners, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by means of letters, circulars, advertisements, or by any other means, directly or by implication—

(a) That respondent's product is the only device of its kind which has the outboard bearing outside of the seal.

(b) That respondent's product has the largest capacity of any unit on the market.

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
SHEPHERD'S TAILORING 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 4716. Complaint, Feb. 26, 1942—Decision, June 8, 1942

Where a corporation and two individuals, its officers and directors, engaged in competitive interstate sale and distribution of men's wearing apparel and other merchandise—

- (a) Sold and distributed garments by means of sales plans which involved the operation of a game of chance, gift enterprise, or lottery scheme, and included a so-called "Club Plan" under which they furnished each participating purchaser with a contract providing for the sale by them to him of a suit for the sum of \$39, of which \$1 was to be paid when the contract was delivered and \$1 each week thereafter until the full sum had been paid, each contract being printed with a so-called "Ledger No." for use as a lottery number under an agreement by which those purchasers whose numbers, or last three digits thereof, corresponded with the last three digits of the Treasury report as published in a Philadelphia paper, would be entitled to a suit or overcoat without additional payment, all others paying the full \$39 retail selling price;

With the result that many persons were attracted by the element of chance involved in their said sales plan, under which the amount paid by the ultimate consumer was determined wholly by lot or chance, and there was involved a game of chance to procure an article of merchandise at less than contract price, and trade was unfairly diverted from many competitors who do not use any such plan or method; and

- (b) Falsely represented price of their merchandise, nature of their business and merchandise itself through such statements as "One \$39.00 price"; "Custom Tailors since 1907"; "Our stock consists of hundreds of patterns of fine imported and domestic suitings and overcoatings for \$39.00"; facts being they did not always sell the garments in question for said sum, but in many instances required additional payments; they had been in business only since 1940; and they did not carry hundreds of patterns, or any large number from which their customers might select a suit or overcoat for said price;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing it to purchase said products, as a result whereof trade was unfairly diverted to them from their competitors:

Held, That said lottery sales plan violated the public policy of the United States Government, and 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.

Mr. Harris I. Weisbord, of Philadelphia, Pa., for respondents.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Shepherd's Tailoring Co., Inc., a corporation, formerly Small's, Inc., a corporation, and Louis Small, Walter H. Hahn, and William Trignani, individually, and as officers and directors of Shepherd's Tailoring Co., Inc., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Shepherd's Tailoring Co., Inc., is a Corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania and until August 8, 1941, its corporate name was Small's, Inc., at that time its name being changed to the present designation. Its principal place of business is located at 1102 Walnut Street in the city of Philadelphia, State of Pennsylvania. Respondents Louis Small, Walter H. Hahn, and William Trignani, are officers and directors of the corporate respondent, Shepherd's Tailoring Co., Inc., and formulate, control and direct the policies, acts and practices of said corporate respondent. The respondents have acted in concert and in cooperation and conjunction with each other in performing the acts and practices hereinafter alleged.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of men's wearing apparel and other merchandise from their said place of business, through the solicitation of orders for such merchandise from persons living in various States of the United States. Respondents fill such orders by transporting said merchandise or causing same to be transported from their said place of business in Philadelphia, Pa., to purchasers thereof at their respective points of location in various States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said garments in commerce between and among the various States of the United States.

In the course and conduct of their business, respondents are and have 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.

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PAR. 3. In the course and conduct of their business, as described in paragraph 1 hereof, respondents are now and have been selling and distributing said garments to members of the purchasing public by means of sales plans or methods which involve the operation of a game of chance, gift enterprise, or lottery scheme. One of said sales plans or methods is substantially as follows:

. Members of the purchasing public are solicited by respondents to purchase a suit of clothes or overcoat under a so-called "club" plan. Respondents supply each purchaser participating in said plan with a contract of purchase which contract provides for the sale by respondents to such purchaser of a suit of clothes for the sum of \$39, which said amount is to be paid as follows:

\$1 when said contract is delivered and \$1 in advance each week thereafter until the full amount of the contract has been paid. There is space provided on said contract for the recording of the weekly payments. Each of said contracts has printed thereon a number designated as "Ledger No." but in reality a lottery number. Purchasers are informed by respondents that if at any time before their contracts are paid out should said number, or the last three digits thereof, correspond to the last three digits of the Treasury report, as published in a Philadelphia paper, provided all of said purchaser's weekly payments have been made up to date, then and in that event such purchaser would be entitled to and would receive a suit or overcoat without additional payments or cost. Purchasers whose contracts do not bear numbers corresponding with the Treasury report, prior to the payment of the full amount of their contracts, are required to pay the full \$39 for their suits or overcoats. All of said suits and overcoats have a retail selling price of \$39. The amount which the ultimate consumer pays for one of said suits or overcoats is thus determined wholly by lot or chance.

PAR. 4. Respondents have sold and distributed their merchandise to members of the consuming public in accordance with the aforesaid sales plans or methods. In so selling and distributing their merchandise, respondents have conducted lotteries in accordance with the sales plans or methods hereinabove set forth. The use by respondents of said sales plans or methods in the sale of such garments by and through the use thereof, and by the aid of said methods, is a practice of a sort which is contrary to an established public policy of the Government of the United States.

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 less than the

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contracted retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondents, as above alleged, do not use said methods or any methods involving the use of a game of chance, or the sale of a chance to win something by chance or, any other method that is contrary to public policy. Many persons are attracted by respondents' said methods and by the element of chance involved in the sale of said merchandise in the manner above alleged and are thereby induced and persuaded to buy respondents' merchandise in preference to the merchandise offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods.

PAR. 6. The use of said methods by the respondents because of said game of chance has a tendency and capacity to 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 sales plans or methods.

PAR. 7. In the furtherance and promotion of their aforesaid merchandising plan and in order to induce members of the purchasing public, to participate therein, the respondents have made false, misleading, and deceptive statements and representations respecting the merchandise sold by them and the price thereof and the nature of their business, such statements and representations appearing on the contract and receipt card above referred to and described, which card is exhibited to prospective purchasers in soliciting sales of respondents' merchandise. Among such statements and representations, are the following:

One \$39.00 price.

Custom tailors since 1907. and

Our stock consists of hundreds of patterns of fine imported and domestic suitings and overcoatings at \$39.00.

PAR. 8. Through the use of the aforesaid statements and representations respondents represent that all of the suits sold by them are priced at \$39; that respondents have been in the custom tailoring business since 1907, and that respondents carry in stock hundreds of patterns of suitings which are offered and sold at \$39.

Said statements and representations are false, misleading, and deceptive. In truth and in fact, all of respondents' garments are not sold for \$39 but, in many cases, additional payments or an additional sum is required in order to secure a suitable garment from respondents. Respondents have not been in the custom tailoring business since 1907 but only since 1940. Respondents do not carry any large

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or substantial number of patterns from which its customers may select a \$39 suit or overcoat.

PAR. 9. The use by respondents of the foregoing false, misleading, and deceptive statements and representations has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the members of the purchasing public into the erroneous belief that such representations are true and into the purchase of a substantial volume of respondents' merchandise on account of such belief so induced.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 26th day of February A. D. 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Shepherd's Tailoring Co., Inc., a corporation, formerly Small's Inc., a corporation, and Louis Small, Walter H. Hahn, and William Trignani, individually, and as officers and directors of Shepherd's Tailoring Co., Inc., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. On March 20, A. D. 1942, respondent William Trignani filed an answer admitting the allegations of the complaint, but denying that Louis Small had ever been an officer of respondent corporation. Thereafter on April 10, 1942, respondent Shepherd's Tailoring Co., Inc., a corporation, and respondents Walter H. Hahn and William Trignani, individually and as officers of the corporation, filed an answer admitting all the material allegations of the complaint and waiving all intervening procedure and further hearing as to said facts, which answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and 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, Shepherd's Tailoring Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and until August 8, 1941, its corporate name was Small's, Inc., its name being changed at that time to its present designation. Its principal place of business is located at 1102 Walnut Street, in the city of Philadelphia, State of Pennsylvania. Respondents Walter H. Hahn and William Trignani, are officers and directors of the corporate respondent, Shepherd's Tailoring Co., Inc., and formulate, control and direct the policies, acts, and practices of said corporate respondent. These respondents have acted in concert and in cooperation and conjunction with each other in performing the acts and practices hereinafter set forth.

PAR. 2. Respondents, Shepherd's Tailoring Co., Inc., Walter H. Hahn and William Trignani are now, and for more than 1 year last past have been, engaged in the sale and distribution of men's wearing apparel and other merchandise from their place of business, through the solicitation of orders for such merchandise from persons living in various States of the United States. These respondents fill such orders by transporting merchandise, or causing same to be transported, from their place of business in Philadelphia, Pa., to purchasers thereof at their respective points of location in various States of the United States. These respondents maintain, and at all times herein mentioned have maintained, a course of trade in their garments in commerce between and among the various States of the United States.

In the course and conduct of their business, these respondents are and have 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.

(NOTE.—When reference is hereinafter made to "respondents," only those named in this paragraph are included.)

PAR. 3. Respondents, in the course and conduct of their business, are now, and have been, selling and distributing garments to members of the purchasing public by means of sales plans or methods which involve the operation of a game of chance, gift enterprise, or lottery scheme. One of such sales plans and methods is substantially as follows:

Members of the purchasing public are solicited by respondents to purchase a suit of clothes or overcoat under a so-called "club plan"; respondents furnish each purchaser participating in the plan with a

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contract of purchase, which provides for the sale by respondents to such purchaser, of a suit of clothes for the sum of \$39, which amount is to be paid as follows:

\$1 when contract is delivered, and

\$1 in advance each week thereafter until the full amount of the contract has been paid.

There is a space provided in the contract for recording the weekly payments. Each contract has printed thereon a number designated as "Ledger No.," but in reality this is a lottery number; purchasers are informed by respondents that if at any time before their contracts are paid out, such number, or the last three digits thereof, correspond with the last three digits of the Treasury report as published in a Philadelphia paper, and provided that all of purchaser's weekly payments have been made up to date, in such event the purchaser would be entitled to and would receive a suit of clothes or overcoat without additional payment or cost. Purchasers whose contracts do not bear numbers corresponding to the Treasury report prior to payment of the full amount of their contracts are required to pay respondents the full amount of \$39 for their suits or overcoats. All of these suits and overcoats have a retail selling price of \$39. The amount which the ultimate consumer pays for one of these suits or overcoats is thus wholly determined by lot or chance.

PAR. 4. Respondents have sold and distributed their merchandise to members of the consuming public in accordance with the aforesaid sales plan or method, and in so doing, have conducted games of chance, gift enterprises, or lottery schemes.

PAR. 5. Respondents' sales of merchandise in accordance with the aforesaid sales plan, involve a game of chance or the sale of a chance to procure an article of merchandise at a price less than the contracted price therefor. Many of respondents' competitors mentioned in paragraph 2 hereof do not use the sales plan employed by respondents, or any other method involving a game of chance, gift enterprise or lottery scheme. Many persons are attracted by the element of chance involved in respondents' sales plan, and as a result purchase respondents' merchandise in preference to that of respondents' said competitors, and trade has thereby been unfairly diverted to respondents from their said competitors.

PAR. 6. Respondents, in furtherance and promotion of their sales plan, and in order to induce the purchasing public to participate therein, have made statements and representations respecting the merchandise sold by them, and the price thereof, and the nature of their business, which statements and representations appear on the

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contract and receipt card used in connection with their sales plan. Among such statements and representations are the following:

One \$39.00 price;

Custom Tailors since 1907;

Our stock consists of hundreds of patterns of fine imported and domestic suitings and overcoatings for \$39.00.

Said statements and representations are false, misleading and deceptive. In truth and in fact, respondents' garments are not always sold for \$39, but in many instances additional payments, or an additional sum, is required in order to secure a suitable garment. Respondents have not been in the custom tailor business since 1907, but have only been in said business since 1940. Respondents do not carry hundreds of patterns or any large number of patterns from which their customers may select a \$39 suit or overcoat.

PAR. 7. The use by respondents of the false, misleading, and deceptive statements set out in paragraph 6 hereof, 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 belief that such representations are true, and because of such belief, the public has been induced to purchase a substantial amount of respondents' products, and as a result, trade has been unfairly diverted to respondents from their competitors who do not make such false, misleading and deceptive statements concerning 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 and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act; and the respondents' sales plan violates the public policy of the Government of the United States.

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, Shepherd's Tailoring Co., Inc., a corporation, and Walter H. Hahn and William Trignani, individually, and as officers and directors of Shepherd's Tailoring Co., Inc., in which answer said respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts; and the Commission having made its

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

It is ordered, That the respondent, Shepherd's Tailoring Co., Inc., a corporation, its officers, directors, representatives, agents and employees, and respondents, Walter H. Hahn and William Trignani, individually, and as officers and directors of Shepherd's Tailoring Co., Inc., jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of men's suits or other garments in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of, others any merchandise together with a sales plan or method involving the use of a game of chance, gift enterprise or lottery scheme by which said merchandise is to be or may be sold or distributed 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.
3. Representing that all the suits sold by them are priced at \$39.
4. Representing that respondents have been in the custom tailoring business since 1907.
5. Representing that respondents carry in stock "hundreds" or any other large number of patterns of suiting which are sold at \$39 or any, other fixed price, unless such is the fact.

It is further ordered, That the respondents, Shepherd's Tailoring Co., Inc., a corporation, and Walter Hahn and William Trignani, shall within 60 days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That the case be closed as to Louis Small, subject to the right of the Commission to reopen the same should further facts so warrant.

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IN THE MATTER OF

MAURICE L. MYERS, TRADING AS CHARLES B. JOYCE
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4476. Complaint, Mar. 26, 1941—Decision, June 9, 1942*

Where an individual, engaged in competitive interstate sale and distribution of radios, clocks, flashlights, and other novelty merchandise to dealers and other purchasers, including certain 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 one involving sale of a radio through use of a 1,500-hole punchboard, chances on which were 5 cents each, under a plan by which the customer selecting, by chance, the winning number secured a radio, 8 others received 50 cents in trade, and 20 received 25 cents in trade, the remaining receiving nothing for their money except the right to punch—

Sold such assortments to dealers and other purchasers by whom they were exhibited and sold to the purchasing public in accordance with sales plan above set forth, and thereby supplied to and placed in the hands of others the means of conducting a game of chance or lottery in the sale of his said products;

With the result that many were attracted by said chance sales plan and the opportunity to procure merchandise at much less than its nominal retail price, and were thus induced to buy and sell his products in preference to those of his competitors who do not use any chance sales plan in the sale and distribution of their products, and with effect of unfairly diverting trade to him 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, were contrary to the 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. John W. Addison*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Gordon L. Bazelon, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that *Morris L. Myers*, an individual, trading as *Charles B. Joyce 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

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

PARAGRAPH 1. Respondent, Morris L. Myers is an individual, trading and doing business as Charles P. Joyce Co., with his office and principal place of business at 2425 North Halstead Street, Chicago, Ill. Respondent is now and during the year last past has been engaged in the sale and distribution of radios, clocks, flashlights, clothing, and novelty merchandise to dealers and other 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 other than Illinois and in the District of Columbia. There is now and has been during the 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 and other purchasers various assortments of 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 a radio together with a device commonly called a punchboard. Said radio is distributed to the consuming public by means of said punchboard in the following manner:

On the face of said board appears a label bearing the following legend:

5¢ Fast Action	WIN THIS \$_____	No Waiting 5¢
	No. 100 WINS RADIO	
\$16.50	Additional Winners	\$16.50
Nos. 150—200—250—300—350—400—450—500—		
50¢ in Trade	WINS	50¢ in Trade
Nos. 550—600—650—700—750—800—850—900—950—1000—1050—1100— 1150—1200—1250—1300—1350—1400—1450—1500—		
25¢ in Trade	WINS	25¢ in Trade

LAST PUNCH In Each SECTION gets 50¢ in Trade

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 purchases there are on the board (1,500), but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing the respective purchasers as to which number entitles the purchasers thereof to receive a radio and which numbers entitle the purchasers to receive certain amounts of merchandise. A purchaser who does not qualify by obtaining the number calling for the radio or one of the designated numbers calling for awards of merchandise receives nothing for his money. The radio and the merchandise awards are worth more than 5 cents each, and the purchaser who obtains the number calling for the radio or one of the numbers calling for the merchandise 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 radio and merchandise are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes and has 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 ones hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's merchandise directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondent thus supplies to and places in the hands of others a means of conducting a lottery in the sale of his product 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.

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 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 methods employed by respondent in the sale and distribution of his 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 his said competitors who do not use the same 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 26th day of March A. D. 1941, issued and thereafter served its complaint in this proceeding upon the respondent, Maurice L. Myers (named in the complaint as Morris L. Myers), an individual, trading as Charles B. Joyce & 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 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 John W. Addison, 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 trial examiner's report 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.

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Maurice L. Myers, is an individual, trading as Charles B. Joyce Co., with his principal place of business at 2425 North Halstead Street, in the city of Chicago and State of Illinois.

PAR. 2. Respondent for more than a year next preceding the issuance of the complaint herein has been, and now is, engaged in the sale and distribution of radios, clocks, flashlights, and other novelty merchandise to dealers and other purchasers thereof located in various States of the United States. Respondent causes said merchandise, when sold, to be transported from his place of business to the purchasers thereof located in various States of the United States, and during all of the time herein mentioned respondent has maintained a constant course of trade in commerce between and among various States of the United States, and has been, during such time, 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 various States of the United States.

PAR. 3. Respondent, in the course and conduct of his business, sells and has sold to dealers and other purchasers various assortments of 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 consists of a radio, together with a device known as a "punchboard." The radio is distributed to the consuming public by means of the punchboard in the following manner:

On the face of said board appears a label bearing the following legend:

5¢ Fast Action	WIN THIS \$-----	No Waiting 5¢
	No. 100 WINS RADIO	
\$16.50	Additional Winners	\$16.50
<hr/>		
	Nos. 150—200—250—300—350—400—450—500	
50¢ In Trade	WINS	50¢ In Trade
<hr/>		
	Nos. 550—600—650—700—750—800—850—900—950—1000—1050—1100— 1150—1200—1250—1300—1350—1400—1450—1500	
25¢ In Trade	WINS	25¢ In Trade
<hr/>		
LAST PUNCH in Each SECTION gets 50¢ In Trade		

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The punchboard has 1,500 holes, each containing a slip of paper bearing a number which is not disclosed until the slip of paper is pushed from the hole. These numbers range from 1 to 1,500 and are not consecutively distributed. Punches are sold at 5 cents each, and the prizes listed are distributed in accordance with the legend appearing on the punchboard. A person who does not punch a number entitling him to a prize receives nothing for his money except the right to punch.

The radio and other prizes are worth more than the price of the punch, but are distributed to the winners without additional payment. The radio and other merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes various other assortments of merchandise by means of games of chance, the sales plans differing only in detail from that hereinabove described.

PAR. 4. Persons who purchase respondent's merchandise, directly or indirectly, exhibit and sell the same to the purchasing public in accordance with the sales plan described in paragraph 3 hereof. Respondent thus supplies to and places in the hands of others the means of conducting a game of chance or lottery in the sale of his products.

PAR. 5. Many of respondent's competitors are unwilling to and do not adopt and use any sales plan involving a game of chance or lottery scheme in the sale and distribution of their merchandise. Many persons are attracted by respondent's sales plan and by the element of chance involved therein and the opportunity to procure merchandise at a cost much less than its nominal retail price, and are thereby induced to buy and sell respondent's products in preference to products of competitors of the respondent who do not use the same or similar methods.

Respondent's sales methods have the tendency and capacity to, and do, unfairly divert trade in commerce between and among various States of the United States to the respondent from his competitors who do not use the same or equivalent methods.

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 public policy of the United States Government, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

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Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence in support of the allegations of the complaint taken before J. W. Addison, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, the report of the trial examiner, and brief in support of the complaint; 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, Maurice L. Myers, trading as Charles B. Joyce Co., or trading under any other name, directly or indirectly, or through any corporate or other device, in connection with the offering for sale, sale, and distribution of radios, clocks, flashlights, 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 cards, or pull cards, or other lottery device, either with assortments of merchandise or separately, which said punchboards, push or pull cards, or other lottery device, 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 him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

A. E. STALEY MANUFACTURING COMPANY AND THE
STALEY SALES CORPORATION

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

Docket 3803. Complaint, June 1, 1939—Decision, June 10, 1942

Where a corporate processor and refiner of corn products, owning and operating in Decatur, Ill., a plant with capacity for processing about 50,000 bushels of corn daily, together with its subsidiary, engaged in competitive interstate sale and distribution of products of such processing;

In selling their glucose or corn sirup unmixed—a major raw material in many candies, constituting from 5 to 90 percent of the finished weight thereof, and about 85 percent of mixed table sirups—to candy manufacturers and mixers of such sirups, engaged in the competitive resale thereof to wholesalers, chain stores, retailers, and others, likewise in competition—

- (a) Discriminated in price unlawfully through sales of glucose of like grade and quality, fulfilled by shipments to purchasers from their Decatur, Ill. plant at differing delivered prices through a pricing system based upon their Chicago tank car prices, to which were added as differentials the amounts of the railroad tariff from Chicago to destination; and
- (b) Discriminated in price between different purchasers through preferential operation or application of their booking system—under which, following announcement of a new price increase, purchasers were granted a period of 5 to 10 days within which to purchase at the old and lower price provided shipment was made within 30 days—by use of practices under which favored buyers received price advantages varying from 5 cents to 55 cents per hundredweight of glucose; in that, among other things, they—
 - (1) Permitted large buyers with unused balances booked by them an extension of delivery time in response to threat of taking business elsewhere;
 - (2) Accepted statements of their brokers or salesmen as to orders booked without proper confirmation as to fact of such orders;
 - (3) Made offers to take business at the lower prices long after expiration of the time for so doing; and
 - (4) Made sales or offers at the lower tank car prices to buyers with no facilities for such purchasing, while making delivery in tank wagon quantities from their filling station stocks, and continuing such deliveries at the older and lower price for several months after the price advance;

With the result that—

- (1) Candy manufacturers who were obliged to pay higher prices for glucose than some of their competitors, might sell their candies—as to which, in the case of the low-priced product bearing no differentiating name or brand customers may be attracted by a difference of as little as one-eighth of a cent per pound, and especially so in the case of the large quantity purchasers to whom a small difference is determinative—only by absorbing the higher glucose costs or by attempting to recover such higher costs by increasing

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the price of their candies and selling them upon a nonprice basis, thereby reducing their profit either directly or through reduced volume, and diminishing their incentive or desire to compete with those paying the lower prices; and possibly deterring potential candy manufacturers from entering the industry in cities where they would be obliged to pay the higher glucose prices; and

(2) Producers of glucose table sirup located in cities other than Chicago had higher costs than Chicago mixers; and producers paying the higher prices had sales substantially reduced through ability of those favored to reduce their price, or, in the event of meeting the reduced price, had diminished profits and incentive to compete with producers paying the lower prices for such product, with respect to which customers may be attracted by as small a difference as 5 cents a case of six 10-pound cans; and potential sirup mixers might be deterred from entering the industry in cities where they would be obliged to pay the higher glucose prices:

Held, That aforesaid unlawful price discriminations resulted in substantial injury to competition among purchasers by affording material and unjustified price advantages to some and not to others, and constituted violation of section 2 (a) of the Clayton Act as amended.

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

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

Le Forgee, Samuels & Miller, of Decatur, Ill., and *Mr. Louis A. Spiess*, of Washington, D. C., 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 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, A. E. Staley Manufacturing Co., is a corporation, organized and existing under the laws of Delaware with its principal office and place of business at 2200 East Eldorado Street in the city of Decatur and State of Illinois. Respondent, The Staley Sales Corporation, is a corporation, organized under the laws of the State of Illinois and has its principal office and place of business at 2200 East Eldorado Street, city of Decatur and State of Illinois. Respondent, The Staley Sales Corporation, is a wholly owned sales subsidiary of respondent, A. E. Staley Manufacturing Co., through which products manufactured by A. E. Staley Manufacturing Co., are sold and distributed. A. E. Staley Manufacturing Co., owns the entire capital stock of The Staley Sales Corporation and controls and directs The Staley Sales Corporation.

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PAR. 2. Respondent, A. E. Staley Manufacturing Co., owns and operates a plant at Decatur, Ill. This plant has a corn grinding capacity in excess of 50,000 bushels per day, with complete facilities for the finished fabrication of all known corn products, both for household and industrial use.

PAR. 3. For many years respondents have been and are now engaged in the business of manufacturing, selling, and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) starch, both for food and other purposes; (2) glucose or corn syrup; and (3) corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by treating the starch with certain acids, the resulting solid product being sugar and the resulting sirup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of sirups.

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

A. E. Staley Manufacturing Co., in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of their business, the respondents have been and are now manufacturing the aforesaid commodities at the aforesaid plant and have sold and shipped and do now sell and ship such commodities in commerce between and among the various States of the United States from the State in which their factory is located across State lines to purchasers thereof located in States other than the State in which respondents' said plant is located in competition with other persons, firms and corporations engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936 and while engaged as aforesaid in commerce among the several States of the United States and the District of Columbia, the respondents have been and are now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption or resale within the several States of the United States and the District of Columbia in that the respondents have been and are now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondents to other purchasers generally competitively engaged with the first mentioned purchasers.

PAR. 6. The effect of said discriminations in price made by said respondents, as set forth in paragraph 5 herein, may be substantially to lessen competition in the sale and distribution of corn products

between the said respondents and their competitors; tend to create a monopoly in the line of commerce in which the respondents are engaged; and to injure, destroy, and prevent competition in the sale and distribution of corn products between the said respondents and their competitors.

PAR. 7. The effect of said discriminations in price made by said respondents, as set forth in paragraph 5 herein, may be substantially to lessen competition between the buyers of said corn products from respondents receiving said lower discriminatory prices and other buyers from respondents competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from respondents are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from respondents are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices.

PAR. 8. The aforesaid acts of respondents constitute a violation of the provisions of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission on June 1, 1939, issued and subsequently served its complaint in this proceeding against respondents, A. E. Staley Manufacturing Co., a corporation, and The Staley Sales Corporation, a corporation, charging them with violation of the provisions of subsection (a) of section 2 of the said Clayton Act, as amended. After the issuance of said complaint and the filing of respondents' answer thereto, certain stipulations as to the facts were read into the record and certain exhibits were introduced in evidence in support of and in opposition to the allegations of said complaint at hearings before an examiner of the Commission theretofore duly designated by it, and said stipulations and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint, answer, stipulation as to the facts, and other 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 same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, A. E. Staley Manufacturing Co., is a corporation, organized and existing under the laws of the State of Delaware, having its principal office and place of business on East Eldorado Street, Decatur, Ill. Respondent, The Staley Sales Corporation, is a corporation, organized and existing under the laws of the State of Illinois, having its office and principal place of business on East Eldorado Street, Decatur, Ill. All of the capital stock of the latter respondent, except for the qualifying shares necessarily held by its directors is owned by respondent A. E. Staley Manufacturing Co.

PAR. 2. Respondent, A. E. Staley Manufacturing Co., is a processor and refiner of corn products and owns and operates in Decatur, Ill., a plant which has a capacity for processing approximately 50,000 bushels of corn per day. Among the products derived from such processing and refining of corn is glucose or corn sirup unmixed. For many years last past and at all times since June 19, 1936, both respondents have been engaged in the business of selling and distributing glucose produced at said plant to purchasers located in the several States of the United States. As a result of such sales, glucose, or corn sirup unmixed and other products of such processing and refining of corn have been transported from Decatur, Ill., to purchasers located in the several States of the United States, and respondents have maintained a course of trade in such products in commerce among and between the several States of the United States.

In the sale and distribution of glucose or corn sirup unmixed, respondents are in competition with other concerns who sell and distribute similar sirup to purchasers in the several States of the United States. Among such competitors of respondents are Corn Products Refining Co. and Corn Products Sales Co., with plants at Chicago, Ill., and Kansas City, Mo.; Clinton Co. and Clinton Sales Co., with a plant at Clinton, Iowa; Penick & Ford, Limited, Inc., with a plant at Cedar Rapids, Iowa; Anheuser-Busch, Inc., with a plant at St. Louis, Mo.; Union Starch & Refining Co. and Union Sales Co., with a plant at Granite City, Ill.; and American Maize-Products Co., with a plant at Roby, Ind., in the Chicago switching area.

PAR. 3. Glucose or corn sirup unmixed is widely used in the manufacture of candy and in the mixing of table sirups. Among the pur-

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chasers of such glucose from respondents are customers located in Chicago, Decatur, and Centralia, Ill.; St. Joseph, St. Louis, and Kansas City, Mo.; Dallas and Farmersville, Tex.; Shreveport and Alexandria, La.; Little Rock, Ark.; Davenport, Ottumwa, and Sioux City, Iowa.

Respondents sell glucose or corn sirup unmixed strictly upon a delivered price basis. Their lowest price, or base price, for such glucose is f. o. b. Chicago in railroad tank car lots, and their prices to all other purchasers in such quantities, wherever located, are equivalent or approximately equivalent to their prices to purchasers in Chicago plus freight from Chicago to the purchaser's location.

As among customers located in the cities named, and on the dates shown in the following tabulation, respondents' prices per hundred-weight for 43° glucose in tank car lots were as follows:

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill.....	\$2.94	\$3.04	\$2.29	\$2.09
Decatur, Ill.....	3.11	3.20	2.47	2.27
Centralia, Ill.....	3.11	3.20	2.47	2.27
St. Louis, Mo.....	3.11	3.20	2.47	2.27
Davenport, Ia.....	3.11	3.20	2.46	2.27
St. Joseph, Mo.....	3.32	3.40	2.69	2.49
Kansas City, Mo.....	3.32	3.40	2.69	2.49
Little Rock, Ark.....	3.52	3.59	2.89	2.69
Alexandria, La.....	3.54	3.60	2.90	2.70
Shreveport, La.....	3.63	3.69	3.00	2.80
Farmersville, Texas.....	3.68	3.74	3.06	2.86
Dallas, Texas.....	3.72	3.77	3.09	2.89

At all times since June 19, 1936, substantially the same differentials in price as those shown above have existed between and among respondents' customers located in the cities named.

As heretofore stated respondents' prices on glucose or corn sirup unmixed vary as between purchasers in different cities according to the Chicago price plus the amount of the railroad freight rate on such glucose from Chicago to the purchaser's location. However, all sales of glucose made by respondents are fulfilled with glucose produced in and shipped from their plant in Decatur, Ill.; and, consequently, the price differences as among purchasers which result from respondents' pricing plan as set forth herein do not merely reflect differing transportation costs. This is illustrated in the following tabulation in which sales by respondents to purchasers in various cities are compared with substantially concurrent sales to purchasers in Chicago. In this tabulation the prices per hundred-weight charged purchasers and the price differences between such purchasers are shown, together with the freight rates from Decatur,

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Ill., to the location of each purchaser and the differences between such freight rates.

Location of purchaser	Delivered prices per hundred-weight	Price difference per hundred-weight	Freight rates per hundred-weight from Decatur	Freight rate difference per hundred-weight
St. Louis, Mo.....	\$3.20		\$0.10	
Chicago, Ill.....	3.04	\$0.16	.14	-\$0.04
St. Louis, Mo.....	2.15		.11	
Chicago, Ill.....	2.09	.06	.155	-0.045
St. Louis, Mo.....	2.16		.11	
Chicago, Ill.....	2.09	.07	.155	-.045
Davenport, Ia.....	3.20		.134	
Chicago, Ill.....	3.04	.16	.14	-.006
Davenport, Ia.....	2.27		.14	
Chicago, Ill.....	2.09	.18	.15	-.015
Ottumwa, Ia.....	2.73		.27	
Chicago, Ill.....	2.44	.29	.15	.12
Ottumwa, Ia.....	2.39		.27	
Chicago, Ill.....	2.09	.30	.155	.115
Ottumwa, Ia.....	2.39		.27	
Chicago, Ill.....	2.09	.30	.155	.115
Sioux City, Ia.....	3.50		.36	
Chicago, Ill.....	3.04	.46	.14	.22
St. Joseph, Mo.....	3.42		.35	
Chicago, Ill.....	3.04	.38	.15	.20
St. Joseph, Mo.....	3.40		.36	
Chicago, Ill.....	3.04	.36	.14	.21
St. Joseph, Mo.....	2.49		.36	
Chicago, Ill.....	2.09	.40	.155	.205
Kansas City, Mo.....	3.50		.335	
Chicago, Ill.....	3.04	.46	.14	.185
Kansas City, Mo.....	2.49		.36	
Chicago, Ill.....	2.09	.40	.155	.205
Kansas City, Mo.....	2.49		.36	
Chicago, Ill.....	2.09	.40	.155	.205
Little Rock, Ark.....	3.63		.635	
Chicago, Ill.....	3.04	.59	.15	.385
Little Rock, Ark.....	3.59		.50	
Chicago, Ill.....	3.04	.55	.14	.36
Shreveport, La.....	3.69		.61	
Chicago, Ill.....	3.04	.65	.14	.47
Shreveport, La.....	2.74		.67	
Chicago, Ill.....	2.14	.60	.155	.515
Shreveport, La.....	2.80		.67	
Chicago, Ill.....	2.19	.61	.155	.515
Dallas, Tex.....	3.77		.73	
Chicago, Ill.....	3.04	.73	.14	.59
Dallas, Tex.....	3.77		.68	
Chicago, Ill.....	3.04	.73	.14	.64
Dallas, Tex.....	2.89		.75	
Chicago, Ill.....	2.09	.80	.155	.395
Dallas, Tex.....	2.89		.75	
Chicago, Ill.....	2.09	.80	.155	.695
Dallas, Tex.....	2.94		.75	
Chicago, Ill.....	2.09	.85	.155	.595
Farmersville, Tex.....	3.01		.72	
Chicago, Ill.....	2.24	.77	.155	.565
Farmersville, Tex.....	2.96		.72	
Chicago, Ill.....	2.19	.77	.155	.565

A comparison between the price differences per hundredweight and the freight rate differences per hundredweight illustrates the lack of justification for said price differences by reason of transportation costs incurred by respondents.

Respondents began the manufacture of glucose or corn sirup un-mixed in 1920, at which time two of their present competitors were producing similar glucose at plants located in the Chicago railroad switching district and were selling glucose at delivered prices based

upon the Chicago price plus freight from Chicago to point of delivery. When respondents became established as sellers of glucose comparable to that of their competitors, respondents adopted the practice of selling at the same delivered prices as their competitors. Respondents have been, and now are, unable to secure higher prices for their glucose than competitors charge for similar glucose. Respondents have consistently followed the prices for glucose announced by their competitors according to the pricing formula stated; that is, Chicago base plus freight to destination, except in certain instances where respondents have been the first to announce a change in the price of glucose, and in such instances they have announced prices in accord with the pricing formula therefore in use by their competitors and themselves.

PAR. 4. When an increase in the price of glucose or corn sirup unmixed is announced by respondents, a period of from 5 to 10 days following the announcement of such increase is allowed in which a purchaser may place an order for his requirements during the next 30 days, for delivery within such period, at the price in effect before the announcement of the increase. This practice of "booking" is theoretically available to all purchasers on equal terms but in practice some buyers benefit more than others and are enabled to purchase glucose at substantially lower prices than other buyers are paying on purchases concurrently made. Discriminations in price resulting from the booking practice occur in various ways, including the following:

(a) A large buyer may place an order for his next 30 days' requirements of glucose with each of several manufacturers. During the first 30 days the buyer may take all the glucose ordered from one manufacturer, or part of what has been ordered from each manufacturer with whom orders have been placed. At the end of the 30-day period such buyer will frequently inform the manufacturers that they will have to extend the time of delivery or cancel the order which was "booked," and that if canceled, other manufacturers will take care of the buyer and receive the business. Fearful of losing the good will of the buyer, manufacturers may extend the delivery time with the result that the buyer continues to get the benefit of the older and lower price for 60, 90, or even 120 days. A large buyer is more successful in securing such extensions of time than a small buyer because of the greater buying power which he possesses. In many instances this results in a small buyer of glucose paying the new and higher price long before the large buyer is obliged to do so; and if there have been a series of price advances resulting from an actively advancing corn market, the price of glucose or corn sirup unmixed

being concurrently delivered to two competing buyers may vary as much as 30 cents, 40 cents, or 50 cents per hundredweight.

(b) When an advance in the price of glucose or corn syrup un-mixed is announced, the brokers or salesmen representing the manufacturer seek to secure orders from all buyers at the price in effect prior to the price increase announced. Even though they fail to secure orders, in some instances these sales representatives may notify their home offices that they have obtained orders. The manufacturer does not require signed purchase orders from buyers and, therefore, cannot determine from the face of the orders submitted by brokers or salesmen which are bona fide orders and which are not. Some manufacturers send confirmation forms to reported purchasers, and respondents have occasionally been informed by such customers that they have received one or several such confirmations without any knowledge of having placed the order so confirmed. The broker or salesman reporting fictitious "bookings" may later endeavor to convert such "bookings" into actual orders, with the result that when he is successful sales are made at the older and lower price long after the announcement of the advance in price. A large buyer is more frequently the beneficiary of such transactions than a small buyer.

(c) Some manufacturers deliberately offer to take business at the lower prices in effect preceding an advance in the price of glucose long after the privilege of buying at the lower price has expired as to other buyers. In some instances respondents have encountered transactions of this nature as long as 3 months after a price advance.

(d) Some buyers are unable, by reason of lack of storage or delivery facilities, to purchase glucose in tank car lots. Upon the announcement of an advance in the price of glucose, manufacturers have sold or offered to sell tank car lots of glucose to purchasers having no facilities which would permit their purchasing in such quantities and have fulfilled such orders by delivery in tank wagon quantities from their filling station stocks at the usual price differential for such deliveries, and for several months after the price advance have continued such deliveries at the older and lower price in effect before the advance.

Price advantages received by favored buyers as a result of practices such as those outlined in this paragraph have varied from 5 to 55 cents per hundredweight of glucose. Respondents have engaged in these discriminatory practices, which they assert were in use by their competitors at the time they entered the industry but which have been more frequent and widespread in the last several years. Respondents further assert that they had no alternative except to meet the competition of others in order to retain their customers and business. However, in granting extensions of the delivery time as set out in sub-

paragraph (a), respondents have relied upon the verbal statements of buyers to their salesmen or brokers in determining whether or not such action was required to meet competition. Respondents have engaged in the practices stated in subparagraph (b) when they suspected, but did not have actual knowledge, that the "bookings" in question were being made without the knowledge or authorization of the buyer for whom the glucose was "booked." Respondents have, upon unsupported verbal representations of purchasers as to the action of other manufacturers, made discriminatory sales of glucose in the manner set forth in subparagraph (c). Respondents have made discriminatory sales of glucose to tank wagon buyers in the manner set out in subparagraph (d) upon reports by their salesmen of verbal statements by buyers concerning similar offers said to have been made by respondents' competitors.

PAR. 5. Glucose or corn sirup unmixed is used to some extent in the manufacture of most kinds of candy and is one of the major raw materials used in the production of many varieties. In candy in which it is used, glucose constitutes from 5 to 90 percent of the finished weight of such candy. The price paid for glucose represents a substantial part of the total raw material cost and the total manufacturing cost of many candies having a wide range of glucose content, and constitutes a major portion of the raw material and total manufacturing costs of candies having a relatively high glucose content.

Some of those who purchase glucose of like grade and quality from respondents, including purchasers located in the cities heretofore enumerated, are candy manufacturers who purchase such glucose for use in the manufacture of candy and who are competitively engaged in the sale of candy so produced to wholesalers, chain stores, retailers, and others located in the several States of the United States and competitively engaged in the resale thereof. The higher prices paid for glucose by candy manufacturers located as aforesaid other than in the city of Chicago, Ill., contribute in a greater or lesser degree to their having higher raw material costs than those candy manufacturers located in Chicago, the degree in each instance depending upon the difference in the price paid for glucose and the proportion of glucose used in the candies manufactured. Generally, glucose is used in greater proportion in candies which are sold by the manufacturers at but a few cents per pound and at narrow margins of profit. In the case of such low-priced candies bearing no differentiating name or brand, manufacturers thereof may attract customers by selling at as little as one-eighth of a cent per pound lower than competitors, and this is especially true in selling such candies to chain stores

and other purchasers buying in large quantities and to whom a small difference in price is determinative in the placing of their business.

Under these circumstances, candy manufacturers who are obliged to pay higher prices for glucose than some of their competitors may sell candies at competitive prices only by absorbing the higher glucose costs or by attempting to recover such higher glucose costs by increasing the price of their candies and selling them upon a non-price basis. The result is to reduce the profit of such candy manufacturers, either directly through the absorption of higher glucose costs or indirectly through selling at higher than competitive prices, which results in a reduced volume of sale of high glucose-content candies because volume purchasers will not buy such candies at higher than competitive prices. The lower profits of candy manufacturers who are obliged to pay higher prices for glucose diminish their incentive or desire to compete with candy manufacturers paying lower prices for glucose and may deter potential candy manufacturers from entering the industry in cities where they would be obliged to pay higher prices for glucose.

PAR. 6. Glucose or corn sirup unmixed is used in the production of sirups for table use. Among those who purchase glucose from respondents, including purchasers located in the cities heretofore enumerated, are customers engaged in the preparation of table sirups containing glucose for sale to wholesalers, chain stores, and other food product distributors. Such mixed table sirups contain approximately 85 percent of glucose or corn sirup and are usually sold packed in cases which contain six 10-pound cans, or 60 pounds net of mixed table sirup, of which approximately 50 pounds is glucose.

The higher prices paid for glucose or corn sirup unmixed by purchasers engaged in the production of table sirups and located as aforesaid other than in Chicago, Ill., contribute in a greater or lesser degree to higher raw material costs and total costs than the corresponding costs of table sirup mixers located in Chicago, Ill., the degree in such instance depending upon the price paid for glucose. Producers of table sirup may attract customers by selling such sirup at prices as little as 5 cents per case lower than the prices of competitors. The savings in the cost of such sirup resulting from lower glucose prices to some producers, when utilized by those producers to reduce the price of table sirup, substantially diminishes the sales of table sirup by producers thereof paying higher prices for glucose; or, in the alternative, the producers paying higher prices for glucose meet the table sirup prices of their competitors who purchase glucose at lower prices. In either case the profits of producers of table sirups paying higher prices for glucose are reduced, and the reduction of

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profit diminishes the incentive of sirup mixers paying higher glucose prices to compete with producers of table sirups paying lower glucose prices and may deter potential sirup mixers from entering the industry in cities where they would be obliged to pay higher prices for glucose.

PAR 7. The record does not show that the aforesaid price differences of respondents, as among their customers purchasing glucose of like grade and quality, are such differences as make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered.

CONCLUSION

The aforesaid discriminations in price by respondents in the sale of glucose or corn sirup unmixed, as herein set forth, have resulted, and do result, in substantial injury to competition among purchasers of glucose by affording material and unjustified price advantages to some 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 (Clayton Act), as amended by an act of Congress approved June 19, 1936, (Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, certain stipulations as to the facts read into the record, exhibits introduced in evidence, and briefs in support of and in opposition to the complaint, and the Commission having made its findings as to the facts and its conclusion that respondents have violated subsection (a) of section 2 of "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by act of June 19, 1936 (Robinson-Patman Act).

It is ordered, That respondents, A. E. Staley Manufacturing Co., a corporation, and The Staley Sales Co., a corporation, and their officers, directors, representatives, agents, and employees, in or in connection with the offering for sale, sale, and distribution of glucose or corn sirup unmixed in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Directly or indirectly discriminating in price between different purchasers of glucose or corn sirup unmixed of like grade and quality

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in the manner and degree set forth in paragraph 3 of the findings as to the facts herein, or in any manner or degree substantially similar thereto, or from continuing or resuming any such discriminations in price.

2. Discriminating in price between different purchasers of glucose in the manner or degree set out in paragraph 4 of the findings as to the facts herein, or in any manner or degree substantially similar thereto, or otherwise discriminating in price between purchasers by means of the booking or entry of orders for glucose or corn sirup unmixed where the price differences between purchasers resulting therefrom substantially approximate or exceed those set out in paragraphs 3 and 4 of the findings as to the facts herein: *Provided*, That this shall not prohibit actual sales of glucose or corn sirup unmixed for future delivery which do not involve such discriminations in price at the time of actual sale.

3. Otherwise discriminating in price as between purchasers of glucose or corn sirup unmixed of like grade and quality where the effect may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which customers of respondents are engaged, or to injure, destroy, or prevent competition with any person who either grants or receives the benefit of such discrimination: *Provided*, That this shall not prevent price differences which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which said glucose or corn sirup is to such purchasers sold or delivered: *and provided further*, That this shall not prevent respondents from showing that any lower price to any purchaser was made in good faith to meet an equally low price of a competitor of respondents.

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

SEGAL LOCK & HARDWARE COMPANY, INC., NORWALK
LOCK COMPANY, AND LOUIS SEGAL, AND JACK KLEIN
TRADING AS TESTED APPLIANCES COMPANY

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

Docket 3896. Complaint, Sept. 16, 1939—Decision, June 12, 1942

Where a corporation and its subsidiary, and an individual who was their president and treasurer and directed and controlled both, engaged in the manufacture and competitive interstate sale and distribution of locks and lock cylinders—

(a) Displayed legend bearing words "Pick-Proof" on a certain lock cylinder designed for use in new locks and for substitution in locks already installed, and on carton containers thereof, and represented thereby and through extensive advertisements in newspapers, periodicals, trade journals, circulars, and other printed matter, and by radio broadcasts, that their said lock cylinder in fact afforded absolute security against picking and was the only lock which did so; and

(b) Unfairly disparaged products of competitors by representing through numerous sales agents—who called upon stores, hotels, apartment houses, and other business establishments, as well as private homes, equipped with a picking gun and a number of lock picks, and conducted demonstrations purporting to show how easily locks concerned could be picked—that the locks of those thus contacted could easily be opened by picking so that they afforded little or no protection against burglary, and that their own lock aforesaid was absolutely pick proof;

The facts being that while their own said lock was, as indicated by the evidence, reasonably secure against customary or conventional methods of picking, such methods fall far short of being the only ones employed in picking, locks; locksmiths seldom use so-called conventional instruments or methods, but make their own devices; evidence and tests showed that their said device could be and had been picked by locksmiths in periods of time ranging from a few minutes to considerably longer; and representations aforesaid, with respect to the purported invulnerability of their lock against picking were erroneous and misleading;

With the result that numerous members of the public were induced to and did have their own locks removed and those aforesaid substituted, and with tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous belief that their own said locks were in fact pick proof and to disparage unfairly competitors' products; as a result whereof, public was induced to purchase said products, and trade was thereby diverted unfairly to them from their competitors:

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

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

Mr. Wilbur N. Baughman and *Mr. Karl E. Steinhauer* for the Commission.

Goodman & Friedman, of New York City, for Segal Lock and Hardware Co., Inc. and Norwalk Lock Co., and along with *Mr. Charles M. Palmer*, of New York City, for Louis Segal.

Mr. Samuel Weiss, of New York City, for Jack Klein.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Segal Lock & Hardware Co., Inc., a corporation; Norwalk Lock Co., a corporation; Louis Segal, an individual; and Jack Klein, an individual, trading as Tested Appliances Co., hereinafter referred to as the respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Segal Lock & Hardware 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 261 Broadway, New York, N. Y. Said corporation is now and has been for some time engaged in the sale and distribution of locks and lock cylinders, including a lock or lock cylinder designated as "Segal Pick-Proof Lock," "Segal Pick-Proof Lock Cylinder," and "Segal Pick-Proof Cylinder," hereinafter referred to as the Segal lock cylinder. Said device is the mechanical locking part or cylinder of a lock and is designed to be used in new locks or interchangeably in locks already installed after the removal of the original cylinder.

Respondent, Norwalk Lock Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business at 261 Broadway, New York, N. Y. Said corporation is a manufacturing subsidiary or division of the Segal Lock & Hardware Co., Inc., and is now and has been for some time engaged in the manufacture of locks and lock cylinders, including the lock cylinder device described in the preceding paragraph.

Respondent, Louis Segal, is an individual, serving as president and treasurer of the Segal Lock & Hardware Co., Inc., and the Norwalk Lock Co., with his principal office and place of business at 261

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Broadway, New York, N. Y. Said respondent formulates, controls, and directs the acts, practices and policies of said respondents, Segal Lock & Hardware Co., Inc., and Norwalk Lock Co.

Respondent, Jack Klein, is an individual, trading, operating, and doing business as Tested Appliances Co., with his principal office and place of business at 261 Broadway, New York, N. Y. Said respondent is now and has been for some time engaged in the sale, distribution, and installation of the Segal lock cylinder previously described.

PAR. 2. In the course and conduct of the aforesaid business, the respondents have been, and now are, cooperating and confederating in promoting, advertising, selling, and installing said Segal lock cylinder and in doing the acts and things hereinafter alleged.

PAR. 3. Respondents sell said Segal lock cylinder to purchasers situated in the various States of the United States and in the District of Columbia, and cause said device, when sold, to be transported from their aforesaid place of business in the State of New York to the purchasers thereof located in the various States of the United States other than the State of New York and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce, as commerce is defined in the Federal Trade Commission Act, in said Segal lock cylinder.

PAR. 4. Respondents are now, and have been during all the times mentioned herein, in substantial competition in commerce with other corporations, firms, partnerships and individuals likewise engaged in the business of manufacturing, selling, distributing, and installing lock cylinders in commerce among the several States of the United States and in the District of Columbia, who do not engage in the unfair methods and unfair and deceptive acts and practices herein alleged.

PAR. 5. 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 and misleading statements, claims, and representations concerning the mechanical perfection and "pick-proof" quality of said Segal lock cylinder and the absence of such qualities in the locks or lock cylinders sold and distributed by their competitors. Said false, misleading, and disparaging statements, claims, and representations have been, and are now being, disseminated by insertions in newspapers, trade journals, and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among the various States of the United States, and by continuities broadcast from radio stations, which have sufficient power to, and do, convey the program emanating therefrom to listeners located

in the various States of the United States other than the State in which such broadcasts originate for the purpose of inducing, and which have induced and are inducing, directly or indirectly, the purchase of their said product.

. Among and typical of said false, misleading, and disparaging statements, representations, and claims, disseminated and caused to be disseminated as aforesaid, are the following:

No lock is safe without a Segal Pick-Proof Cylinder.

The Segal Pick-Proof Cylinder contains a series of ingenious locking devices, a complete internal system of safeguards which positively prevents opening by picking.

Now * * * after many years of the most pains-taking research he (Samuel Segal) has perfected the only lock cylinder that is impossible to pick.

Experts have tried to pick it open. Our competitors have tried. Recently, in New York, the inventor of the lock-picking gun tried to pick open the *New Segal Pick-Proof Cylinder*. Newspaper reporters were there. So were leading representatives of the trade. That expert failed, too. See the clippings attached.

New Segal Pick-Proof Lock Cylinder.

Without it, there is no real security. Without it, any lock can be picked open by skeleton keys or other lock-picking devices with which burglars are so expert. Only the *New Segal Pick-Proof Cylinder* cannot be picked open. *The only way to open the New Pick-Proof Cylinder is with its own keys.*

It cannot be picked, or opened, by any skill, art or machine.

Impossible to Open By Any Method of Lock Picking.

Nothing But the Proper Key Will Open It.

A Sensational Engineering Achievement. — The First Absolute Guarantee of Complete Safety From The Lock-Picking Menace.

The New Segal Cylinder is absolute proof against lockpicking and is the only certain protection against the dangerous picking gun.

The only genuine pick-proof cylinder ever invented.

It will protect your home and possessions by making the lock on your door *absolutely* pick-proof.

Only Your Key will Unlock It.

The Segal Pick-Proof Cylinder.

Every pin-tumbler cylinder should be *replaced* with a Segal Pick-Proof Cylinder! That's the only way your customers can be absolutely sure that no burglar will be able to pick their locks open!

You know that you can open any lock with skeleton keys, lockpicking gun, or other devices. So can the professional burglar. Yet, *no one can pick* open the new Pick-Proof Cylinder. The only way you, or any expert, *can* open it is with its proper keys.

Keep the Burglar Out—Get the only lock cylinder that can't be picked open.

Bernard Zion, co-inventor of the lock-picking gun, challenged the Segal Lock Company to a contest by saying that he thought he could open the new "pick-proof" locks invented by Sam Segal. * * * The contest was staged in the Segal offices; Mr. Zion tried to pick the lock, failed, now admits that it cannot be picked. If he can't do it, it can't be done.

PAR. 6. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase and installation of said Segal

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lock cylinder, the respondents have represented and are representing, through the medium of demonstrations made to prospective purchasers, that locks or lock cylinders sold and installed by their competitors can be easily picked or opened by the use of a "pick gun" or a lock-picking device, and that such locks or lock cylinders so picked or opened are inferior to their own Segal lock cylinder. Said "pick gun" is a gun-shaped device, the pick prongs of which may be inserted into the cylinder of a lock. When said "pick gun" is so inserted and operated by a person trained in its use the locking device or the lock may be released and the lock unfastened. By the use of the aforesaid "pick gun" or other lock-picking device, the respondents, their salesmen, representatives, or agents have been, and are, picking and opening locks or lock cylinders manufactured and installed by their competitors, and by such demonstrations, accompanied by statements and representations as to the superiority and "pick-proof" quality of said Segal lock cylinder, said respondents, their salesmen, representatives, or agents have been and are disparaging the locks or lock cylinders manufactured and installed by their competitors.

PAR. 7. Through the use of the aforesaid false, misleading and disparaging statements, representations and claims, and others of similar import and meaning not herein set forth, the respondents have represented, directly or by implication, that said Segal lock cylinder is absolutely "pick-proof" under any and all circumstances; that experts have tried and failed to pick it; that the inventor of the "lock-picking gun" failed in a public demonstration to pick it; that without the respondents' locking device any lock can be picked or opened by skeleton keys or other lock-picking devices; that only the Segal lock cylinder cannot be picked or opened; that said device is the first device which is an absolute guarantee of complete safety from the lock-picking menace and dangerous pick-gun; that Bernard Zion the co-inventor of the "lock-picking gun" challenged the Segal Lock Co. to a contest, and that in response thereto a contest was staged at which said Bernard Zion tried to pick the respondents' said Segal lock cylinder, and failed; that said Bernard Zion thereupon admitted that respondents' said device could not be picked or opened without a key; that competitors' locks or lock cylinders are inferior to respondents' said Segal lock cylinder and that such inferior lock cylinders may be picked open, whereas respondents' device is pick-proof and cannot be opened with such an instrument or instruments.

PAR. 8. The aforesaid statements, representations, and claims, including the representations and implications made by and in connection with the "pick-gun" demonstrations alleged in paragraph 6

herein, made and disseminated by the respondents in the manner described above are grossly exaggerated, misleading, and untrue.

In truth and in fact, said Segal lock cylinder is not absolutely "pick-proof" under any and all circumstances; and expert locksmiths have not failed to open it. All locks or lock cylinders can be opened or picked by some lock-picking device in the hands of an expert. Said Segal lock cylinder is not safe from the "lock-pick" menace and the picking gun. Bernard Zion, co-inventor of the "pick-gun," did not on the occasion of a public demonstration or contest fail in an honest endeavor to open said lock cylinder, for in truth and in fact, Bernard Zion only pretended that he could not open or pick said Segal lock cylinder and he has opened or picked said Segal lock cylinder. The representations and implications made by the respondents in connection with the demonstrations in the picking and opening of locks or lock cylinders of respondents' competitors to the effect that such locks or lock cylinders are inferior to respondents' Segal lock cylinder and that such inferior locks or lock cylinders may be picked open, whereas respondents' locking device is "pick-proof" and cannot be opened with a lock-picking device, are misleading and untrue and falsely and unfairly defame and disparage competitors and their products.

PAR. 9. The use by the respondents of the aforesaid false, misleading and disparaging statements, representations, and claims, including the representations and implications made by and in connection with the "pick-gun" demonstrations alleged in paragraph 6 hereof, has the tendency and capacity to, and does, mislead and deceive and has misled and deceived a substantial number of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading and disparaging statements, representations, and claims, including the representations and implications made by and in connection with the "pick-gun" demonstrations, are true, and into the purchase of substantial quantities of respondents' said Segal lock cylinder because of such erroneous and mistaken belief. As a direct result thereof, trade in commerce among the various States of the United States and the District of Columbia has been diverted unfairly to the respondents from their competitors in said commerce who do not misrepresent the "pick-proof" quality of their locks or lock cylinders and who do not disparage their competitors' products.

PAR. 10. The aforesaid methods, acts, or 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 or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 16, 1939, issued and subsequently served its complaint in this proceeding upon the respondents, Segal Lock & Hardware Co., Inc., a corporation, Norwalk Lock Co., a corporation, Louis Segal, an individual, and Jack Klein, an individual, trading as Tested Appliances 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 filing of the respondents' answers, 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 attorneys for certain of the respondents, before John W. Addison, a trial examiner of the Commission theretofore duly designated by it which testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answers of the respondents, testimony, and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, brief 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. Respondent, Segal Lock & Hardware Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 261 Broadway, New York City, N. Y.

Respondent, Norwalk Lock Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 261 Broadway, New York City, N. Y. This respondent is a subsidiary of respondent, Segal Lock & Hardware Co., Inc., being wholly owned by the Segal Lock & Hardware Co., Inc.

Respondent, Louis Segal, an individual, is president and treasurer of both of the corporate respondents, having his principal office at 261 Broadway, New York City, N. Y. He formulates, directs, and controls the policies, acts, and practices of the corporate respondents.

The Commission having concluded, for the reasons hereinafter set forth, that the complaint should be dismissed as to respondent, Jack

Klein, the term "respondent," as used hereinafter, will not include this respondent unless the contrary is indicated.

PAR. 2. The respondents are engaged in the manufacture and in the sale and distribution of locks and lock cylinders, including a certain lock cylinder designated by respondents as "Segal Pick-Proof Lock," "Segal Pick-Proof Lock Cylinder," and Segal Pick-Proof Cylinder." This device is the mechanical locking part or cylinder of a lock, and is designed to be used both in new locks and for installation in locks which have already been installed, the cylinder being substituted for the original cylinder in such locks.

The respondents have acted in cooperation and concert with one another in carrying out the acts and practices hereinafter described.

PAR. 3. In the course and conduct of their business the respondents cause and have caused their locks and lock cylinders, 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 for a number of years last past have maintained a course of trade in their locks and lock cylinders in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 4. The respondents are now and at all times mentioned herein have been in active and substantial competition with other corporations and individuals, and with firms and partnerships, engaged in the sale and distribution of locks and lock cylinders in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 5. The lock cylinder in question bears the legend "Segal Pick-Proof," and a similar legend appears also on the carton in which the cylinder is packed and displayed for sale. In the course and conduct of their business, respondents have also advertised the cylinder extensively by means of advertisements inserted in newspapers, periodicals, and trade journals having wide circulation, by means of circulars and other printed matter distributed among prospective purchasers, and by means of radio broadcasts. Among the statements and representations appearing in such advertisements were the following:

No lock is safe without a Segal Pick-Proof Cylinder.

The Segal Pick-Proof Cylinder contains a series of ingenious locking devices, a complete internal system of safeguards which positively prevents opening by picking.

Now * * * after many years of the most painstaking research he (Samuel Segal) has perfected the only lock cylinder that is impossible to pick.

Experts have tried to pick it open. Our competitors have tried. Recently, in New York, the inventor of the lock-picking gun tried to pick open the *New Segal*

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Pick-Proof Cylinder. Newspaper reporters were there. So were leading representatives of the trade. That expert failed, too. See the clippings attached.

Without it, there is no real security. Without it, any lock can be picked open by skeleton keys or other lock-picking devices with which burglars are so expert. Only the *New Segal Pick-Proof Cylinder* cannot be picked open. *The only way to open the New Pick-Proof Cylinder is with its own keys.*

It cannot be picked, or opened, by any skill, art or machine.

Impossible to Open By Any Method of Lock Picking.

Nothing But the Proper Key Will Open It.

A Sensational Engineering Achievement. The First Absolute Guarantee of Complete Safety From The Lock-Picking Menace.

The New Segal Cylinder is absolute proof against lockpicking and is the only certain protection against the dangerous picking gun.

The only genuine pick-proof cylinder ever invented.

It will protect your home and possessions by making the lock on your door *absolutely* pick-proof.

Only *Your Key* will Unlock It.

Every pin-tumbler cylinder should be *replaced* with a Segal Pick-Proof Cylinder! That's the only way your customers can be absolutely sure that no burglar will be able to pick their locks open!

You know that you can open any lock with skeleton keys, lock-picking gun, or other devices. So can the professional burglar. Yet, *no one can pick* open the new Pick-Proof Cylinder. The only way you, or any expert, *can* open it is with its proper keys.

Keep the Burglar Out—Get the only lock cylinder that can't be picked open.

Bernard Zion, co-inventor of the lock-picking gun, challenged the Segal Lock Company to a contest by saying that he thought he could open the new "pick-proof" locks invented by Sam Segal. * * * The contest was staged in the Segal offices; Mr. Zion tried to pick the lock, failed, now admits that it cannot be picked. If he can't do it, it can't be done.

PAR. 6. Through the use of these statements and representations, including the legends appearing on the cylinder and carton, the respondents represent that their lock cylinder is in fact pick proof, that it affords absolute security against picking, and that it is the only lock which does afford such security.

PAR. 7. Picking a lock may be defined as the opening of the lock without the use of the original or duplicate keys and without damage to the lock. The lock or lock cylinder here involved was first placed on the market by respondents in 1938. In the construction of the lock certain mechanical principles and features are employed which respondents contend render it impossible to manipulate the lock tumblers sufficiently to open the lock by picking. Some six locksmiths testifying at the instance of respondents stated that they had been unable to pick the lock although they had made a number of attempts to do so. On the other hand, three locksmiths testifying at the instance of the Commission stated that they had picked the lock on numerous occasions, and two of these witnesses conducted a demon-

stration in the presence of the trial examiner, all other persons being excluded from the room in which the demonstration took place. The reason for the exclusion of all persons other than the trial examiner was that the witnesses giving the demonstration regarded their picking method as a trade secret and objected to divulging it.

For the purpose of the demonstration three of respondents' cylinders were purchased at random from hardware or locksmith supply dealers. The first of the cylinders was successfully picked by one of the witnesses within 30 minutes, while the third cylinder was picked by the same witness within 4 minutes. In the attempt of the other witness to pick the second cylinder the instruments used by the witness became caught in the cylinder and the attempt to pick this cylinder was therefore abandoned. The record indicates that possibly this cylinder was not in perfect condition when it was purchased. While the two witnesses are employed in the same locksmith shop and have at times worked together in picking respondents' lock, each worked alone on this occasion.

These two locksmiths testified that they had previously picked respondents' cylinder some 30 to 40 times, and that the average time required to pick the cylinder on these occasions was between 20 and 30 minutes. They further stated that they had not used the same cylinder in all of their attempts, but had used some 10 different cylinders and moreover had adjusted the 10 cylinders from time to time so as to cause them to have varying combinations. According to the testimony of these witnesses, the shortest period of time during which they had been able to pick the cylinder, prior to the demonstrations before the trial examiner, was 7 minutes, while the longest period of time required was 45 minutes.

PAR. 8. The evidence on behalf of respondents shows that the customary or conventional lock picks available at hardware and locksmith supply stores are restricted to a few types, there being only some 8 or 10 types of such picks, and respondents insist that their lock cannot be picked by the use of such devices. They also insist that their lock cannot be picked through the use of a certain instrument known as a "picking gun," which is a device somewhat resembling a pistol in appearance and having a pointed projection which may be inserted into the keyway of a lock and used to manipulate the lock tumblers. The record indicates that respondents' lock is reasonably secure against such customary or conventional methods of picking, and respondents contend that this fact warrants their claims that their lock is pick proof.

It is further evident from the record, however, that these customary or conventional lock picks and methods of picking fall far short of

being the only devices and methods which may be and frequently are employed in the picking of locks. In fact, locksmiths seldom use the so-called conventional instruments or methods at all, but make their own devices and instruments, depending upon the particular lock which they are called upon to open. The fact that at least three locksmiths have been able to pick respondents' lock on numerous occasions, and the further fact that one of these locksmiths picked the lock twice in the demonstration before the trial examiner, show that the lock is not in fact pick proof. The Commission therefore finds that respondents' representations with respect to the purported invulnerability of their lock against picking are erroneous and misleading.

PAR. 9. In an effort to promote the sale of their lock direct to the purchasing public, the respondents early in 1939 organized a separate division or department of their business under the name of Tested Appliances Co., and placed respondent, Jack Klein, in charge of the operations of such division. While the complaint herein alleged, in substance, that Klein was the owner of the business known as Tested Appliances Co., the evidence discloses that Klein was in fact only an employee of the other respondents herein, and that while he was vested with a limited amount of authority in the operation of this phase of respondents' business, his actions were at all times subject to the general supervision and control of the other respondents. He was discharged by respondents in May 1939, and since that time has had no connection with the sale of respondents' products.

In conducting this phase of their business the practice of the respondents was to send out numerous sales agents, at times some two thousand in number who called upon stores, hotels, apartment houses, and other business establishments, as well as private homes, and represented to such prospective purchasers that the locks of such persons were insecure, could easily be opened by picking, and that such locks therefore afforded little or no protection against burglary. Each of these salesmen was provided by respondents with a picking gun and with a number of lock picks, and in connection with and as a part of their sales efforts the salesmen conducted certain demonstrations purporting to show how easily the locks of the prospective purchasers could be picked. Along with such purported demonstrations numerous representations were made to such prospective purchasers to the effect that respondents' lock was absolutely pick proof. As a result of such practices on the part of respondents through their agents, numerous members of the public were induced to and did have their locks removed and respondents' lock substituted therefor. The Commission finds that these practices on the part of respondents

constituted an unfair disparagement of the products of respondents' competitors.

PAR. 10. The Commission further finds that the acts and practices of the respondents as herein described have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' locks are in fact pick proof, and the tendency and capacity to disparage unfairly the products of respondents' competitors. In consequence thereof such portion of the public has been induced to purchase and has purchased respondents' products, with the result that substantial trade has been diverted unfairly to the respondent from their competitors.

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 answers of respondents, testimony, and other evidence taken before John W. Addison, 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 the exceptions to such report, 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 certain of the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Segal Lock & Hardware Co., Inc., a corporation, Norwalk Lock Co., a corporation, their officers, and Louis Segal, individually, and as an officer of said corporations, 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' locks and lock cylinders in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "pick proof," or any other word or words of similar import, to designate or describe respondents' locks or lock

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cylinders, or otherwise representing, directly or by implication, that respondents' locks or lock cylinders cannot be picked.

2. Conducting demonstrations purporting to show that locks or lock cylinders sold by respondents' competitors can be picked, unless in connection with such demonstrations disclosure is made that respondents' locks and lock cylinders can also be picked.

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

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondent, Jack Klein.

IN THE MATTER OF
**NATIONAL PRESS PHOTO BUREAU, INC., KAY HART
 STUDIOS, INC., BOLIVAR STUDIOS, INC., AND SAMUEL
 F. REESE AND CLARA L. REESE**

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

Docket 3898. Complaint, Sept. 20, 1939—Decision, June 16, 1942

Where three corporations and two individuals, general officers of two of said concerns and in control of their activities and policies, the third having become inactive; engaged in interstate sale of photographs to members of the purchasing public—

In soliciting business under a plan by which their agents, supplied with a letter from a local newspaper—in consideration of furnishing the paper a glossy print of photographs taken in its community—introducing the agent as a photographer of the "National Press Photo Bureau" (one of corporate names employed), engaged in taking pictures of leading citizens for the paper's files—

- (a) Represented that the photograph was desired for their files or "photographic morgue" and for use by newspapers or other publications, and, following approval of proof by the subject, endeavored, with frequent success, to solicit purchase of one or more copies of the photograph selected; and
- (b) Represented, through use of words "National Press" as part of one of their corporate names and through their aforesaid practices, that they conducted a news or press photographic agency engaged in taking photographs intended for release to newspapers and other publications; when in fact they did not conduct such an agency, had no connection with any newspaper except as above set forth in regard to letters of introduction, but, as aforesaid, were engaged in selling photographs, and their said method was merely a scheme or device to secure sittings and sell photographs to prospective customers;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby causing it to purchase substantial quantities of photographs because of such mistaken belief:

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

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

Mr. John M. Russell for the Commission.

Mr. Nat C. Helman, 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

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Trade Commission, having reason to believe that National Press Photo Bureau, Inc., a corporation, Kay Hart Studios, Inc., a corporation, Bolivar Studios, Inc., a corporation, Samuel F. Reese and Clara L. Reese, individually, and as officers of National Press Photo Bureau, Inc., a corporation, and Kay Hart Studios, 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. Respondents, National Press Photo Bureau, Inc., Kay Hart Studios, Inc., Bolivar Studios, Inc., are corporations, organized, existing, and doing business under and by virtue of the laws of the State of New York, having their offices and principal places of business at 509 Fifth Avenue, in the city of New York, in said State.

Samuel F. Reese, is president, and Clara L. Reese, is secretary-treasurer, of National Press Photo Bureau, Inc., and Kay Hart Studios, Inc., respectively, and are individuals, having their offices and principal places of business at 509 Fifth Avenue, in the city of New York, in said State, and they direct and control the sales activities and policies of all of said corporate respondents with respect to the acts and practices herein set forth. All of said respondents act in concert in doing the acts and things hereinafter alleged.

PAR. 2. The respondents are now and have been for more than 2 years last past engaged in the business of photographing persons, and in the sale and distribution of said photographs. Respondents sell said photographs to members of the purchasing public situated in various States of the United States and in the District of Columbia and cause the said photographs, when sold by them, to be transported from their aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said photographs among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, and for the purpose of securing permission to take said photographs and of inducing the purchase thereof, respondents have caused false and misleading statements and representations with respect to the identity, nature, and character of their business to be disseminated among prospective purchasers of said photographs situated in various States of the United States and in the District of Columbia. Respondents or their agents call on prominent men situated in various States of

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the United States and in the District of Columbia, and display business cards bearing the statement, "National Press Photo Bureau, Inc., Purveyors of Photographs to Leading Trade, Financial and Professional Publications," letters of introduction, and letters transmitting proofs and invoices with similar representations therein, to prospects, stating they desire a photograph of such person for the press, that is, for newspapers, magazines, and other periodicals published throughout the United States, and for publication therein; that National Press Photo Bureau, Inc., is directly or indirectly connected with the leading newspapers of the United States; that National Press Photo Bureau, Inc. represents the local newspapers and has a following throughout the country; that prospects' pictures are wanted by the local and other newspapers; that respondents are taking pictures of prominent men for use in trade publications, newspapers, and other publications; that they are obtaining said photographs for the files of National Press, which furnishes said photographs to the press and that National Press is likely to get calls for their pictures; and otherwise, directly or by implication, represent that they are representatives of or connected with one of the recognized news or photographic news services, desiring to procure photographs of such person for the purpose of publishing the same.

By means of the use of such statements and representations disseminated as aforesaid, the respondents or their agents procure permission from such persons to take their photographs. Respondents or their agents cause photographs of such persons to be taken and thereafter request such persons to select and approve one of the negatives, which respondents or their agents represent is to be released to the press. After such selection is made by the prospective purchasers, respondents, or their agents attempt to sell, and sell to such persons quantities of the finished photographs.

PAR. 4. The aforesaid statements and representations used and disseminated by the respondents in the manner above described are deceptive, false, misleading, and untrue. In truth and in fact none of the respondent corporations is a news or press photographic agency. None of the respondents nor their agents or representatives have any connection, direct or indirect, with any newspaper or other publication. The respondents do not take the photographs of the aforesaid members of the purchasing public for the purpose of distributing such photographs to newspapers or any other publication or for the press library of any of the corporate respondents, the respondents take such photographs for the purpose of selling the same to such members of the purchasing public. The said corporate respondents receive very few,

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if any, calls for any of their said photographs from newspapers or other publications, and none of them has or maintains a press library.

Through the use by the respondents of the name National Press Photo Bureau, Inc., respondents represent and imply, that the respondent, National Press Photo Bureau, Inc., was organized by, is a part of, or has some direct and substantial connection with the press of the United States to a Nation-wide extent, when in truth and in fact, said respondent, National Press Photo Bureau, Inc., was not organized by, is not a part of, and has no direct or indirect connection with the press of the United States to a Nation-wide extent, or any other extent, or on any other basis, except that occasional sales are made of photographs to individual publications.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to the identity, nature, and character of the business of the corporate respondents 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 causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondents' photographs.

PAR. 6. 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 September 20, A. D., 1939, issued and thereafter served its complaint in this proceeding upon respondents, National Press Photo Bureau, Inc., a corporation; Kay Hart Studios, Inc., a corporation; Bolivar Studios, Inc., a corporation; and Samuel F. Reese and Clara L. Reese, individually, and as officers, of National Press Photo Bureau, Inc., a corporation, and Kay Hart Studios, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After the issuance of the complaint and the filing of respondents' answer, testimony, and other evidence in support of the allegations of the complaint and in opposition thereto were introduced by attorneys for the Commission and for the respondents before duly appointed trial examiners of the Commission designated by it to serve in this pro-

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ceeding, 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, 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 argument by counsel for the Commission and counsel for respondents. And the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom :

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, National Press Photo Bureau, Inc., and Kay Hart Studios, Inc., are corporations, organized under the laws of the State of New York, with their offices and principal place of business at 509 Fifth Avenue, in the city and State of New York.

Respondent, Bolivar Studios, Inc., was a corporation organized under the laws of the State of New York, and until some time in the early part of the year 1939, when it ceased to function, its principal place of business was the same as that of the other respondents.

Respondents, Samuel F. Reese and Clara L. Reese, are respectively the president and the secretary and treasurer of respondents, National Press Photo Bureau, Inc., and Kay Hart Studios, Inc ; they direct and control the activities and policies of these corporations and act in concert with them in doing the acts and things hereinafter mentioned.

PAR. 2. The corporate respondents, National Press Photo Bureau, Inc., and Kay Hart Studios, Inc., are now, and for more than 2 years prior to the issuance of the complaint herein have been, engaged in the business of photographing prominent men and in selling and distributing such photographs.

Respondent, Bolivar Studios, Inc., was similarly engaged until the early part of the year 1939.

Respondents, during the periods mentioned, sold said photographs to members of the purchasing public and caused the same, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various States of the United States. During all of the periods herein mentioned respondents maintained a course of trade in said photographs in commerce between and among the various States of the United States.

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PAR. 3. Respondents' agents, for the purpose of obtaining permission to take photographs and of inducing the purchase thereof, call upon prominent men throughout the United States and present a business card bearing the statement "National Press Photo Bureau, Inc., Purveyors of Photographs to Leading Trade, Financial and Professional Publications," and at the same time exhibit a letter of introduction obtained from a local newspaper in consideration of furnishing the paper a glossy print of photographs taken in its community. The following are typical of such letters:

ITEM * TRIBUNE

NEW ORLEANS

OCTOBER 28, 1936

TO WHOM IT MAY CONCERN:

This will introduce Mr. Joseph, photographer for the Kay Hart Studios division of the National Press Photo Bureau, who has been taking pictures of our leading citizens for our press files.

It is understood that your sitting for this picture does not obligate either you or the Item-Tribune in any way.

The Item-Tribune will very much appreciate having your photograph made by Mr. Joseph for our files.

Yours cordially,

C. H. CAMPBELL,
City Editor.

TO WHOM IT MAY CONCERN:

This will introduce Mr. Delacrioux, photographer of the National Press Photo Bureau, who is making pictures of a number of Wichita Falls citizens.

It is understood that your sitting for this picture does not obligate you or the Times Publishing Company in any way.

It is our intention to use the prints we will be furnished by the Bureau for our files, for use as the occasion may arise.

We will appreciate your sitting for Mr. Delacrioux.

TIMES PUBLISHING COMPANY.

The agent represents that the photograph is desired for the files or photographic "morgue" of one of the respondents and for use by newspapers or other publications. The person so contacted frequently sit for their photographs, the negatives of which, after they are taken by respondents' agents, are forwarded to respondents in New York, where they are developed and proofs are printed and transmitted to the agent, who delivers them to the respective subjects, with the request in each case that one be approved for use by the press. After the selection has been made by the subject, the agent solicits him to purchase one or more copies of the photograph selected, and in many cases such solicitation is successful.

PAR. 4. Respondents, by their acts and practices as set forth in Paragraph 3 hereof, and by use of the words "National Press" as

part of one of their corporate names, represent that they conduct a news or press photographic agency, engaged in the taking of photographs intended for release to newspapers or other publications, which representations are false and misleading. Respondents, in truth and, in fact, are not engaged in conducting a news or press photographic agency, nor have they any connection with any newspaper except, as hereinbefore stated, in regard to letters of introduction but, on the contrary, respondents are engaged in the business of selling photographs, and their method of doing business is merely a scheme or device for the purpose of securing sittings and selling photographs to prospective customers.

PAR. 5. The use by respondents of the foregoing false, deceptive, and misleading statements and representations has the capacity and tendency to mislead and deceive, and has mislead and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and has caused a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase substantial quantities of respondents' photographs.

CONCLUSION

The aforesaid acts and practices of the respondents are to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, the testimony, and other evidence in support of and in opposition to the allegations of the complaint 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 exceptions thereto, briefs in support of and in opposition to the allegations of the complaint, and oral argument 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:

It is ordered, That respondents, National Press Photo Bureau, Inc., a corporation; Kay Hart Studios, Inc., a corporation, and Bolivar Studios, Inc., a corporation—their officers, directors, representatives,

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agents, and employees; and respondents, Samuel F. Reese and Clara L. Reese, individually, and as officers of corporate respondents, National Press Photo Bureau, Inc., and Kay Hart Studios, Inc., jointly or severally, directly or through any corporate or other device, in connection with the solicitation of permission to make photographs, or the offering for sale, sale, and distribution of photographs, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "National Press," or any other word or words of similar import or meaning, in the corporate name of respondent, National Press Photo Bureau, Inc., or as a part of any other trade or corporate name, to designate or describe a business which is principally for the purpose of making and selling photographs to the individuals photographed.

2. Representing or implying in any manner to a prospective customer, that respondents, or either of them, are news or press photographers, or that they conduct a news or press photographic agency; or that any photograph taken by them is for press or publicity purposes, unless such photograph is actually for immediate press or publicity use.

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

SIMON ARON, MORRIS ARON AND LOUIS BROUDO,
TRADING AS NOVELTY 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 4039. Complaint, Feb. 24, 1940—Decision, June 16, 1942

Where three partners; engaged in competitive interstate sale and distribution of clocks, knives, flashlights, trays, jewelry, and other merchandise to dealers—

Sold and distributed assortments thereof which were so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumer, a typical assortment consisting of a number of articles of merchandise, together with a punchboard—in manufacture and sale of which two of the partners were also engaged—
• under a plan by which persons securing certain numbers for the 5 cents usually paid for a punch secured the articles, others receiving nothing; and thereby

Supplied to and placed in the hands of purchasers, who exposed their assortments to the purchasing public and distributed merchandise in accordance with plan described, a means of conducting games of chance, gift enterprises, or lotteries in the sale of said products in accordance with such plan;

With the result that many persons purchased said merchandise in preference to that offered by competitors who did not use similar sales methods, whereby competition was hindered and trade unfairly diverted from such competitors to them:

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

Before *Mr. John W. Addison*, *Mr. Arthur F. Thomas*, and *Mr. Andrew B. Duvall*, trial examiners.

Mr. D. C. Daniel and *Mr. J. W. Brookfield, Jr.* for the Commission.

Mr. Arthur S. Salus and *Mr. David S. Molod*, of Philadelphia, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Simon Aron, Morris Aron, and Louis Broudo, individually and as copartners, trading under the name of Novelty Sales Co., have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in

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

PARAGRAPH 1. Respondents, Simon Aron, Morris Aron, and Louis Broudo, are individuals, trading as copartners, under the name of Novelty Sales Co., with their principal office and place of business located at 806 Walnut Street, Philadelphia, Pa. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of clocks, knives, flashlights, trays, jewelry, and various other articles of merchandise to dealers located in the various States of the United States and in the District of Columbia. They cause, and have caused, their said merchandise, when sold, to be shipped or transported from their aforesaid place of business in the State of Pennsylvania to purchasers thereof in the various other States of the United States and in the District of Columbia at their respective points of location. There is now, and for more than 1 year last past has been, a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of their business, respondents are, and have been, in competition with other partnerships and individuals, and with corporations, engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell, and have sold, to dealers certain assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the consumers thereof.

Respondents' said merchandise is sold and distributed to the consuming public by means of devices commonly known as punchboards, in substantially the following manner: Assortments of said merchandise consist of a number of articles of merchandise, together with one of said punchboards. Said punchboards have printed on the tops thereof various instructions or legends showing the method or sales plan by which said merchandise is to be sold or distributed to the purchasing or consuming public. Sales are generally .5 or 10 cents each, and said punchboard has a number of sealed tubes in which have been inserted slips of paper with numbers appearing thereon. Each purchaser is entitled to punch one of said slips from said board. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the

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slip of paper punched or removed from said board. Persons punching certain specified numbers are entitled to and receive specified articles of merchandise. Persons obtaining numbers not so specified receive nothing for their money. Said articles of merchandise are thus sold and distributed to the consuming or purchasing public wholly by lot or chance.

Others of said punchboards have no instructions or legends printed thereon but have blank spaces provided therefor. On those punchboards the purchasers thereof place instructions or legends which have the same import or meaning as the instructions or legends placed by respondents on said punchboard devices first hereinabove described.

Respondents sell and distribute various assortments of their said merchandise and furnish various devices for use in the sale and distribution of said merchandise, but the sales plan or method employed with each of said devices is substantially the same as the sales plan or method hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase or procure respondents' said merchandise and said punchboards and other devices, either directly or indirectly, from respondents, expose said devices and the said merchandise accompanying same to the purchasing public, and sell or distribute such articles of merchandise in accordance with the above described sales plans or methods. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries, gift enterprises, or games of chance in the sale of said merchandise in accordance with the sales plans or methods hereinabove set forth. Such sales plans or methods have the tendency and capacity to induce the consuming or purchasing public to purchase respondents' merchandise in preference to similar merchandise offered for sale and sold by their competitors.

PAR. 4. The sale of said merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure articles of merchandise at prices less than the normal retail prices thereof. The use by respondents of said methods in the sale of their merchandise, and the sale of such merchandise by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws. The use by respondents of said sales plans or methods has the tendency to unfairly hinder competition. Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondents, as above described, are unwilling to adopt and use said methods or any 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 respondents are attracted by respondents' said sales plans or methods and by the element of chance involved in the sale of said merchandise in the manner above described and are thereby induced to purchase said merchandise from respondents in preference to similar merchandise offered for sale and sold by said competitors of respondents who do not use the same or similar methods. The use of said methods by respondents has the capacity and tendency, because of said game of chance, lottery scheme, or gift enterprise, unfairly to divert trade to respondents from their competitors who do not use the same or equivalent or similar methods, and has the capacity to deprive the purchasing public of free competition in said merchandise.

PAR. 6. The aforesaid acts and practices of the respondents, as herein alleged, are all to the 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 February A. D. 1940, issued and thereafter served its complaint in this proceeding upon the respondents, Simon Aron, Morris Aron, and Louis Broudo, individually, and as copartners, trading under the name, "Novelty Sales Company," 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 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, said proceeding came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner, briefs in support of the complaint and in opposition thereto, and oral argument and the

Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Simon Aron, Morris Aron, and Louis Broudo, from 1927, A. D., to December 31, 1939, were co-partners trading under the name Novelty Sales Co. On the latter date the partnership was discontinued and respondent Simon Aron became sole owner and operator of the business until June 29, 1940, when he died. Since that time his widow, Jennie Aron has conducted the business. Respondents' principal place of business was located at 806 Walnut Street, Philadelphia, Pa., and Jennie Aron now conducts the business at this place.

PAR. 2. Respondents, during the existence of the partnership, and respondent, Simon Aron, from the time of the dissolution of the partnership until the time of his death, were engaged in the sale and distribution of clocks, knives, flashlights, trays, jewelry, and other articles of merchandise to dealers located in various States of the United States. Respondents caused their merchandise, when sold, to be shipped from their place of business in Pennsylvania to purchasers thereof located in various States of the United States.

Respondents, during the periods herein stated, were in competition with other individuals and partnerships, and with corporations, engaged in the sale and distribution of like or similar merchandise in commerce between and among various States of the United States.

Respondents, Morris Aron and Louis Broudo, are also engaged in the business of manufacturing punchboards which were sold to the respondents.

PAR. 3. Respondents sold and distributed assortments of their 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 consumers thereof. Such assortments consisted of a number of articles of merchandise together with a punchboard. Such punchboards had printed on the top thereof various instructions explaining the method or sales plan by which the merchandise was to be sold or distributed to the consuming public. The punchboards had a number of tubes containing slips of paper bearing numbers. These numbers were effectively concealed within the tube until it had been punched and the paper withdrawn. Five cents was the usual price charged for the privilege of punching one of these tubes.

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Persons who punched tubes bearing certain numbers received the article of merchandise stated in the legend; nothing was received by the persons punching other numbers. The merchandise was thus sold and distributed to the consuming public wholly by lot or chance.

Respondents sold and distributed various assortments of merchandise and furnished various devices for use in the sale and distribution thereof, but the sales plan or method was the same as that herein described, varying only in detail.

PAR. 4. The purchasers of respondents' assortments exposed the same and said device to the purchasing public, and sold and distributed the merchandise in accordance with the herein described plan or sales method. Respondents thus supplied to and placed in the hands of others the means of conducting games of chance, gift enterprises, or lotteries in the sale of their said merchandise, in accordance with their said sales plan.

PAR. 5. Respondents' sales plan involved a game of chance or the sale of a chance to procure articles of merchandise at a price less than the normal retail price thereof, and because of this, many persons purchased respondents' merchandise in preference to similar merchandise offered for sale by competitors of respondents who were unwilling to use and did not use the same or similar methods in disposing of their merchandise. As a result, competition has been hindered and trade unfairly diverted to respondents from their competitors.

CONCLUSION

The aforesaid acts and practices of the respondents were all to the prejudice and injury of the public and of respondents' competitors, are contrary to the public policy of the Government of the United States of America, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence in support of the allegations of the complaint taken before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, report of the trial examiner, briefs in support of the complaint and in opposition thereto, and oral argument: And the Commission having

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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, Morris Aron and Louis Broudo, individually, and as copartners, trading under the name of Novelty Sales Co., or trading under any other name, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of clocks, knives, flashlights, trays, jewelry, 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 same 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, or other lottery device, either with assortments of merchandise or separately, which said punchboards, push or pull cards, or other lottery device, 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 complaint, insofar as it relates to respondent, Simon Aron, be and the same hereby is dismissed.

It is further ordered, That respondents, Morris Aron and Louis Broudo 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

BLANK & STOLLER CORPORATION, HARRY H. LONG,
GEORGE STOLLER, MAURICE SCHULTZ, AND RAN-
DOLPH FAJEN

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

Docket 4523. Complaint, June 24, 1941—Decision, June 16, 1942

Where a corporation previously engaged in making and selling photographs, in the course of which it acquired a large number of negatives, together with the three officers in control of its business activities and a fourth individual, engaged in making and selling photographic miniatures from said negatives; by means of circular letters to prospective purchasers, whose names and addresses they obtained from the corporate files along with corresponding negatives—

Represented that the miniatures they offered from negatives of photographs of the prospect had been displayed at public exhibition, were regularly or frequently sold for as much as \$75 or \$50, and that the quoted price of \$12.50 was greatly reduced and a special offer; and that such miniatures were prepared by a new and unusual method;

The facts being that while their place of business had a show case containing a number of miniatures—many of which had been rejected—which could be seen by persons entering, none of the miniatures had in fact been displayed in any public exhibition within the real meaning of the term; none of them had ever sold for any such amounts; quoted price was neither special nor reduced but the regular and customary one which they sought and which they even made no serious effort to maintain, selling at the best price obtainable and sometimes for as low as \$5; and methods used were not new or unusual, but commonly known and employed in the trade generally;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to said products, causing thereby its purchase thereof:

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

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

Mr. Donovan Divet for the Commission.

Mr. Joseph K. Guerin, Receiver, and *Mr. Emil Weitzner*, of New York City, for Blank and Stoller Corp.

Mr. Isidor Glasgal, of New York City, for George Stoller and Maurice Schultz.

Baer & Marks, of New York City, for Randolph Fajen.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Blank & Stoller Corporation, a corporation, and Harry J. Long, George Stoller, Maurice Schultz, and Randolph Fajen, individually, and doing business as Blank & Stoller Studios, hereinafter designated 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. The respondent, Blank & Stoller Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business at 227 East Forty-fifth Street, New York, N. Y. The respondents Harry J. Long, George Stoller, and Maurice Schultz are, and at all times hereinafter mentioned, have been, officers of said Blank & Stoller Corporation in charge and control of its business and activities. The said respondents, Harry J. Long, George Stoller, and Maurice Schultz, and the respondent, Randolph Fajen, are individuals, and have at all times hereinafter mentioned done business at Blank & Stoller Studios with their office and principal place of business at 227 East Forty-fifth Street, New York, N. Y., said office and principal place of business being the same as that of respondent, Blank & Stoller Corporation.

PAR. 2. The respondents are now and for more than 1 year last past have been engaged in the production, sale, and distribution of photographic miniatures, sometimes known as gold-tone miniatures. The respondents sell, and at all times mentioned herein have sold, said product to members of the purchasing public situated in the various States of the United States and in the District of Columbia, causing said product when sold to be transported from their said place of business in the State of New York, or other point of origin of shipment, to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondents for more than 1 year last past have entered into and carried out various understandings, agreements, combina-

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tions, and conspiracies for the purpose of selling said photographic miniatures to the purchasing public, and of obtaining photographs and negatives from which to produce said miniatures, by the use of false, misleading, and deceptive representations concerning said product, and concerning the purpose for which certain photographs and negatives were obtained as hereinafter alleged.

PAR. 4. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof the respondents for more than 1 year last past, acting in concert and cooperation with each other, for the purpose of promoting the sale of said product, and for the purpose of obtaining certain photographs from which to produce some of said miniatures, have engaged in the practice of making false representations as to the merits of their said miniatures, and as to the purposes for which certain photographs and negatives were desired as hereinafter alleged. Said false representations are and have been made by means of letters and other printed and written matter distributed among customers and prospective customers, and by oral statements made to customers and prospective customers.

PAR. 5. Among the false and misleading representations so made and distributed concerning respondents' said product, and in furtherance of said understandings, agreements, combinations, and conspiracies are the following:

Recently we made a goldtone miniature from one of your negatives for display at an exhibition of miniatures, as we considered it admirably adapted for the purpose.

The Exhibition has been concluded and we are taking this occasion to offer you the opportunity of acquiring for yourself this fine reproduction at the greatly reduced price of \$12.50. Our regular price is \$75.00.

Recently we took occasion to offer you a very fine miniature of yourself which we have on hand. Our special offer to you of \$12.50 for the miniature was a fraction of our regular price for this type of work.

The miniatures are selling for as high as \$50.00, according to the type of workmanship. However, due to our new method of preparation, we are able to furnish a goldtone miniature for you, that will be as fine in every respect as the miniatures selling for higher prices.

By the use of said representations and others of similar import and meaning not herein specifically set forth, the respondents have represented and do represent that said miniatures so offered for sale have been displayed at a legitimate exhibition of the kind ordinarily conducted by photographers to which the public was invited and which were largely attended; that the sum of \$12.50 is a greatly reduced price for said miniatures, and constitutes a special offer; that the regular price at which respondents sell said miniatures is in some instances

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\$75, and in other instances \$50; and that said miniatures are prepared by a new and novel method heretofore unknown to persons engaged in the production of similar miniatures.

PAR. 6. The aforesaid representations are false and misleading. In truth and in fact said miniatures are not and have not been displayed at a legitimate exhibition of the kind ordinarily conducted by photographers to which the public was invited and which were largely attended, or at any other exhibition; the sum of \$12.50 is not a reduced price for said miniatures, but is the price at which they are usually offered for sale by said respondents, and does not constitute a special offer; the regular price at which said miniatures are sold is not \$50 or \$75 or any sum approaching either of these amounts; said miniatures are not prepared by a new or novel method heretofore unknown to persons engaged in the business of producing miniatures.

PAR. 7. Many of the miniatures sold by respondents, as heretofore alleged, have been made from photographs or negatives supplied by the respondent, Blank & Stoller Corporation. In order to obtain additional and other photographs and negatives from which to produce miniatures, respondents in the course and conduct of their said business and in furtherance of said understandings, agreements, combinations, and conspiracies have falsely represented to numerous members of the purchasing public located in the various States of the United States and in the District of Columbia that they were connected with one or more newspapers or press associations, and were desirous of taking photographs of said members of the purchasing public for use by said newspapers or press associations at some future date. In truth and in fact none of said respondents is, or at any time herein mentioned has been, in any way connected with any newspaper or press association, and said photographs and negatives were in fact wanted only for the purposes of preparing miniatures to be offered for sale to the various persons to whom said representations were made.

PAR. 8. The use by the respondents of the aforesaid acts, practices, and methods 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 into the purchase of substantial quantities of respondents' said product.

PAR. 9. The aforesaid methods and practices of the respondents, including said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, 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 June 24, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, Blank & Stoller Corporation, a corporation, and Harry H. Long (referred to in the complaint as Harry J. Long), George Stoller, Maurice Schultz, and Randolph Fajen, individually, and doing business as Blank & Stoller Studios, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of answers by the respondents (except respondent, Stoller, who filed no answer), testimony and other evidence in support of the allegations of the complaint were introduced by attorney for the Commission, and in opposition thereto by the attorneys for certain of the respondents, before John W. Addison, 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 of the respondents, testimony, and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, 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, Blank & Stoller Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, its office and principal place of business having formerly been located at 227 East Forty-fifth Street, New York, N. Y. While the corporation has not been dissolved, it has been adjudicated a bankrupt and is no longer engaged in business operations.

Respondents, Harry H. Long, George Stoller, and Maurice Schultz, are officers of the corporate respondent, and at all times referred to herein, were in full charge of its business activities. They formulated the policies and directed and controlled all of the acts and practices of the corporation. The present address of respondent, Long, is 33 West Forty-second Street, New York, N. Y., that of respondent, Schultz, is 91 East Fifty-ninth Street, New York, N. Y., and the last

known address of respondent, Stoller, is 227 East Forty-fifth Street, New York, N. Y.

The present address of respondent, Fajen, is 45 West Fifty-seventh Street, New York, N. Y.

PAR. 2. During the period of its active business operations respondent, Blank & Stoller Corporation, was engaged in the business of making and selling photographs, and in the course of its operations it acquired a large number of photograph negatives. In March 1940, an agreement was entered into among all of the respondents herein under which the respondents engaged in the joint business of making and selling photographic miniatures, sometimes referred to as gold-tone miniatures. The miniatures were made from the negatives in the files of the Blank & Stoller Corporation. This business, which was operated under the name of Blank & Stoller Studios, was continued by all of the respondents until about April 1, 1941. At that time a controversy arose between respondent, Fajen, and the other respondents, and Fajen severed his connection with the business. The other respondents continued to operate the business for some 2 months thereafter, when it was discontinued entirely. The corporation was adjudicated a bankrupt on August 14, 1941.

PAR. 3. In the course and conduct of their business the respondents sold their miniatures to numerous members of the purchasing public situated throughout the United States, and caused the miniatures, when sold, to be transported from respondents' place of business in the State of New York to the purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondents maintained a course of trade in their products in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 4. In promoting the sale of their miniatures the respondents addressed numerous circular letters to prospective purchasers, the names and addresses of such persons being obtained from the files of the corporation, along with the corresponding negatives. One form of letter in common use by the respondents read in part as follows:

You will probably recollect that a few years ago we finished some very fine photographs of you.

Recently we made a goldtone miniature from one of your negatives for display at an exhibition of miniatures, as we considered it admirably adapted for the purpose.

The exhibition has been concluded and we are taking this occasion to offer you the opportunity of acquiring for yourself this fine reproduction at the greatly reduced price of \$12.50. Our regular price is \$75.00.

If no response was received to this letter, a second letter was usually addressed to the prospect which read in part as follows:

Recently we took occasion to offer you a very fine miniature of yourself which we have on hand from our recent exhibition of miniatures. Our special offer to you of \$12.50 for the miniature was a fraction of our regular price for this type of work.

Inasmuch as we have no further exhibitions planned at this time, we believe the miniature would be of far greater value to you, than to us. Accordingly, we are bringing the matter to your attention once more.

Another letter used by respondents read in part as follows:

Have you any of our photographs that we made of you? If not, perhaps you will recall that we made some large portraits for you some time ago?

Many of our customers have found that besides a large portrait, they would like to have a miniature. Something compact to have on a desk or dressing table, perhaps a gift to their children or relatives. They wanted something that would look expensive yet would not cost too much. We experimented with a few miniatures and our best to date is our goldtone miniature.

Your negative is very adaptable and would make a beautiful goldtone miniature. These miniatures are selling for as high as \$50,000, according to the type of workmanship. However, due to our new method of preparation, we are able to finish a goldtone miniature for you for \$12.50, that will be as fine in every respect as the miniatures selling for higher prices.

PAR. 5. Through the use of these representations and others of a similar nature, the respondents represented to prospective purchasers that the miniatures offered for sale had been displayed at public exhibitions; that the miniatures regularly or frequently sold for prices as high as \$75 and \$50, and that the quoted price of \$12.50 was a greatly reduced price and constituted a special offer; and that the miniatures were prepared by a new and unusual method theretofore unknown to persons engaged in the production of miniatures.

PAR. 6. The evidence shows and the Commission finds that none of the miniatures offered for sale by respondents had in fact been displayed at any public exhibition. There was in respondents' place of business a showcase containing a number of miniatures, many of which had been rejected by purchasers, and these miniatures could be seen by persons entering respondents' place of business, but there had never been any exhibition of any of the miniatures within the real meaning of the term. None of respondents' miniatures had ever sold for \$75 or \$50, or for any amount approaching such figures. The quoted price of \$12.50 was in no sense a special or reduced price and did not constitute a special offer, but was the regular and customary price sought by respondents for the miniatures. In fact, respondents made no serious effort to maintain even the price of

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\$12.50 but sold the miniatures at the best price obtainable, sometimes as low as \$5. The method used in the preparation of the miniatures was in no sense new or unusual but was a method commonly known and used in the trade generally.

The Commission therefore finds that the representations made by the respondents were false, misleading, and deceptive.

PAR. 7. The Commission further finds that the use by the respondents of these false, misleading, and deceptive representations had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the qualities, characteristics, and value of respondents' products, and the tendency and capacity to cause such portion of the public to purchase respondents' products as a result of the erroneous and mistaken beliefs so engendered.

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 answers of certain of the respondents, testimony, and other evidence taken before John W. Addison, 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 the exceptions to such report, 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, Blank & Stoller Corporation, a corporation, its officers, and Harry H. Long, George Stoller, Maurice Schultz, and Randolph Fajen, individually, and doing business as Blank & Stoller Studios, or doing business 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, and distribution of respondents' miniatures in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Representing that respondents' miniatures have been displayed at public exhibitions.

2. Representing that respondents' miniatures have ever sold for \$75 or \$50, or for any amount in excess of that for which such miniatures have actually been sold by respondents.

3. Representing as the customary or regular price of respondents' miniatures, any price which is in excess of the price at which such miniatures have been customarily or regularly sold by respondents in the usual course of business.

4. Representing that the price at which respondents' miniatures are offered for sale constitutes a special or reduced price, when in fact such price is the usual or customary price at which such miniatures are offered for sale by respondents in the usual course of business.

5. Representing that respondents' miniatures are prepared by a new or unusual method.

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
LINCOLN ACADEMY, INC., ALSO TRADING AS PREPARATORY SERVICE BUREAU, 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 4703. Complaint, Feb. 5, 1942—Decision, June 16, 1942

Where a corporation and two individuals who were president and secretary thereof and controlled its activities, engaged in the interstate sale and distribution, through their agents, of correspondence courses intended to prepare students for civil service positions—

- (a) Represented that said corporation was an agency or representative of, or connected with, the United States Government or Civil Service Commission, and that a Government job was assured or guaranteed to students taking the courses offered; the facts being that neither such agents nor aforesaid individuals had any such connection and could not thus guarantee such jobs;
- (b) Represented that civil service examinations would be held at definite times and places or within a specified time at or near the home of the prospective student, and that their students would be notified of the time and place and would not be required to leave their homes in order to obtain Government jobs; the facts being neither they or anyone connected with the school had any advance knowledge of such examinations or any information to enable them to say that students would not be required to leave their homes to obtain such jobs;
- (c) Represented that the number of students who were permitted to take their courses was limited, as was the number enrolled in a certain locality and the time within which they might enroll; when in fact there were no such limitations;
- (d) Falsely represented that prospective students had been appointed to civil service jobs, that unpaid balances due on tuition at time of students' appointments to Government positions would be deducted from their pay checks by the Government; and that cards of inquiry signed by prospective students had been returned from Washington, and that such students had been selected by the Government for employment; and
- (e) Made use of words "Service Bureau" as a part of their corporate or trade name, thereby creating an erroneous impression of Government connection, and encouraging misrepresentations by their salesmen as aforesaid;

With effect of misleading and deceiving members of the public into the mistaken belief that the aforesaid representations were true, and thereby inducing them to purchase substantial quantities of said courses:

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. S. F. Rose for the Commission.

Mr. William Furst, of Newark, N. J., for respondents.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Lincoln Academy, Inc., a corporation, doing business under its corporate name and also under the name of Preparatory Service Bureau, K. Arnold Freedman and Mrs. K. Arnold Freedman, also known as Miss R. E. Sims, individually, and as officers of Lincoln Academy, 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 theretof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lincoln Academy, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, and does business under its corporate name and also under the name of Preparatory Service Bureau, with its principal office and place of business located at 43 Lincoln Park, Newark, N. J. Said business was originally operated as a partnership under the name of Metropolitan Training Academy, later being incorporated under such name and in 1940 the corporate name was changed to Lincoln Academy, Inc.

Respondents, K. Arnold Freedman and Mrs. K. Arnold Freedman, are individuals, and are president and secretary, respectively, of respondent, Lincoln Academy, Inc., and as such manage, direct, and control its affairs and activities. The respondent, Mrs. K. Arnold Freedman, now the wife of respondent, K. Arnold Freedman, was formerly Miss R. E. Sims, and in carrying out the acts and practices herein alleged sometimes used her said former name. Each of the individual respondents have their address and place of business located at 43 Lincoln Park, Newark, N. J.

PAR. 2. Respondents are now, and have been for more than a year last past, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examinations for various civil service positions under the United States Government, which said courses are pursued principally by correspondence through the medium of the United States mails. Respondents cause and have caused their said courses of study and instruction to be transported from their said 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.

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Respondents maintain, and at all times mentioned herein have maintained a course of trade in said courses of study and instruction in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 3. The respondents make use of agents in soliciting and selling their courses of instruction. In the course and conduct of respondents' business, and for the purpose of selling such courses of instruction, respondents, through their agents, have made many false, misleading, and deceptive statements and representations to prospective purchasers with respect to said courses of instruction, and matters and things appertaining thereto. Among such statements and representations are the following:

1. That respondent corporation, in conducting said business aforesaid, is an agency or representative of or connected with the United States Government or the United States Civil Service Commission.

2. That a Government job is assured or guaranteed to students taking the courses offered.

3. That civil service examinations will be held at definite times and places or within a specified time at or near the home of the prospective student.

4. That students of the school conducted by respondents will be notified of the time and place civil service examinations are to be held.

5. That such representatives represent or are connected with or under the supervision of the United States Government or the United States Civil Service Commission.

6. That students of the school conducted by respondents will be able to obtain positions at or near their respective places of residence and will not be required to leave their homes in order to obtain Government jobs.

7. That respondents limit the number of students who take their courses of study.

8. That respondents limit the number of students to be enrolled in a certain locality.

9. That the time within which prospective students may enroll for respondents' courses of study is limited, and unless such student enrolled at once there would be no opportunity to do so again.

10. That the prospect interviewed has been appointed to a civil service job.

11. That any unpaid balance on the contract at the time of a student's appointment to a Government position would be deducted from the student's pay check by the Government.

12. That the card of inquiry signed by the prospective student and sent to respondents had been returned from Washington and that the prospective student's name was picked by the Government.

PAR. 4. All of said representations are false, misleading, and deceptive. In truth and in fact, neither the corporate or individual respondents, nor anyone connected with said school, have had or now have any connection whatever with the United States Government or with the United States Civil Service Commission. Respondents cannot and do not guarantee Government jobs to students taking the courses offered by respondents. Neither respondents nor anyone connected with said school had any advance knowledge in regard to the time or place of examinations conducted by the United States Civil Service Commission. Respondents have never had information or knowledge that enabled them to make statements that prospective students who took their said courses of study would not be required to leave their homes to obtain Government jobs. Respondents did not limit and do not now limit the number of students enrolled in any certain locality or otherwise, nor was the time within which a prospective student might enroll in respondents' school limited. Prospective students interviewed have not been appointed to Government positions as represented to them by respondents, nor could the respondents or their agents make any agreement binding on the Federal Government or any of its agencies in respect to a deduction from the salary of a prospective employee of the Government. The cards of inquiry signed by prospective students are not and never have been returned from Washington and no prospective student's name has been picked or selected by the Government or any department thereof.

PAR. 5. The use by the respondents of the words "Service Bureau" as a part of the trade name "Preparatory Service Bureau," when used in connection with the sale of correspondence courses intended for preparing students thereof for positions in the classified civil service under the United States Government are in themselves misleading and deceptive in that they serve to create an erroneous impression of Government connection and encourages misrepresentations by salesmen as aforesaid.

PAR. 6. The representations of respondents, as aforesaid, have had, and now have, the tendency and capacity to and do, confuse, mislead, and deceive members of the public into the erroneous and mistaken belief that such representations are true and to induce them to purchase substantial quantities of respondents' courses of study and instruction and pursue the same on account thereof.

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 5th day of February A. D. 1942, issued, and on February 6 A. D. 1942, served its complaint in this proceeding upon respondents, Lincoln Academy, Inc., a corporation trading under its corporate name and also as Preparatory Service Bureau; K. Arnold Freedman and Mrs. K. Arnold Freedman, also known as Miss R. E. Sims, individually, and as officers of Lincoln Academy, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, 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, solely for the purpose of this proceeding, 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, Lincoln Academy, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Jersey, and does business under its corporate name and also under the name of Preparatory Service Bureau, with its principal office and place of business located at 43 Lincoln Park, Newark, N. J. Said business was originally operated as a partnership under the name of Metropolitan Training Academy, later being incorporated under such name and in 1940 the corporate name was changed to Lincoln Academy, Inc.

Respondents, K. Arnold Freedman and Mrs. K. Arnold Freedman, are individuals, and are president and secretary, respectively, of re-

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spondent, Lincoln Academy, Inc., and as such manager, direct and control its affairs and activities. The respondent, Mrs. K. Arnold Freedman, now the wife of respondent, K. Arnold Freedman, was formerly Miss R. E. Sims, and in carrying out the acts and practices herein alleged sometimes uses her said former name. Each of the individual respondents have their address and place of business located at 43 Lincoln Park, Newark, N. J.

PAR. 2. Respondents are now, and have been for more than a year last past, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examinations for various civil service positions under the United States Government which said courses are pursued principally by correspondence through the medium of the United States mails. Respondents cause and have caused their said courses of study and instruction to be transported from their said 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.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said courses of study and instruction in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 3. The respondents make use of agents in soliciting and selling their courses of instruction. In the course and conduct of respondents' business, and for the purpose of selling such courses of instruction, respondents, through their agents, have made many false, misleading, and deceptive statements and representations to prospective purchasers with respect to said courses of instruction, and matters and things appertaining thereto. Among such statements and representations are the following:

1. That respondent corporation, in conducting said business aforesaid, is an agency or representative of or connected with the United States Government or the United States Civil Service Commission.

2. That a Government job is assured or guaranteed to students taking the courses offered.

3. That civil service examinations will be held at definite times and places or within a specified time at or near the home of the prospective student.

4. That students of the school conducted by respondents will be notified of the time and place civil service examinations are to be held.

5. That such representatives represent or are connected with or under the supervision of the United States Government or the United States Civil Service Commission.

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6. That students of the school conducted by respondents will be able to obtain positions at or near their respective places of residence and will not be required to leave their homes in order to obtain Government jobs.

7. That respondents limit the number of students who take their courses of study.

8. That respondents limit the number of students to be enrolled in a certain locality.

9. That the time within which prospective students may enroll for respondents' courses of study is limited, and unless such student enrolled at once there would be no opportunity to do so again.

10. That the prospect interviewed has been appointed to a civil service job.

11. That any unpaid balance on the contract at the time of a student's appointment to a Government position would be deducted from the student's pay check by the Government.

12. That the card of inquiry signed by the prospective student and sent to respondents had been returned from Washington and that the prospective student's name was picked by the Government.

PAR. 4. All of said representations are false, misleading, and deceptive. In truth and in fact, neither the corporate or individual respondents, nor anyone connected with said school, have had or now have any connection whatever with the United States Government or with the United States Civil Service Commission. Respondents cannot and do not guarantee Government jobs to students taking the courses offered by respondents. Neither respondents nor anyone connected with said school had any advance knowledge in regard to the time or place of examinations conducted by the United States Civil Service Commission. Respondents have never had information or knowledge that enabled them to make statements that prospective students who took their said courses of study would not be required to leave their homes to obtain Government jobs. Respondents did not limit and do not now limit the number of students enrolled in any certain locality or otherwise, nor was the time within which a prospective student might enroll in respondents' school limited. Prospective students interviewed have not been appointed to Government positions as represented to them by respondents, nor could the respondents or their agents make any agreement binding on the Federal Government or any of its agencies in respect to a deduction from the salary of a prospective employee of the Government. The cards of inquiry signed by prospective students are not and never have been returned from Washington and no prospective student's name has been picked or selected by the Government or any department thereof.

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PAR. 5. The use by the respondents of the words "Service Bureau" as a part of the trade name, "Preparatory Service Bureau," when used in connection with the sale of correspondence courses intended for preparing students thereof for positions in the classified civil service under the United States Government are in themselves misleading and deceptive in that they serve to create an erroneous impression of Government connection and encourages misrepresentations by salesmen as aforesaid.

PAR. 6. The representations of respondents, as aforesaid, have had, and now have, the tendency and capacity to and do, confuse, mislead, and deceive members of the public into the erroneous and mistaken belief that such representations are true and to induce them to purchase substantial quantities of respondents' courses of study and instruction and pursue the same on account thereof.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to 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, Lincoln Academy, Inc., a corporation, when doing business under its own or any other name, its officers, agents, and employees; K. Arnold Freedman and Mrs. K. Arnold Freedman, individually, under such names or any other 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 correspondence courses of study for civil service positions under the United States Government, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or by implication:

1. Representing that respondent corporation is an agency or representative of or connected with the United States Government or the United States Civil Service Commission.

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2. Representing that a Government job is assured or guaranteed to students taking the courses offered.

3. Representing that civil service examinations will be held at definite times and places or within a specified time at or near the homes of prospective students.

4. Representing that students will be notified of the time and place civil service examinations are to be held.

5. Representing that respondents' salesmen or representatives represent or are connected with or are under the supervision of the United States Government or the United States Civil Service Commission.

6. Representing that students will be able to obtain positions at or near their respective places of residence and will not be required to leave their homes in order to obtain Government jobs.

7. Representing that the number of students who are permitted to take courses of study are limited.

8. Representing that the number of students enrolled in a certain locality are limited.

9. Representing that the time within which prospective students may enroll is limited, and unless such students enroll at once there will be no opportunity to do so again.

10. Representing that prospective students have been appointed to a civil service job.

11. Representing that unpaid balances due on tuition at the time a student is appointed to a Government position will be deducted from the student's pay check by the Government.

12. Representing that cards of inquiry signed by prospective students and sent to respondents have been returned from Washington and that such prospective student has been selected by the Government for employment.

13. Using the words "Service Bureau" or any other words of similar import as a corporate or trade name, or a part thereof, or in any manner representing that respondents' business is a part of, is connected with, or is a branch, bureau or agency of the Government of the United States or the United States Civil Service Commission.

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

Complaint

IN THE MATTER OF

SARA B. PLANT, TRADING AS CRAVEX COMPANY AND
PLANT PRODUCTS 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 3794. Complaint, Nov. 15, 1940—Decision, June 19, 1942

Where an individual, a corporation which she organized to carry on the business theretofore conducted by her, and her two children, officers of said corporation, engaged in the interstate sale and distribution of a medicinal preparation designated "Cravex"; by means of advertisements through the mails and otherwise, directly and indirectly—

Represented that their said "Cravex" was a competent and effective treatment for alcoholism, use of which would remove a craving for whiskey, beer, wine, or other alcoholic liquors and enable a person addicted to excessive drinking to discontinue use of such liquors, and made use of the word "relieve" to designate or describe the effect of their preparation upon an alcoholic;

The facts being that use of their said preparation does not constitute such treatment for alcoholism and will not accomplish results claimed therefor, its value lying only in the after-care or building treatment, following the obtaining of an aversion or stoppage of the use of such liquors, and an elimination of the toxins produced in the system by alcohol, and then only as part of a general tonic treatment; and psychological factor, regarded as more important than the physiological by physicians, was necessarily eliminated by use of said preparation secretly, as suggested;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said representations were true, and thereby inducing it to purchase their said preparation:

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

Before *Mr. Miles J. Furnas* and *Mr. Edward E. Reardon*, trial examiners.

Mr. Lynn C. Paulson, *Mr. D. E. Hoopingarner*, *Mr. William L. Pencke*, and *Mr. Merle P. Lyon* for the Commission.

Rosen, Francis & Cleveland, of Chicago, Ill., and *Mr. J. P. Cain*, of Santa Monica, Calif., 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 Sara B. Plant, an individual, trading as Cravex Co., and Plant Products Co., Inc., a corporation, and its officers, James Plant and Sara B. Plant, named in

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the caption of this amended and supplemental complaint, 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, Sara B. Plant, is an individual, who, until September 28, 1939, operated under the trade name of Cravex Co., and had an office and place of business at Burbank, Calif. On September 28, 1939, respondent, Sara B. Plant, together with their son, James Robert Plant, and her daughter, Marion Alice Plant, caused the business of respondent, Sara B. Plant, to be incorporated under the laws of the State of California under the name of Plant Products Co., Inc. Respondent, Plant Products Co., Inc., has its office and principal place of business at Burbank, Calif., post office box 766.

Respondent, James Plant, an individual, is secretary and treasurer and business manager of respondent, Plant Products Co., Inc., and has his office in Burbank, Calif., with respondent, Plant Products Co., Inc., aforesaid. Respondent, Sara B. Plant, is an officer of respondent, Plant Products Co., Inc., and has her office in Burbank, Calif., with the said Plant Products Co., Inc.

PAR. 2. For more than 1 year prior to September 28, 1939, respondent, Sara B. Plant, was engaged in the business of selling and distributing a medicinal preparation known as "Cravex." This respondent caused said preparation, when sold, to be transported from her place of business in the State of California to the purchasers thereof located in other States of the United States, and at all times mentioned herein prior to September 28, 1939, 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 her aforesaid business, Sara B. Plant, disseminated, and caused to be disseminated, false advertisements concerning her said product, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which were distributed in commerce among and between the various States of the United States; and by other means in commerce as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of her said product, and has disseminated, and has caused the dissemination of, false advertisements concerning her said product, by various means, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of

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her 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:

Stop Drink Habit.

Just put tasteless CRAVEX in his coffee, tea, liquor or food. His craving for whiskey, beer or wine should be relieved. New Proven treatment—physician's prescription. Tones nerves—aids nature. Safe, doesn't upset stomach. Thousands benefited. May be given secretly if desired. Satisfaction guaranteed.

Tones nerves—aids nature stop habit.

He won't know and soon his craving for whiskey, beer or wine should disappear.

Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of remedial, curative, or therapeutic properties of respondent's product, the individual respondent, Sara B. Plant, has represented, directly and indirectly, that her preparation "Cravex" is a cure or remedy for alcoholism and that it is a competent and effective treatment therefor and will remove a craving for whiskey, beer, or wine.

PAR. 4. Respondent, Plant Products Co., Inc., has at all times since its incorporation, been, and is now, engaged in the business of selling and distributing a medicinal preparation under the trade name of "Cravex" to purchasers located in the various States of the United States. Respondent, Plant Products Co., Inc., has caused, and causes, said preparation, when sold, to be transported from its place of business in the State of California to the purchasers thereof located in other States of the United States and in the District of Columbia, and at all times mentioned herein has maintained, and now maintains, 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.

Respondents, James Plant and Sara B. Plant, have acted as officers of respondents, Plant Product Co., Inc., and participated in the conduct of its aforesaid business and are continuing to act in that capacity, and have sold and distributed the said preparation "Cravex" to purchasers thereof located in various States of the United States other than the State of California and in the District of Columbia, and when sales have been made, have caused said preparation to be transported from the State of California to the purchasers thereof located in the several States of the United States and in the District of Columbia, and have at all times maintained, and are now maintaining, 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. 5. In the course and conduct of its aforesaid business respondent, Plant Products Co., Inc., and its officers, have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of, false advertisements concerning its said product "Cravex," 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 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 the said product "Cravex"; and have disseminated, and are now disseminating, and have caused, and are now causing the dissemination of false advertisements concerning the said product "Cravex," by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the said product "Cravex" 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:

Should you have a problem of excessive drinking in your home, just put tasteless CRAVEX in his coffee, tea, liquor, beer, wine or food. New proven method—physician's prescription.

DRINK HABIT

Just put tasteless CRAVEX in his coffee, tea, liquor or food. His craving for whiskey, Beer, or Wine should be relieved, New, proven treatment—physician's prescription. Tones nerves, aids nature. Safe, doesn't upset stomach. Thousands benefited. May be given secretly if desired. Satisfaction guaranteed.

Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative or therapeutic properties of respondent's product, respondents have represented and do now represent directly and indirectly, that their preparation, "Cravex," is a cure or remedy for alcoholism and that it is a competent and effective treatment therefor and will remove a craving for whiskey, beer, or wine.

PAR. 6. The aforesaid representations and claims used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading and untrue. In truth and in fact, respondents' preparation "Cravex" is not a cure or remedy for alcoholism. Said prepa-

ration is not a competent and effective treatment for alcoholism and will not remove a craving for whiskey, beer, or wine.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to the product "Cravex," disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' preparation containing drugs.

PAR. 8. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 15 A. D. 1940, issued and subsequently served its amended complaint in this proceeding upon the respondents, Sara B. Plant, an individual, trading as Cravex Co., Plant Products Co., Inc., a corporation, and James Plant and Sara B. Plant, 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' answer thereto, testimony, and other evidence in support of the allegations of said amended complaint were introduced by W. L. Pencke and Merle P. Lyon, attorneys for the Commission, and in opposition to the allegations of the amended complaint by J. P. Cain, attorney for the respondents, before Miles J. Furnas and Edward E. Rear-don, 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 upon said amended complaint, the answer thereto, testimony and other evidence, report of the trial examiners upon the evidence, and brief in support of the amended 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 in-

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Sara B. Plant, is an individual, who, until September 28, 1939, operated under the trade name of "Cravex Co." and had an office and place of business at Burbank, Calif. On September 28, 1939, respondent, Sara B. Plant, together with her son James Robert Plant, and her daughter Marian Alice Plant, caused the business of the respondent, Sara B. Plant, to be incorporated under the laws of the State of California under the name of "Plant Products Company, Inc." Respondent, Plant Products Co., Inc., has its office and principal place of business at No. 1 Toluca State Drive, North Hollywood, Calif., the place of residence of the individual respondents, Sara B. Plant, and James Robert Plant, and also has a mailing address of post office box 766, Burbank, Calif.

Respondent, James Robert Plant, is an individual, and is secretary, treasurer, and business manager of respondent, Plant Products Co., Inc., and prior to September 28, 1939, was actively engaged with Sara B. Plant in the operation of the business under the trade name "Cravex Company." Respondent, Sara B. Plant, is an officer of respondent, Plant Products Co., Inc.

PAR. 2. For several years prior to September 28, 1939, respondent, Sara B. Plant, was engaged in the business of selling and distributing a medicinal preparation known as "Cravex." This respondent caused said preparation, when sold, to be transported from her place of business in the State of California to the purchasers thereof located in other States of the United States, and at all times mentioned herein prior to September 28, 1939, said respondent 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. Respondent, Plant Products Co., Inc., has, at all times since its incorporation, been, and is now, engaged in the business of selling and distributing said medicinal preparaton designated "Cravex" to purchasers located in various States of the United States. Respondent, Plant Products Co., Inc., has caused, and causes, said preparation, 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; and at all times mentioned herein has maintained, and now maintains, 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.

The individual respondents, James Robert Plant, and Sara B. Plant, have participated in and have controlled the advertising policies and business activities of said corporate respondent, Plant Products Co., Inc. Said individual respondents and the corporate respondent have acted in conjunction and cooperation with each other in doing the acts and practices hereinafter described.

PAR. 4. In the course and conduct of its 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 "Cravex," by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product "Cravex" by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product "Cravex" 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. Advertisements disseminated prior to September 28, 1939:

STOP DRINK HABIT

Just put tasteless CRAVEX in his coffee, tea, liquor or food. He won't know, and soon his craving for whiskey, beer, or wine should disappear. New, proven treatment—physician's prescription. Tones nerves—aids natural stop habit. Safe—doesn't upset stomach. Thousands benefited. Satisfaction guaranteed.

DRINK HABIT

Just put tasteless CRAVEX in his coffee, tea, liquor or food. His craving for Whiskey, Beer or Wine should be relieved. New, proven treatment—physician's prescription. Tones nerves—aids nature. Safe, doesn't upset stomach. Thousands benefited. May be given secretly if desired. Satisfaction guaranteed.

2. Advertisements disseminated subsequent to September 28, 1939:

FOR DRINK HABIT

Excessive drinking often tends to cause jangled nerves, nervous irritability, fatigue, loss of efficiency, and weakened faculty of judgment. Should you have a problem of excess drinking in your home just put tasteless Cravex, in coffee, tea, liquor, beer, wine, or food. New, proven method—physician's prescription.

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The ingredients of Cravex are an aid in helping to build up the nerves and appetite, thereby aiding to kill the excessive craving for liquor. Cravex is safe and doesn't upset the stomach.

Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondents' product, respondents have represented, and do now represent, directly and indirectly, that their preparation "Cravex" is a competent and effective treatment for alcoholism and that its use will remove a craving for whiskey, beer, wine, or other alcoholic liquors and enable a person addicted to excessive drinking to discontinue the use of alcoholic liquors.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondents as hereinabove described, are grossly exaggerated, misleading, and untrue.

Respondents' preparation is composed of the following ingredients: calcium glycerophosphate, $1\frac{1}{2}$ grains; manganese glycerophosphate, 1 grain; caffein alkaloid, $\frac{1}{2}$ grain; with sufficient milk sugar to make each powder weigh approximately 2.21 grams. The advertising and the directions provide for the administration of one powder twice daily in the patient's coffee or other beverage.

The calcium glycerophosphate contained in respondents' preparation is a chemical compound which serves as a nerve nutriment and which is ordinarily found in the average diet. In fact, as much calcium could be obtained by drinking a glass of milk as by use of this powder. The use of manganese glycerophosphate, another ingredient of respondents' preparation, is not definitely known to the medical profession. It is sometimes believed that this ingredient serves as a nerve nutriment, but this is not the general, recognized medical opinion with reference to this ingredient. Caffein alkaloid is a derivative obtained from plants, such as coffee and tea, and is ordinarily used as a nerve and heart stimulant. The amount contained in each powder is very low, and the same reaction or result could be obtained from one cup of ordinary coffee. Milk sugar has a certain nutrient value. None of the ingredients in respondents' preparation, used either alone or in combination, would have any effect upon the craving for alcohol.

The treatment of an alcoholic patient is generally considered to be along psychological, rather than physiological, lines, and the treatment varies with the individual. Respondents' advertising generally is directed not to the alcohol addict but rather to some member of his family, with the further indication that said preparation can be administered secretly. The use of this preparation secretly in an

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effort to treat an alcoholic, eliminates the psychological factor, which is held by physicians to be the more important in any course of treatment. No cooperation can be extended by a patient who does not know that he is undergoing treatment.

The extent to which this preparation might be of value in the treatment of an alcoholic is in the after-care or building treatment after an aversion or stoppage of the use of alcoholic liquors has been obtained and the toxins produced in the system by alcohol eliminated, and then only as an adjunct or part of a general tonic treatment.

The use of respondents' preparation under the conditions prescribed by them does not constitute a competent or effective treatment for alcoholism, and its use will not remove a craving for whiskey, beer, wine, or other alcoholic liquors, or enable a person addicted to excessive drinking to discontinue the use of alcoholic liquors.

PAR. 6. The use by the respondents of the word "relieve" to designate or describe the effect of this preparation upon an alcoholic, has a tendency to mislead and deceive the public into the belief that the use of respondents' preparation will either permanently remove the craving for alcoholic liquors or eliminate such craving for substantial periods of time, so that eventually the liquor habit can be entirely cured or removed, when, in fact, this preparation has no therapeutic value in connection with the craving for alcoholic liquors, and its stimulating effect is of such short duration as to make this preparation of no value in the treatment of alcoholism.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to the product "Cravex" 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 representations are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondents' preparation containing drugs.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the amended complaint of the Commission, answer of the

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respondents, testimony, and other evidence taken before Miles J. Furnas and Edward E. Reardon, trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said amended complaint and in opposition thereto, report of the trial examiners upon the evidence, and brief filed in support of the amended 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, Plant Products Co., Inc., a corporation, its officers, representatives, agents, and employees, and Sara B. Plant, an individual, trading as Cravex Co., and as officer and director of the corporate respondent, Plant Products Co., Inc., and James Robert Plant, individually, and as officer of said corporate respondent, 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 the medicinal preparation known as "Cravex," 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 respondents' preparation is a competent or effective treatment for alcoholism or that its use will relieve or remove the craving for alcoholic liquors or enable a person addicted to excessive drinking to discontinue the use of alcoholic liquors;

2. Disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act of respondents' preparation "Cravex," 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.

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IN THE MATTER OF

WESTERN CONFECTIONERS 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 4132. Complaint, June 14, 1940¹—Decision, June 22, 1942

Where a nonprofit Association, composed of manufacturers of candies and other confections in California, Washington, Oregon, Montana, Nevada, Utah, Wyoming, Colorado, Arizona, and New Mexico, with its principal office and place of business in San Francisco; officers, directors, and trustees thereof; and various manufacturer-members who constituted a large and influential portion of the candy manufacturers in California, Washington, Utah, and Colorado, able to control or substantially influence the flow of trade in candies in their area, and prices of such products, in substantial interstate competition with others and, but for combination and conspiracy below described, with one another—

- (a) Entered into an agreement, combination or conspiracy to maintain minimum prices for their products and uniform discounts to purchasers thereof through the medium of the Association, and making use of the California Unfair Practices Act which, among other things, prohibits sale below seller's cost, as the basis of price agreements which would cover all of the sales transactions of all Association members; and in furtherance of said plan—
 - (1) Undertook, through the Association, the making of certain "Cost Surveys" which involved the submission to a commercial reporting concern by members of data pertaining to items entering into the cost of manufacture for use in compiling unidentified averages; and distribution thereof by the Association to the members;
 - (2) Provided in a new constitution, among other things, that no member should sell below cost—having in mind, apparently, above statute—providing, however, that a member might meet the lower prices of a competitor if not in violation "of the established cost survey"; and
 - (3) Adopted said "Survey's" figures as representing the correct cost on hard mixed candy and chocolate drops, shortly after the completion of said "cost survey" on hard mixed candy, chocolate drops and pan goods (for which alone said surveys were completed), at a meeting called, at their instance apparently, by the Los Angeles city attorney, and advised Association members of such action;
 - (b) Threatened with legal action manufacturers who, according to reports, were not maintaining the minimum prices thus arrived at, taking action in some cases with a view thereto, and also caused threats to be circulated generally among manufacturers that those who sold their candies at less than the cost figure adopted would be prosecuted under the said Unfair Practices Act; and
 - (c) Concertedly classified purchasers as syndicates, wholesalers, jobbers, and retailers, on the basis of information supplied by manufacturers relative to their discounts; and adhered to such classification in granting discounts;

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With result that minimum prices not only on hard mixed candy and chocolate drops, but on other candies as well, were increased, and with effect of substantially restraining competition in the sale of candies and other confections in commerce, and with tendency and capacity so to do, and to increase price of said products to the purchasers and ultimately to the general public:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Floyd C. Collins for the Commission.

Cressaty & Elstein, of Los Angeles, Calif., for Western Confectioners Ass'n, Inc.; and various officers, directors, trustees and members thereof, and along with—

Mr. Grant B. Cooper, of Los Angeles, Calif., for Warren Watkins;

Mr. John H. Foley, of Los Angeles, Calif., for Alfred Beaudry and Wilfred Beaudry;

Mr. Henry C. Lank, of Washington, D. C., for Leon Sweet and Sweet Candy Co.;

Croson, Johnson & Wheelon, of Seattle, Wash., for Harold Thompson and Candy House, Inc.;

Skeel, McKelvy, Henke, Evenson & Uhlmann, of Seattle, Wash., for Chester Roberts and Imperial Candy Co.;

McKee, Tasheira & Wahrhaftig, of Oakland, Calif., for George Cardinet and Cardinet Candy Co., Inc.; and

Chickering & Gregory, of San Francisco, Calif., for California Peanut Co.

Mr. Philip S. Ehrlich, of San Francisco, Calif., for Euclid Candy Co. of California, Inc.

Mr. W. Parker Jones, of Washington, D. C., and *Mr. George H. Coopers* and *Mr. Edwin Foster Blair*, of New York City, for National Biscuit Co.

Mr. N. Matzger, of San Francisco, Calif., for Matzger Chocolate Co.

Elliot & Calden, of San Francisco, Calif., for Golden Nugget Sweets, Ltd.

Piccirillo & Wolf, of San Francisco, Calif., for Coxon Co.

Orrick, Dahlquist, Neff & Herrington, of San Francisco, Calif., for General Food Products Co.

Orloff & Katz, of Los Angeles, Calif., for Los Angeles Nut House.

Mr. Vernon P. Spencer, of Inglewood, Calif., for Johanna A. Gilker.

Mr. William A. Wittman, of South Gate, Calif., for Triangle Candy Co. and Walter A. Hewitt.

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- Mr. H. E. Gleason*, of Los Angeles, Calif., for Charles E. Hassey.
Mr. Harley W. Gustin, of Salt Lake City, Utah, for Ostler Candy Co.
Ogden & Ogden, of Seattle, Wash., for Queen Anne Candy Co.
Monheimer & Griffin, of Seattle, Wash., for Joseph Vinikow.
Chickering & Gregory, of San Francisco, Calif., for Margaret Burnham's, Inc.
Mr. Wilbur F. Denious, of Denver, Colo., for Brecht Candy Co.
Rothgerber & Appel, of Denver, Colo., for Cosner Candy Co.
Hamblen, Gilbert & Brooke, of Spokane, Wash., for Riley Candy Co.
Mr. Derrah B. Van Dyke, of Ogden, Utah, for Shupe-Williams Candy Co.

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 corporations, firms, partnerships, and individuals named in the caption hereof and hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. Western Confectioners Association, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 74 New Montgomery Street, San Francisco, Calif. Said respondent is an incorporated nonprofit association and its members are composed of manufacturers of candies and other confections located in the States of California, Washington, Oregon, Montana, Nevada, Utah, Wyoming, Colorado, Arizona, and New Mexico. Said respondent will be hereinafter referred to as respondent Association.

Respondent Association, is now and has been for several years last past, engaged in collecting and disseminating among its members, and the trade in general, information relating to the candy and confection industry, formulating and enforcing rules with reference to labor, wages, costs, and uniform sales prices and discounts and classification of purchasers in the manufacture, sale, and distribution of candies and other confections.

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Respondent, Warren Watkins, of 768 Merchant Street, Los Angeles, Calif., is an individual, and is president, of respondent Association.

T. A. White, of 2700 Eighteenth Street, San Francisco, Calif., is an individual, and is vice president, of the respondent Association.

Clarence M. Kretchmer, of 55 Federal Street, San Francisco, Calif., is an individual, and is secretary-treasurer, of respondent Association.

LeRoy M. Gimbal, of 501 Folsom Street, San Francisco, Calif., is an individual, and is a director, of respondent Association.

Alfred Beaudry, of 3762 South Normandie, Los Angeles, Calif., is an individual, and is a director, of the respondent Association.

Leon Sweet, of 218 South First Street West, Salt Lake City, Utah, is an individual, and is a director, of respondent Association.

Harold Thompson, of 1600 Dexter Avenue, Seattle, Wash., is an individual, and is a director, of respondent Association.

E. H. Jenanyan, of 530 Davis Street, San Francisco, Calif., is an individual, and is a director, of the respondent Association.

A. C. Carrington, of 2420 Encinal Avenue, Alameda, Calif., is an individual, and is a trustee, of the respondent Association.

Chester Roberts, of 800 Western Avenue, Seattle, Wash., is an individual, and is a trustee, of the respondent Association.

George Cardinet, of 2172 Market Street, Oakland, Calif., is an individual, and is a trustee, of the respondent Association.

H. L. Brown, of 110 East Twenty-sixth Street, Tacoma, Wash., is an individual, and is a trustee, of the respondent Association.

Robert W. Kaneen, of 4020 Avalon Boulevard, Los Angeles, Calif., is an individual, and is a trustee, of respondent Association.

E. A. Hoffman, of 6600 Avalon Boulevard, Los Angeles, Calif., is an individual, and is a trustee of respondent Association.

PAR. 2. Respondent, Brown & Haley, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Washington, with its home office and principal place of business located at 110 East Twenty-sixth Street, Tacoma, Wash.

L. M. Gimbal and R. E. Gimbal, is a partnership, trading and doing business as Gimbal Brothers, and the address and principal place of business of respondents is 501 Folsom Street, San Francisco, Calif.

Euclid Candy Co. of California, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, and has its home office and principal place of business located at 715 Battery Street, San Francisco, Calif.

Hromada Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Cali-

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fornia, with its home office and principal place of business located at 1206 Sansome Street, San Francisco, Calif.

Sierra Candy Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 2700 Eighteenth Street, San Francisco, Calif.

Hoeffler's Centennial Chocolates, Ltd., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 580-590 Folsom Street, San Francisco, Calif.

National Biscuit Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 449 West Fourteenth Street, New York, N. Y., and owns and operates a business under the trade name, Pacific Coast Candy Co., located at 815 Battery Street, San Francisco, Calif., also owns and operates a business located at 1366 East Seventh Street, Los Angeles, Calif., under the name of Bishop & Co., Inc.

Walter A. Vellguth, of 2500 Eighteenth Street, San Francisco, Calif., is an individual, trading and doing business in San Francisco, Calif., as Vellguth's Candy Co.

George Haas & Sons, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 1380 Howard Street, San Francisco, Calif.

Planters Nut & Chocolate Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business located at Wilkes-Barre, Pa., and operates a branch plant at 530 Davis Street, San Francisco, Calif.

Frederick W. Theisen, is an individual, trading under the trade name of Purity Candy Co., and his place of business is located at 633 Laguna Street, San Francisco, Calif.

Laurente Cerf, is an individual, trading and doing business as Orange Blossom Candy Co., with his place of business located at 11 Pearl Street, San Francisco, Calif.

Collins Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at Emeryville, Alameda County, Calif.

Nathan Matzger and Manford Matzger, are copartners, and are trading and doing business under the partnership name of Matzger

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Chocolate Co., and their principal place of business is located at 780 Harrison Street, San Francisco, Calif.

Golden Nugget Sweets, Ltd., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 1975 Market Street, San Francisco, Calif.

William G. Coxon and Pearl W. Coxon, are copartners, trading and doing business as Coxon Co., and the address of said business is 240 Shotwell Street, San Francisco, Calif.

E. A. Hoffman Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 6600 Avalon Boulevard, Los Angeles, Calif.

General Food Products Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 1925 East Vernon Avenue, Los Angeles, Calif.

Alfred Beaudry and Wilfred Beaudry, are copartners, trading and doing business under the partnership name of Beaudry Bros. Candy Co. The address of said respondents is 3762 South Normandie Avenue, Los Angeles, Calif.

James Doumakes, is an individual, trading and doing business under the firm name of Doumaks Marshmallow Co. Respondent's place of business is located at 711 East Jefferson Boulevard, Los Angeles, Calif.

Sam Gendel and Lillian Gold, are copartners, trading and doing business as Los Angeles Nut House, and their principal place of business is located at 722 Market Court, 1040 San Julian Street, Los Angeles, Calif.

Johanna A. Gilker, is an individual, trading and doing business as Los Angeles Confection Co., with her place of business located at 14315 Hawthorne Boulevard, Lawndale, Los Angeles County, Calif.

Pearson Candy Co., Ltd., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 555 Towne Avenue, Los Angeles, Calif.

Triangle Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 1309 Santa Fe Avenue, Los Angeles, Calif.

Jesse G. Beckjord, is an individual, trading and doing business as Wonder Food Marshmallow Co., with his place of business located at 503-511 West Sixty-second Street, Los Angeles, Calif.

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Charles E. Hassey, is an individual, trading and doing business as Hassey Candy Co., with his place of business located at 2045 West Jefferson Boulevard, Los Angeles, Calif.

Walter A. Hewitt, is an individual, trading and doing business as Hewitt Candy Co., with his place of business located at 835 South San Julian Street, Los Angeles, Calif.

Sunkist Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 425 East Fifty-eighth Street, Los Angeles, Calif.

G. Fred Spearin, is an individual, with his place of business located at 1687 Beverly Boulevard, Los Angeles, Calif.

J. G. McDonald Chocolate Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at Salt Lake City, Utah.

Ostler Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at 143 South State Street, Salt Lake City, Utah.

Robert E. Wilson, is an individual, trading and doing business as Sweetarts, with his place of business located at 328 North East Failing Street, Portland, Oreg.

Queen Anne Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its home office and principal place of business located at 1039 Sixth Avenue South, Seattle, Wash.

Candy House, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its home office and principal place of business located at 1600 Dexter Avenue, Seattle, Wash.

Joseph Vinikow, is an individual, trading and doing business as Parisian Candy Co., with his place of business located at 1319 Washington Street, Seattle, Wash.

Margaret Burnham's, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 4632 Telegraph Avenue, Oakland, Calif.

Cardinet Candy Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home-office and principal place of business located at 2172 Market Street, Oakland, Calif.

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California Peanut Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 630 Twentieth Street, Oakland, Calif.

Louis F. Chiodo and Emilio G. Chiodo, are copartners, trading and doing business as Chiodo Candy Co., and their principal place of business is located at 2923 Adeline Street, Oakland, Calif.

Leslie N. Johnson, is an individual, trading and doing business as Leslie's Fountain, with his place of business located at Walnut Creek, Calif.

Brecht Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its home office and principal place of business located at Denver, Colo.

Cosner Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its home office and principal place of business located at Denver, Colo.

Savage Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its home office and principal place of business located at Denver, Colo.

Carl C. Bonn, is an individual, trading and doing business as Bonn Candy Co., with his place of business located at 287 North San Pedro Street, San Jose, Calif.

Davenport Candycrafts, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its home office and principal place of business located at South 168 Division Street, Spokane, Wash.

Riley Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its home office and principal place of business located at West 1015 First Street, Spokane, Wash.

Shupe-Williams Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at 2605 Wall Avenue, Ogden, Utah.

Startup Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at Provo, Utah.

Idaho Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Idaho, with

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its home office and principal place of business located at 412 South Eighth Street, Boise, Idaho.

Warren Watkins, is an individual, trading and doing business as Warren Watkins Manufacturing Co., and his principal place of business is located at 768 Merchant Street, Los Angeles, Calif.

Sweet Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at 218 South First Street West, Salt Lake City, Utah.

Miss Saylor's Chocolates, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the States of California, with its home office and principal place of business located at 2720 Encinal Avenue, Alameda, Calif.

Imperial Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its home office and principal place of business located at 800 Western Avenue, Seattle, Wash.

Christopher Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 4020 Avalon Boulevard, Los Angeles, Calif.

B. Guy Showley is an individual, trading and doing business as Showley Bros., and his principal place of business is located at 800 K Street, San Diego, Calif.

All of the above-named respondents are members of the respondent Association. Each of said respondents, individually and as members of said respondent Association have taken, and do now take, an active part in all the activities herein described.

PAR. 3. The individual respondents, named in paragraph 1 hereof, direct and control the policies of the respondent Association and have taken an active part in all of the unfair methods of competition and the unfair acts and practices as herein set out.

PAR. 4. The respondent corporations, firms, individuals, and partnerships, named in paragraph 2 hereof, have been for several years last past and are now engaged in the business of manufacturing candies and other confections and in the sale and distribution thereof in commerce among and between the various States of the United States and the District of Columbia. Respondents cause their respective products, when sold, to be shipped and transported in commerce from their respective places of business through and into States of the United States other than the States in which respondents maintain their respective places of business, and there has been for more than 3 years

last past and now is a constant and recurring current of trade in commerce between and among the several States of the western portion of the United States in candies and other confections.

PAR. 5. There are corporations, partnerships, firms, and individuals located in the States of California, Washington, Oregon, Montana, Nevada, Utah, Wyoming, Colorado, Arizona, and New Mexico, who are engaged in manufacturing candy and other confections, and who sell and distribute their respective products in commerce among and between the various States of the United States and who do not engage in wrongful and unlawful acts and practices herein described as engaged in by respondents, and with these corporations, firms, individuals, and partnerships, the respondents are and have been in direct and substantial competition.

PAR. 6. Respondent manufacturers, named in paragraph 2 hereof, constitute a large and influential part of the candy manufacturers in the States of California, Washington, Oregon, Montana, Nevada, Utah, Wyoming, Colorado, Arizona, and New Mexico, and constitute a group so large and influential in said business as to be able to control and influence the flow of trade and commerce in said products between and among said States and to control the prices thereof and discounts to be allowed on the sales of said products. Said respondents, but for the wrongful conspiracy, combination, understanding, and agreement and wrongful and unlawful acts and practices herein set out, would be in free and active competition with one another and are in such competition with other manufacturers of candies and confections in said States.

PAR. 7. Some time prior to December 1937, respondent manufacturers, acting in combination with one another, and respondent Association, and its officers and members, and through respondent Association, for the purpose and intent of eliminating or restraining price competition among themselves, and in order to stabilize and make uniform the prices of the products by them and each of them sold and to stabilize and make uniform discounts allowed thereon, adopted, established and have since maintained and carried out a system or policy of merchandising whereby they, through agreements and understandings between and among one another, fix specified standard and uniform prices and discounts at which their products should be and are sold in said States.

Pursuant to such agreements and understandings, respondent Association, and respondent candy manufacturers, each and every member of said Association, and every officer of said Association, has endeavored, and now endeavors, to enforce and has enforced, and is now enforcing, said merchandising policy, and to this end, among other things, has done and is now doing the following acts and things:

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(a) Respondent Association, through questionnaires sent to the different manufacturers, obtained figures representing production costs and from the figures so obtained has struck an average figure and respondent manufacturers have adopted the figure thus obtained as a price below which no member of respondent Association would sell.

(b) Respondent manufacturers, while pretending to act under the "Fair Trade Act" and the "Unfair Practice Act" of the State of California, adopted cost figures arrived at in an arbitrary manner, as aforesaid, and have agreed to be, and have been, governed and controlled by said figures in the sale of their respective products both in the States of their respective locations and in other States into which they sell and ship their products.

(c) Respondent Association has arbitrarily classified purchasers of said products into classes, such as "wholesalers," "jobbers," and other dealers, and has fixed specified standard and uniform discounts to be allowed to purchasers of each classification, and respondent manufacturers have adopted said classifications and have allowed discounts in conformity therewith.

(d) Respondent manufacturers have directly and through "clearing houses" and respondent Association submitted price lists to other members of said Association and to other candy manufacturers and have, after demand being made by the said Association, revised said price lists to make them uniform.

(e) Respondent manufacturers have agreed to file, and have filed, with the respondent Association advance notice of contemplated price changes, and have preceded all price changes with such advance notice.

(f) Respondent Association, through its officers and respondent manufacturers have made threats to institute court proceedings and have aided and abetted in instituting court proceedings against manufacturers selling at prices below the costs arbitrarily arrived at as hereinbefore set out.

(g) Respondent Association through its officers and respondent manufacturers have disseminated threats among the members of said Association and other manufacturers that any manufacturer who sold below the cost figures adopted would be prosecuted under the California "Fair Trade Act" or "Unfair Practice Act."

PAR. 8. Each and every corporation, partnership, firm, and individual, named herein, directly and through the agency of the respondent Association, has taken an active part in all of the activities herein set out.

PAR. 9. The acts and practices of the respondents, as herein alleged, are all to the prejudice of the public and respondents' competitors and

have a dangerous tendency to, and have actually hindered and prevented price competition between and among respondents in the sale of candies and other confections in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; increased the prices of candies and confections paid by the purchasers thereof, and consequently, the prices paid by the public; and have unreasonably restrained such commerce in candies and other confections, and constitute unfair methods of competition and unfair 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 June 14, 1940, issued and subsequently served upon the respondents named in the caption hereof its amended and supplemental complaint in this proceeding, charging the respondents 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 (on May 9, 1940, the Commission had previously issued its original complaint in this proceeding, which was identical with the amended and supplemental complaint except that it failed to name certain parties as respondents therein). After the filing of the respondents' answers, testimony and other evidence in support of the allegations of the amended and supplemental complaint were introduced by the attorney for the Commission, and in opposition thereto by attorneys for certain of the respondents, before Randolph Preston, a trial examiner of the Commission theretofore duly designated by it, which testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the amended and supplemental complaint, the answers of the respondents, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, 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. Respondent, Western Confectioners Association, Inc., hereinafter for convenience, frequently referred to as respondent Association or as the Association, is a corporation organized, existing,

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and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 74 New Montgomery Street, San Francisco, Calif. Said respondent is a nonprofit association and its membership is composed of various manufacturers of candies and other confections located in the States of California, Washington, Oregon, Montana, Nevada, Utah, Wyoming, Colorado, Arizona, and New Mexico.

Respondent, Alfred Beaudry, 3762 South Normandie, Los Angeles, Calif., is an individual, and is president, of the respondent association.

Respondent, T. A. White, 2700 Eighteenth Street, San Francisco, Calif., is an individual, and is vice president, of the respondent Association.

Respondent, Clarence M. Kretchmer, 55 Federal Street, San Francisco, Calif., is an individual, and is secretary-treasurer of the respondent Association.

Respondent, LeRoy M. Gimbal, 501 Folsom Street, San Francisco, Calif., is an individual, and is a director, of the respondent Association.

Respondent, Alfred Beaudry, 3762 South Normandie, Los Angeles, Calif., is an individual, and is a director, of the respondent Association.

Respondent, Leon Sweet, 218 South First Street, West, Salt Lake City, Utah, is an individual, and is a director, of the respondent Association.

Respondent, Harold Thompson, 1600 Dexter Avenue, Seattle, Wash., is an individual, and is a director, of the respondent Association.

Respondent, E. H. Jenanyan, 530 Davis Street, San Francisco, Calif., is an individual, and is a director, of the respondent Association.

Respondent, A. C. Carrington, 2420 Encinal Avenue, Alameda, Calif., is an individual, and is a trustee, of the respondent Association.

Respondent, Chester Roberts, 800 Western Avenue, Seattle, Wash., is an individual, and is a trustee, of the respondent Association.

Respondent, George Cardinet, 2172 Market Street, Oakland, Calif., is an individual, and is a trustee, of the respondent Association.

Respondent, H. L. Brown, 110 East Twenty-sixth Street, Tacoma, Wash., is an individual, and is a trustee, of the respondent Association.

Respondent, Robert W. Kaneen, 4020 Avalon Boulevard, Los Angeles, Calif., is an individual, and is a trustee, of the respondent Association.

Respondent, E. A. Hoffman, 6600 Avalon Boulevard, Los Angeles, Calif., is an individual, and is a trustee, of the respondent Association.

The individual respondents named above direct and control the policies of the respondent Association and have participated actively in the methods, acts and practices hereinafter described.

PAR. 2. Respondent, Brown & Haley, 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 110 East Twenty-sixth Street, Tacoma, Wash.

Respondents, L. M. Gimbal and R. E. Gimbal, are copartners, trading and doing business as Gimbal Brothers, with their principal office and place of business located at 501 Folsom Street, San Francisco, Calif.

Respondent, Euclid Candy Co. of California, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 715 Battery Street, San Francisco, Calif.

Respondent, Hromada Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1206 Sansome Street, San Francisco, Calif.

Respondent, Sierra Candy Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2700 Eighteenth Street, San Francisco, Calif.

Respondent, Hoefler's Centennial Chocolates, Ltd., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 580-590 Folsom Street, San Francisco, Calif.

Respondent, National Biscuit Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 449 West Fourteenth Street, New York, N. Y. This respondent owns and operates a business under the name, Pacific Coast Candy Co., located at 815 Battery Street, San Francisco, Calif., and also a business under the name of Bishop & Co., Inc., located at 1366 East Seventh Street, Los Angeles, Calif.

Respondent, Walter A. Vellguth, is an individual, trading and doing business as Vellguth's Candy Co., with his principal office and place of business located at 2500 Eighteenth Street, San Francisco, Calif.

Respondent, George Haas & Sons, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1380 Howard Street, San Francisco, Calif.

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Respondent, Planters Nut & Chocolate Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Wilkes-Barre, Pa., and a branch plant located at 530 Davis Street, San Francisco, Calif.

Respondent, Frederick W. Theisen, is an individual, trading under the trade name of Purity Candy Co., with his principal office and place of business located at 633 Laguna Street, San Francisco, Calif.

Respondent, Laurente Cerf, is an individual, trading and doing business as Orange Blossom Candy Co., with his principal office and place of business located at 11 Pearl Street, San Francisco, Calif.

Respondent, Collins Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at Emeryville, Alameda County, Calif.

Respondents, Nathan Matzger and Manford Matzger, are copartners, trading and doing business under the partnership name of Matzger Chocolate Co., with their principal office and place of business located at 780 Harrison Street, San Francisco, Calif.

Respondent, Golden Nugget Sweets, Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1975 Market Street, San Francisco, Calif.

Respondents, William G. Coxon and Pearl W. Coxon, are copartners, trading and doing business as Coxon Co., with their principal office and place of business located at 240 Shotwell Street, San Francisco, Calif.

Respondent, E. A. Hoffman Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 6600 Avalon Boulevard, Los Angeles, Calif.

Respondent, General Food Products Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1925 East Vernon Avenue, Los Angeles, Calif.

Respondents, Alfred Beaudry and Wilfred Beaudry, are copartners, trading and doing business under the partnership name of Beaudry Bros. Candy Co., with their principal office and place of business located at 3762 South Normandie Avenue, Los Angeles, Calif.

Respondent, James Doumakes, is an individual, trading and doing business under the name of Doumaks Marshmallow Co., with his prin-

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principal office and place of business located at 711 East Jefferson Boulevard, Los Angeles, Calif.

Respondents, Sam Gendel and Lillian Gold, are copartners, trading and doing business as Los Angeles Nut House, with their principal office and place of business located at 722 Market Court, 1040 San Julian Street, Los Angeles, Calif.

Respondent, Johanna A. Gilker, is an individual, trading and doing business as Los Angeles Confection Co., with her principal office and place of business located at 14315 Hawthorne Boulevard, Lawndale, Los Angeles County, Calif.

Respondent, Pearson Candy Co., Ltd., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 555 Towne Avenue, Los Angeles, Calif.

Respondent, Triangle Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1309 Santa Fe Avenue, Los Angeles, Calif.

Respondent, Jesse G. Beckjord, is an individual, trading and doing business as Wonder Food Marshmallow Co., with his principal office and place of business located at 503-511 West Sixty-second Street, Los Angeles, Calif.

Respondent, Charles E. Hassey, is an individual, trading and doing business as Hassey Candy Co., with his principal office and place of business located at 2045 West Jefferson Boulevard, Los Angeles, Calif.

Respondent, Walter A. Hewitt, is an individual, trading and doing business as Hewitt Candy Co., with his principal office and place of business located at 835 South San Julian Street, Los Angeles, Calif.

Respondent, Sunkist Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 425 East Fifty-eighth Street, Los Angeles, Calif.

Respondent, G. Fred Spearin, is an individual, with his principal office and place of business located at 1687 Beverly Boulevard, Los Angeles, Calif.

Respondent, J. G. McDonald Chocolate Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at Salt Lake City, Utah.

Respondent, Ostler Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State

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of Utah, with its principal office and place of business located at 143 South State Street, Salt Lake City, Utah.

Respondent, Robert E. Wilson, is an individual, trading and doing business as Sweetarts, with his principal office and place of business located at 328 Northeast Failing Street, Portland, Oreg.

Respondent, Queen Anne Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1039 Sixth Avenue South, Seattle, Wash.

Respondent, Candy House, Inc., 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 1600 Dexter Avenue, Seattle, Wash.

Respondent, Joseph Vinikow, is an individual, trading and doing business as Parisian Candy Co., with his principal office and place of business located at 1319 Washington Street, Seattle, Wash.

Respondent, Margaret Burnham's, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 4632 Telegraph Avenue, Oakland, Calif.

Respondent, Cardinet Candy Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 2172 Market Street, Oakland, Calif.

Respondent, California Peanut Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 630 Twentieth Street, Oakland, Calif.

Respondents, Louis F. Chiodo and Emilio G. Chiodo, are copartners, trading and doing business as Chiodo Candy Co., with their principal office and place of business located at 2923 Adeline Street, Oakland, Calif.

Respondent, Leslie N. Johnson, is an individual, trading and doing business as Leslie's Fountain, with his principal office and place of business located at Walnut Creek, Calif.

Respondent, Brecht Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at Denver, Colo.

Respondent, Cosner Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at Denver, Colo.

Respondent, Savage Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at Denver, Colo.

Respondent, Carl C. Bonn, is an individual, trading and doing business as Bonn Candy Co., with his principal office and place of business located at 287 North San Pedro Street, San Jose, Calif.

Respondent, Davenport Candycrafts, 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 South 168 Division Street, Spokane, Wash.

Respondent, Riley Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at West 1015 First Street, Spokane, Wash.

Respondent, Shupe-Williams Candy Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at 2605 Wall Avenue, Ogden, Utah.

Respondent, Startup Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at Provo, Utah.

Respondent, Idaho Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Idaho, with its principal office and place of business located at 412 South Eighth Street, Boise, Idaho.

Respondent, Warren Watkins, is an individual, trading and doing business as Warren Watkins Manufacturing Co., with his principal office and place of business located at 768 Merchant Street, Los Angeles, Calif.

Respondent, Sweet Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at 218 South First Street West, Salt Lake City, Utah.

Respondent, Miss Saylor's Chocolates, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2720 Encinal Avenue, Alameda, Calif.

Respondent, Imperial Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 800 Western Avenue, Seattle, Wash.

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Respondent, Christopher Candy 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 4020 Avalon Boulevard, Los Angeles, Calif.

Respondent, B. Guy Showley, is an individual, trading and doing business as Showley Bros., with his principal office and place of business located at 800 K Street, San Diego, Calif.

PAR. 3. The Commission having concluded that the evidence is insufficient to establish that the following respondents participated in the combination and conspiracy hereinafter described, the terms "respondents" and "respondent manufacturers" as used hereinafter will not include these respondents unless the contrary is indicated:

Euclid Candy Co. of California, Inc., a corporation; Hoefler's Centennial Chocolates, Ltd., a corporation; Walter A. Vellguth, individually, and doing business as Vellguth's Candy Co.; George Haas & Sons, a corporation; Frederick W. Theisen, individually, and trading under the trade name of Purity Candy Co.

Laurente Cerf, individually, and trading and doing business as Orange Blossom Candy Co.; Collins Candy Co., a corporation; Nathan Matzger and Manford Matzger, individually, and as copartners, trading and doing business under the partnership name of Matzger Chocolate Co.

Golden Nugget Sweets, Ltd., a corporation; William G. Coxon and Pearl W. Coxon, individually, and as copartners trading and doing business as Coxon Co.; James Doumakes, individually, and trading and doing business under the firm name Doumaks Marshmallow Co.

Sam Gendel and Lillian Gold, individually, and as copartners, trading and doing business as Los Angeles Nut House; Johanna A. Gilker, individually and trading and doing business as Los Angeles Confection Co.; Pearson Candy Co., Ltd., a corporation; Triangle Candy Co., a corporation.

Jesse G. Beckjord, individually, and trading and doing business as Wonder Food Marshmallow Co.; Charles E. Hassey, individually, and trading and doing business as Hassey Candy Co.; Walter A. Hewitt, individually, and trading and doing business as Hewitt Candy Co.; Sunkist Candy Co., a corporation; G. Fred Spearin, an individual.

J. G. McDonald Chocolate Co., a corporation; Ostler Candy Co., a corporation; Robert E. Wilson, individually, and trading and doing business as Sweetarts; Queen Anne Candy Co., a corporation; Joseph Vinikow, individually, and trading and doing business as Parisian Candy Co.; Margaret Burnham's, Inc., a corporation; California Pea-

nut Co., a corporation; Louis F. Chiodo and Emilio G. Chiodo, individually, and as copartners, trading and doing business as Chiodo Candy Co.

Leslie N. Johnson, individually, and trading and doing business as Leslie's Fountain; Cosner Candy Co., a corporation; Savage Candy Co., a corporation; Carl C. Bonn, individually, and trading and doing business as Bonn Candy Co.; Davenport Candycrafts, a corporation; Riley Candy Co., a corporation; Shupe-Williams Candy Co., a corporation; Startup Candy Co., a corporation; and Idaho Candy Co., a corporation.

PAR. 4. The respondent corporations, firms, individuals, and partnerships, named in paragraph 2 hereof (except those excluded in paragraph 3 hereof) are now, and for several years last past have been, engaged in the business of manufacturing candies and other confections, and in the sale and distribution of such products. In the course and conduct of their respective businesses the respondents cause, and have caused, their products, when sold, to be shipped and transported from their respective places of business through and into States of the United States other than those in which such shipments originate. Respondents maintain and at all times mentioned herein have maintained, a course of trade in their respective products in commerce among and between the several States of the United States.

All of the respondent manufacturers are members of respondent Association, and have participated actively in formulating the policies and carrying on the activities of the Association.

The respondent manufacturers constitute a large and influential portion of the candy manufacturers in the States of California, Washington, Utah, and Colorado. They are able to control or substantially influence the flow of trade and commerce in candies and confections among and between those States and to control or substantially influence the prices of such products.

PAR. 5. There are in the States named above other corporations, firms, individuals, and partnerships, engaged in the manufacture of candies and other confections, and in the sale and distribution of such products in commerce among and between these States and various other States of the United States. The respondent manufacturers are and have been in direct and substantial competition with such other manufacturers. But for the combination and conspiracy hereinafter described, the respondent manufacturers would also be in direct and active competition with one another in the sale and distribution of their products in commerce among and between these States and among and between other States of the United States.

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PAR. 6. While the Western Confectioners Association was organized some 25 years ago, it was not until about 1936 that it became particularly active or attempted to serve as anything more than a social organization. In 1937 a new constitution and bylaws was adopted, and in January 1938 the Association was incorporated. The ostensible purposes of the Association, as set forth in the constitution, were:

(1) To establish and maintain fair and equitable standards of labor; to cultivate friendly relations within the industry; to eliminate evils and abuses with the view of promoting the common welfare of the Industry, its employees, and the public good.

(2) To analyze and investigate the many problems affecting this industry, including the problem of production and the abatement of the evils of child labor, unfair competition, and manufacturing under sub-standard conditions.

(3) To secure freedom from unjust or unlawful exactions and enactments, establish and maintain uniformity and equity in the customs and commercial usages of the industry, and recognize and deal with any unfair or discriminating conditions that may exist or arise within the Industry.

(4) To determine means of improvement, standardization and methods of manufacturing, costing and marketing of candy and closely allied competitive products, and of increasing the efficiency of management.

(5) To make such statistical and fact-finding investigations as may seem desirable and to build up information about the Industry which will make possible intelligent treatment of local and national problems.

(6) To develop friendly and cooperative relations with similar groups in other sections of the United States which shall have for its primary purpose the welfare of this industry. And such other purposes as will be of general benefit to the industry.

For the purpose of the carrying on of its various activities the area covered by the Association was divided into four zones, as follows:

Southern California Zone.....	South of San Luis Obispo and Bakersfield, by a line drawn East and West.
Northern California Zone.....	North of and including San Luis Obispo and Bakersfield, by a line drawn East and West.
Northern Zone.....	States of Washington and Oregon.
Eastern Zone.....	States of Utah, Colorado, etc.

Under the caption, "Fair Trade Practice Rules" the constitution contained the following provisions, among others:

SELLING BELOW COST. No member shall sell any candy at a price below cost; except that a member may meet the lower prices of a competitor, whose prices are not in violation of the established Cost Survey (The Association will endeavor with the least delay to establish this Cost Survey for our Industry); *Provided, however,* That such member shall report immediately to the Manager of the Association the name of such competitor, the sales price of the article or articles of candy involved.

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A member may merchandise a new product below cost, provided the member's estimated cost based on potential production and based on the established Cost Survey for the Industry, shall have been filed in the Manager's Office.

This provision shall not apply to distressed candy which may be sold below the member's cost, provided due notice of said proposed sale has been filed in the Manager's Office, giving description, quantity price, and to whom offered or sold.

* * * * *

DISCOUNTS. No member shall allow to Jobbers discount for cash to exceed two (2) percent in any case, and the time in which said cash discount shall be allowed shall not exceed fifteen (15) days from date of shipment, and all bills paid after expiration of such member's discount period shall be net. However, on water freight shipments from the Pacific Coast to the Atlantic Coast, Alaska, Hawaii, Philippines, or foreign territory, an additional fifteen (15) days may be allowed, but provided further that the invoice shall clearly state the date of the invoice and the actual date of the shipment and include the words "Via Water Freight."

For sales direct to the Retail Trade, the above terms shall apply unless application is made to the Board of Directors by any Zone desiring a change in the terms applicable to the specific Zone.

A statute of the State of California known as the "Unfair Practices Act" provides, in part, that it shall be unlawful for any person engaged in business within the State to sell any article or product at less than the cost thereof to such vendor. The act further provides for the bringing of injunction proceedings to prevent the violation of the act, and for the imposition of certain penalties for the violation of the act. Apparently the provision of the Association's constitution with respect to "Selling Below Cost" was framed with the State statute in mind.

While the constitution provided for the payment of such membership dues or fees as might be fixed by the Association's board of directors, and for the forfeiture of all of the rights and privileges of membership in the event of the failure to pay such dues, there apparently has been no serious effort made during the last several years to enforce these provisions. The record discloses numerous instances in which members who were in default in the payment of dues have attended the conventions of the Association and meetings held in the various zones, and have participated actively in the formulation of the Association's policies and in carrying out the various activities and practices of the Association and the various zone groups.

Not only was the membership of the Association divided into groups based upon geographic lines, but the membership also divided into groups determined by the particular kinds and varieties of candies manufactured by the members. For example, some of the members manufactured principally "hard mixed candy," others "bar candy," others "pan goods," others "chocolate drops," others "box

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goods," etc. The various members naturally had little interest in lines of candies which they themselves did not manufacture, and confined their activities in the main to the group or groups representing their own particular line of products. At the annual conventions of the Association it was the custom and practice of the members, after certain general discussions in the convention as a whole, to separate into the various groups, and it was principally through these groups that the real activities of the Association were conducted.

PAR. 7. Some 5 or 6 years ago certain members and officers of the Association conceived the idea of using the Association as a medium whereby agreements might be reached among the members with respect to the minimum prices at which the products of the respective members would be offered for sale, and also with respect to discounts which would be allowed purchasers. The exact time at which this plan had its inception is not disclosed by the record, but the plan was the subject of discussion in the Association and among certain of the members as early as 1936. As a part of and in furtherance of the plan, the Association undertook in the early part of 1937 the making of certain surveys among its members, these surveys being designated by the Association as "Cost Surveys." Letters explaining the nature of the surveys were addressed by the Association to all of the members, and in these letters were enclosed certain questionnaires to be answered by the members. These questionnaires called for various data pertaining to the various items entering into the cost of the manufacture of candy, including such items as labor, factory and packing overhead, shipping expense, selling expense, administrative expense, etc. It was contemplated by the Association that cost surveys would eventually be made on all of the various kinds of candy manufactured and sold by the members, but so far as the record discloses only three of the surveys were completed, these covering hard mixed candy, pan goods and chocolate drops.

Arrangements were made by the Association with a prominent commercial reporting concern under which the members were to return the executed questionnaires to this concern rather than to the Association, and this concern in turn was to advise the Association of the results of the survey. Averages only were to be supplied rather than the actual survey sheets. The members were identified by code numbers only and were requested not to sign the questionnaires. Assurance was given in the Association's letter that the data submitted by the members in response to the questionnaire would be strictly confidential and would be known only to the commercial agency's accountant.

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The questionnaires were sent by the Association not only to members whose places of business were located within the State of California, but were sent to all of members of the Association located in all of the States comprising the Association's territory. Nor was the data requested in the questionnaires restricted to the cost of goods sold within the State of California, but the information requested was of a general nature and was intended to cover the cost of all products sold by the members, regardless of the territory in which the sales were made and irrespective of whether such sales were intrastate or interstate. Obviously it was the intention of the Association to use the California Unfair Practices Act as the basis of price agreements which would cover all of the sales transactions of all of the members of the Association.

While it appears that the major portion of the members of the Association did not answer and return the cost survey questionnaires, a substantial number did supply the data as requested, and in due course the results of the surveys were communicated by the commercial reporting agency to the Association. In arriving at the cost figures submitted to the Association the agency computed the total of all of the answers made by the members, and then obtained an average figure by dividing this total by the number of members reporting. Upon receipt of this information from the agency the Association made known to the members the average figures arrived at, and these figures were through common understanding accepted by the respondent manufacturers as governing the minimum prices in all sales of their products.

Shortly after the completion of the cost surveys, on hard mixed candy and chocolate drops the city attorney of Los Angeles, California, proceeding under the California Unfair Practices Act and apparently acting at the instance of the Association, called a meeting of the members of the Association in the Los Angeles area. The purpose of the meeting was to arrive at and publish figures representing the cost of hard mixed candy and chocolate drops. At this meeting the cost figures on hard mixed candy and chocolate drops resulting from the Association's surveys were adopted as the correct figures representing the cost of such candy, and the members of the Association were in the course advised by the Association of the action taken at the meeting. The record is replete with correspondence between the various respondent manufacturers and between the respondent manufacturers and the Association, showing that these figures were by common understanding and agreement among the members adopted and accepted as the minimum prices on hard mixed candy and chocolate drops, and that there was concerted effort on the part

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of the members manufacturing these types of candy to maintain these minimum prices on their products.

That the respondents were successful, through concerted and cooperative action, in increasing and maintaining minimum prices not only on hard mixed candy and chocolate drops but on other candies as well, is evidenced by numerous pieces of documentary evidence in the record. For example, the minutes of the annual convention of the Association held in Los Angeles in February 1938 recite that the chairman of the group representing the bulk candy manufacturers reported to the convention that:

Higher prices were obtained in 1937 as a result of cooperation among firms producing this type of merchandise.

A letter addressed to a number of members of the Association by the secretary in August 1937 stated in part that:

Much has already been accomplished. Through concerted effort the price for hard candy was raised 1¢ above last year.

And a letter addressed by one of the respondents, to another of the respondents, in July 1937, read in part as follows:

We felt that it is not very much to ask to support the Association \$10. to \$20. per month. It would not take much of an increase in the price to pay this back a thousand fold. As Leon Sweet stated at the time of the recent convention—by just coming there and getting Jelly Beans up ½¢, he had paid for several trips to the convention. This same would true [sic] if we can get the price of hard candy up ½¢ to 1¢ per pound this Fall. The additional profits derived from that alone would support the association for many years to come. As you know, we are just now starting on general comparative expenses. Believe that this survey on hard candy will help us to maintain prices this Fall season, especially here in California.

In certain instances reports reached the respondents that certain manufacturers were not maintaining the minimum prices which had been arrived at as shown above, and such manufacturers were threatened by respondents with legal action for such departures. In at least two instances cases of alleged price-cutting were referred by the Association to its attorney for investigation and possible legal action. Respondents also caused threats to be circulated generally among manufacturers that those who sold their products at prices less than the cost figures adopted would be prosecuted under the Unfair Practices Act.

PAR. 8. In addition to establishing and maintaining a system of minimum prices governing the sale of their products, the respondents have by concerted action classified purchasers of their products into various classes, such as syndicates, wholesalers, jobbers, and retailers, and have agreed upon and fixed certain specified standard and uni-

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form discounts to be allowed purchasers within such classifications. The respondent manufacturers were requested by the Association to supply detailed information relative to the discounts allowed various purchasers of their products, and from this information, as well as from other information gathered by the Association, the respondents made up an arbitrary classification of the purchasers of candy in the trade area served by respondents. The respondents, pursuant to agreement among themselves, adopted such classification and adhered to it in allowing or declining to allow discounts to purchasers.

PAR. 9. Each of the respondent members has acted in concert and in cooperation with one or more of the other respondent members and with the respondent Association in doing the foregoing acts in furtherance of the understanding, combination, and conspiracy herein described.

PAR. 10. The Commission further finds that the understanding, agreement, combination, and conspiracy entered into by the respondents, and the acts done pursuant thereto and in furtherance thereof, as herein described, have the tendency and capacity to hinder, restrain, lessen, and prevent competition, and did substantially hinder, restrain, and lessen competition, in the sale of candies and other confections in commerce among and between various States of the United States. Such understanding, agreement, combination and conspiracy, and the acts done pursuant thereto and in furtherance thereof, also have the tendency and capacity to increase the price of candy and other confections to the purchasers thereof and ultimately to the general public, and unreasonably to restrict and restrain trade in candies and other confections in commerce among and between 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 and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, 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 the complaint, and in opposition thereto, report of the trial examiner upon

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the evidence and the exceptions to such report, 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 certain of the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Western Confectioners Association, Inc., a corporation; Warren Watkins, T. A. White, and Clarence M. Kretchmer, individually, and as officers and members of said Association; Leroy M. Gimbal, Alfred Beaudry, Leon Sweet, Harold Thompson, and E. H. Jananyan, individually, and as directors and members of said Association; A. C. Carrington, Chester Roberts, George Cardinet, H. L. Brown, Robert W. Kaneen, and E. A. Hoffman, individually, and as trustees and members of said Association;

Brown & Haley, a corporation; L. M. Gimbal and R. E. Gimbal, individually, and as copartners, trading and doing business as Gimbal Brothers; Hromada Candy Co., a corporation; Sierra Candy Co., Inc., a corporation; National Biscuit Co., a corporation; Planters Nut & Chocolate Co., a corporation; E. A. Hoffman Candy Co., a corporation; General Food Products Co., a Corporation; Alfred Beaudry and Wilfred Beaudry, individually, and as copartners, trading and doing business under the partnership name of Beaudry Bros. Candy Co.; Candy House, Inc., a corporation; Cardinet Candy Co., Inc., a corporation;

Brecht Candy Co., a corporation; Warren Watkins, trading as Warren Watkins Manufacturing Co.; Sweet Candy Co., a corporation; Miss Saylor's Chocolates, Inc., a corporation; Imperial Candy Co., a corporation; Christopher Candy Co., a corporation; and B. Guy Showley, individually, and trading as Showley Bros.; and respondents' officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of candies and confections in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, continuing, or carrying out, or aiding or assisting in the continuing or carrying out, of any agreement, understanding, combination or conspiracy between or among any two or more of said respondents, or between or among any one or more of said respondents and any other person, partnership or corporation, for the purpose or with the effect of establishing or maintaining uniform or minimum prices for respondents' products or uniform discounts to purchasers of such products;

2. Doing, by cooperative or concerted action, or agreement or understanding, between or among any two or more of said respondents, or between or among any one or more of said respondents and any other person, partnership or corporation, any of the following acts or things:

(a) Fixing, establishing or maintaining uniform or minimum prices for respondents' products, or uniform discounts to purchasers of such products;

(b) Classifying purchasers or prospective purchasers of respondents' products into classes for the purpose or with the effect of fixing, establishing, or maintaining uniform discounts to such purchasers.

(c) Coercing or attempting to coerce manufacturers, by threats of legal action or otherwise, to maintain uniform or minimum prices fixed by 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.

It is further ordered, That this proceeding be, and it hereby is, dismissed as to respondents, Euclid Candy Co. of California, Inc., a corporation; Hoefler's Centennial Chocolates, Ltd., a corporation; Walter A. Vellguth, individually, and trading and doing business as Vellguth's Candy Co.; George Haas & Sons, a corporation; Frederick W. Theisen, individually, and trading under the trade name of Purity Candy Co.

Laurent Cerf, individually, and trading and doing business as Orange Blossom Candy Co.; Collins Candy Co., a corporation; Nathan Metzger and Manford Matzger, individually, and as copartners trading and doing business under the partnership name of Matzger Chocolate Co.

Golden Nuggets Sweets, Ltd., a corporation; William G. Coxon and Pearl W. Coxon, individually, and as copartners, trading and doing business as Coxon Co.; James Doumakes, individually, and trading and doing business under the firm name Doumaks Marshmallow Co.

Sam Gendel and Lillian Gold, individually, and as copartners, trading and doing business as Los Angeles Nut House; Johanna A. Gilker, individually, and trading and doing business as Los Angeles Confection Co.; Pearson Candy Co., Ltd., a corporation; Triangle Candy Co., a corporation; Jesse G. Beckjord, individually and trading and doing business as Wonder Food Marshmallow Co.; Charles E. Hassey, individually, and trading and doing business as Hassey Candy Co.; Walter A. Hewitt, individually, and trading and doing business as Hewitt Candy Co.; Sunkist Candy Co., a corporation; G. Fred Spearin, an individual.

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J. G. McDonald Chocolate Co., a corporation; Ostler Candy Co., a corporation; Robert E. Wilson, individually, and trading and doing business as Sweetarts; Queen Anne Candy Co., a corporation; Joseph Vinikow, individually, and trading and doing business as Parisian Candy Co.; Margaret Burnham's, Inc., a corporation; California Peanut Co., a corporation; Louis F. Chiodo and Emilio G. Chiodo, individually, and as copartners, trading and doing business as Chiodo Candy Co.

Leslie N. Johnson, individually, and trading and doing business as Leslie's Fountain; Cosner Candy Co., a corporation; Savage Candy Co., a corporation; Carl C. Bonn, individually, and trading and doing business as Bonn Candy Co.; Davenport Candycrafts, a corporation; Riley Candy Co., a corporation; Shupe-Williams Candy Co., a corporation; Startup Candy Co., a corporation; and Idaho Candy Co., a corporation.

IN THE MATTER OF

HARRY FROMAN, TRADING AS SUPREME SALES
COMPANY AND RELIABLE PREMIUM HOUSE

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

Docket 3559. Complaint, Aug. 29, 1938—Decision, June 23, 1942

Where an individual, engaged in competitive interstate sale and distribution of watches, clocks, dolls, doll carriages, men's and boys' jackets, and numerous other articles of merchandise—

(a) Sold them through use of sales circular and a pull card device, under a plan by which the particular article received and the price paid therefor were dependent upon the legend disclosed under tab of card selected by chance by purchaser, and operator of card, after sale of all chances thereon and remission of money, was compensated by choice of a premium or cash; and thereby

Supplied to and placed in the hands of others a means of conducting lotteries in the sale of his merchandise, notwithstanding subterfuge "Notice to Purchasers" offering right to refuse purchase of article; contrary to an established public policy of the Government and in violation of the criminal laws, and in competition with many who are unwilling to use such, or any method contrary to public policy and refrain therefrom;

With the result that many persons were attracted by said sales method 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, from whom trade was thereby unfairly diverted to him; and

Where said individual, engaged as aforesaid—

(b) Made such statements and representations in his advertising circulars as "Gifts for all," "How to get your Gifts without any cost to you," "Special Offer: 2 Extra Valuable Surprise Gifts Free"; when none of his articles designated as premiums or gifts were free but were in fact delivered as compensation for services, and price thereof was included in price of other articles which representative had to sell or procure sale of, and, in case of at least one, having to pay money in addition to service;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby inducing it to purchase substantial quantities of said products because of such mistaken belief, and unfairly diverting trade 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.

Before *Mr. Randolph Preston* and *Mr. Andrew B. Duval*, trial examiners.

Mr. D. C. Daniel, and *Mr. J. W. Brookfield, Jr.* for the Commission.

Mr. Arthur D. Herrick, of New York City, for respondent.

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Complaint

COMPLAINT

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

PARAGRAPH 1. Respondent, Harry Froman, is an individual, trading as Supreme Sales Co. and Reliable Premium House. Respondent first operated under the name of Reliable Premium House at 171 Broome Street, New York, N. Y., but discontinued business at that address and now has his principal office and place of business located at 34 East Twelfth Street, New York, N. Y. Respondent is now, and for some time last past has been, engaged in the sale and distribution of watches, clocks, dolls, doll carriages, men's and boys' jackets, electric lamps, carving sets and pie servers, bedding, cameras, dresser sets, salt and pepper sets with trays, cosmetics, tooth brushes, jewelry, rain-coats, cigarette cases and lighters, kitchenware, tableware, suitcases, dinner sets, pipes, comb and brush sets, beauty sets, carpet sweepers, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped or transported from his places of business aforesaid to purchasers thereof in the various States of the United States other than New York and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise or lottery scheme. The respondent distributes certain advertising literature, including a sales circular, to rep-

representatives and prospective representatives. Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive, or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named articles of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull card tabs receives an article which has apparent greater value and higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes, and has sold and distributed, various assortments of said merchandise, and furnishes and has furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery

scheme. Such plan or method varies in detail but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull cards, use and have used the same in purchasing, selling and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise, and the sale of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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

PAR. 5. In the course and conduct of his business as herein-above related, respondent causes, and has caused, various false, deceptive, and misleading statements or representations to appear in his advertising matter as aforesaid, of which the following are examples but are not all inclusive:

Gifts For All.

How To Get Your Gifts Without Any Cost To You.

Beautiful Gifts Or Cash To Be Had At Absolutely No Cost.

Special Offer: Extra Valuable Surprise Gifts Free.

We Pay All Shipping Charges.

The effect of the foregoing false, deceptive, and misleading statements or representations of respondent in selling and offering for sale such articles of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the several states of the United States and in the District of Columbia by inducing them to mistakenly believe that respondent gives away certain of his said articles of merchandise without cost to his representatives, and that said respondent pays all shipping charges on all of his said articles of merchandise.

PAR. 6. In truth and in fact none of respondent's so-called premiums or gifts are given away "free" or without cost, but said so-called premiums or gifts, which are represented as being "free" or without cost to said representatives, are either purchased with labor by said representatives, or the prices thereof are included in the prices of other articles of merchandise which said representatives must sell or procure the sale of before said so-called premiums or gifts can be procured by them. For a number of said so-called premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered. Respondent does not pay the shipping charges on all of his said products, but said representatives are required to pay certain specified sums of money as shipping charges on a number of respondent's said articles of merchandise.

PAR. 7. The use by respondent of the false, deceptive and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such statements or representations are true, and into the purchase of substantial quantities of said respondent's products as a result of such erroneous belief. There are, among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive and misleading statements and representations concerning their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and, as a result thereof, substantial injury is being done, and has been done, by respondent to competition in commerce 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 com-

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merce within the intent and meaning of the Federal Trade Commission Act.

REPORTS, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 29, 1938, issued and subsequently served its complaint in this proceeding upon the respondent, Harry Froman, individually, and trading as Supreme Sales Co., and Reliable Premium House, charging him with the use of unfair methods of competition in commerce in violation of and 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 attorneys for the Commission, and in opposition to the allegations of the complaint by the attorney for the respondent, before Randolph Preston and Andrew B. Duvall, trial examiners, of the Commission, theretofore designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, and briefs in support of 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. The respondent, Harry Froman, is an individual, trading as Reliable Premium House, with his principal place of business located at 34 East Twelfth Street, in the city and State of New York. During the year 1936 respondent traded also under the name Supreme Sales Co., but has not used that name since said date. Respondent is now, and since the year 1935 has been, engaged in the sale and distribution of watches, clocks, dolls, doll carriages, men's and boys' jackets, and numerous other articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be shipped or transported from his place of business in the State of New York to purchasers 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 merchandise in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 2. In the course and conduct of his said business the respondent is engaged in competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In promoting the sale of his products, the respondent, distributes advertising or sales circulars by the United States mails to prospective customers or representatives located in various States of the United States. These circulars contain pictorial representations and descriptive matter with reference to merchandise offered as compensation for the sale of certain of respondent's merchandise, and pictorial representations and descriptive matter of certain of the articles of merchandise offered for sale. Each of said circulars contains also what is commonly known as a pull card device.

Said pull card device consists of a number of tabs under each of which is concealed the name of an article of merchandise and the price thereof. Neither the name of the article of merchandise nor the price thereof, is disclosed to a purchaser or prospective purchaser until after the tab has been separated or removed from the card. 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 he is to receive and the price he is to pay for it, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have retail values and regular prices greater than the prices so designated for them, but all of the articles are distributed to the purchasers for the prices on the tabs which they pull or remove from said device. The apparent greater values and regular prices of some of such articles of merchandise as compared with the prices the prospective purchaser will be required to pay in the event he secures the privilege of purchasing 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 he will be required to pay for it, and the obtaining of an article of greater value than the price 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, the sum of these

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amounts is remitted to the respondent. The respondent, upon receipt of such amounts, ships to said representative, the merchandise sold by means of said device, together with a premium for the representative as compensation for operating the device and selling and distributing the merchandise. The premium is selected by said representative from articles of merchandise pictured in the sales or advertising circular. If the representative so desires, he may deduct a cash premium in lieu of the merchandise premium. Upon receipt of the merchandise from respondent, the representative delivers each article thereof to the purchaser in accordance with the list prepared when the tabs were removed or detached from the device as above-described.

Immediately above the pull tab device on the circular, 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 respondent's 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 respondent in order to obtain the merchandise purchased. The purchaser knows the articles listed, and the prices to be paid therefor before he selects and removes the tab from the pull card device. The element of chance is the specific article to be purchased and the amount of money to be paid for it. The operation of the plan strictly in accordance with the so-called "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.

It does not appear that any person who pulled a tab from one of respondent's pull card devices ever refused to take and pay for the merchandise designated on the tab. The record shows that at least one representative, by the use of said sales plan, disposed of several assortments of respondent's merchandise without having anyone refuse to take and pay for the merchandise indicated on the tab he pulled. Moreover, from aught that appears in the record all the instructions received by the representative or operator for the operation of said sales plan are contained in the advertising circular forwarded by the respondent. It is significant that in these instructions there is no direction as to what should be done in the event all of the articles of

merchandise are not sold. The circular likewise fails to contain any information as to the premium or compensation which can be obtained by the representative or operator in the event one or more of the purchasers refuse to accept the article listed on the tab he removes from the pull tab device. It is clearly apparent from the circulars, on the other hand, that all of the articles listed thereon are to be sold. The following is typical of the instructions appearing on each of said circulars:

Ask your friends and neighbors to pull one of the advertising slips **ON THE NEXT PAGE**. On the back of each slip you will find the name of the article and its price plainly marked. You collect from the purchaser the price stated on the slip for which he will receive the article mentioned on it.

The prices start at 9c and **NO ARTICLE COSTS MORE THAN 39c**. When all the articles have been sold you will have collected \$7.65. Then fill out the attached order blank and check the premium you want for your prize. As soon as we receive your order and money order we will mail you the 22 articles, as well as your premium.

The order blank referred to in these instructions reads in part as follows:

After you have sold the 22 articles of merchandise and collected \$7.65, fill out this blank, stating the correct number of premiums you have selected. Also write your name and address plain, and mail it to us in the enclosed envelope.

Gentlemen:

Please ship at once all charges prepaid the 22 articles of merchandise as sold amounting to \$7.65 and one of the valuable premiums.

REWARD PREMIUM NO. ----- COLOR -----

PAR. 4. The Commission finds that the persons or representatives to whom respondent has furnished or distributed said sales or advertising circulars, containing said pull card device, use and have used the same in purchasing, selling, and distributing respondent's merchandise in accordance with the sales plan or method hereinabove described. Respondent has thus supplied to and placed in the hands of others a means of conducting lotteries in the sale and distribution of his said merchandise in accordance with said sales plan or method. Such merchandise has thus been sold or distributed by means of a game of chance, gift enterprise, or lottery scheme, and respondent has reaped the benefits therefrom. The use by the respondent of said sales plan or method in the sales 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 is in violation of the criminal laws.

PAR. 5. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondent 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 respondent's said method and by the element of chance involved in the sale of such merchandise in the manner above-described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or any equivalent method. The use of said method by respondent, because of said game of chance, has a capacity and tendency to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 6. In addition to the acts and practices hereinabove described, the respondent also causes, and has caused, various statements to appear in his advertising circulars, of which the following are typical examples:

Gifts for All;

How to Get Your Gifts Without Any Cost To You;

Beautiful Gifts Or Cash To Be Had At Absolutely No Cost;

Special Offer: 2 Extra Valuable Surprise Gifts Free.

Each and all of said statements and representations are false, deceptive and misleading. None of respondent's articles of merchandise designated as premiums or gifts are given away "free," but, instead, said articles 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 they may obtain said premiums or gifts. For at least one of the premiums or gifts described in respondent's circulars a certain sum of money must be paid by the representative in addition to the labor performed or services rendered.

PAR. 7. The use by the respondent 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 and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of respondent's products as a result of such erroneous and mistaken belief. As a result thereof trade has been unfairly diverted to the respondent from his 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.

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CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Randolph Preston and Andrew B. Duvall, trial examiners of the Commission therefore designated by it, in support of the allegations of the complaint and in opposition thereto, and briefs in support of and in opposition to 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, Harry Froman, individually, and trading as Supreme Sales Co., and Reliable Premium House, or under any other trade name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of watches, clocks, dolls, doll carriages, men's and boys' jackets, 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.

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

Complaint

IN THE MATTER OF

MONTGOMERY WARD & 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 4447. Complaint, Jan. 15, 1941—Decision, June 23, 1942

Where a corporation, engaged in interstate sale and distribution by mail order of merchandise, including certain devices for feminine use described by it as "Ward's Posture-Aid Health Belts," "Diab Reducers," and "DuPont Velutex Perforated Reducers"—

- (a) Made such statements, in its catalogs, along with illustrations of such devices, as "Reduce Excess Flesh," "Correct Figure Faults," "Reduce your diaphragm and abdomen," "Mold your abdomen gently," "Correct pendulous abdomens," "Take 2 to 3 inches from abdomen and diaphragm," and "Make reducing easy";

The facts being that, while such devices would afford artificial support, lessen the prominence of pendulous abdomens, and change the physical appearance by compressing that portion of the body about which they were placed, they would not cause a reduction of local body tissue, or effectively remove fat; and

- (b) Represented, through use of terms "Health" and "Reducers" as part of the name of said devices, that the use thereof promoted health and reduced wearer's weight; when in fact such results were not thus obtainable;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said statements were true, thereby inducing it to purchase said devices, because of such mistaken belief:

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

Before *Mr. William C. Reeves*, *Mr. John W. Addison*, and *Mr. John J. Keenan*, trial examiners.

Mr. Eldon P. Schrup for the Commission.

Mr. Francis D. Roth and *Mr. L. E. Oliphant*, 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 Montgomery Ward & 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, Montgomery Ward & Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located in the city of Chicago, State of Illinois.

Respondent, Montgomery Ward & Co., Inc., is now and for a number of years last past has been engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of articles of general merchandise. In the course and conduct of said business respondent maintains and operates various so-called mail order houses located in Chicago, Ill.; Baltimore, Md.; Albany, N. Y.; Kansas City, Mo.; St. Paul, Minn.; Denver, Colo.; Portland, Oreg.; Oakland, Calif., and Fort Worth, Tex., together with a large number of retail stores, and many so-called catalog order offices situated in numerous cities and towns throughout the United States and in the District of Columbia.

For the purpose of inducing the purchase of its various articles of merchandise, respondent from time to time issues and distributes catalogs to the purchasing public by means of the United States mails and by various other means in commerce. Said catalogs contain illustrations, drawings, and descriptive matter concerning the various articles of merchandise offered for sale and the prices at which said articles can be purchased. Respondent also supplies its various retail stores and so-called catalog order offices with copies of said catalog for inspection by the general public, and from which the public can make purchases of articles of merchandise not carried in stock by the retail store.

Respondent causes said merchandise when sold to be transported, by means of the United States mails and otherwise, from its places of business located in the State of Illinois and in various other States to the purchasers thereof located in a State or States other than the State or States wherein such shipments of merchandise from respondent originate.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said articles of general merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Among the articles of general merchandise so offered for sale, sold, and distributed by respondent are certain devices for feminine use advertised and described by respondent in respondent's said mail order catalogs as "Ward's Posture-Aid Health Belts," "Diab Reducers," and "Du Pont Velutex Perforated Reducers."

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused

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and is now causing the dissemination of, false advertisements concerning said devices 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 products by various means, for the purpose of inducing, and which are likely to induce directly or indirectly, the purchase of said devices 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 catalogs and other advertising material, are the claims by respondent that the wearing of the aforementioned devices, "Ward's Posture-Aid Health Belts," "Diab Reducers," and "Du Pont Velutex Perforated Reducers" will accomplish the following:

- Reduce excess flesh;
- Correct figure faults;
- Reduce your diaphragm and abdomen;
- Mold your abdomen gently;
- Correct pendulous abdomens;
- Take 2 to 3 inches from abdomen and diaphragm;
- Make reducing easy.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, and by use of the terms "Health" and "Reducers" in the trade names of such devices, and also by means of illustrations and drawings contained in said catalogs, respondent represents that the aforementioned devices when worn will reduce excess flesh, correct figure faults, reduce the wearer's diaphragm and abdomen, mold the abdomen gently, correct pendulous abdomens, take 2 to 3 inches from abdomen and diaphragm, and make reducing easy.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondent, as hereinabove described, are grossly exaggerated, misleading and untrue. In truth and in fact, the wearing of such devices will not reduce flesh, make reducing easy, reduce the diaphragm and abdomen, or take 2 to 3 inches from the abdomen and diaphragm. The wearing of these devices will afford artificial support and lessen the prominence of pendulous abdomens, and by compressing that portion of the body about which they are placed change the wearer's physical appearance. They will not correct this condition, but instead will cause further loss of the functioning of the abdominal muscles. The use of said devices will not cause a

reduction of local or body tissue or effectively remove fat or overcome or lessen a condition of excess weight. Said devices have no value in maintaining or restoring bodily health.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements, representations and advertisements, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations, and advertisements are true and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said devices.

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 15th day of January A. D. 1941, issued and thereafter served its complaint in this proceeding upon the respondent, charging it with unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act.

After the issuance of the complaint and filing of respondent's answer, testimony, and other evidence in support of the allegations of the complaint were introduced by Eldon P. Schrup, attorney for the Commission, and testimony in opposition to the allegations of the complaint was introduced by F. D. Roth, 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 complaint, answer, testimony, and other evidence, the trial examiners' report and 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. Respondent, Montgomery Ward & Co., Inc., a corporation, is a corporation, organized under the laws of the State of

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Illinois, with its principal office and place of business in the city of Chicago, State of Illinois, and branch stores located in numerous States.

PAR. 2. Respondent is now, and for a number of years last past has been, engaged in conducting a mail order business, and in this connection has sold and now sells and distributes merchandise, including certain devices for feminine use described by respondent as "Ward's Posture-Aid Health Belts," "Diab Reducers," and "DuPont Velutex Perforated Reducers." Respondent causes said merchandise, when sold, to be transported by means of the United States mail, and otherwise, from its various places of business to purchasers thereof located in States other than the States wherein such shipments originate, and maintains and has maintained during all of the time mentioned herein, a course of trade in said articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, for the purpose of inducing the purchase of the devices referred to in paragraph 2 hereof, issues and distributes its catalogs to the purchasing public by means of the United States mail and by various other means. Among and typical of the statements and representations contained in respondent's advertisements appearing in its catalogs are the claims that the wearing of respondent's said devices will accomplish the following:

- Reduce Excess Flesh;
- Correct Figure Faults;
- Reduce your diaphragm and abdomen;
- Mold your abdomen gently;
- Correct pendulous abdomens;
- Take 2 to 3 inches from abdomen and diaphragm;
- Make reducing easy.

PAR. 4. Respondent, by use of the representations set forth in paragraph 3 hereof, and by means of illustrations and drawings contained in its catalogs, represents that its said devices, when worn, will reduce excess flesh, correct figure faults, reduce the wearer's diaphragm and abdomen, mold the abdomen gently, correct pendulous abdomens, take 2 to 3 inches from abdomen and diaphragm, and make reducing easy.

PAR. 5. The representations and claims of respondent, as set forth in paragraphs 3 and 4 hereof, are grossly exaggerated, false, and misleading. The wearing of said devices will afford artificial support and lessen the prominence of pendulous abdomens; will change the physical appearance by compressing that portion of the body about which they are placed; but will not cause a reduction of local body tissue, or effectively remove fat, or overcome or lessen the condition of

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excess weight; nor have such devices any value in retaining or restoring bodily health. In truth and in fact, the wearing of respondent's said devices will not reduce excess flesh, correct figure faults, reduce the wearer's diaphragm and abdomen, take 2 to 3 inches from abdomen and diaphragm, or make reducing easy.

PAR. 6. Respondent, by use of the terms "Health" and "Reducers," as part of the name of said devices, represents and causes the purchasing public to believe, that the use of its devices promotes health and reduces the weight of the wearer, when in truth and in fact, such results are not obtainable by the use of said devices.

PAR. 7. The said exaggerated, false and misleading statements, representations, and advertisements disseminated by respondent have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations, and advertisements are true, and have the capacity and tendency to induce, and have induced, the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's devices.

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, testimony and other evidence introduced before William C. Reeves, John W. Addison, and John J. Keenan, trial examiners of the Commission, theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, and briefs in support of and in opposition to 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, Montgomery Ward & 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 offering for sale, sale and distribution of devices for feminine use designated by the respondent as "Ward's Posture-Aid Health Belts," "Diab Reducers," and "Du Pont's Velutex Perforated Reducers," or otherwise designated, or any device of sub-

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stantially 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 advertisement (a) by means of United States mails, or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference,

(1) That the wearing of any of said devices will remove excess flesh from the human body, or from the diaphragm or abdomen or any particular part or area of the body.

(2) That the wearing of any of said devices will mold the abdomen gently or correct figure faults in excess of compressing that portion of the body about which said devices are placed, and to that extent only improve the appearance of the wearer while the devices are actually being worn.

(3) That the wearing of said devices, or any of them, will correct pendulous abdomens, or take 2 or 3 inches, or any certain number of inches, from the wearer's diaphragm and abdomen.

(4) That said devices, or any of them, will make it easy for the wearer to reduce.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said devices, or any of them, which advertisement contains any of the representations prohibited in paragraph 1 hereof;

3. Using as a part of the designation or trade name of said devices the words "Health" or "Reducers," when such devices are offered for sale, sold or distributed in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

Complaint

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IN THE MATTER OF

LASHER'S SILK 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 4612. Complaint, Oct. 9, 1941—Decision, June 23, 1942

Where a corporation engaged in the manufacture and interstate sale and distribution of ribbon seam binding material and other products—

Offered and sold its ribbon seam binding wound on spools, cardboard rolls or cards upon which was imprinted, in conspicuous type and plainly visible to purchasers, along with said corporation's brand name and other descriptive matter, the legend "100 yds."; when in fact, due to shrinkage in dyeing, said spools or cards contained less than said amount;

With result of placing in the hands of dealers purchasing its products for resale a means whereby they were enabled to mislead and deceive the purchasing public, and of misleading and deceiving a substantial portion of such dealers into the false belief that said spools, cardboard rolls and cards contained said quantity, and of thereby inducing their purchase of substantial quantities of its said product; to their loss and injury and that 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. Clyde M. Hadley*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. George J. Beldock, of New York City, for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Lasher's Silk Manufacturing Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 545 Eighth Avenue, in the city of New York, State of New York, and a manufacturing plant in the city of Bethlehem, State of Pennsylvania.

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PAR. 2. The respondent is now, and for more than 2 years last past has been, engaged in the manufacture, at its plant in Bethlehem, Pa., of ribbon seam binding material and other products, and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes its said products, when sold, to be shipped from said place of business in Pennsylvania to jobbers and other purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, as aforesaid, the respondent has offered for sale and sold, and now offers for sale and sells, its said ribbon seam binding under its brand name "Lasher's," wound or rolled on spools, cardboard rolls or cards. Imprinted and labeled on the visible surface of said spools, cardboard rolls, or cards, among other printed statements, in conspicuous type and visible to the eye of jobbers and other members of the purchasing public, appear the following statements:

SEAM BINDING
100 YARDS
RAYON AND SILK
SEAM BINDING
100 YARDS

The foregoing statements and representations are false, misleading, and deceptive in that the said spools, cardboard rolls, or cards did not, and do not, contain 100 yards of ribbon seam binding.

In truth and in fact, the said spools, cardboard rolls, or card contain substantially less than 100 yards of ribbon seam binding to the container.

PAR. 4. The acts and practices of the respondent place in the hands of the dealers purchasing for resale a means or instrumentality whereby such dealers are enabled to mislead and deceive the purchasing public.

PAR. 5. The aforesaid acts and practices of the respondent have had, and now have, the capacity and tendency to, and do mislead and deceive a substantial portion of purchasers and prospective purchasers into the erroneous and mistaken belief that said spools, cardboard rolls, or cards contain 100 yards of ribbon seam binding and cause jobbers and other members of the purchasing public, because

of such erroneous and mistaken belief, to purchase substantial quantities of respondent's products, to their injury and to the injury of the public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 9th day of October A. D. 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Lasher's Silk Manufacturing Co., Inc., a corporation, charging it with unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After the issuance of the complaint, testimony, and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and evidence in opposition to the allegations of the complaint was introduced by the attorney for the respondent, before a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, and a stipulation of facts was entered into on the record by the attorney for the Commission and the attorney for the respondent. The testimony and other evidence and the stipulation of facts were duly recorded and filed in the office of the Commission. The attorney for respondent waived the filing of the trial examiner's report, filing of briefs and oral argument.

Thereafter, the proceeding came on for final hearing before the Commission, upon the complaint, the testimony and other evidence, and the stipulation as to the facts. And the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Lasher's Silk Manufacturing Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 545 Eighth Avenue, in the city and State of New York, and having a manufacturing plant in the city of Bethlehem, Pa.

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PAR. 2. The respondent, for more than 2 years last past has been, and now is, engaged in the manufacture, in its plant at Bethlehem, Pa., of ribbon seam binding material and other products, and in the sale and distribution thereof in commerce between and among various States of the United States and in the District of Columbia.

The respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has offered for sale and sold its ribbon seam binding, wound or rolled on spools, cardboard rolls, or cards, under its brand name, "Lasher's." Among other statements imprinted and labeled on the visible surface of such spools, cardboard rolls or cards, in conspicuous type and plainly visible to purchasers, are the following:

Seam Binding	100 yards	Rayon and silk;
Seam Binding	100 yards.	

The foregoing statements are misleading in that, due to shrinkage in dyeing, the spools, cardboard rolls, or cards did not and do not contain 100 yards of ribbon seam binding, each, but contain less than 100 yards.

PAR. 4. The acts and practices of the respondent place in the hands of dealers purchasing its product for resale, means and instrumentalities whereby they are enabled to mislead and deceive the purchasing public.

PAR. 5. The aforesaid acts and practices of the respondent had and have the capacity and tendency to and do mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that such spools, cardboard rolls, or cards contain 100 yards of ribbon seam binding, and have induced the purchase by such dealers, because of such belief, of substantial quantities of respondent's product, to the loss and injury of such dealers and 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 testimony and other evi-

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dence in support of the allegations of the complaint introduced by the attorney for the Commission, and evidence in opposition to the allegations of the complaint introduced by the attorney for the respondent, before a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, and a stipulation of facts entered into on the record by the attorneys for the Commission and for the respondent—the filing of the trial examiner's report, briefs, oral argument, and all intervening procedure being waived, and it being agreed between the attorneys for the Commission and for the respondent that the Commission may make its findings as to the facts and its conclusion based thereon, and issue its order disposing of the proceeding: And the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Lasher's Silk Manufacturing Co., Inc., a corporation, its officers, representatives, directors, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its product, ribbon seam binding material, whether sold under the brand name "Lasher's" or under any other name, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from

Representing, directly or indirectly, that the number of yards or quantity of ribbon seam binding wound, contained or rolled on spools, cardboard rolls, or cards, or on any container in which said product is offered for sale or sold, is greater than the number of yards or quantity of such product actually contained thereon.

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

Complaint

IN THE MATTER OF

DANIEL HECHTMAN AND STEVE MOORE, TRADING AS
H & H HAT COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT AND THE WOOL PRODUCTS
LABELING ACT OF 1939

Docket 4633. Complaint, Jan. 15, 1942¹—Decision, June 23, 1942

Where two individuals, engaged in the manufacture of women's hats from felt and other materials including old, worn or previously used felt hat bodies purchased by them, which, after being cleaned, shaped and fitted with new trimming, had the appearance of new hats made from new felt; and in the interstate sale and distribution of said products—

- (a) Sold their said hats with no labeling, markings, or designation to indicate that they were in fact made from old, used hat bodies, to jobbers, wholesalers, and retailers by whom they were resold to the purchasing public without disclosure of aforesaid fact;

With result that a substantial portion of said public was misled into believing that products in question were made entirely from new materials, and in consequence, into purchase of substantial quantities thereof; and with further result of thereby placing in the hands of dealers a means of deceiving or misleading members of the public into the mistaken belief that they were, contrary to the fact, purchasing new hats; and

Where said individuals, engaged as aforesaid in manufacture and sale of hats, including many which were wool products within the meaning of the Wool Products Labeling Act in that they were composed in part of wool, reprocessed wool, or reused wool, and other fibers—

- (b) Sold said products misbranded in violation of act in question in that they did not have on or affixed thereto a stamp, tag, label, or other means of identification showing the percentages of the total fiber weight required by the statute with respect to wool, reprocessed wool, reused wool, nonwool fibers, and aggregates thereof, addition of nonfibrous loading, and proper identification of the manufacturer or seller, under act in question:

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 within the intent and meaning of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

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

Mr. Irving Block, of Chicago, Ill., for respondents.

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 Daniel Hechtman

¹ Amended.

and Steve Moore, individually, and trading as H & H Hat Co., have violated the provisions of said act and the provisions of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, 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. Respondents, Daniel Hechtman and Steve Moore, are individuals, trading as H & H Hat Co., and have their principal office and place of business at 1351 Milwaukee Avenue, Chicago, Ill.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the business of manufacturing women's hats from felt and other materials. Some of said hats have been manufactured from felt obtained from old, worn, or previously used hats and others are made from felt not previously used as felt. Respondents sell said hats to retailers, jobbers, and wholesale dealers located in the various States of the United States and the District of Columbia. Respondents cause said hats, when sold, to be transported from their place of business in the State of Illinois to the aforesaid purchasers located in various States of the United States other than the State of Illinois. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said hats in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, prior to July 15, 1941, respondents bought old, worn, or previously used felt hats. The old, worn, or previously used felt hat bodies were cleaned and shaped and fitted with new trimmings and sold by respondents to dealers who in turn sold said hats to the purchasing public.

PAR. 4. The aforesaid hats manufactured from old, worn, or previously used hat bodies as hereinabove described had the appearance of new hats manufactured from new felts. When articles manufactured from old, worn, or previously used materials and having the appearance of being manufactured from new materials are offered to the purchasing public and are not clearly and conspicuously labeled as being manufactured from old, worn, or previously used materials, such articles are readily accepted by members of the purchasing public as being manufactured entirely from new materials.

Said hats were sold to retailers and other dealers without any label, marking, or designation stamped thereon, or attached thereto, to indicate to the purchasing public or to the dealers that said hats were, in fact, manufactured from old, worn, or previously used hat

bodies. Said hats were resold to the purchasing public without the fact being disclosed that they were manufactured from old, worn, or previously used hat bodies, and a substantial portion of the purchasing public was thereby misled to believe that they were, in fact, new hats manufactured entirely from new materials. As a result of this erroneous and mistaken understanding and belief, substantial quantities of respondent's hats were purchased by members of the public.

PAR. 5. Through the use of the aforesaid acts and practices, the respondents placed in the hands of dealers the means and instrumentalities whereby said dealers may have deceived or misled members of the purchasing public into the erroneous and mistaken belief that they were purchasing hats manufactured from new materials when, in fact, said hats were composed entirely or in part of old, worn, or previously used hat bodies.

PAR. 6. Among the hats manufactured by the respondent from felt not previously used as felt, and which have been sold and distributed by respondents since July 15, 1941, are many which are wool products within the intent and meaning of the Wool Products Labeling Act of 1939, in that such hats are composed in part of wool, reprocessed wool, or reused wool, as those terms are defined in said act. Many of said wool products contain fibers other than wool, reprocessed wool, or reused wool.

Each of said wool products, when sold and distributed by the respondents in said commerce as aforesaid, was misbranded in violation of the Wool Products Labeling Act of 1939, in that said wool product did not have on or affixed thereto a stamp, tag, label, or any other means of identification, or a substitute in lieu thereof as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 percentum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (c) the name of the manufacturer of the wool product, or a registered number in lieu thereof under the conditions provided in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of the said act with respect to such wool product.

PAR. 7. The aforesaid acts, practices, and methods 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 14th day of November 1941, issued and subsequently served its complaint in this proceeding upon respondents, Daniel Hechtman and Steve Moore, individually; and trading as H & H Hat Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act and the provisions of the Wool Products Labeling Act of 1939. Subsequently, on the 15th day of January 1942, the Commission issued and thereafter served upon the respondents its amended complaint in this proceeding. After the issuance of said amended complaint, the Commission by order entered herein granted respondents' motion for permission to withdraw their answer filed to the original complaint and to file an answer admitting all of the material allegations of fact set forth in said amended complaint and waiving all intervening procedure and further hearing as to said facts, which answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said amended complaint and respondents' 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, Daniel Hechtman and Steve Moore, are individuals, trading as H & H Hat Co., and have their principal office and place of business at 1351 Milwaukee Avenue, Chicago, Ill.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the business of manufacturing women's hats from felt and other materials. Some of said hats have been manufactured from felt obtained from old, worn, or previously used hats and others are made from felt not previously used as felt. Respondents sell said hats to retailers, jobbers, and wholesale dealers located in the various States of the United States and the District of Columbia. Respondents cause said hats, when sold, to be transported from their place of business in the State of Illinois to the aforesaid purchasers located in various States of the United States other than the State

of Illinois. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said hats in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, prior to July 15, 1941, respondents bought old, worn, or previously used felt hats. The old, worn, or previously used felt hat bodies were cleaned and shaped and fitted with new trimmings and sold by respondents to dealers who in turn sold said hats to the purchasing public.

PAR. 4. The aforesaid hats manufactured from old, worn, or previously used hat bodies as hereinabove described had the appearance of new hats manufactured from new felt. When articles manufactured from old, worn, or previously used materials and having the appearance of being manufactured from new materials are offered to the purchasing public and are not clearly and conspicuously labeled, as being manufactured from old, worn, or previously used materials, such articles are readily accepted by members of the purchasing public as being manufactured entirely from new materials.

Said hats were sold to retailers and other dealers without any label, marking, or designation stamped thereon, or attached thereto, to indicate to the purchasing public or to the dealers that said hats were, in fact, manufactured from old, worn, or previously used hat bodies. Said hats were resold to the purchasing public without the fact being disclosed that they were manufactured from old, worn, or previously used hat bodies, and a substantial portion of the purchasing public was thereby misled to believe that they were, in fact, new hats manufactured entirely from new materials. As a result of this erroneous and mistaken understanding and belief, substantial quantities of respondents' hats were purchased by members of the public.

PAR. 5. Through the use of the aforesaid acts and practices, the respondents placed in the hands of dealers the means and instrumentalities whereby said dealers may have deceived or misled members of the purchasing public into the erroneous and mistaken belief that they were purchasing hats manufactured from new materials when, in fact, said hats were composed entirely or in part of old, worn, or previously used hat bodies.

PAR. 6. Among the hats manufactured by the respondents from felt not previously used as felt, and which have been sold and distributed by respondents since July 15, 1941, are many which are wool products within the intent and meaning of the Wool Products Labeling Act of 1939, in that such hats are composed in part of wool, reprocessed wool, or reused wool, as those terms are defined in said act. Many of

said wool products also contain fibers other than wool, reprocessed wool, or reused wool.

Each of said wool products, when sold and distributed by the respondents in said commerce as aforesaid, was misbranded in violation of the Wool Products Labeling Act of 1939, in that said wool product did not have on or affixed thereto a stamp, tag, label, or any other means of identification, or a substitute in lieu thereof as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, or (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (c) the name of the manufacturer of the wool product, or a registered number in lieu thereof under the conditions provided in the rules and regulations promulgated under such act, or the name of one or more persons manufacturing for introduction, introducing said wool product into, or engaged in the sale, transportation, or distribution of said wool product in, commerce as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

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 and the Wool Products Labeling Act of 1939.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act and the provisions of the Wool Products Labeling Act of 1939.

It is ordered, That the respondents, Daniel Hechtman and Steve Moore, individually, and trading as H & H Hat Co., or trading under

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any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of 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 in some conspicuous place on the exposed surface of the inside of the hat, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the hat itself, a statement that said hats are composed of second-hand or used materials: *Provided*, That if substantial bands, placed similarly to sweat bands in men's hats, are attached to said hats, then and in that event such statement may be stamped upon the exposed surface of such bands; *Provided further*, That said stampings are of such nature that they cannot be removed or obliterated without mutilating the band and the band itself cannot be removed without rendering the hat un-serviceable.

2. Representing in any manner that hats made in whole or in part from old, used or second-hand materials are new or are composed of new materials.

It is further ordered, That the respondents, Daniel Hechtman and Steve Moore, individually, and trading as H & H Hat Co., or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction of hats into commerce, or the sale, transportation, or distribution of hats in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding hats which contain, purport to contain or in any way are represented as containing wool, reprocessed wool or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, by failing to place on or affix to each hat a stamp, tag, label, or other means of identification showing:

(a) The percentage of the total fiber weight of the hat, exclusive of ornamentation not exceeding 5 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 per centum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of the hat of nonfibrous loading, filling, or adulterating matter.

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(c) The name of the manufacturer of the hat; or the manufacturer's registered identification number and the name of a subsequent seller of the hat; or the name of one or more persons introducing said hat into, or engaged in the sale, transportation, or distribution of said hat in, commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

Subsections (a), (b), and (c) of this order are subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and are not to be construed as limiting any applicable provision of said act or said rules and regulations.

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

Complaint

IN THE MATTER OF
ROBERT W. IRWIN COMPANY

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

Docket 4701. Complaint, Feb. 5, 1942—Decision, June 23, 1942

Where a corporation engaged in the manufacture of household furniture, and in the competitive interstate sale and distribution thereof—

Represented and implied that certain of its furniture was made in its entirety from walnut through use of words "Wood: Walnut" and other statements containing the word "Walnut" in catalogs, price lists, photogravure sheets, invoices, and labels distributed among prospective purchasers, and by other means; when in fact it used a walnut wood veneer on a portion of the flat surface of said furniture and pecan wood for some of the exposed structural parts, such as the legs and framing for cabinet doors;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that such furniture was made entirely from walnut, for which it has a marked preference over that made from a combination of woods such as pecan and walnut, and thereby to induce its purchase of said product, 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 its competitors, and constituted unfair methods of competition in commerce, and unfair and deceptive acts and practices therein.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. B. G. Wilson for the Commission.

Travis, Merrick, Varnum & Riddering, of Grand Rapids, Mich., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Robert W. Irwin Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business at 23 Summer Avenue, Grand Rapids, Mich.

The respondent is now, and for more than 2 years last past has been, engaged in the manufacture of household furniture, such as

dining room, bedroom, and living room furniture and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

Respondent 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. In the course and conduct of its said business, the respondent is in substantial competition with other corporations, and with partnerships, firms and individuals engaged in the manufacture of household furniture, and in the sale and distribution thereof in said commerce.

PAR. 3. In the course and conduct of its business, and for the purpose of inducing the purchase of its said furniture, the respondent has disseminated, and is now disseminating, false and misleading statements and representations with respect to the kind of wood from which certain of its furniture is made. Such statements and representations are made by means of catalogs, price lists, photogravure sheets, invoices and labels distributed among prospective purchasers and by other means. Among the statements so disseminated by the respondent is the statement "Wood: Walnut" to designate, describe, and refer to certain of its furniture which is not composed wholly of the wood known as walnut, but which is made from a combination of the wood commonly known as walnut and the wood commonly known as pecan. Respondent, in the manufacture of said furniture, so designated and described, uses what is commonly known as a walnut wood veneer for a portion of the flat surface of said furniture but uses the wood commonly known as pecan for all of the exposed structural parts, such as the legs and framing for cabinet doors.

Through the use of the statement "Wood: Walnut" and other statements containing the word "walnut" to designate, describe and refer to said furniture manufactured from a combination of the woods commonly known as walnut and pecan, as aforesaid, respondent represents and implies, and the purchasing public is thereby led to believe, that said furniture is manufactured in its entirety from the wood commonly known as walnut.

PAR. 4. There is a marked preference on the part of a substantial portion of the purchasing public for furniture manufactured wholly from walnut wood over furniture manufactured from a combination of woods such as pecan and walnut.

The wood commonly known as pecan is similar in appearance to, and resembles the wood commonly known as walnut when finished

to be used in furniture with walnut. Under such conditions the greater portion of the public and many dealers in furniture are unable to distinguish the wood commonly known as pecan from the wood commonly known as walnut.

PAR. 5. There are among the competitors of respondent, as mentioned in paragraph 2 hereof, many who manufacture, sell and distribute the same character of furniture, who do not in any manner misrepresent the material or kind of wood from which such furniture is manufactured or matters pertaining thereto.

PAR. 6. 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 furniture. As a result thereof, substantial injury has been done, and is being done, by respondent to competition in commerce between, and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 5th day of February 1942, issued and subsequently served its complaint in this proceeding upon respondent, Robert W. Irwin 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 February 26, 1942, the respondent filed its answer in this proceeding. Thereafter, at a hearing held in Grand Rapids, Mich., on May 4, 1942, before Clyde M. Hadley, an examiner of the Commission theretofore duly designated by it, a stipulation was entered into whereby 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 said statement of facts to make its findings as to the facts and

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its conclusion based thereon, and issue its order disposing of this proceeding without the presentation or arguments or the filing of briefs. The respondent expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding came on for final hearing before the Commission on said complaint, answer, and stipulation as to the facts, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Robert W. Irwin Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business at 23 Summer Avenue, Grand Rapids, Mich.

The respondent is now, and for more than 2 years last past has been engaged in the manufacture of household furniture, such as dining room, bedroom, and living room furniture, and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

Respondent 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. In the course and conduct of its said business, the respondent is in substantial competition with other corporations, and with partnerships, firms and individuals engaged in the manufacture of household furniture, and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its furniture, the respondent has disseminated statements and representations with respect to the kind of wood from which certain of its furniture is made. Such statements and representatives have been made by means of catalogs, price lists, photogravure sheets, invoices, and labels distributed among prospective purchasers, and by other means. Among the statements so disseminated by the respondent was the statement "Wood: Walnut" to designate, describe, and refer to certain of its furniture not composed wholly of the wood known as walnut, but made from a combination of the wood commonly known as walnut and wood commonly known as pecan. Respondent, in the manufacture of said furniture

so designated and described, has used what is commonly known as a walnut wood veneer for a portion of the flat surface of said furniture, but has used the wood commonly known as pecan for some of the exposed structural parts, such as the legs and framing for cabinet doors.

Through the use of the statement "Wood: Walnut" and other statements containing the word "Walnut" to designate, describe, and refer to said furniture manufactured from a combination of the woods commonly known as walnut and pecan, as aforesaid, respondent has represented and implied, and the purchasing public has been thereby led to believe, that said furniture was manufactured in its entirety from the wood commonly known as walnut.

PAR. 4. There is a marked preference on the part of a substantial portion of the purchasing public for furniture manufactured wholly from walnut wood over furniture manufactured from a combination of woods such as pecan and walnut.

The wood commonly known as pecan is similar in appearance to, and resembles the wood commonly known as walnut when finished to be used in furniture with walnut. Under such conditions the greater portion of the public and many dealers in furniture are unable to distinguish the wood commonly known as pecan from the wood commonly known as walnut.

PAR. 5. There are among the competitors of respondent, as mentioned in paragraph 2 hereof, many who manufacture, sell, and distribute the same character of furniture, who do not in any manner misrepresent the material or kind of wood from which such furniture is manufactured or matters pertaining thereto.

PAR. 6. The use by the respondent of the statements and representations referred to herein has had a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said furniture was, in fact, manufactured in its entirety from the wood commonly known as walnut; and because of such erroneous and mistaken belief, a substantial portion of the purchasing public has been induced to purchase respondent's said furniture. 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.

On or about November 1, 1941, respondent discontinued the practice of designating, describing and referring to furniture manufactured from a combination of the woods commonly known as walnut and pecan as "Wood: Walnut" or "Walnut" and has since designated,

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described and referred to such furniture as "Wood: Walnut and Pecan."

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Robert W. Irwin 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 furniture 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 furniture made from a combination of the wood commonly known as walnut and the wood commonly known as pecan is manufactured from the wood commonly known as walnut.

2. Using the words "Wood: Walnut" or the word "Walnut" to describe, designate, and refer to furniture which is not composed wholly of the wood commonly known as walnut.

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

Complaint

IN THE MATTER OF

SIERRA CANDY COMPANY, INC.

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

Docket 4758. Complaint, May 7, 1942—Decision, June 23, 1942

Where a corporation, engaged in the manufacture and 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 and lottery schemes when sold and distributed to the consumers, typical assortments including, as illustrative, one of 24 one-pound boxes of uniform size and shape, together with a push card for use in sale and distribution thereof under a plan by which amount paid by customers for said boxes was determined by number secured by chance from card, and another of 19 boxes with punchboard, for use under a plan by which customer, for 5 cents, by chance selection of certain designated numbers received one of said boxes, as did also the customer making the last punch in each of the first two sections into which the board was divided, or the last punch on the board, others receiving nothing for their money—

Sold such assortments to wholesalers, to jobbers, and to retailers, by whom they were sold to the purchasing public in accordance with aforesaid plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products under plan in question, involving game of chance to procure candy at much less than normal retail price, in competition with many who do not use any such method;

With the result that many persons were attracted by its said sales method and element of chance involved therein, and were thereby induced to buy and sell its candy in preference to that of competitors aforesaid, whereby trade was unfairly diverted to it from them; 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, were contrary to the public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. David Rubenstein, of San Francisco, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Sierra Candy Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the

public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Sierra Candy Co., Inc., is a corporation, organized and doing business under the laws of the State of California with its office and principal place of business located at 2203 Third Street, San Francisco, Calif. Respondent, is now, and for more than 6 months last past, has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said candy, when sold, to be transported from its principal place of business in the city of San Francisco, Calif., to purchasers thereof at their respective points of location in various States of the United States other than California 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 retailer dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift, enterprises and lottery schemes when sold and distributed to the consumers thereof. Two of said assortments are hereinafter described for the purpose of showing the methods used by the respondent and are as follows:

One assortment includes 24 one-pound boxes of candy of uniform size and shape together with a device commonly called a push card. The said push card has 24 partially perforated disks on the faces of which is printed the word "Push." Concealed within the said disks are numbers ranging from 1 to 39 inclusive. When the disks are pushed or separated from the card, a number is disclosed. Purchasers pushing No. 1 pay 1 cent; those pushing Nos. 2, 8, or 39 pay 2 cents, 8 cents, or 39 cents, respectively, each purchaser paying the amount revealed by the punch which he has selected. 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 boxes of candy are thus determined wholly by lot or chance.

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Another of said assortments consist of 19 boxes of candy and a punchboard. Appearing on the face of the punchboard is the following inscription.

5¢ A SALE 5¢
 -20-40-60-80-100-120-140-Wins
 ½ # Picture Top Box
 160-180-200-220-240-260-280-300-210-Wins
 1 # Picture Top Box
 Last Punch in 1st 2 sections gone Wins
 1½ # Picture Top Box
 Last Punch on Board Wins 3 # Picture Top Box

Said candy is 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 three sections. The board bears a statement informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a box of candy, and the purchaser of the last sale in each of the first two sections completely sold is also entitled to receive a box of candy, and the last punch on the board entitles the purchaser to receive a box of candy. A customer who does not qualify by obtaining one of the specified numbers or the last punch in the first two sections of the last punch on the board, receives nothing for his money. The boxes of candy are worth more than 5 cents each, and the purchaser who obtains a number calling for one of the boxes of candy receives the same for 5 cents. The numbers are effectively concealed from purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The candy is thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondent furnishes and has furnished various push cards and punchboards for use in the sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme. Such push cards or punchboards are similar to the ones 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 by and through the use thereof and by the aid

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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 alleged, do not 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. 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 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.

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 May 7, 1942, issued and thereafter served its complaint in this proceeding upon respondent, Sierra Candy 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. On May 25, 1942, the respondent filed its original answer in this proceeding. In its answer the respondent admitted all the material allegations charged in the complaint to be true and, in accordance with rule IX of the Commission's Rules of Practice, by such an answer the respondent is deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and answer thereto, and the Commission, having duly considered the

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Sierra Candy Co., Inc., is a corporation, organized and doing business under the laws of the State of California with its office and principal place of business located at 2203 Third Street, San Francisco, Calif. Respondent is now and for more than 6 months last past has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said candy, when sold, to be transported from its principal place of business in the city of San Francisco, Calif., to purchasers thereof at their respective points of location in various States of the United States other than California 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, and lottery schemes when sold and distributed to the consumers thereof. Two of said assortments are hereinafter described for the purpose of showing the methods used by the respondent and are as follows:

One assortment includes 24 one-pound boxes of candy of uniform size and shape together with a device commonly called a push card. The said push card has 24 partially perforated disks on the faces of which is printed the word "Push." Concealed within the said disks are numbers ranging from 1 to 39 inclusive. When the disks are pushed or separated from the card, a number is disclosed. Purchasers pushing No. 1 pay 1 cent; those pushing Nos. 2, 8, or 39 pay 2 cents, 8 cents and 39 cents, respectively, each purchaser paying the amount revealed by the punch which he has selected. The

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

Another of said assortments consists of 19 boxes of candy and a punchboard. Appearing on the face of the punchboard is the following inscription:

5¢ A SALE 5¢
 -20-40-60-80-100-120-140-Wins
 ½ # Picture Top Box
 160-180-200-220-240-260-280-300-210-Wins
 1 # Picture Top Box
 Last Punch in 1st 2 sections gone Wins
 1½ # Picture Top Box
 Last Punch on Board Wins 3# Picture Top Box

Said candy is 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 three sections. The board bears a statement informing purchasers and prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a box of candy, and the purchaser of the last sale in each of the first two sections completely sold is also entitled to receive a box of candy, and the last punch on the board entitles the purchaser to receive a box of candy. A customer who does not qualify by obtaining one of the specified numbers or the last punch in the first two sections of the last punch on the board, receives nothing for his money. The boxes of candy are worth more than 5 cents each, and the purchaser who obtains a number calling for one of the boxes of candy receives the same for 5 cents. The numbers are effectively concealed from purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The candy is thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondent furnishes and has furnished various push cards and punchboards for use in the sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme. Such push cards or punchboards 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 ac-

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cordance 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 product in accordance with the sales plan hereinbefore set forth.

PAR. 4. The respondent's sales plan involves a game of chance, gift enterprise, or lottery scheme to procure candy at prices much less than the normal retail prices thereof. Many of respondent's competitors mentioned in paragraph 1 hereof do not use said method, or any method involving a game of chance, gift enterprise, or lottery scheme.

Many persons are attracted by respondent's sales method and the element of chance involved therein, and are thereby induced to buy and sell respondent's candy in preference to the candy of said competitors, and the use of said method by respondent has the tendency and capacity to, and does, unfairly divert trade, in commerce between and among various States of the United States and in the District of Columbia, to respondent from its said competitors. As a result thereof injury is being and has been done by respondent to competition in commerce between and among various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors, are contrary to the 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 and answer of the respondent, in which answer respondent admitted all the material allegations of the Commission's complaint to be true, and by which answer, in accordance with rule IX of the Commission's Rules of Practice, respondent was deemed to have waived a hearing on all the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence or other intervening procedure to find such facts to be true; 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.

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It is ordered, That the respondent, Sierra Candy Co., Inc., 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 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 are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to and placing in the hands of others, push or pull cards, punchboards, or other lottery device, either with assortments of candy or other merchandise, or separately, which said push or pull cards, punchboards, or other lottery device are to be 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 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.

Complaint

IN THE MATTER OF

MATHEW W. M. DEVITT, ROY D. SCHLEGEL AND ROBERT
E. SARGENT, TRADING AS AUTOGROOM COMPANY

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

Docket 3702. Complaint, Feb. 7, 1939—Decision, June 24, 1942

Where three individuals, engaged in manufacture and competitive interstate sale and distribution of their "Auto-Groom" for cleaning and polishing automobiles, and previously in the employ of a concern which made and sold its similar "Karsmetik" product; in soliciting sales from garages, service stations, and distributors, upon many of whom they had formerly called as salesmen for said "Karsmetik"—

Represented to such former purchasers that the company which formerly made "Karsmetik" was no longer in business, and that such product was no longer being offered; that the chemist who was formerly employed by it and developed the formula was in their employ, and that "Auto-Groom" was the same product as the other, differing therefrom only in trade name and color;

The facts being that said older concern was then manufacturing and offering its said product in active competition with them; formula for the new product was not developed as claimed, but obtained from a collection of formulae distributed by a chemical manufacturer, and while similar to that for the older product, was not in all respects the same; and they did not have any such chemist in their employ;

With effect of causing former purchasers of said competitive "Karsmetik" mistakenly to believe that aforesaid representations were true, and with consequence that many of them, particularly those formerly making their purchases from one of said individuals, discontinued purchasing it, and they and others purchased "Auto-Groom" instead of "Karsmetik"; whereby trade was diverted to them from said competitor;

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

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

Mr. S. Brogdyne Teu, II for the Commission.

Mr. Joseph A. Kaufmann, 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 Mathew W. M. Devitt, Roy D. Schlegel, and Robert E. Sargent, trading as Autogroom

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, Mathew W. M. Devitt, Roy D. Schlegel, and Robert E. Sargent, are individuals, doing business under the firm name and style of Autogroom Co., with their principal office and place of business located at 11 East Forty-Fourth Street, in the city of New York, State of New York, and 5013 Georgia Avenue NW., city of Washington, D. C. Their manufacturing plant is located at 2416 Forty-seventh Street, city of Long Island City, State of New York. For more than 1 year last past said respondents have been, and are now, engaged in the offering for sale, sale, and distribution in commerce among and between the various States of the United States and in the District of Columbia of a product, under the trade name "Auto-Groom," used for cleaning and polishing automobiles. In the course and conduct of their said business, respondents have caused, and now cause, said product, when sold or ordered, to be shipped and transported from their aforesaid places of business to purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia.

PAR. 2. In the course and conduct of their business as aforesaid respondents have been, and are now, in competition with other corporations, and with partnerships and individuals engaged in the business of offering for sale, selling, and distributing products used or useful for the cleaning and polishing of automobiles in commerce among and between the various States of the United States and in the District of Columbia. Among said competitors are many who do not disparage their competitors' products and who do not misrepresent the efficacy of their products or pass their products off as that of a competitor. Among said competitors is one offering for sale and selling in said commerce an automobile cleaner and polisher under the trade name "Karsmetik." The product Karsmetik has been on the market for several years in the trade territory in which the respondents offer for sale and sell their said product Auto-Groom. The product Karsmetik has been on the market for a much greater period of time than has respondents' said product. Said product Karsmetik has long been recognized by the purchasers and users of automobile cleaners and polishers as a product of merit and excellence and there has been created, as a result of the reputation established because of the merit of said product, a good will among purchasers and users thereof of substantial value to the sellers of said product.

All of said respondents were connected with the seller of the product Karsmetik, at one time or another prior to the time they began the distribution of the product Auto-Groom, and through such connection they had occasion to and did become acquainted and familiar with the purchasers and users of the product Karsmetik located in the trade territory in which respondents now offer for sale and sell the product "Auto-Groom."

PAR. 3. Respondents, in the course and conduct of their said business in said commerce as aforesaid, have defamed and disparaged, and do defame and disparage, their competitor and its product by representing to former purchasers and prospective purchasers of the product Karsmetik that the company manufacturing and distributing said product is no longer in business and that said product is not being offered for sale and sold. Respondents further represent that the chemist who discovered the formula for, and supervised the preparation of, the product Karsmetik is now in the employ of the respondents and that the product "Auto-Groom" is in all respects the same as the product Karsmetik. In some instances, the respondents represent that the product Karsmetik is, in all respects, inferior to the product Auto-Groom.

In truth and in fact the company manufacturing the product Karsmetik has not discontinued business but has been and is now manufacturing said product and offering for sale and selling the same in the trade territory in which respondents operate. Respondents do not have in their employ the chemist who discovered the formula for the product Karsmetik, and the product Auto-Groom is not made from the formula used to make Karsmetik, nor is the product Auto-Groom in all respects the same as Karsmetik. The product Karsmetik is in no wise inferior to, but is in many respects superior to, the product Auto-Groom.

PAR. 4. The acts and practices of the respondents in making and using the representations aforesaid in connection with the sale and distribution of said product Auto-Groom in said commerce have the tendency and capacity to and do cause former purchasers and prospective purchasers of the product Karsmetik erroneously and mistakenly to believe that said representations are true and that the manufacturer of said product Karsmetik is no longer engaged in business and that such product is no longer obtainable under its original trade name Karsmetik; that the product Auto-Groom is made from the formula for Karsmetik and under the supervision of the chemist who formerly supervised the manufacture of Karsmetik; and that the product Auto-Groom is the same as, or superior to, the product Karsmetik.

Because of the mistaken and erroneous beliefs engendered as aforesaid many former purchasers, more particularly those formerly making their purchases of the product Karsmetik through one of the respondents while in the employment of the manufacturer of said product, and prospective purchasers of the product Karsmetik have discontinued purchasing or declined to purchase said product and have purchased respondents' product in lieu and instead of the product Karsmetik which they would have purchased but for the false and misleading representations so made and used by the respondents.

As a consequence thereof, trade in said commerce has been and is diverted unfairly to the respondents from their competitors who do not defame and disparage competitors or their products and who truthfully represent their products, to the injury of said competitors and to the injury of the public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 7, 1939, issued and subsequently served its complaint in this proceeding upon the respondents, Mathew W. M. Devitt, Roy D. Schlegel, and Robert E. Sargent, individuals, trading as Autogroom 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 the complaint and the filing of a joint answer thereto by the respondents, 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 the attorney for the respondents, before John W. Addison, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the joint answer thereto, testimony, and other evidence, and 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.

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Findings

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Mathew W. M. Devitt, Roy D. Schlegel, and Robert E. Sargent, are individuals, trading as Auto-groom Co., with their principal office and place of business located in the city of New York, State of New York, and with a place of business in the District of Columbia and a manufacturing plant located in Long Island City, Long Island, in the State of New York.

PAR. 2. The respondents since sometime in the year 1938 have been engaged in the manufacture and in the sale and distribution of a product for use in the cleaning and polishing of automobiles. Said product is sold under the trade name "Auto-Groom," and sales are made directly to operators of automobile garages and service stations and to distributors who buy the product from the respondents and resell to their own customers. In filling all of their orders respondents ship the cleaner and polish from their factory in the State of New York direct to the purchasers, many of whom are 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 products in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents are and have been in substantial competition with other individuals and with firms and corporations engaged in the sale and distribution of similar merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Among such competitors of respondents is the Karsmetik Co., Incorporated, a New York corporation, with its factory and principal place of business located in New York, N. Y. This corporation manufactures and sells under the trade name "Karsmetik" a cleaner and polish similar to the product sold by respondents. The company was incorporated in the year 1937, but it appears from the testimony of George H. Deters, president and general manager of said corporation, that the business was organized in 1934 and that the product "Karsmetik" has been manufactured and sold continuously since that time.

PAR. 5. All of the respondents, prior to the time they began the distribution of their product "Auto-Groom" were engaged in one way or another in the business of selling and distributing the product "Karsmetik." Respondent, Devitt purchased the product direct from the manufacturer and resold it to his own customers in the State of New York; respondent, Schlegel carried on business in a

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similar manner under the name K. & M. Products Corporation in the States of Maryland and Virginia and in the District of Columbia; while respondent, Sargent was employed directly by the "Karsmetik" manufacturer and worked in the factory, in the office, or solicited sales, as directed by Deters. The connection of each of the respondents with the Karsmetik Corporation, was severed in the latter part of 1937 or early part of 1938, however, and as above stated, it was about this time that the respondents began the manufacture and sale of the product "Auto-Groom."

PAR. 6. In the course and conduct of their business, and the purpose of furthering the sale of their product, the respondents have solicited sales from various automobile garages, service stations, and other establishments and individuals whose businesses involve the use and resale of products such as respondents sell. These solicitations are made in part through personal visits by respondents, and among those they have called on have been many former purchasers of the product "Karsmetik" While the evidence is conflicting to some extent, there is substantial testimony to the effect and the Commission finds that respondents have made the following representations to these former purchasers of "Karsmetik": that the company formerly manufacturing "Karsmetik" was no longer in business and that said product was no longer being offered for sale; that the chemist who was formerly employed by the Karsmetik Corporation and who developed the formula for "Karsmetik" was in the employ of the respondents; and that "Auto-Groom" was the same product as "Karsmetik," differing only in trade-name and color. Numerous operators of garages and service stations testified that one or another of the respondents made these or substantially similar representations to them, and that they had purchased respondents' product in the belief that the manufacturer of "Karsmetik" was out of business, or at least that the product "Karsmetik" was no longer obtainable. This testimony was corroborated by the fact that in 1937 the volume of sales of the Karsmetik Corporation amounted to something over \$15,000 and that in 1938 the volume dropped to approximately \$8,000. In 1939 the sales of said corporation dropped still lower to \$3,435.92.

PAR. 7. The evidence shows that the company manufacturing the product "Karsmetik" has not discontinued business. Said company has been and is now manufacturing its product and offering the same for sale and has been and is now in active competition with the respondents. The evidence shows further that the respondents do not have in their employ the chemist who developed the formula for "Karsmetik." Said formula in fact was not developed by any

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chemist connected with the Karsmetik Corporation, but was obtained by Deters, president of the corporation, from a collection of formula for cleaners and polishes distributed by a certain chemical manufacturer. While this formula and the formula for the respondents' product "Auto-Groom," are substantially similar, they are not in all respects the same.

The Commission, therefore, finds that the representations made by the respondents were false, misleading, and deceptive.

PAR. 8. The Commission further finds that the acts and practices of the respondents as herein described have the tendency and capacity to and do cause former purchasers of the product "Karsmetik" erroneously and mistakenly to believe that the aforesaid representations are true and that the manufacturer of said product is no longer engaged in business and said product is no longer obtainable under its regular trade name "Karsmetik"; that "Auto-Groom" is made of the formula for "Karsmetik" and under the supervision of the chemist who developed the formula for "Karsmetik," and that the product "Auto-Groom" is the same as the product "Karsmetik."

Because of the mistaken and erroneous beliefs so engendered many former purchasers of "Karsmetik," particularly those formerly making their purchases from one of the respondents while engaged in selling said product, and prospective purchasers, have discontinued purchasing or have declined to purchase said product, and have purchased respondents' product in lieu of and instead of "Karsmetik." As a consequence thereof, substantial trade has been diverted to the respondents from their said competitor.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice of the public and of respondents' competitor, and constitute unfair methods 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 joint answer of respondents, the testimony and other evidence introduced before John W. Addison, a duly appointed trial examiner of the Commission theretofore designated to serve in this proceeding, the report of the trial examiner and exceptions thereto, and briefs 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 respondents, Mathew W. M. Devitt, Roy D. Schlegel, and Robert E. Sargent, individuals, trading as Autogroom Co., or trading or doing business under any other name or designation, 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 cleaner and polish for automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that a competitor who manufactures and sells a cleaner and polish for automobiles known as "Karsmetik" has discontinued business.
2. Representing that the product known as "Karsmetik" is no longer being offered for sale or sold.
3. Representing that the chemist who developed the formula for the product known as "Karsmetik" is in the employ of respondents.
4. Representing that respondents' product "Auto-Groom" is in all respects the same as the product known as "Karsmetik."

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

Complaint

IN THE MATTER OF

JAMES J. REISS 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 4502. Complaint, May 13, 1941—Decision, June 30, 1942

Where a corporation, engaged in the competitive interstate sale and distribution of candy, including certain assortments which were so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumers, typical assortments consisting of a number of uniform small, individually wrapped pieces, together with a number of larger pieces or bars, secured without further charge by those purchasers of the small penny candies who obtained by chance a piece of different color from the majority; and of 150 uniform pieces of penny candy, together with some 18 to 35 larger candy bars, with a push card for use in sale thereof under a plan by which purchasers of the penny candy who punched from said card one of several numbers listed thereon received, in addition, his choice of one of the larger bars;

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 plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its product, in competition with those who do not use any such plan or method;

With the result that many persons were attracted by its said sales plan because of element of chance involved, and purchased its candy in preference to that of its aforesaid competitors, whereby trade was unfairly diverted to it from them:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Henican, Carriere & Cleveland, of New Orleans, La., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that James J. Reiss 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, James J. Reiss Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 417-423 Decatur Street, New Orleans, La. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of candy to wholesale dealers, jobbers, and retailers 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 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 now and has been for more than 1 year last past, a course of trade by respondent in such products in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondent is, and has been, in competition with other corporations, and with individuals and firms 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 said candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said candy is sold and distributed to the consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner. This assortment consists of a number of small pieces of candy of uniform size and shape, and a number of larger pieces of candy or candy bars. The said larger pieces of candy are to be given as prizes to purchasers of certain of said small pieces of candy as follows; the majority of said small pieces of candy of uniform size and shape are of a certain color, but a small minority of said pieces of candy, of uniform size and shape and otherwise similar to the others, are of a different color. All of said pieces of candy retail at 1-cent each and are similarly wrapped so that the purchaser is unable to determine which color candy is secured by his purchase until the same has been unwrapped. Purchasers procuring one of said minority pieces of candy are entitled to and receive without additional charge one of the said larger pieces of candy as prizes. The said larger pieces of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes various assortments of candy involving lot or chance features when said assortments are sold to the consuming public, and such assortments and the methods of sale and distribution thereof, while varying as to detail, all involve lottery or chance features.

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 plans aforesaid. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of its 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 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 without cost or at prices less than the retail regular prices of said candy. 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 methods 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.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 13th day of May A. D. 1941,

issued and thereafter served its complaint in this proceeding upon the respondent, James J. Reiss 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 the complaint and the filing of respondent's answer thereto, a stipulation of facts was entered into on the record between attorneys for the Commission and for the respondent, which stipulation was approved by the Commission. The attorney for respondent waived filing of the trial examiner's report and oral argument.

Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, stipulation, 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, James J. Reiss Co., Inc., is a corporation, organized under the laws of the State of Louisiana, with its principal place of business located in New Orleans, La.

PAR. 2. Respondent, since some time prior to the year 1935 has been, and now is, engaged in the sale and distribution of candy to wholesale dealers, jobbers and retailers, and causes its products, when sold, to be shipped from its principal place of business to purchasers thereof located in the States of Louisiana and Mississippi. For more than 7 months preceding the issuance of the complaint herein, respondent has maintained and now maintains a course of trade in its product in commerce between the States of Louisiana and Mississippi, and during all of said time 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 the States of Louisiana and Mississippi.

PAR. 3. Respondent, in the sale and distribution of its candy, until about the year 1935, but not since that date, sold and distributed to purchasers in the State of Mississippi 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. One of said assortments consisted of a number of small pieces of candy of uniform size and shape, and a

number of larger pieces of candy, or candy bars. The majority of the small pieces of candy were all of one certain color, but a small minority were of a different color. All the small pieces of candy were similarly wrapped, and were retailed at 1 cent each, and the purchaser was unable to determine the color of the candy until it was unwrapped. A purchaser procuring one of the minority pieces of candy was entitled to and did receive without additional charge, one of the larger pieces of candy as a prize. These larger pieces of candy were thus distributed to the purchasing public wholly by lot or chance.

PAR. 4. Respondent, since some time prior to the issuance of the complaint herein, has sold and distributed to retail dealers in the State of Mississippi, an assortment of candy consisting of 150 small pieces of candy of uniform size and color, and from 18 to 35 larger pieces of candy or candy bars, together with a push card. This push card has 150 disks bearing upon their faces the word "Push." The small pieces of candy are sold for 1 cent each, which also entitles the purchaser to punch or push out one of the disks on the push card. If the number appearing on the disk, which is revealed only after the punch has been made, is the same as one of the several numbers listed on the heading of the card, the purchaser receives his choice of one of the larger pieces or bars of candy; said larger pieces or bars of candy are thus distributed to the purchasers wholly by lot or chance.

The retail dealers who purchase respondent's candy expose and sell same to the purchasing public in accordance with the sales plan herein mentioned. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its product, in accordance with the sales plan herein set forth.

PAR. 5. Many persons are attracted by respondent's sales plan because of the element of chance involved, and purchase respondent's candy in preference to that of its competitors who do not use such sales plan or any other sales method involving a game of chance, gift enterprise or lottery scheme, and, as a result, trade has been unfairly diverted to respondent from such competitors.

PAR. 6. Respondent's total sales in the State of Mississippi during the year ending June 30, 1941, amounted to \$6,352, or approximately 1½ percent of its total sales for that period. Of this amount only \$28.30 was for the assortment described in paragraph 4 hereof, and \$100. was for the sale in Mississippi of other punchboard assortments. The figures are approximately the same for each of the years mentioned herein.

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CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and of respondent's competitors, are contrary to the public policy of the Government of the United States of America, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the stipulation of facts entered into between attorneys for the Commission and for the respondent, and approved by the Commission, and briefs in support of and in opposition to the complaint: And the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, James J. Reiss Co., Inc., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of 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 device, either with assortments of candy or other merchandise, or separately, which said push or pull cards, punchboards or other device, 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 from 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.

Complaint

IN THE MATTER OF

MRS. ANN B. GOLDSTEIN, TRADING AS CHAMPION
SPECIALTY COMPANY

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

Docket 4723. Complaint, Mar. 6, 1942—Decision, June 30, 1942

Where an individual, engaged in the competitive interstate sale and distribution of drug sundries, notions, novelties, and premium merchandise, including certain assortments which were so packed or assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed, a typical one including 12 pocket knives of equal value and a push card with 12 feminine names thereon for use in sale and distribution of said knives under a plan by which number concealed under particular name selected determined what amount, from 1 to 30 cents, purchaser should pay;

Sold such assortments to retailers and others, by whom they were exposed and sold to the purchasing public in accordance with aforesaid plan involving a game of chance to procure merchandise at much less than its normal retail price, and thereby supplied to and placed in the hands of others means of conducting a lottery, contrary to an established public policy of the United States Government, and in competition with many who are unwilling to use a method contrary to public policy and refrain therefrom; With the result that many persons were attracted by her said sales plan because of the element of chance involved, and purchased her products in preference to those of said competitors, whereby trade was diverted unfairly to her from them, to the injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair 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 Mrs. Ann B. Goldstein, individually, and trading as Champion Specialty Co., herein-after 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:

PARAGRAPHS 1. Respondent, Mrs. Ann B. Goldstein, is an individual, trading and doing business as Champion Specialty Co., with her

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office and principal place of business located at 814-16 Central Street, Kansas City, Mo. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of drug sundries, notions, novelties, and premium 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 her said place of business in the State of Missouri 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 her business, respondent is and has 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 her business, as described in paragraph 1 hereof, respondent sells and has 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 12 pocket knives of equal value and a device commonly known as a push card. The push card bears on its face 12 feminine names. Over each feminine name appears a small, partially perforated disk, 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 numbers which are concealed within each disk are between the limits of number 1 and number 39. A person selecting number 1 would pay 1 cent; and, a person selecting number 12 would pay 12 cents; and, a person selecting number 39 would pay 39 cents and so forth. Every person who pushes out one of the partially perforated disks receives one of the aforesaid pocket knives. The push card bears the following legend or instructions:

TRY YOUR LUCK

1¢ to 39¢

EVERYBODY WINS

PAY WHAT YOU PUNCH

FROM 1¢ TO 39¢—NO HIGHER

EVERY PUNCH WINS

Sales of the respondent's pocket knives by means of the said push card are made in accordance with the above-described legend or instructions. The fact as to whether a purchaser pays 1 cent or

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39 cents or any intermediate amount of money for a pocket knife is thus determined wholly by lot or chance.

Respondent sells and distributes and has 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 ones above described, varying only in detail.

PAR. 3. Retail dealers and others who purchase respondent's merchandise directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondent thus supplies to and places in the hands of others a means of conducting a lottery in the sale of her products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of her 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 sales 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 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 methods employed by respondent in the sale and distribution of her 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 her said competitors who do not use the same 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 acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 6, 1942, issued and thereafter served its complaint in this proceeding upon respondent, Mrs. Ann B. Goldstein, an individual, doing business as Champion Specialty Co., charging her 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, the proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Mrs. Ann B. Goldstein, is an individual, trading and doing business as Champion Specialty Co., with her office and principal place of business located at 814-816 Central Street, Kansas City, Mo. Respondent, is now, and for more than 1 year last past, has been engaged in the sale and distribution of drug sundries, notions, novelties, and premium 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 her said place of business in the State of Missouri 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 her business, respondent is and has 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 her business, as described in paragraph 1 hereof, respondent sells and has sold to retail dealers and

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Findings

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 12 pocket knives of equal value and a device commonly known as a push card. The push card bears on its face 12 feminine names. Over each feminine name appears a small, partially perforated disk, 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 numbers which are concealed within each disk are between the limits of number 1 and number 39. A person selecting number 1 would pay 1 cent; and, a person selecting number 12 would pay 12 cents; and, a person selecting number 39 would pay 39 cents, and so forth. Every person who pushes out one of the partially perforated disks receives one of the aforesaid pocket knives. The push card bears the following legend or instructions:

TRY YOUR LUCK
1c to 39c
EVERYBODY WINS
PAY WHAT YOU PUNCH
FROM 1c to 39c—NO HIGHER
EVERY PUNCH WINS

Sales of the respondent's pocket knives by means of the said push card are made in accordance with the above-described legend or instructions. The fact as to whether a purchaser pays 1 cent or 39 cents or any intermediate amount of money for a pocket knife is thus determined wholly by lot or chance.

Respondent sells and distributes and has 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 respondent's merchandise directly or indirectly expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondent thus supplies to and places in the hands of others a means of conducting a lottery in the sale of her products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of her 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.

Order

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PAR. 4. The sale of merchandise to the purchasing public by the method or sales plan hereinabove found involves a game of chance, 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 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 methods employed by respondent in the sale and distribution of her 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 method. 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 her said competitors who do not use the same or equivalent methods. 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 acts and practices in commerce within the intent and meaning of the Federal Trade 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 facts set forth in said complaint, and states that she waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Mrs. Ann B. Goldstein, individually, and trading as Champion Specialty Co., or trading under any other name, her representatives, agents, and employees, directly

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Order

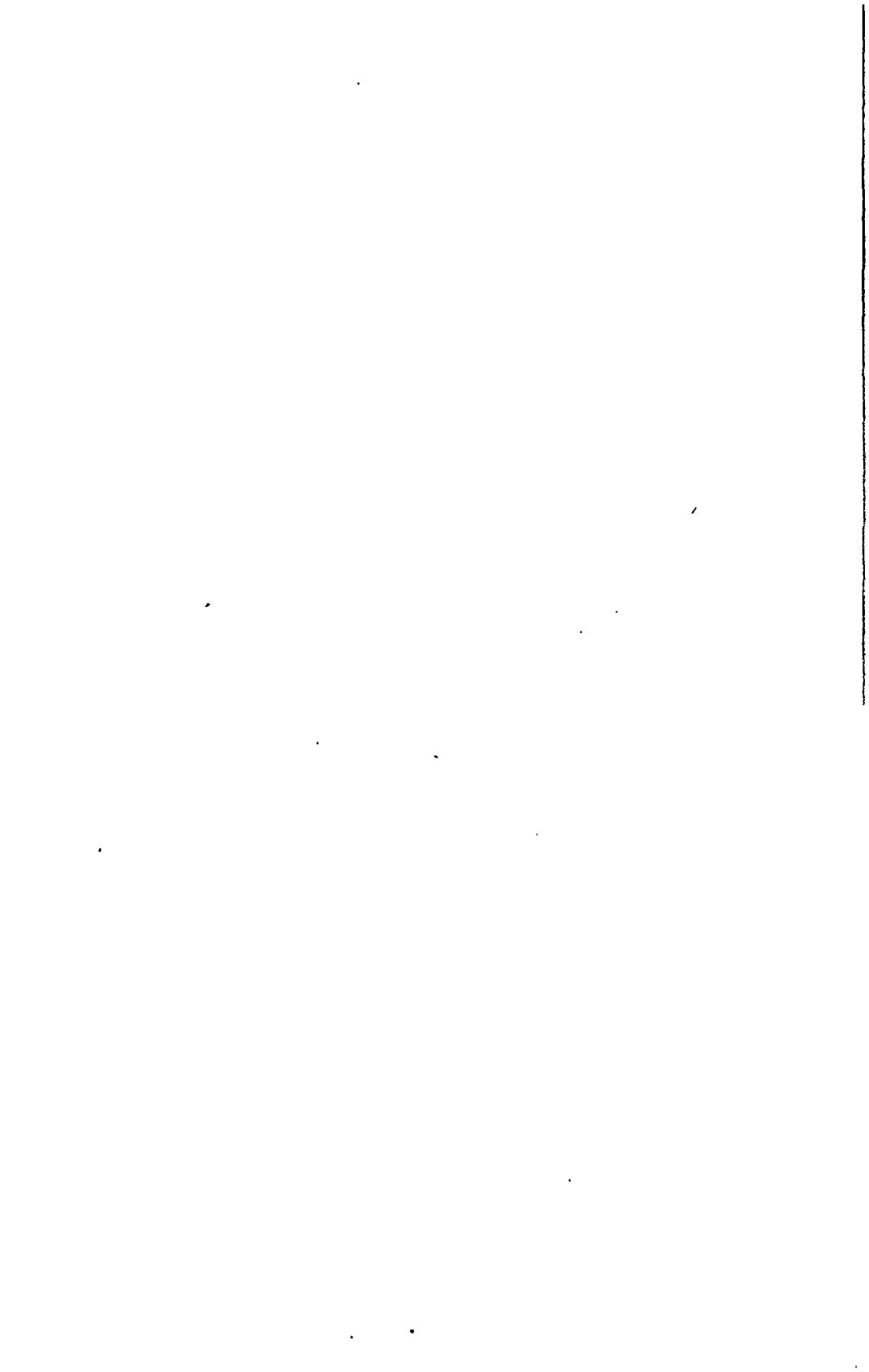
or through any corporate or other device, in connection with the offering for sale, sale, and distribution of drug sundries, notions, novelties, premium merchandise, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing any merchandise so packed 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 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.



ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

FINE-CRAHAN CANDY Co. Complaint, October 12, 1939. Order, November 13, 1941. (Docket 3925.)

Charge: Using lottery scheme in merchandising; in connection with the sale of candy.

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 above-named corporation has forfeited its right to do business for failure to pay its franchise tax, that it has been adjudicated a bankrupt, and that it is no longer engaged in business of any character, and the Commission having duly considered the matter, and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same and resume trial thereof in accordance with its regular procedure.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. L. P. Allen, Jr. and *Mr. J. V. Mishou* for the Commission.

Mr. D. G. Johnson, of Oklahoma City, Okla., for respondent.

PARKERSBURG RIG AND REEL Co. Complaint, June 29, 1940. Order, November 14, 1941. (Docket 4172.)

Charge: Acquisition of stock of competitors in violation of section 7 of the Clayton Act; in connection with the manufacture and sale of various kinds of machinery and equipment used in drilling and operating oil and gas wells.

Dismissed by the following order:

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation of facts entered into between the respondent herein and counsel for the Commission, briefs filed by counsel for the Commission and counsel for the respondent, and oral argument, and it appearing that prior to the acquisition by respondent of the voting capital stock of The Oil Country Specialties Manufacturing Co. only a small portion of respondent's business was competitive with the business of the acquired corporation, and concluding from all the facts that the effect of said acquisition was not actually or potentially to

substantially lessen competition between the acquiring and acquired corporations, or to restrain commerce in any section or community, or tend to create a monopoly of any line of commerce, and the Commission being fully advised in the premises.

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

Mr. Wm. T. Chantland for the Commission.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., and *Gardner, Carton & Douglas*, of Chicago, Ill., for respondent.

MERCK AND Co., INC. Complaint, September 1, 1936. Order, November 18, 1941. (Docket 2917.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of products; in connection with the manufacture and sale of "Iodine Suspensoid Merck" and "Iodine Vermicide Merck" poultry remedy.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the same and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. Maurice C. Pearce for the Commission.

Hughes, Schurman & Dwight, of New York City, for respondent.

L. L. GWIN, trading as UNITED ART STUDIO. Complaint, March 2, 1940. Order, November 24, 1941. (Docket 4043.)

Charge: Misrepresenting value of product and special or limited offers; in connection with the sale of portraits or products of photography by the coupon plan or method.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission on the record, and the Commission having duly considered the matter and being now fully advised in the premises.

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Sizer, Chambliss & Kefauver, of Chattanooga, Tenn., for respondent.

BRAY CHEMICAL Co. Complaint, March 7, 1940. Order, November 25, 1941. (Docket 4052.)

Charge: Misbranding or mislabeling as to qualities, properties, or results; in connection with the sale of products of lye.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the said record, 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. James A. Purcell*, trial examiner.

Mr. Jay L. Jackson and *Mr. L. P. Allen, Jr.* for the Commission.

Lord, Bissell & Kadyk, of Chicago, Ill., for respondent.

STIEFEL MEDICINAL SOAP Co. ET AL. Complaint, June 6, 1940.¹ Order, November 27, 1941. (Docket 4098.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to qualities, quality, and source or origin of product; misrepresenting as to business connections or identity and dealer being manufacturer; simulating products of competitor; and assuming or using misleading trade and corporate names; in connection with the sale of medicinal soaps.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises.

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Otto A. Stiefel, of Newark, N. J., for respondents.

THE BAUER MANUFACTURING Co. Complaint, July 17, 1940. Order, November 27, 1941. (Docket 4190.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results and comparative merits or tests of products; in connection with the manufacture and sale of ladders.

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.

¹ Amended and supplemental.

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

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

Mr. B. G. Wilson for the Commission.

Schwab & Hinton, of Akron, Ohio, for respondent.

WHITE SWAN UNIFORMS, INC. and LEO M. COOPER trading as PURITAN UNIFORM Co. and YORK UNIFORM Co. Complaint, October 5, 1940. Order, December 4, 1941. (Docket 4335.)

Charge: Discrimination between customers in the granting of compensation for advertising expenditures; in violation of section 2 (d) of the Clayton Act as amended by the Robinson-Patman Act; in connection with the manufacture and sale of uniforms for nurses, maids, waitresses, etc.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises.

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

Before *Mr. Webster Ballinger* and *Mr. Lewis C. Russell*, trial examiners.

Mr. P. C. Kolinski for the Commission.

Goldwater & Flynn, of New York City, for respondents.

ALBERT T. CHERRY, doing business as A. T. CHERRY Co. and as ATCO SOAP Co. Complaint, May 11, 1938. Original findings and order, November 2, 1940. Docket 3416, 31 F. T. C. 1262. Order vacating, etc., December 6, 1941.

Charge: Furnishing means and instrumentalities of misrepresentation and deception through supplying false and misleading "combination deal" price mark values; misbranding or mislabeling as to prices; and misrepresenting prices as to exaggerated fictitious being regular; in connection with the sale of soap and soap products.

Findings as to the facts and order to cease and desist in this case were vacated and set aside and case was closed without prejudice by the following order:

This case coming on to be heard by the Commission on the record and briefs in support of the complaint and in opposition thereto and it appearing that on November 2, 1940, the Commission issued its findings as to the facts and order to cease and desist herein and that

thereafter on January 7, 1941, the Commission, acting upon respondent's petition filed on December 23, 1940, reopened the case for the taking of further testimony; and the Commission having now duly considered the entire record, including testimony and other evidence received subsequent to the reopening of the case, and being now fully advised in the premises.

It is ordered, That the findings as to the facts and the order to cease and desist issued by the Commission on November 2, 1940, be, and the same hereby are, vacated and set aside.

It is further ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Before *Mr. Edward E. Reardon, Mr. Randolph Preston, Mr. Arthur F. Thomas, Mr. Lewis C. Russell, and Mr. Charles A. Vilas*, trial examiners.

Mr. DeWitt T. Puckett for the Commission.

Mr. Robert C. Porter, of Cincinnati, Ohio, for respondent.

HONEY-WEB, INC. Complaint, September 5, 1940. Order, December 12, 1941. (Docket 4300.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to qualities, properties, or results and comparative merits; and assuming or using misleading trade or corporate name as to composition; in connection with the sale of fly ribbons or sticky tape for fly catching.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the same and being now fully advised in the premises, and it appearing that the allegations of the complaint have not been sustained.

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Clark Nichols for the Commission.

Mr. Alexander S. Levine, of New York City, for respondent.

TERPEZONE INCORPORATED. Complaint, August 21, 1940. Order, January 12, 1942. (Docket 4248.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results of product; in connection with the sale of a device called a "Terpezone Generator" which produces a vapor for use in the treatment of various diseases, ailments, etc.

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. Miles J. Furnas*, trial examiner.

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

Mr. Philip Horton Newman, of Chicago, Ill., for respondent.

WOODLEY-ELLIOTT AND Co., also trading as ASSOCIATED DENVER TAILORS, and as ASSOCIATED TAILORS. Complaint, April 12, 1939. Order, January 19, 1942. (Docket 3759.)

Charge: Advertising falsely or misleadingly as to composition, source, or origin and quality of product, and special prices or offers, comparative values, etc.; in connection with the sale of men's suits and coats.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record herein and the Commission having duly considered the matter and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

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

Mr. Jay L. Jackson and *Mr. Charles S. Cox* for the Commission.

Hellerstein & Gertz, of Denver, Colo., for respondent.

HARRY HINDLEMANN, trading as ASSOCIATED TAILORS, and as ASSOCIATED DENVER TAILORS. Complaint, August 16, 1940. Order, January 19, 1942. (Docket 4239.)

Charge: Advertising falsely or misleadingly as to product being custom made and up-to-date, and as to quality, comparative value, prices and source of origin; and assuming or using misleading trade or corporate names as to dealer being an association; and maintenance of branch offices in different cities; in connection with the sale of men's suits and coats.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record herein and the Commission having duly considered the matter and being now fully advised in the premises.

It is 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. William C. Reeves*, trial examiner.

Mr. Jay L. Jackson and *Mr. Charles S. Cox* for the Commission.

Hellerstein & Gertz, of Denver, Colo., for respondent.

ALBERT WALTERS, trading as WAYNE-TOWNESEND & CO. Complaint, February 6, 1941. Order, January 27, 1942. (Docket 4461.)

Charge: Offering deceptive inducements to purchase in pretended use of lottery scheme and prospect of product for greatly reduced amount, as advertising; in connection with the sale of men's suits or other wearing apparel.

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. Andrew B. Duvall*, trial examiner.

Mr. J. V. Mishou for the Commission.

Mr. Michael M. Linden, of Philadelphia, Pa., for respondent.

THE GRIFFITH LABORATORIES. Complaint, January 27, 1942. Order, February 24, 1942. (Docket 4684.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results, unique nature, success, use or standing, history of product, etc.; in connection with the preparation and sale of certain meat curing preparations and devices, designated "Prague Powder", etc.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing to the Commission that the respondent, The Griffith Laboratories, a corporation, has entered into a stipulation as to the facts and an agreement to cease and desist from the practices charged in the complaint and that said stipulation and agreement was on February 19, 1942, approved by the Commission, and the Commission having duly considered this matter and being now fully advised in the premises.

It is ordered, That this case be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts

so warrant, to reopen the same and proceed to trial thereof in accordance with the Commission's regular procedure.

Mr. S. F. Rose for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for respondent.

FRANCKE Co., ETC. Complaint, December 3, 1940. Order, February 25, 1942. (Docket 4396.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results of products; in connection with the sale of certain medicinal preparations for chickens and turkeys.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission on the record, and the Commission having duly considered the matter and being now fully advised in the premises;

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

Before *Mr. Robert S. Hall* and *Mr. W. W. Sheppard*, trial examiners.

Mr. Jesse D. Kash for the Commission.

Bates, Little & Lindsay and *Rice, Miller & Hyatt*, of Kansas City, Kans., for respondent.

PHILIP ADLER, JR., trading as AMERICAN SILK HOSIERY MILLS, ETC. Complaint, April 25, 1940. Order, March 17, 1942. (Docket 4109.)

Charge: Advertising falsely or misleadingly as to free product, sample offer and demonstrating equipment, agents' earnings, or profits and terms and conditions, nature of manufacture, comparative merits, competitive products, qualities, properties or results, direct dealing, and size of plant; in connection with the manufacture and sale of silk hosiery.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon the motion of respondent to amend the stipulation heretofore signed by him on July 24, 1936, and upon execution of an amended stipulation satisfactory to the Commission, to close the case growing out of the complaint herein, 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, and it appearing that the respondent has executed and filed with the Commission an appropriate and satisfactory amended stipulation, 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 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. Karl Stecher for the Commission.

Bright, Thompson & Mast, of Washington, D. C., for respondent.

TAYLOR SCHOOL OF BIO-PSYCHOLOGY, INC. ET AL. Complaint, June 30, 1941. Order, March 18, 1942. (Docket 4529.)

Charge: Advertising falsely or misleadingly and assuming or using misleading trade or corporate name as to private business being university, research, and educational organization, success or standing of product or service, opportunities thereof, or possibilities therein, etc.; in connection with the sale of correspondence courses of study and instruction in the subjects of psychology, philosophy, religion, and allied subjects.

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 public interest involved is not sufficient to justify corrective action, 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. J. A. Purcell*, trial examiner.

Mr. William L. Pencke for the Commission.

O. R. PIEPER Co. Complaint, May 8, 1941. Order, March 31, 1942. (Docket 4498.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results, comparative merits, scientific or relevant facts, preparation, and history of product; in connection with the blending, roasting, packing, and sale of coffee designated as "Gargoyle" coffee.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter, and being now fully advised in the premises;

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. J. V. Buffington and *Mr. Joseph C. Fehr* for the Commission.

Mr. August C. Moeller and *Mr. Emmet Horan, Jr.*, of Milwaukee, Wis., for respondent.

WILLIAM H. WISE & Co., INC. Complaint, February 18, 1942. Order, April 3, 1942. (Docket 4710.)

Charge: Advertising falsely or misleadingly as to scientific or relevant facts and government source, authorization or sponsorship thereof; in connection with the publishing and sale of books including a set titled "The New People's Physician."

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. Maurice C. Pearce for the Commission.

Gwinn & Pell, of New York City, for respondent.

FELS & Co. Complaint, April 8, 1939. Order, April 6, 1942. (Docket 3755.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to qualities, properties, or results and composition of product and comparative merits; in connection with the manufacture and sale of Fels Naphtha Soap Chips.

Record closed, 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, testimony and other evidence taken before John W. Addison, 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, briefs filed herein, and oral arguments of counsel; and

It appearing to the Commission, That the facts in this case were not sufficiently developed to permit a proper determination of the issues; and

It further appearing to the Commission, That since the issuance of the complaint herein the respondent has adopted a glassine-lined package, which may tend to retard evaporation of the naphtha content of its soap chips; 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 to resume trial thereof in accordance with its regular procedure.

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

Mr. Wilbur N. Baughman and Mr. K. E. Steinhauer for the Commission.

Fox, Rothschild, O'Brien & Frankel, of Philadelphia, Pa., for respondent.

ELECTRIC STORAGE BATTERY CO. and WILLARD STORAGE BATTERY CO. Complaint, September 13, 1939. Order, April 28, 1942. (Docket 3892.)

Charge: Acquiring stock of a competitor in violation of section 7 of the Clayton Act; in connection with the manufacture and sale of electric storage batteries for automotive and aircraft starting and lighting, radios, farm lighting and other uses.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the motion filed herein on April 1, 1942 by McKeehan, Merrick, Arter and Stewart, counsel for Electric Storage Battery Company and Willard Storage Battery Company, respondents herein, to dismiss the complaint heretofore issued on September 13, 1939 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 by the Commission.

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

Mr. Everett F. Haycraft for the Commission.

Mr. C. H. Bell, of Cleveland, Ohio, along with *Mr. Augustus B. Stoughton*, of Philadelphia, Pa., for Electric Storage Battery Co., and, along with *McKeehan, Merrick, Arter & Stewart*, of Cleveland, Ohio, for Willard Storage Battery Co.

KIMBLE GLASS Co. Complaint, March 9, 1942. Order, May 12, 1942. (Docket 4725.)

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 glass tubing and test and control apparatus for the dairy industry.

Record closed, after answer, by the following order:

This matter coming on to be heard upon the recommendation of Assistant Chief Counsel Wooden that the case be closed by reason of absence of sufficient evidence to warrant the Commission proceeding with trial in this cause, and the Commission having duly considered said recommendation, and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of

the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. W. C. Kern for the Commission.

Ashcraft & Ashcraft, of Chicago, Ill., for respondent.

MRS. ANNE M. JENKS, trading as JENKS PHYSICIANS' SUPPLIES, and DEPENDON PRODUCTS. Complaint, November 15, 1940. Original findings and order, November 18, 1941.¹ (Docket 4378.) Order vacating, etc., May 21, 1942.

Charge: Advertising falsely or misleadingly as to qualities, properties, or results and safety of products; in connection with the sale of medicinal preparations and appliances for women.

Findings as to the facts and order to cease and desist in this case were vacated and set aside and case was reopened for taking of testimony, by the following order:

This matter coming on to be heard by the Commission upon respondent's motion that the Commission include in the findings as to the facts issued by it on November 18, 1941 an additional finding, 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 motion to include an additional finding in the findings as to the facts issued by the Commission on November 18, 1941, be, and the same hereby is, denied.

It is further ordered, That the findings as to the facts and order to cease and desist issued by the Commission on November 18, 1941 be, and the same hereby are, vacated and set aside.

It is further ordered, That the proceedings herein be, and they hereby are, reopened for the purpose of taking such further testimony and other evidence as may be offered either in support of the complaint or in opposition thereto.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. Andrew A. Glenn and *Mr. Joseph F. Cowern*, of St. Paul, Minn., for respondent.

FRANK B. MORAN, trading as MAGNETIC RAY CO. Complaint, June 19, 1940. Original findings and order, December 23, 1941.¹ (Docket 4164.) Order vacating, etc., May 27, 1942.

Charge: Advertising falsely or misleadingly as to qualities, properties, or results, safety and comparative merits; in connection with the manufacture and sale of an electrical device designated "magnetic ray."

¹ Not published.

Findings as to the facts and order to cease and desist in this case were vacated and set aside and case was reopened for taking of testimony, by the following order:

This matter having come before the Commission upon the petition of the respondent to reopen the case for the taking of further testimony, which petition is supported by six affidavits of medical practitioners, and the Commission being of the opinion that the case should be reopened for the purpose of taking further testimony and being now fully advised in the premises;

It is ordered, That the findings as to the facts and order to cease and desist issued by the Commission herein on December 23, 1941, be, and the same hereby are, vacated and set aside.

It is further ordered, That the case be, and the same hereby is, reopened for the taking of such further competent, relevant and material testimony and evidence as may be offered by the respondent or his counsel in opposition to the allegations of the complaint or by counsel for the Commission in rebuttal thereto.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Donovan Divet and *Mr. William L. Pencke* for the Commission.

Thompson & Meek and *Mr. Paul McCarroll*, of Dallas, Tex., for respondent.

JAMES BELL Co., INC. Complaint, August 14, 1941. Order, May 27, 1942. (Docket 4566.)

Charge: Using lottery scheme in merchandising; in connection with the sale of aluminum ware, enamel ware, household furnishings, radios, electrical appliances, luggage, silverware, bedding, furniture, and other articles of merchandise.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter, and being now fully advised in the premises.

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Before *Mr. Andrew B. Duwall*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Charles Handler, of Newark, N. J., for respondent.

ACME BREWERIES, also doing business as CALIFORNIA BREWING ASSOCIATION, ACME BREWING Co. and BOHEMIAN DISTRIBUTING Co., LTD. Complaint, August 5, 1936. Order closing case, March 23,

1937. 24 F. T. C. 1393. Order setting aside approval of stipulation and order closing case, etc., June 11, 1942. (Docket 2888.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to properties of product; in connection with the manufacture and sale of beer products.

Approval of stipulation set aside, case reopened, and issuance of amended and supplemental complaint directed by the following order:

Upon consideration of this matter, and in view of the more recent action of the Commission in similar cases, the Commission gave further consideration to its action of March 23, 1937, when it approved a stipulation as to the facts and agreement to cease and desist and closed the case growing out of the complaint issued herein on August 5, 1936, without prejudice to the right of the Commission to reopen the proceeding and resume the prosecution thereof should the facts so warrant, and it appearing to the Commission that the facts warrant a reopening of the case.

It is ordered, That the Commission's approval of the stipulation as to the facts and agreement to cease and desist entered herein on March 23, 1937, be, and the same hereby is, revoked and rescinded.

It is further ordered, That the proceedings in this case under the complaint issued herein on August 5, 1936, be and the same hereby are, reopened.

It is further ordered, That an amended and supplemental complaint be issued and served upon the respondents in accordance with the regular procedure.

Mr. DeWitt T. Puckett for the Commission.

Cummings & Stanley, of Washington, D. C., for respondents.

SCHMIDT BREWING Co. Complaint, August 7, 1940.¹ Order, June 24, 1942. (Docket 4225.)

Charge: Advertising falsely or misleadingly as to composition of product; in connection with the brewing and sale of beer.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter, and being now fully advised in the premises.

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

Before *Mr. Charles A. Vilas*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Simpliner, Dewey, Stanton & Honigman, of Detroit, Mich., for respondent.

¹Amended by order of November 5, 1941.

STIPULATIONS ¹

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST ²

3249. Oil Burners, Etc.—“Manufacturers.”—Universal Manufacturers, Inc., a corporation, engaged in the business of selling and distributing oil burners, oil burning equipment, and allied lines in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Universal Manufacturers, Inc., in connection with the offering for sale, or sale of its product involving the shipment thereof in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the word “Manufacturers” as a part of its corporate or trade name; and from the use on its letterheads or other printed matter or in any other way of the word “Manufacturers” or of any other word or words of similar import, the effect of which tends or may tend to convey the belief or impression to purchasers or prospective purchasers that the said corporation makes the said products or that it actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured. (Nov. 4, 1941.)

3250. Cartooning Correspondence Courses—Results, Success, Opportunities, Personal Contact, Special Offer, Free, Etc.—Jesse Beery, Ray C. Beery, and Beecher Beery, copartners, engaged in the business of conducting a school of instruction in cartooning by correspondence

¹ For false and misleading advertising stipulations effected through the Commission's radio and periodical division, see p. 1705 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, November 1, 1941, to June 30, 1942, inclusive. Digests of previous stipulations of this character accepted by the Commission may be found in vols. 10 to 33 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.

under the trade name "Cartoonists' Exchange," and in the sale of courses of instruction 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.

Jesse Beery, Ray C. Beery, and Beecher Beery, in connection with the advertisement, sale, or distribution of their courses of instruction in cartooning 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 inferentially, that every student, upon completion of the said course of instruction, is assured of financial success as a cartoonist or that he will or may, by reason thereof, step into a good position as a cartoonist or comic artist, or that he, without regard to his education, imagination, discernment, sense of humor, experience, or artistic talent, can or may become a competent or famous cartoonist or humorist or earn an enormous salary or make fabulous sums of money, by taking such course of instruction.

2. the use of statements or of representations, pictorial or otherwise, which directly assert or tend or may tend to convey the impression or belief to prospective students that "David Rand" or other named or indicated individual personally supervises the instructions given to the student or that such individual personally criticizes or corrects the work of said student, when in fact, there is no such personal contact between the said individual and the student.

3. stating or representing in any way that an article offered to prospective students in connection with the sale of courses of instruction is a "special" offer or an offer, the acceptance of which is limited with respect to time or that the said article is given free or as a gratuity to the purchasing student, when in fact, such article is customarily sent to every student subscribing for the course regardless of the time in which the subscription is made and the cost thereof is included as a part of the cost made for the course.

4. publishing testimonial letters without disclosing the dates when such letters were written. (Nov. 4, 1941.)

3251. **Electrical Heating Pads—Qualities and Results.**—Waage Manufacturing Co., a corporation, engaged in the sale and distribution of electrical equipment, including heating pads, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Waage Manufacturing Co., in connection with the sale or offering for sale in commerce as defined by the Federal Trade Commission Act, of its electrical heating pads not equipped or provided with three or more adequate thermostatic or other heat controls calibrated for three different, distinct temperatures or degrees of heat, agreed forthwith to cease and desist from the use of the words "Triple-Heat," "Trip-L-Heat," or "Three-Heat" as descriptive of such pads or the switches used therewith; and from the use of the words, phrases or initials "Triple Heat," "Trip-L-Heat," "Three-Heat," or "L," "M," and "H," or other words, phrases, initials, or symbols of similar implication or meaning in any way so as to import or imply or the effect of which tends or may tend to convey the belief that said electrical heating pads are capable of maintaining or that the operation or the switches used therewith effects or results in maintaining three different, distinct temperatures or degrees of heat. (Nov. 4, 1941.)

3252. **Skin Cream—Qualities, Properties, or Results.**—Earl B. McKinney, an individual, trading as Beauty Affiliates, engaged in the sale and distribution of a cosmetic preparation designated "El Zambu Cream" 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.

Earl B. McKinney, in connection with the offering for sale, sale, or distribution or the advertising by the means and in the manner above set forth of his product designated "El Zambu Cream" or any other preparation composed of substantially the same ingredients or possessing substantially the same properties, whether sold under such name or any other namer or names, agreed to forthwith cease and desist from representing, directly or inferentially, that said product is a competent treatment or remedy for wrinkles or is capable of preventing or eliminating skin wrinkles. (Nov. 5, 1941.)

3253. **Silver-Plated Flatware—Composition.**—R. Wallace & Sons Manufacturing Co., a corporation, engaged in the manufacture of silver-plated flatware and in the sale thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

R. Wallace & Sons Manufacturing Co., in connection with the advertisement, marking, branding, labeling, sale, or distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the word "Sterling" or the words "Sterling Silver" as descriptive of its silver-plated flatware. If any piece or pieces of the set is or are

"shod" or reinforced with fine silver, as differentiated from sterling silver, at certain points thereof, such fact may be stated, provided that such reinforcing is correctly described, and those parts of the set which are thus "shod" or reinforced are specifically identified. (Nov. 5, 1941.)

3254. **Wrist Watch Straps—Prices.**—Newport Leather Manufacturing Co., Inc., a corporation, engaged in the sale and distribution of wrist watch straps in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Newport Leather Manufacturing Co., Inc., in connection with the sale and distribution of its wrist watch straps or other commodities in commerce as defined by said act, agreed forthwith to cease and desist from the use of fictitious price tags on labels indicating that its wrist watch straps sell or are intended to be sold for 75 cents, \$1, \$1.25, or \$1.50; or in any other way, from directly or by implication, representing that its various types of straps or other articles of merchandise have regular values and customarily sell for sums in excess of the prices actually charged therefor. (Nov. 5, 1941.)

3255. **Women's Sweaters—Composition and Nature.**—Spur Knitting Mills, Inc., a corporation, engaged in the manufacture of women's sweaters 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.

Spur Knitting Mills, Inc., in connection with the offering for sale, sale, or distribution of its aforesaid garments in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the words "Homespun Shetland" in branding or labeling the same. It also agreed to cease and desist from the use of the word "Shetland" as descriptive of said garments in any way so as to import or imply that the said garments are composed of wool from the Shetland Islands or of wool from the Shetland Islands breed of sheep. It further agreed to cease and desist from the use of the word "Homespun" in any way, the effect of which tends or may tend to convey the belief or impression to purchasers or prospective purchasers that the said garments are composed of cloth made at home or of yarn spun at home. (Nov. 6, 1941.)

3256. **Peat Products—Nature.**—Mountain Peat Co., a corporation, engaged in the business of mining a peat product obtained from bogs near Denver, Colo., and in the sale thereof in baled form in interstate

commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Mountain Peat Co., 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 said words in any arrangement 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 customers or prospective customers that said product is moss peat, a product consisting chiefly of the decomposed stems and leaves derived from species of Sphagnum mosses. (Nov. 6, 1941.)

3257. **Wrist Watch Straps—Qualities, Properties or Results, Prices, and Composition.**—Cambridge Straps, Inc., a corporation, engaged in the sale and distribution of wrist watch straps in interstate commerce, in competition with other corporations, and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

"Sweatproof," as descriptive of leather, implies a quality of imperviousness to the penetration of perspiration and to the adverse or deteriorating action of perspiration. While leather is sometimes coated with lacquer to prevent penetrability by perspiration, such treatment is but temporary and would be effective only so long as the lacquered surface remained intact. There is no leather watch strap known to the trade that could be accurately or properly designated as "Sweatproof."

The word "glass" as universally understood for thousands of years by the trade and the public, is an amorphous substance, usually transparent or translucent, consisting ordinarily of a mixture of silicates, as sand, fused together, and in some instances containing borates, phosphates, and other inorganic matter. There is a plastic product on the market trade-marked "Vinylite," made of petroleum, coal, and salt with special chemicals producing a synthetic resin resembling glass in appearance but which in fact is not glass. An article made of such organic substance Vinylite and marketed under a trade name containing the word "glass," or the term "glas," or other designation connoting glass, is misbranded in that it imports or implies to a substantial portion of the buying public that such product is made of inorganic silica glass or material containing glass in some form.

Cambridge Straps, Inc., in the sale and distribution of its wrist watch straps or other commodities in commerce, agreed to cease and desist from:

(a) The use of the word "Sweatproof" in its advertising matter, on its tags, labels, mounting cards, or in any other way as descriptive of its wrist watch straps; and from the use of any other words or representations of similar implication, the effect of which tends or may tend to convey the belief to purchasers that any wrist watch straps or other leather products offered for sale and sold by it have been rendered impervious to the penetration of perspiration and to the adverse or deteriorating action of perspiration.

(b) The use of fictitious price tags or labels indicating that its wrist watch straps sell or are intended to be sold for 75 cents, \$1, and \$1.50; or in any other way, directly or by implication, representing that its various types of straps or other articles of merchandise have regular values and customarily sell for sums in excess of the prices actually charged therefor.

(c) The use, either with or without contradictory explanation, of the word "glass" or other glass connoting term, either alone or in connection with the word "Misto" or with any other word or words, or in any way as a trade name or designation for, or as descriptive of Vinylite or similar products, so as to import or imply, or the effect of which tends or may tend to convey the belief that such products are glass or contain glass or are fabricated from fibers of glass, that is to say, inorganic silica glass, as the term "glass" is ordinarily understood and accepted by the trade and the public. (Nov. 7, 1941.)

3258. **Wrist Watch Straps—Composition.**—S. & B. Lederer Co., a corporation, engaged in the manufacture of novelties, including wrist watch straps, and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The word "glass" as universally understood for thousands of years by the trade and the public, is an amorphous substance, usually transparent or translucent, consisting ordinarily of a mixture of silicates, as sand, fused together, and in some cases, containing borates, phosphates, and other inorganic matter. There is a plastic product on the market trade-marked "Vinylite," made of petroleum, coal, and salt with special chemicals producing a synthetic resin resembling glass in appearance but which in fact is not glass. An article made of such organic substance Vinylite and marketed under a trade name containing the word "glass," or the term "glas," or other designation connoting glass, is misbranded in that it imports or implies to a substantial portion of the buying public that such product is made of inorganic silica glass or material containing glass in some form.

S. & B. Lederer Co., in the sale and distribution of its wrist watch straps or other commodities in commerce, agreed forthwith to cease and

desist from the use, either with or without contradictory explanation, of the word "glass," or the syllable "glas," or any other glass connoting term to denominate, designate, or describe a product which is not composed of glass; or the use thereof or of any other word, term or syllable of similar import, as part of a trade-name or designation such as "Nu-Glass," "Glass-Band," "Glass Craft," "Flex Glass," "Glass Swagger," "Stretch Glass," or "Glas-Las-Tic" for, or as descriptive of, Vinylite or similar products, so as to import or imply, or the effect of which tends or may tend to convey the belief that such products are glass or contain glass or are fabricated from fibers of glass, that is to say, inorganic silica glass, as the term "Glass" is ordinarily understood and accepted by the trade and the public. (Nov. 12, 1941.)

3259. **Wrist Watch Straps—Composition.**—Bruner-Ritter, Inc., a corporation, engaged in the sale and distribution of wrist watch straps in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships 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 word "glass" as universally understood for thousands of years by the trade and the public, is an amorphous substance, usually transparent or translucent, consisting ordinarily of a mixture of silicates, as sand, fused together, and in some cases containing borates, phosphates, and other inorganic matter. There is a plastic product on the market trade-marked "Vinylite" made of petroleum, coal, and salt with special chemicals producing a synthetic resin resembling glass in appearance but which in fact is not glass. An article made of such organic substance Vinylite and marketed under a trade name containing the word "glass," or the term "glas," or other designation connoting glass, is misbranded in that it imports or implies to a substantial portion of the buying public that such product is made of inorganic silica glass or material containing glass in some form.

Bruner-Ritter, Inc., in the sale and distribution of its wrist watch straps or other commodities in commerce, agreed forthwith to cease and desist from the use, either with or without contradictory explanation, of the word "glass" or other glass connoting term, either alone or in connection with the word "Misto" or with any other word or words, or in any way as a trade name or designation for, or as descriptive of Vinylite or similar products, so as to import or imply, or the effect of which tends or may tend to convey the belief that such products are glass or contain glass or are fabricated from fibers of glass, that is to say, inorganic silica glass, as the term "glass" is ordinarily understood and accepted by the trade and the public. (Nov. 12, 1941.)

3260. **Cartooning Correspondence Courses—Unique and Limited Enrollment.**—Frank Lamorelle, an individual, who, on or about August 1, 1940, acquired by purchase and has since continued a business previ-

ously conducted by one C. N. Landon and, following his death, by the latter's son, Corwin Landon, under the name "Landon School" at Cleveland, Ohio, said business being that of a correspondence school of instruction in cartooning and involving the sale and distribution of lesson material in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Frank Lamorelle, trading as "Landon School," in connection with the offering for sale, sale, or distribution of his courses of instruction in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from stating or representing in his advertising or printed matter or in any other way that the "picture chart method of teaching" is an exclusive feature of the Landon School, or that the said School is the only school which uses the picture chart method of instruction. The said individual also agreed to cease and desist from stating or representing that enrollments which may be accepted by the Landon School are limited to only an exclusive or select number, when in fact, no such limitation actually prevails as to either the number or the qualifications of students who are accepted by the said school. (Nov. 14, 1941.)

3261. **Fur Garments—Source or Origin and Secondhand as New.**—Ames, Inc., a corporation, engaged in the sale and distribution of fur garments in interstate commerce, in competition with other corporations, with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Ames, Inc., in connection with the offering for sale, sale, or distribution of its fur garments in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Representing, directly or by implication, that such garments are purchased or obtained from the Customs Service of the United States Treasury Department unless each and every article or item thereof is in fact obtained from the source as represented; or from any other misleading claim or representation concerning the source or agency from or through which such products are obtained, which has the capacity, tendency or effect of misleading or deceiving the purchasing or consuming public;

(b) Advertising, selling or offering for sale used, worn, or secondhand fur garments unless in all advertising pertaining thereto and also by means of labels or tags attached thereto the fact be clearly indicated that such garments are used, worn or secondhand. (Nov. 14, 1941.)

3262. **Dog Foods—Nature and Composition.**—Archer Products Sales Co., Inc., a Texas corporation, engaged in the sale and distribution in interstate commerce of a food for dogs designated "Archer's Vitalized Dog Ration," in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Archer Products Sales Co., Inc., in connection with the sale or distribution in commerce, as defined by the Federal Trade Commission Act, or by the advertising by the means and in the manner above set forth of its dog food heretofore designated "Archer's Vitalized Dog Ration" 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 it will forthwith cease and desist from:

(a) The use of the word "Vitalized" as part of the designation for or as descriptive of such product.

(b) Representing that said dog food is a meat product or that it contains meat, that is to say, the properly dressed flesh derived from cattle, swine, sheep, or goats.

(c) Representing that said product is a "scientifically balanced food" or that such product constitutes a balanced food or ration for dogs generally or for dogs of all breeds, ages, or activities. (Nov. 14, 1941.)

3263. **Wrist Watch Straps—Composition, Custom Made, and Prices.**—Max Gershberg and Sol Lasko, copartners, trading under the firm name of Lasko Strap Co., engaged in the manufacture of novelties, including wrist watch straps, and in the sale and distribution thereof in interstate commerce, in competition with other firms and partnerships, and with individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

A hide known as kip is obtained from a semimature steer or cow and classed as cattle hide but never as calfskin. There is a sharp distinction between cattle hides and calfskins, as these terms are understood by both the trade and the general public. Calfskins are more plump in proportion to weight and thickness and have a finer and more even grain than kips, or cattle hides. A product made of kip or cattle hide and labeled or designated "calf" or "calfskin" is misbranded in that it imports or implies to the buying public that such product is actually made of calfskin.

Alligator leather is made from the raw skins of alligators obtained from tropical America, has a distinctive appearance and also an un-

usual surface durability, and requires a slow and expensive finishing process, demanding a higher price than ordinary leather. A product made of calfskin or cowhide grained to resemble alligator skin and labeled or designated "Alligator" is misbranded in that it misleads and deceives purchasers as to the true nature and quality of the product so described.

In the jewelry trade the mark "1/90-10K" means and is understood to mean that 1/90 of the total weight of an article so marked is composed of 10 carat gold, or that the entire article has 4.5 parts fine gold per one thousand parts. The term "Rolled Gold" as now used refers to "filled gold," which, according to the standards set up by the Department of Commerce of the United States, means and is understood to mean that the article so marked has a coating of gold of not less than 10-carat fineness, and that the weight of such gold is not less than one-twentieth the weight of the entire article.

Max Gershberg and Sol Lasko, and each of them, in the sale and distribution of their wrist watch straps or other merchandise in commerce as defined by said act, agreed forthwith to cease and desist from:

(a) Branding, labeling, or otherwise designating as "Calf" or "Calfskin," either with or without the word "Genuine" as descriptive of a product which is not in fact composed of calfskin as understood and accepted by the trade and the public.

(b) Branding, labeling, or otherwise describing as "Alligator" or as "Antique Alligator," or the use of any other alligator connoting term, as descriptive of a product which is not in fact composed of real alligator skin as the same is known to the public and the trade.

(c) Branding, labeling, or otherwise marking its metal buckles or other articles with the term "1/90-10Kt." when in fact the gold content of the entire article is less than 4.5 parts fine gold per one thousand parts; or using in its advertising or as a stamp or marking for a product the term "Gold Rolled" unless such article has a coating of not less than 10-carat fineness and unless the weight of such gold is at least 1/20 the weight of the entire article.

(d) Labeling or otherwise describing articles which have been merely gold electroplated with terminology that indicates the presence of substantial quantities of gold, or representing as "Gold Plate" an article, the gold content of which is too minute or the coating of which is too thin to merit such description.

(e) Representing a wrist watch strap or other merchandise to be "Custom Made" or "Custom Built" unless and until such wrist watch strap or other merchandise is actually made upon the specific order of the customer who buys it.

(f) The use of fictitious price tags or labels indicating that its wrist watch straps sell or are intended to be sold for 50 cents, 75 cents, \$1,

\$1.25, and \$1.50; or in any other way, directly or by implication, representing that its various types of straps or other articles of merchandise have regular values and customarily sell for sums in excess of the prices actually charged therefor. (Nov. 17, 1941.)

3264. Wrist Watch Straps—Prices and Custom Built.—Isadore Kobin and Julius Kottler, copartners, trading under the firm name of Kobin Co., engaged in the sale and distribution of wrist watch straps in interstate commerce, in competition with other firms and partnerships and with individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Isadore Kobin and Julius Kottler, and each of them, in connection with the sale and distribution of their wrist watch straps or other merchandise in commerce as defined by said act, agreed forthwith to cease and desist from:

(a) The use of fictitious price tags or labels indicating that their wrist watch straps sell or are intended to be sold for 50 cents, 75 cents, \$1, and \$1.25, or in any other way, directly or by implication, representing that their various types of straps or other articles of merchandise have regular values and customarily sell for sums in excess of the prices actually charged therefor.

(b) Representing a wrist watch strap or other merchandise to be "Custom Built" or "Custom Made" unless and until such wrist watch strap or other merchandise is actually made upon the specific order of the customer who buys it. (Nov. 17, 1941.)

3265. Alcoholic Beverage—Source or Origin and Imported.—Corydon & Ohlrich, Inc., a corporation, engaged in the sale and distribution in interstate commerce of an alcoholic liquor or beverage designated "Kronborg Taffel Akvavit," in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Corydon & Ohlrich, Inc., in connection with the offering for sale, sale, or distribution of its said alcoholic liquor or beverage in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means and in the manner above set forth, agreed forthwith to cease and desist from representing, directly or inferentially, that said product is manufactured or prepared in accordance with the "Harold Jensen Formula" or the formula used in preparing Harold Jensen Taffel Akvavit; or from the use on or in its labels or other advertising media of statements and/or depictions causing or having the capacity to cause the belief or impression that said product is Harold Jensen Taffel Akvavit, that it is produced, manufactured or compounded in Denmark or that it is imported from Denmark or any other foreign country. (Nov. 18, 1941.)

3266. **Wrist Watch Straps—Composition.**—Max Gershberg and Sol Lasko, copartners, trading as Lasko Strap Co., engaged in the manufacture of novelties, including wrist watch straps, and in the sale and distribution thereof in interstate commerce, in competition with other firms and partnerships, and with individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The word "glass" as universally understood for thousands of years by the trade and the public, is an amorphous substance, usually transparent or translucent, consisting ordinarily of a mixture of silicates, as sand, fused together, and in some cases containing borates, phosphates, and other inorganic matter. There is a plastic product on the market trade-marked "Vinylite," made of petroleum, coal, and salt with special chemicals producing a synthetic resin resembling glass in appearance but which in fact is not glass. An article made of such organic substance "Vinylite" and marketed under a trade name containing the word "glass," or the term "glas," or other designation connoting glass, is misbranded in that it imports or implies to a substantial portion of the buying public that such product is made of inorganic silica glass or material containing glass in some form.

Max Gershberg and Sol Lasko, and each of them, in the sale and distribution of their wrist watch straps or other commodities in commerce, agreed forthwith to cease and desist from the use in their advertising, on their labels or otherwise, either with or without contradictory explanation, of the word "glass," or the syllable "glas," or any other glass connoting term to denominate, designate or describe a product which is not composed of glass; or the use thereof or of any other word, term, or syllable of similar import, as part of a trade name or designation such as "glastex" or "Glasko" for, or as descriptive of, Vinylite or similar products, so as to import or imply, or the effect of which tends or may tend to convey the belief that such products are glass or contain glass or are fabricated from fibers of glass, that is to say, inorganic silica glass, as the term "glass" is ordinarily understood and accepted by the trade and the public. (Nov. 18, 1941.)

3267. **Stationery—"Designers" and "Producers."**—L. Barrett Clark, an individual trading as The Clark Co., engaged in the sale of business and social stationery in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

L. Barrett Clark, in connection with his business of offering for sale, selling, or distributing stationery in commerce, as commerce is defined by the Federal Trade Commission Act, agreed he will cease and desist forthwith from the use on his circular matter or in any other way of the words "Designers and Producers" as descriptive of his said business; and from the use of the words "Designers" and "Producers," or of either of said words, 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 he, the said L. Barrett Clark, trading under the name "The Clark Company" or under any other name, actually designs and/or produces the said stationery. (Nov. 21, 1941.)

3268. **Permanent Wave Papers—Qualities or Properties.**—Corona Hair Net Corp., trading also as Bobby Trading Co., engaged in the sale and distribution of beauty parlor supplies, including permanent wave papers, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Corona Hair Net Corp., in connection with the sale and distribution of its permanent wave papers or other merchandise in commerce as defined by said act, agreed it will forthwith cease and desist from the use of the word "oil" or other oil connoting term to denominate, designate, or describe a product which does not in fact contain oleaginous properties; or the use thereof or of any word, term or syllable of similar import, as part of a trade name or designation such as "Endoil" for, or as descriptive of, a product saturated with glycerine or other nonoleaginous substance; or representing, by the use of the words "oil saturated" or similar statements, or in any manner, that such product is in fact saturated with oil or has the properties of oil as understood by the trade and the public. (Nov. 21, 1941.)

3269. **Wrist Watch Straps—Prices and Custom Made.**—Morris Sherry and David Jacobson, copartners trading under the firm name of Leather Specialty Co., engaged in the sale and distribution of wrist watch straps in interstate commerce in competition with other firms and partnerships and with individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Morris Sherry and David Jacobson, and each of them, in connection with the sale and distribution of their wrist watch straps or other merchandise in commerce as defined by said act, agreed they will forthwith cease and desist from:

(a) The use of fictitious price tags or labels indicating that their wrist watch straps sell or are intended to be sold for 75 cents, \$1,

\$1.25, \$1.50, \$1.75, \$2, and \$2.50, or in any other way, directly or by implication, representing that their various types of straps or other articles of merchandise have regular values and customarily sell for sums in excess of the prices actually charged therefor.

(b) Representing a wrist watch strap or other merchandise to be "Custom Made" or "Custom Built" unless and until such wrist watch strap or other merchandise is actually made upon the specific order of the customer who buys it. (Nov. 24, 1941.)

3270. **Gang Mowers and Other Grass-Cutting Equipment—Success, Use, or Standing.**—Worthington Mower Co., a corporation, engaged in the manufacture of grass-cutting equipment, including mowing machines designated "Worthington Gang Mowers," 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.

Worthington Mower Co., in connection with the offering for sale, sale, or distribution of its gang mowers or other grass-cutting equipment in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from representing that "there are more Worthington Gang Mowers in use throughout the world than all other makes combined"; or from any other misleading or exaggerated claims or representations concerning the number of machines or units produced or the extent of the use of its said grass-cutting equipment, either by means of comparisons or otherwise, which have the capacity, tendency, or effect of misleading or deceiving the purchasing public or consuming public. (Nov. 24, 1941.)

3271. **Wrist Watch Straps—Composition and Prices.**—Samuel Mandel, Eugene Mandel, and Morris Mandel, copartners trading under the firm name of Manco Watch Strap Co., engaged in the sale and distribution of wrist watch straps in interstate commerce, in competition with other firms and partnerships and with individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Samuel Mandel, Eugene Mandel, and Morris Mandel, and each of them, in connection with the sale and distribution of their wrist watch straps or other merchandise in commerce as defined by the Federal Trade Commission Act, agreed they will forthwith cease and desist from:

(a) The use in their advertising or invoices, on their labels or otherwise, either with or without contradictory explanation, of the word "glass" or the syllable "glas," or any other glass connoting

term to denominate, designate or describe a product which is not composed of glass; or the use thereof or of any other word, term or syllable of similar import, as part of a trade name or designation such as "Clear-Flex—The Glass Wrist Watch Strap" for, or as descriptive of, Vinylite or similar products, so as to import or imply, or the effect of which tends or may tend to convey the belief that such products are glass or contain glass, that is to say, inorganic silica glass, as the term "glass" is ordinarily understood and accepted by the trade and the public.

(b) The use of fictitious price tags or labels indicating that their wrist watch straps sell or are intended to be sold for 50 cents, 75 cents, \$1, and \$1.50; or in any other way, directly or by implication, representing that its various types of straps or other articles of merchandise have regular values and customarily sell for sums in excess of the prices actually charged therefor. (Nov. 24, 1941.)

3272. **Leather Products—Composition.**—Ohio Leather Co., engaged in the manufacture of leathers, including calfskins imprinted with an alligator grain, 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.

Ohio Leather Co., in connection with the sale and distribution of its leather products in commerce as defined by said act, agreed it will forthwith cease and desist from the use, in its advertising, labels, brands, or otherwise, either with or without contradictory explanation, of the words, terms, or names "Alligator," "Mexican Alligator," "Baby Mexican Alligator," "My-Ak-Ka Alligator," "Bayou Alligator," "Bayou Alligator Calf Print," "Baby Yucca Alligator," or any other term of similar meaning, to designate or describe products not made from the hide of an alligator, or in any way representing that products made of other leathers or materials are made of alligator hide. If the word "alligator" is used properly to describe only the grain, embossing, or embellishment of a leather other than alligator, then such word shall be immediately accompanied and compounded (hyphenated), in type of equal size, with another word or words clearly indicating that said designation refers only to the pattern embossed on such material and not to the substance thereof; and such descriptive words shall be directly followed or preceded, also in type of equal size and conspicuousness, by the true name of the leather so embellished or imprinted. (Nov. 24, 1941.)

3273. **Grease Sticks—Composition and Patent Application.**—Harry Augen and Lillian Augen, nee Trachten, copartners trading as Graphited Lubricants Co., engaged in the sale and distribution in

interstate commerce, of sticks of grease designated "Greastik" designed to eliminate squeaks and sticking, as in door hinges and other appliances, 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.

Harry Augen and Lillian Augen, and each of them, agreed to cease and desist forthwith from the use of the word "Graphite" as part of the trade name under which the product called "Greastik" or by any other name is advertised, offered for sale, sold, or distributed in commerce, as commerce is defined by the Federal Trade Commission Act; and from the use of the word "graphite" or of any other word or words of similar import as descriptive of said product, or the effect of the use of which word tends or may tend to convey the belief or impression to purchasers or prospective purchasers that the said product is made of graphite. The said copartners also agreed to cease and desist from the use of the words "Patent Pending" or of any other word or words or abbreviation of a word or words of similar meaning, so as to import or imply, or the effect of which tends or may tend to convey the impression or belief that an application for patent relating to said product is presently pending in the United States Patent Office. (Nov. 25, 1941.)

3274. Mascara Products—History, Source or Origin and Qualities, Properties or Results.—Camille, Inc., a corporation, engaged in the manufacture of mascara, a cosmetic preparation, 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.

Camille, Inc., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Representing that its mascara product is prepared from a "treasured Egyptian formula" or from any Egyptian formula, or from a formula "used for centuries by famous beautiful women of the Orient" or elsewhere; or by any other statement, term, or reference, representing that the particular formula used for its product has been guarded or esteemed in Egypt or in the Orient in either ancient or modern times.

(b) Representing that the preparation Camille's Mascara or any product of similar composition "gives" the user long or luxuriant eyelashes or representing in any other way, by statement or by inference, that such or any similar preparation or combination thereof will grow or stimulate the growth, affect the growth or improve the quality of

eyelashes, or otherwise actually produce either long or luxuriant eyelashes. (Nov. 26, 1941.)

3275. **Cosmetics—Domestic as Imported and Qualities, Properties or Results.**—Henri S. Gompes, Inc., a corporation, engaged in the sale and distribution of a line of cosmetic preparations, under the trade designation "H. S. G.," in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Henri S. Gompes, Inc., in connection with the sale and distribution of its cosmetics or other products in commerce as defined by said act, agreed forthwith to cease and desist from:

(a) Using any French or other foreign terms or words to designate, describe, or in any way refer to lipsticks, rouge, face powder, eye shadow products, or other cosmetics or toilet preparations made or compounded in the United States unless the English translation or equivalent thereof appears as conspicuously and in immediate conjunction therewith, and also without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are made or compounded in the United States.

(b) Designating, describing, or otherwise representing its lipstick, eye shadow, or other cosmetic preparations as "Permanent," lasting or otherwise durable or unchangeable. (Nov. 26, 1941.)

3276. **Wrist Watch Straps—Qualities, Properties or Results, Prices, and Composition.**—American Strap Co., Inc., a New York corporation, engaged in the sale and distribution of wrist watch straps in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships 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 Strap Co., Inc., in connection with the sale and distribution of its wrist watch straps or other commodities in commerce as defined by said act, agreed it will forthwith cease and desist from:

(a) The use of the words "Sweat Proof" or "Sweat Proofed" in its advertising matter, on its products, tags, labels, mounting cards, or in any other way as descriptive of its wrist watch straps; and from the use of any other words or representations of similar implication, the effect of which tends or may tend to convey the belief to purchasers that any wrist watch straps or other leather products offered for sale and sold by it have been rendered impervious to the penetration of perspiration and to the adverse or deteriorating action of perspiration.

(b) The use of fictitious price tags or labels indicating that its wrist watch straps sell or are intended to be sold for 75 cents, \$1, \$1.50, and

\$2; or in any other way, directly or by implication, representing that its various types of straps or other articles of merchandise have regular values and customarily sell for sums in excess of the prices actually charged therefor.

(c) The use, either with or without contradictory explanation, of the word "glass," or the syllable "glas," or any other glass-connoting term to denominate, designate or describe a product which is not composed of glass; or the use thereof or of any other word, term or syllable of similar import, as part of a trade name or designation such as "Duro-Glass" for, or as descriptive of, Vinylite or similar products, so as to import or imply, or the effect of which tends or may tend to convey the belief that such products are glass or contain glass, that is to say, inorganic silica glass, as the term "glass" is ordinarily understood and accepted by the trade and the public. (Nov. 26, 1941.)

3277. Furniture—Composition.—Beecher Falls Manufacturing Corp., and T. Baumritter Co. Inc., exclusive selling agent for the aforesaid Beecher Falls Manufacturing Corp., 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.

Beecher Falls Manufacturing Corp. and T. Baumritter Co., Inc., and each of them, in connection with the offering for sale, sale, or distribution in commerce, as commerce is defined by the Federal Trade Commission Act, of furniture not composed or manufactured wholly of maple wood, agreed they will forthwith cease and desist from the use of the word "Maple" or any other word or term indicating maple wood to describe, designate, or in any way refer to such furniture; *Provided, however*, If a product is composed in substantial part of maple wood and in part of a wood or woods other than maple, and the word maple is properly used to designate that part composed of maple wood, then in such case the word maple must be accompanied by a word or words printed in equally conspicuous type and in immediate connection or conjunction therewith indicating clearly that the product is not composed wholly of maple but is composed in part of a wood or woods other than maple. (Nov. 26, 1941.)

3278. Spark Plugs—Second-Hand as New.—H. H. Goldstein, an individual trading as Goldie, The Spark Plug Man, engaged in the sale and distribution of used and discarded gasoline engine spark plugs 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.

H. H. Goldstein, whether trading under the name "Goldie, The Spark Plug Man" or under any other name in connection with the conduct of his business in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that he will cease and desist forthwith from offering for sale, selling, or delivering to others for sale to the public, any spark plug which has been used and thereafter reconditioned in any manner unless the word "used" or "second-hand" or "reconditioned," or some other word or words of similar import and meaning, has or have been permanently stamped or fixed on each of such spark plugs in a color in contrast to the surface to which the word or words is or are applied and of a size and in such location as to be clearly legible to the purchasers thereof after the same shall have been installed, as in a gasoline engine, and unless there has been plainly printed, marked, or stamped on the containers in which such spark plugs are sold or offered for sale a notice that said spark plugs are used, second-hand, or reconditioned. (Nov. 26, 1941.)

3279. **Hand Tools—Lottery Scheme.**—Bonney Forge & Tool Works, a corporation, engaged in the business of manufacturing hand tools, such as wrenches, screw drivers, hammers, and the like, and in the sale and distribution of said products in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Bonney Forge & Tool Works, in connection with the sale and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from:

(a) Conducting so-called "tool clubs" or other plans or devices for the sale of products which involve a game of chance, gift enterprise, or lottery scheme.

(b) Selling or otherwise disposing of products by means of a game of chance, gift enterprise, or lottery scheme. (Nov. 26, 1941.)

3280. **Floor Waxes—Qualities, Properties, or Results.**—Melvin Fuld and Joseph Fuld, copartners, trading as Fuld Bros., engaged in the business of manufacturing several types of water emulsion floor waxes and allied products and in the sale and distribution thereof in interstate commerce, in competition with other partnerships and with corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Melvin Fuld and Joseph Fuld, in connection with the offering for sale, sale, or distribution of their waxes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use in advertising matter employed by them

or supplied by them to others for use, or in any other way, of the word "waterproof" or any other word of similar implication, as descriptive of such waxes which are not in fact impervious to water or its effects. The said copartners also agreed to cease and desist from the use in any way of the word "SlipNOTic" as a trade name for their waxes which are not strictly proof against slipping, and from the use of the said word or the word "slipless" or "slipproof" or any other word of similar import, the effect of which tends or may tend to convey the belief or impression to the consuming public that waxes so referred to, when used as floor covering, would eliminate or do away with all tendency to slip by the person or persons who walk thereupon. (Nov. 27, 1941.)

3281. **Face Powder—Comparative Merits.**—Lady Esther, Ltd., an Illinois corporation, engaged in the manufacture of cosmetics including a face powder designated "Lady Esther Face Powder," in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lady Esther, Ltd., in connection with the offering for sale, sale, or distribution or the advertising by the means and in the manner above set forth of its face powder designated "Lady Esther Face Powder," whether sold under such name or any other name or names, agreed it will forthwith cease and desist from representing, directly or inferentially, that face powders generally, sold in competition with its said product, contain sand or other minerals of a gritty nature; that such competitive products contain "grit" or gritty substances not present in its said product; that the use of said competitive products will result in loss of beauty or cause an appearance of age; or from any similar representation concerning the character, quality, or properties of competitive face powders with a tendency or capacity to mislead or deceive purchasers or the consuming public and/or to disparage such competitive products. (Nov. 28, 1941.)

3282. **Cellulose Acetate Plastic Plates—Composition.**—Ivan T. Johnson Co., Inc., a corporation, engaged as national distributor for Doane Products Corp., of Meriden, Conn., in the sale and distribution, in interstate commerce, of cellulose acetate plastic plates for use in lighting fixtures, in competition with other corporations and with individuals, firms, and partnerships 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 word "glass" as universally understood for thousands of years by the trade and the public is an amorphous substance, usually transparent or translucent, consisting ordinarily of a mixture of silicates, as sand, fused together, and in some cases containing borates, phos-

phates, and other inorganic matter. As used in the lighting industry, the word "Louver" denotes a series of baffles so arranged that the light may be seen without the direct rays striking the eye. There is a louver product on the market of laminated cellulose acetate plastic sheeting which resembles glass but which in fact is not glass. An article made of such organic substance and marketed under a trade name containing the word "glass," or the term "glas," or other designation connoting glass, is misbranded in that it imports or implies to a substantial portion of the buying public that such product is made of inorganic silica glass or material containing glass in some form.

Ivan T. Johnson Co., Inc., in connection with its sale and distribution of cellulose acetate plastic plates for use in lighting fixtures or other merchandise in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the word "glass," or of the syllable "glas," or any other glass-connoting term to denominate, designate or describe a product which is not actually composed of glass; or the use thereof or of any other word, term, or syllable of similar import, as part of a trade name or designation such as "Louverglas" for, or as descriptive of, plastic or other products which are not in fact glass, so as to import or imply, or the effect of which tends or may tend to convey the belief that such products are glass or contain glass or are fabricated from fibers of glass, that is to say, inorganic silica glass as the term "glass" is ordinarily understood and accepted by the Trade and the public. (Nov. 28, 1941.)

3283. Cellulose Acetate Plastic Plates—Composition.—Doane Products Corp., a corporation, engaged in the manufacture of electric lighting equipment, including plates made of cellulose acetate plastic for use in lighting fixtures, and in sale thereof in interstate commerce through its distributing agent, Ivan T. Johnson Co., Inc., in competition with other corporations and with individuals, firms, and partnerships 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 word "glass" as universally understood for thousands of years by the trade and the public, is an amorphous substance, usually transparent or translucent, consisting ordinarily of a mixture of silicates, as sand, fused together, and in some cases containing borates, phosphates, and other inorganic matter. As used in the lighting industry, the word "Louver" denotes a series of baffles so arranged that the light may be seen without the direct rays striking the eye. There is on the market a louver product made for said corporation of cellulose acetate plastic sheeting, which resembles glass but which in fact is

not glass. An article made of such organic substance and marketed under a trade name containing the word "glass," or the term "glas," or other designation connoting glass, is misbranded in that it imports or implies to a substantial portion of the buying public that such product is made of inorganic silica glass or material containing glass in some form.

Doane Products Corp., in connection with the sale and distribution of its plastic material for use in lighting fixtures or other merchandise in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use, or permitting the use by its distributors of the word "glass," or of the syllables "glas," or any other glass-connoting term to denominate, designate, or describe a product which is not actually composed of glass; or the use thereof or of any other word, term, or syllable of similar import, as part of a trade name or designation such as "louverglas" for, or as descriptive of, plastic or other products which are not in fact glass, so as to import or imply, or the effect of which tends or may tend to convey the belief that such products are glass or contain glass or are fabricated from fibers of glass, that is to say, inorganic silica glass as the term "glass" is ordinarily understood and accepted by the trade and public. (Nov. 28, 1941.)

3284. Skin Lotion—Qualities, Properties, or Results.—Colloidal Pharmacals, Inc., a corporation, engaged in the sale and distribution of a skin lotion known as "Aknasol" in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Colloidal Pharmacals, Inc., in connection with the offering for sale, sale, or distribution of its products in commerce as defined by said act, or the advertising thereof by the means or in the manner above set forth, agreed forthwith to cease and desist from:

(a) Representing that a product such as "Aknasol" "does help" a blemished skin or is a "first aid" for skin blemishes, or otherwise that it is a competent treatment or an effective remedy for "skin blemishes" or may be relied upon to remove, correct, or clear up "blemished skin"; and from the use of such general and inclusive terms in any manner having the capacity or tendency to suggest or convey the impression that said preparation would have therapeutic value in the treatment or elimination of skin blemishes such as moles, warts, freckles, birthmarks, or epitheliomas.

(b) Representing, inferentially or otherwise, by statements or expressions such as "for your son's or daughter's 'adolescent skin'" or "clearing up blemishes so common and embarrassing to adolescents,"

that the use of said lotion will prevent or overcome skin eruptions due to systemic factors incident to the age of puberty or adolescence.

(c) Representing that said preparation is a "valuable aid" or would have any beneficial effect in clearing up or eradicating enlarged skin pores or in toning up the skin; or otherwise, directly or inferentially, that it has remedial or corrective capabilities beyond those properly attributable to a colloidal sulfur lotion. (Dec. 1, 1941.)

3285. **Lawn Mowers—Place of Business.**—Samuel P. Townsend Lawn Mower Co., a corporation, engaged in the manufacture of lawn mowers 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.

Samuel P. Townsend Lawn Mower Co., in connection with the offering for sale, sale, or distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use, in its sales-promotional literature or advertising media, of any depiction, illustration, or other representation of a building not actually occupied by it, in any manner so as to import or imply that it occupies the building so depicted or that its factory or plant is situated therein, or which otherwise conveys or has the capacity to convey a deceptive or misleading representation with respect to its factory or plant or other facilities. (Dec. 1, 1941.)

3286. **Women's Dresses or Other Textile Fabric Products—Composition.**—Princess Garment Co., an Ohio corporation, with place of business in Cincinnati, Ohio, and Fashion Frocks, Inc., a corporation, with principal place of business in the city of Cincinnati, Ohio, and is a subsidiary of the aforesaid Princess Garment Co.; said corporations engaged in the sale and distribution of women's dresses and other garments in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Princess Garment Co. and Fashion Frocks, Inc., and each of them, in connection with the offering for sale, sale, or distribution of their women's dresses or garments or other textile fabric products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) 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 material other than

rayon, from failing to disclose, in immediate connection or conjunction with, and in type equally conspicuous as the word "rayon," each constituent fiber of said product in the order of its predominance by weight, beginning with the largest single constituent.

(b) The use of the words "silk," "satin," "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 words "satin" or "crepe" or similar words are used properly to describe the construction of a product containing fiber other than silk then such word or 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 product is composed, stated in the order of their predominance by weight, beginning with the largest single constituent as, for example, "rayon and silk satin" for a product of satin construction and composed of a mixture of rayon and silk each present in substantial proportion but with the rayon predominant, or "rayon and cotton crepe" when the product is composed of rayon and cotton each present in substantial proportion but with the rayon predominant.

(c) The use of the word "Linspun" or any other word or term connoting linen, to designate or describe a product which is not composed of linen; the use of the word, term, or syllable "lin" or other word, term, or syllable of similar import, alone or as part of a word or in combination with one or more words, terms, syllables, or representations, in such manner as to import or imply that a product is composed of linen when in fact such product is not composed of linen; or the use of any such word, term, syllable, or combination in any manner which has the capacity, tendency, or effect of misleading or deceiving the purchasing or consuming public. If the product is composed in substantial part of linen and in part of fibers or material other than linen, and the word "linen" or other linen-connoting term is used properly to describe such linen content, then the word "linen" or other linen-connoting term, whenever used, shall be accompanied, in immediate conjunction therewith and in type equally conspicuous by a word or words accurately designating and describing each constituent fiber thereof in the order of its predominance by

weight, beginning with the largest single constituent, such as, for example "Rayon and Linen," for a product composed of rayon and linen, each present in substantial proportion but with the rayon predominant. (Dec. 2, 1941.)

3287. **Silk Preservative—Qualities, Properties, or Results.**—John B. Mears and Mary K. Gelnett, copartners, trading under the firm name of Gelnett-Mears Enterprises engaged in the sale and distribution of novelty items, including a product offered as a silk preservative and known as "runsaver" in interstate commerce, in competition with other firms and partnerships and with individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

John B. Mears and Mary K. Gelnett, and each of them, in connection with the sale and distribution of their silk treatment product in commerce as defined by said act, agreed forthwith to cease and desist from:

(a) The use of the trade name or designation "Runsaver" as descriptive of their product, or of any other word, term, or expression having the capacity or tendency to convey the impression or create the belief that such or any similar preparation can substantially save the user from runs in hosiery or lingerie, or that it may be relied upon or depended upon to do so.

(b) Representing that the said product or any like preparation will or can "insure hosiery or lingerie against runs, snags, or breaks" or in any other way stating or representing that it does or may prevent or stop such runs, snags, or breaks.

(c) Representing that it "sets the color," or otherwise, that it is capable of setting the dyes in hosiery or lingerie or other articles.

(d) Representing by statement such as "No more rotting or fading" or in any other way that treatment with said product will prevent either rotting or fading of hosiery or lingerie. (Dec. 2, 1941.)

3288. **Publications or Printed Material—Source or Origin and Earnings or Profits.**—Sheboygan Publishing Co., also trading as Liberty Sales Service, engaged in the publication of periodicals or magazines and "folios" or booklets 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.

Sheboygan Publishing Co., in connection with the sale and distribution of its publications or printed material in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Designating as the publisher or publishers of its periodicals or publications the name or trade name of any individual or firm other than that of the actual or true publisher thereof; or otherwise representing, directly or inferentially, that any individual, corporation, or firm is the publisher of any periodical, magazine, or other publication, when, in fact, such individual, corporation, or firm is not the publisher thereof.

(b) Representing as income, earnings, or profits from the operation of any business or businesses described in any publication or publications disseminated by it, any amounts in excess of those which have, in fact, been regularly and customarily earned by persons operating such business or businesses under normal conditions; or representing that such publication or publications contain a complete exposition of any new profession or money-making business when said publication or publications do not in fact contain such complete information. (Dec. 2, 1941.)

3289. **Ski Supplies and Equipment—Unique and Comparative Merits.**—Sydney Gerber, sole proprietor trading as Gerber Brothers and also as Anderson and Thompson Ski Co., engaged in the manufacture of ski supplies and equipment and in the sale and distribution thereof in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged; entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Sydney Gerber, in connection with the sale and distribution of his products in commerce as defined by said act, agreed he will forthwith cease and desist from:

(a) Representation that either the instant tension adjuster or the adjusting clip furnished as a part of the ski equipment offered for sale and sold by him is a feature "found only on GB cable bindings"; or otherwise, by statement or by inference, that his products, because of such apparatus, are superior to or will accomplish more than comparable products on the market in competition therewith.

(b) Disparagement of competitors' products similarly equipped, in any manner connoting that they are lacking in such features and are thus obviously inferior to, or less effective or less desirable than those of his own production. (Dec. 3, 1941.)

3290. **Mattresses—Prices.**—Max Yahr, Max Cantor, and Simon S. Cantor, copartners trading as Royal Bedding Co., engaged in the manufacture of mattresses and in the sale thereof 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.

Max Yahr, Max Cantor, and Simon S. Cantor, 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 of labels or from supplying to others for the use of the latter on or in connection with said products, of labels which bear any false, fictitious, or misleading price representation purporting to be the retail sales price of each such product but which, in fact, is in excess of the price for which each said product is customarily sold in the usual course of retail trade. (Dec. 4, 1941.)

3291. **Hearing Aids—Qualities, Properties or Results, History and Time in Business.**—C. L. Hofmann Corp., a corporation, engaged in the business of manufacturing so-called “vest pocket size” hearing aids of the vacuum tube type, and in the sale thereof under the trade designation “Duratron” in interstate commerce, in competition with other corporations and with other individuals, firms, and partnerships 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. L. Hofmann Corp., in connection with the advertisement, offering for sale, sale, or distribution of its “Duratron” hearing aids of the vacuum tube type in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from stating or representing either directly or by inference:

1. That the said device will enable the user to hear naturally or to hear and understand everything that is said or sung wherever it may be used regardless of the degree of the individual user's hearing impairment or that it will assure the elimination of all auditory handicaps under all conditions of its use.

2. That hearing aids of the carbon type are on the way out or are out-moded and/or that they do not have a proper place or are not adapted to equip and, in fact, best serve the hard of hearing in certain types of deafness.

3. That the vest-pocket-wearable vacuum tube hearing aid was first introduced in this country by the said C. L. Hofmann Corporation.

4. That the said C. L. Hofmann Corporation has been serving the hard of hearing since 1918, when in fact, it did not exist prior to 1938. (Dec. 4, 1941.)

3292. **Men's Neckwear—Composition.**—The Metcalf Neckwear Co., engaged in the manufacture of men's neckwear, and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist.

from the alleged unfair methods of competition in commerce as set forth therein.

The Metcalf Neckwear Co., in connection with the offering for sale, sale, or distribution of its neckwear in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use of the word "silk," the coined word "silko" or any other word or words connoting silk, as a trade mark for or 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.

(b) Advertising, branding, labeling, invoicing, selling, or offering for sale products composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or material other than rayon, from failing to disclose, in immediate connection or conjunction with and in type equally conspicuous as the word "rayon" each constituent fiber of said product in the order of its predominance by weight, beginning with the largest single constituent.

(c) Advertising, branding, labeling, invoicing, selling, or offering for sale, any silk product which contains any metallic weighting or any product containing metallic weighted silk without full and non-deceptive disclosure in or on 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, "Rayon and (Weighted 25%) Silk," with the word "Weighted" and the percentage thereof printed in type equally conspicuous as the word "Silk." (Dec. 4, 1941.)

3293. **Wrist Watch Straps—Composition and Prices.**—Samuel Friedman, sole proprietor, trading as Improved Products Manufacturing Co., engaged in the sale and distribution of wrist watch straps 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.

Samuel Friedman, in connection with the sale and distribution of his wrist watch straps or other merchandise in commerce as defined by said act, agreed he will forthwith cease and desist from:

(a) The use in his advertising, on his labels or otherwise, either with or without contradictory explanation, of the word "glass," or the syllable "glas," or any other glass-connoting term to denominate, designate, or describe a product which is not composed of glass; or the use thereof or of any other word, term or syllable of similar import, as part of a trade name or designation such as "Glass-Flex," for, or as descriptive of, Vinylite or similar products, so as to import or imply, or the effect of which tends or may tend to convey the belief that such products are glass or contain glass or are fabricated from fibers of glass, that is to say, inorganic silica glass, as the term "glass" is ordinarily understood and accepted by the trade and the public.

(b) The use of fictitious price tags or labels indicating that his wrist watch straps sell or are intended to be sold for 50 cents, 75 cents, \$1, \$1.25, and \$1.50; or in any other way, directly or by implication, representing that his various types of straps or other articles of merchandise have regular values and customarily sell for sums in excess of the prices actually charged therefor. (Dec. 4, 1941.)

3294. **Gas Furnaces—Connections, Standards, Conformance and Qualities, or Properties.**—The Utility Supply Co., a corporation, engaged in the business of manufacturing gas appliances, including so-called "Super-Heat" gas furnaces of both the floor and wall types, and in the sale thereof in commerce between and among various States of the United States, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

American Gas Association is an organization formed by public utilities and by practically all of the substantial manufacturers of gas heat equipment and other gas appliances whose extensive financial support enables the said Association to maintain a large laboratory in Cleveland, Ohio, and another in Los Angeles, Calif., where for some time exhaustive tests and research work have been and are now being made, devoted to the improvement, efficiency, and safety of various types of gas appliances, including gas furnaces. As the result of these tests, the safety standards and efficiency standards of gas furnaces and stoves have been brought to a high degree. To assure safety and efficiency in operation, the Association has promulgated various statements and requirements with regard to the thickness and type of metal used in the construction of such heating devices and the manner in which the devices are constructed. Manufacturers of gas fur-

naces submit their products to the testing laboratories of the Association for approval and in the event that these products are so approved, they bear the seal of approval of the American Gas Association. The activities of the Association have assumed such importance that its standards have been for some time and are now generally accepted by architects, building, and health authorities, and public utility companies throughout the United States as the standards and requirements most conducive to healthful and safe operation of gas furnaces.

The Utility Supply Co., in connection with the advertisement, offering for sale, sale, or distribution of its "Super Heat" furnaces in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from stating, either directly or inferentially, that it is a member of the American Gas Association, or that its said products, as constructed, meet the standards and requirements promulgated by the American Gas Association for such products, or that the said products are so built as to afford that degree of serviceability, durability, or safety as is effected by adherence to the specifications established by the said Association. (Dec. 4, 1941.)

3295. **Mattresses—Doctor's Design or Supervision and Prices.**—United States Cabinet Bed Co., Inc., engaged, in part, in the manufacture of mattresses at its place of business in Brooklyn, N. Y., and at various times during the past 5 years, sold or caused to be sold certain of its mattresses under the name of its subsidiary corporation, Eclipse Sleep Products, Inc., as a division of United States Cabinet Bed Co., Inc., in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

United States Cabinet Bed Co., Inc., in connection with the offering for sale, sale, or distribution of its mattresses or allied products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. The use in its advertising matter relating to said products or on labels affixed to said products, or in any other way, of the word "doctor" or its abbreviation "Dr.," either alone or in connection with a name or in any manner so as to import or imply or the effect of which tends or may tend to convey the belief or impression to purchasers that the products so advertised or labeled, branded, or referred to are made in accordance with the design or under the supervision of a doctor of medicine or a physician or that the said products contain special or scientific features resulting from medical determination or services.

2. Advertising, offering for sale, selling, or supplying to customers for resale products to which are affixed or which bear a price label

or tag or other indication purporting to be the retail selling price of said products, when in fact, such price is not the regular retail selling price thereof but is in excess of the price for which said products are customarily sold and offered for sale in the usual course of retail trade. (Dec. 5, 1941.)

3296. **Furs—Nature.**—Domestic Broadtail Producers, Inc., engaged in the sale and distribution of furs in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Domestic Broadtail Products, Inc., in connection with the sale and distribution of its furs in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from designating or describing any fur in any manner other than by the use of the correct name of the fur as the last name of the description thereof and, when any dye, blend, or process is used in simulating another fur, the true name of the fur appearing as the last name of the description shall be immediately preceded in equally conspicuous type by the word "dyed," "blended," or "processed" compounded (hyphenated) with the name of the simulated fur. (Dec. 5, 1941.)

3297. **Fur Garments—Nature.**—Scheiner-Wolfson, Inc., engaged in the manufacture of fur garments 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.

Scheiner-Wolfson, Inc., in connection with the sale and distribution of fur products in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from designating or describing any fur or fur garment in any manner other than by the use of the correct name of the fur as the last name of the description thereof and, when any dye, blend, or process is used in simulating another fur, the true name of the fur appearing as the last name of the description shall be immediately preceded in equally conspicuous type by the word "dyed," "blended," or "processed" compounded (hyphenated) with the name of the simulated fur. (Dec. 5, 1941.)

3298. **Fur Garments—Nature.**—Morris Wagner and Jerome Wagner, copartners trading as Morris Wagner & Son, engaged in the manufacture of fur garments 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.

Morris Wagner and Jerome Wagner, and each of them, in connection with the sale and distribution of fur products in commerce as defined by the Federal Trade Commission Act, agreed they will forthwith cease and desist from designating or describing any fur or fur garment in any manner other than by the use of the correct name of the fur as the last name of the description thereof and, when any dye, blend, or process is used in simulating another fur, the true name of the fur appearing as the last name of the description shall be immediately preceded in equally conspicuous type by the word "dyed," "blended," or "processed" compounded (hyphenated) with the name of the simulated fur. (Dec. 5, 1941.)

3299. Fur Garments—Nature.—**Kruskal & Kruskal, Inc.**, engaged in the sale and distribution of fur garments in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Kruskal & Kruskal, Inc., in connection with the sale and distribution of fur products in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from designating or describing any fur or fur garment in any manner other than by the use of the correct name of the fur as the last name of the description thereof and, when any dye, blend, or process is used in simulating another fur, the true name of the fur appearing as the last name of the description shall be immediately preceded in equally conspicuous type by the word "dyed," "blended," or "processed" compounded (hyphenated) with the name of the simulated fur. (Dec. 5, 1941.)

3300. Mattresses—Prices.—**Geier Mattress Co.**, engaged in the business of manufacturing mattresses and in the sale thereof in interstate commerce, and also to a certain dealer, namely, **Fair Store Co.**, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Geier Mattress Co., a corporation, and **Fair Store Co.**, a corporation, agreed that the said corporations and each of them will cease and desist forthwith from advertising, offering for sale, or selling in commerce, as commerce is defined by the Federal Trade Commission Act, products to which are affixed or which bear a price purporting to be the retail selling price of said products, when in fact, such price is not the regular retail selling price thereof but is in excess of the

price for which said products are customarily offered for sale and sold in the usual course of retail trade. (Dec. 5, 1941.)

3301. Lubricating Oils—Composition and Old or Reclaimed as New.—Joe Mouren-Laurens, an individual trading as Mouren-Laurens Oil Co., engaged in the business of selling and distributing motor lubricating oils in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Joe Mouren-Laurens, in connection with the offering for sale, sale, or distribution of motor oil 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 "Penn" either alone or in connection or conjunction with "Red-E" or with any other word or words, letter or letters, or in any other way, as a brand or label for or as part of the trade name under which he sells said product, when in fact, said product is not composed wholly of Pennsylvania oil; and from the use of the said "Penn" or the phrase "100% Pure Pennsylvania Motor Oil" or of any other statement or representation of like import, the effect of which conveys or tends or may tend to cause the belief or impression to purchasers that the product thus referred to is composed of Pennsylvania oil, when in fact, said product contains oil other than Pennsylvania oil.

2. Failing to clearly and unequivocally disclose the fact that said motor oil contains used or reclaimed oil or oils in all invoices and on printed and advertising matter, sales promotional descriptions, or representations thereof, however disseminated or published. (Dec. 8, 1941.)

3302. Food Products and Flavorings—Special or Limited Prices, Nature, History and Success, Use, or Standing.—George Foster, Inc., a Minnesota corporation, and George Foster, an individual, said corporation and individual, engaged in the sale and distribution of various household and food products, including food flavorings, 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.

George Foster, Inc., and George Foster, and each of them, in connection with the offering for sale, sale, or distribution of their products in commerce as defined by the Federal Trade Commission Act or the advertising thereof by the means and in the manner above set forth, agreed forthwith to cease and desist from:

(a) Representing that the so-called "Eight Bottle Deal," presently sold at one dollar will be sold at four dollars after one million "deals"

have been sold; or representing in any manner that the price or prices at which they offer for sale and sell their products are special, reduced, or introductory prices, or that such price or prices are applicable for a limited time only, when in fact they are the usual and customary prices at which they sell said products in the normal and usual course of business.

(b) The use of the word or term "Vanilla," "Van-Wine," or any other word or term connoting vanilla to designate or describe a product which is not vanilla extract; and from the use of the word, term, or syllable "Van" or other word, term, or syllable of similar import, alone or as part of a word or in combination with one or more words, terms, syllables, or representations, in such manner as to import or imply that a product, by reason of its vanilla content, is properly designated or described as vanilla extract when in fact such product is not vanilla extract; provided that if such product simulates the flavor of vanilla and the word "vanilla" is used to indicate such flavor only, then the word "vanilla," whenever used, shall be immediately preceded in equally conspicuous type by the word "imitation" so as to indicate definitely and clearly that said product is not vanilla extract and that the flavoring thereof is not that of vanilla.

(c) Representing that the product designated "Van-Wine" was originated by any person or persons who did not originate such product or that the "Parisian School of Cooking" or any other institution uses George Foster flavors, extracts and spices exclusively, when such products are not used exclusively as represented. (Dec. 8, 1941.)

3303. Hydraulic Lifts—Prize Award and Safety of Competitive Products.—John H. Halstead, an individual doing business under the name of Western Manufacturing Co., engaged in the business of manufacturing hydraulic lifts of the two-post type for stations, 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.

John H. Halstead, in connection with the offering for sale, sale, or distribution of his two-post lift in commerce, as commerce is defined by the Federal Trade Commission Act, agreed he will cease and desist forthwith from the use in his advertising or printed matter, or in any other way, of the words "The Blue Ribbon Winner" in referring to said lift so as to import or imply or the effect of which tends or may tend to convey the belief or impression to purchasers that the said lift had been entered in a contest with one or more other lifts and/or that it had been awarded any prize or blue ribbon. The said individual also agrees to cease and desist from the use of the word "unsafe"

as descriptive of so-called single-post lifts generally, and from the use of the word "unsafe" or of any other word or words of similar meaning or import, the effect of which causes or may cause the belief that so-called single-post lifts generally are not safe to use. (Dec. 8, 1941.)

3304. Radio Equipment, Perfume Lamps, Etc.—Qualities, Properties or Results, Scientific or Relevant Facts, Safety, Nature, Etc.—Alfred Johnson Smith, Arthur James Smith, and Paul Smith, copartners trading as Johnson Smith & Co., engaged in the mail-order business and in the sale and distribution of miscellaneous merchandise 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.

Alfred Johnson Smith, Arthur James Smith, and Paul Smith, and each of them, in connection with the sale and distribution of their merchandise in commerce as defined by the Federal Trade Commission Act, agreed they will forthwith cease and desist from:

(a) Representing, by the use of the words "broadcasting transmitter" or other word or words of similar implication, or in any manner, directly or inferentially, that their "Wireless Transmitter Set" or other wireless transmitting device not capable of broadcasting sound such as the voice, is capable of transmitting spoken words or the articulate sound of the human voice.

(b) Representing by statements, such as "Complete Two Tube Transmitter Kit," by illustrations depicting a wireless transmitter set equipped with tubes or in any other manner that such set is equipped or provided with tubes when, in fact, the set so described is not equipped or provided with tubes as represented.

(c) Representing that there are 100,000 radio amateurs in the United States of America or that there are any number of amateur radio operators in this country in excess of the number actually licensed to operate by the Federal Communications Commission.

(d) Disseminating any advertisement pertaining to wireless transmitter sets or kits which fails to reveal that a person is not permitted to operate a broadcasting station or set, amateur or otherwise, except by authorization or under license issued by the Federal Communications Commission.

(e) Disseminating any advertisement which fails to reveal that extreme care must be exercised in the use of the aforesaid "Wireless Transmitter Set" or any other set of similar construction, due to exposed connections or terminals and the character of the insulation of the wiring thereof and the resultant potential danger to life or health and fire hazard.

(f) Disseminating any advertisement pertaining to the "Famous India Perfume Lamp" or other lamp or lamps not equipped or provided with bulbs, perfume, or other component part, unless the fact that such equipment is not provided or furnished with such lamp or lamps is truthfully disclosed in said advertisement in type equally as conspicuous as that appearing in the caption or other prominently displayed portion of such advertisement.

(g) Representing by any statement or illustration that a lamp or other product advertised by said partnership bears depictions of lions and is surmounted or ornamented with an image of a lion or is otherwise ornamented when, in fact, the lamp or other product actually sold and delivered to the purchaser ordering from the catalog or other advertising media containing such statement or illustration, bears ornaments other than, or in any material respect differs from, such advertised representation or illustration. (Dec. 9, 1941.)

3305. Shower Curtains, Raincoats, Etc.—"Mills."—Albert Sarfati, sole proprietor, trading as American Oiled Silk Mills, engaged in the manufacture of shower curtains, raincoats, shampoo capes, and like products made of oiled silk, and in the sale and distribution thereof in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Albert Sarfati, in connection with the sale and distribution of his products in commerce as defined by said act, agreed forthwith to cease and desist from the use of the word "Mills" as part of his trade name or as descriptive of his business. He also agreed to cease and desist from the use of any other word or words of similar implication, the effect of which tends or may tend to convey the belief that he makes or manufacturers the oiled silk cloth used in the products sold by him, or that he actually owns or operates or directly and absolutely controls the plant or factory in which such oiled silk cloth is made or manufactured. (Dec. 9, 1941.)

3306. Canning or Preserving Devices.—History, Qualities, Properties or Results, Safety, Testimonials, Etc.—Vacuum Process Co., a corporation, engaged in the sale and distribution in interstate commerce, of products to be used in the canning or preserving of foods, designated "Vacuum Units" or "Vacuum Process" consisting of lids, rubber rings, seals, so-called "vacuum" pumps, and/or other products, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Vacuum Process Co., in connection with the sale and distribution of its preserving or canning devices designated "Vacuum Units" or "Vacuum Process" or any component parts thereof, whether sold under such name or names or any other name or names, agreed forthwith to cease and desist from:

(a) Representing, directly or inferentially, that the use of a partial vacuum in connection with the preserving or canning of foods is a recent discovery or that the use of its said devices involves a newly discovered principle in canning or preserving.

(b) Representations which cause or have the capacity to cause the belief or impression that such devices or the use thereof will prevent food spoilage or destroy bacteria responsible for food spoilage or will do away with or obviate the necessity for the proper sterilization of foods by adequate cooking during the canning process.

(c) Representing, directly or by implication, that by the use of such devices "left-overs" or unused foods will be preserved or will not sour or spoil.

(d) Disseminating any advertisement containing representations concerning the use of such devices as canning or preserving agents, which do not reveal the danger incident to failure to apply heat of adequate temperature and for a sufficient duration of time to effectuate the destruction of bacteria responsible for food spoilage.

(e) Disseminating any testimonials containing statements or assertions contrary to the terms of the foregoing agreement. (Dec. 9, 1941.)

3307. **Tooth Brushes**—"Sterilized."—Gibson-Thomsen Co., Inc., a corporation, engaged in the manufacture of toilet brushes, including tooth brushes, 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.

Gibson-Thomsen Co., Inc., in connection with the offering for sale, sale, and distribution or the advertising in commerce, as defined by the Federal Trade Commission Act, of tooth brushes not in fact so packaged and sterilized as to be rendered free from bacteria, it will forthwith 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, at the time of purchase, sterile or rendered free from organisms capable of growth. (Dec. 9, 1941.)

3308. **Food Stuff**s—Qualities, Properties or Results, and Comparative Merits.—Ballard & Ballard Co., a corporation, engaged in the business

of manufacturing food stuffs, including a so-called "Obelisk Self-Rising Flour" for human consumption and a product called "Nutro-Tone" to be used as a supplement to poultry feeds, and in the sale of said products in interstate commerce, causing same, when sold, to be shipped from its place of business in the State of Kentucky or to be distributed through its branch offices in a number of cities to purchasers thereof, as retail dealers, located in other States and there engaged in reselling said products to the consuming public, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Ballard & Ballard Co., in connection with the advertisement, offering for sale, sale, or distribution of its "Nutro-Tone" product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from representing, either specifically or by implication, said product to be a food conditioner or regulator, or that the use of said product will improve a bird's health any more than any well-balanced food, or that it is a preventive of or cure for the poultry disease known as coccidiosis, or that it will do more in this respect than to increase resistance of birds to such disease. The said corporation also agreed to cease and desist forthwith from the use in its advertisements and advertising matter of whatever kind or character distributed in commerce, or in any other way of any statement or representation, the effect of which conveys, tends, or may tend to convey the belief to purchasers or prospective purchasers that the use of its so-called "Obelisk Self-Rising Flour" will produce a greater volume or yield of baked products or give more baked products per pound than other comparable flours used in the same manner. (Dec. 10, 1941.)

3309. "Slendotabs"—Qualities, Properties, or Results.—Gaylord W. Keeton, Arthur Nebel, and Frank Sterling, individuals, as copartners trading under the firm name and style of "Keneco Health Products," engaged for more than 1 year prior to September 1940, in the sale and distribution of a preparation in tablet form called "Slendotabs" 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.

Gaylord W. Keeton, Arthur Nebel, and Frank Sterling, in connection with the offering for sale or sale of their so-called "Slendotabs" 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 or from resuming the use or supplying to others for use of adver-

tisements or printed matter of whatever kind or description wherein it is stated or represented, either directly or inferentially, that the indicated treatment involving the use of said tablets is an easy or a dependable or sensible, correctively balanced weight-reducing method or that it is one which will attractively or otherwise effectively slenderize the user's figure or which doctors would approve as a competent and safe means of producing permanent weight reduction. (Dec. 10, 1941.)

3310. **Solder—Patent.**—L. B. Allen Co., Inc., a corporation, engaged in the business of manufacturing, among other products, solder for cast iron, aluminum, and stainless steel, and in the sale of said solder products in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

L. B. Allen Co., Inc., in connection with the offering for sale, sale, or distribution of its product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from stamping, embossing, or otherwise marking or identifying said product with the term "Pat. No. 401482"; and from the use of the said term in any way so as to import or imply or the effect of which tends or may tend to cause the belief by purchasers or prospective purchasers or others that the said product is or ever was the subject matter of a patent properly identified by such number or that the said corporation is the present owner of a subsisting patent entitling it to the exclusive right or privilege of making, using, or selling the said product. (Dec. 10, 1941.)

3311. **Cigars—Award.**—Manuel L. Fernandez and Marcel L. Fernandez, copartners, trading as M. L. Fernandez & Bro., engaged in the business of manufacturing cigars at their factory and in the sale of such cigars 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.

Manuel L. Fernandez and Marcel L. Fernandez, in connection with the offering for sale, sale, or distribution of their products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use on labels affixed to the containers thereof, or otherwise, of the term "Exposicion de Paris" either alone or in connection with the numerals "1870" and/or of the pictorial or other representation of medals or other insignia so as to import or imply or the effect of which tends or may tend to cause the belief by purchasers that the products sold by the said copartners have received an award from any Paris Exposition or other comparable

institution, or that the said medals were awarded in connection with the exhibition of their products at an exposition or on any other occasion where such awards are customarily made, when in truth such are not the facts. (Dec. 10, 1941.)

3312. Medicinal Preparations for Domestic Animals—Qualities, Properties, or Results.—Dr. David Roberts Veterinary Co., Inc., a corporation, and David Roberts, a practicing veterinarian, owner of the capital stock of such corporation, is its president and treasurer and supervises the conduct of its operations, engaged in the business of compounding numerous medicinal preparations for treatment of diseases in domestic animals and in the sale and distribution of such products 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.

Dr. David Roberts Veterinary Co., Inc., and David Roberts, and each of them, in connection with the offering for sale, sale, or distribution of their products in commerce as defined by said act, or the advertising thereof by the means or in the manner above set forth, agreed forthwith to cease and desist from representing, directly or inferentially:

(a) That the product offered for sale and sold as "Herd-Tonik" or any like preparation is a competent or effective treatment to build up breeding vitality, to prevent loss of calves or to remedy failure to breed, retained afterbirth, scours, or milk shortage; or that such preparation is efficacious in preventing or overcoming "Herd Infection" in cattle.

(b) That the product offered for sale and sold as "Genito-Wash" or any like preparation is "healing" or will prevent or overcome inflammation, unnatural discharge, or similar disorders.

(c) That the product offered for sale and sold as "Absorbent" or any like preparation is a competent treatment or an effective remedy for goiters, enlarged glands or growths, deep seated wounds, quittor, fistula, or lump jaw.

(d) That the product offered for sale and sold as "Badger Balm" or any like preparation is either a competent treatment or an effective remedy for cow pox, inflamed swellings or piles, or that it is "healing".

(e) That the product offered for sale and sold as "Cow Tonic" or any like preparation is a competent treatment or an effective remedy for loss of appetite, shortage of milk, indigestion, or all kinds of udder trouble.

(f) That the product offered for sale and sold as "Freshening Prescription" is a tonic for failure to clean, or retention of the after-birth in cows or heifers.

(g) That the product offered for sale and sold as "Calf Medicine" is a competent treatment or adequate remedy for indigestion or scours, or that it would be of benefit in the treatment of looseness of bowels other than that due to irregular feeding.

(h) By the use of any designation such as "Laxotonic" that the medicine so referred to is both laxative and tonic in action; or that the preparation heretofore so denominated is either an effective treatment or an adequate remedy for constipation or paralysis of the bowels generally, in livestock or other animals.

(i) That the product offered for sale and sold as "Uterine Capsules" or any like preparation is an effective treatment generally for slow breeding cows.

(j) That the product offered for sale and sold as "Udderine" or any like preparation is a competent treatment or an effective remedy for any cases of garget or of udder swollen through causes other than caking thereof.

(k) That the product offered for sale and sold as "Udder Balm" or any like preparation is a competent treatment or an effective remedy for cases of inflamed udder, garget, or mammitis.

(l) That the product offered for sale and sold as "Antiseptic Lotion" or any like preparation will heal old sores, pus cavities, fistulas, poll evil, lump jaw, or any similar condition.

(m) That the product offered for sale and sold as "Germ-O-Cide" or any like preparation is "Excellent" in some cases of skin disease, or that it is efficacious in the treatment of any skin diseases for which it might be an adequate remedy, without particularly specifying which disease.

(n) That the product offered for sale and sold as "Soothing Paste" or any like preparation is "Healing" or is a competent treatment or an effective remedy for distemper or shipping fever, or lung trouble.

(o) That the product offered for sale and sold as "Bon Blister" or any like preparation is an adequate treatment to heal or remove bone spavins, ring bones, splints, side bones or curbs, or by the use of the term "bon" or other bone connoting designation that this is a bone medicine.

(p) That the products offered for sale and sold as "Fistula Powder" and "Fistula Capsules" or any like preparations are competent treatments or adequate remedies for fistula or for deep-seated abscesses; or by the use of the word "Fistula" in their trade designations, representing that they are of value for fistulous conditions.

(q) That the product offered for sale and sold as "Lucky Four Blister" or any like preparation is a competent treatment or an effective remedy for shoulder lameness or for enlargements such as poll evil or fistula.

(*r*) That the product offered for sale and sold as "Special Tonic" or any like preparation is an effective remedy for barrenness or for failure of livestock to come in heat; or that the products designated "Hog Tonic" and "Sheep Tonic" are effective in the prevention or eradication of worms or disease generally, in hogs or sheep.

(*s*) That the product offered for sale and sold as "Cow Poxine" or any like preparation is an effective treatment or competent remedy for cow pox; or by the use of the word "Poxine" or other pox connoting term in denominating such product, that its use would be beneficial for said disease or condition.

(*t*) That the product offered for sale and sold as "Colic Dose" or any like preparation is an effective treatment or competent remedy for spasmodic or wind colic or for kidney and water troubles in horses; or otherwise that its therapeutic properties exceed those of a carminative and stimulant for wind colic.

(*u*) That the product offered for sale and sold as "Haverine" or any like preparation is a competent remedy for heaves, asthma, or any similar ailment of the respiratory organs.

(*v*) That the product offered for sale and sold as "Diuretic Stimulant to the Kidneys" or any like preparation is a competent remedy or effective treatment for Azoturia, Red Water, or any other kidney disease.

(*w*) That the product offered for sale and sold as "Poultry Tonic" or any like preparation will make hens lay or prevent disease; or that the product offered for sale and sold as "Poultry Paste" or any like preparation is an effective treatment or competent remedy for colds, roup conditions, or similar ailments of poultry.

(*x*) That the product offered for sale and sold as "Poultry Worm Capsules" or any like preparation would be effective in the eradication of tape worms in poultry.

(*y*) That the product offered for sale and sold as "Catarrhal Medicine" or any like preparation is an antiseptic and healing preparation for, or is an adequate treatment for ailments often referred to as distemper.

(*z*) That the product offered for sale and sold as "Dog Liniment" or any like preparation is an adequate treatment for the relief of rheumatism, sore throat, lung trouble, lameness, or swellings in dogs or other pet stock. (Dec. 11, 1941.)

3313. Upholstery Fabrics—"Manufacture."—Peter Z. Fidler and Tillie Fidler, copartners trading as M. Fidler & Son, engaged in the sale and distribution of upholstery 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.

Peter Z. Fidler and Tillie Fidler, and each of them, agreed that, in connection with the sale and distribution of their upholstery fabrics in commerce as defined by the Federal Trade Commission Act, they will forthwith cease and desist from the use of the word "manufacture" or any other word or words of similar implication in any manner so as to import or imply or the effect of which tends or may tend to convey the belief, that they make or manufacture the products sold by them or that they actually own and operate or directly and absolutely control, a plant or factory in which such products are made or manufactured. (Dec. 11, 1941.)

3314. Barn Doors—Quality and Manufacturer.—John Arthur McGregor and Helen I. McGregor, copartners trading as Dakota Sash & Door Co., engaged in the business of selling in interstate commerce certain barn doors, the sash of which is equipped with panes of glass, 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.

John Arthur McGregor and Helen I. McGregor, in connection with the offering for sale, sale, or distribution of their barn doors in commerce, as commerce is defined by the Federal Trade Commission Act, agreed they and each of them will cease and desist forthwith from:

1. The use of the word "plate" either alone or in connection with any other word or words on the labels affixed to the panes of glass forming part of said doors, and from the use of the word "plate" in any way, the effect of which tends or may tend to convey the belief or impression to purchasers that the glass used in the construction of such doors is that known as "plate glass," when in fact it is not of that type.

2. The use of the words "Manufactured by" or of any other word or words of similar meaning on the said labels so as to import or imply that the glass with which the sash of said doors is equipped is made by the said copartners or by either of them or that they or either of them actually own and operate or directly and absolutely control the plant or factory in which such glass is made or manufactured. (Dec. 11, 1941.)

3315. Shoes—Doctor's Design or Supervision.—Knipe Brothers, Inc., a corporation, engaged in the business of manufacturing shoes and in the sale thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Knipe Brothers, Inc., in connection with the offering for sale, sale, or distribution of shoe products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist

forthwith from the use of the word "Doctor" or the abbreviation "Dr." or by any simulation thereof either alone or in connection with a name or with any other word or words as a trade name, brand or designation for said products, or in any other way, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the said products are made in accordance with the design or under the supervision of a physician and contain special scientific or orthopedic features which are the result of medical determination or services. (Dec. 11, 1941.)

3316. **Wrist Watch Straps—Composition and Prices.**—Max E. Westerman, trading as Westerman Manufacturing Co., engaged in the manufacture of watch straps in interstate commerce, in competition with other individuals and with corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Max E. Westerman, in connection with the sale and distribution of his wrist watch straps or other merchandise in commerce as defined by said act, agreed he will forthwith cease and desist from:

(a) The use in his advertising or invoices, on his labels, or otherwise, either with or without contradictory explanation, of the word "glass" or the syllable "glas," or any other glass connoting term to denominate, designate, or describe a product which is not composed of glass; or the use thereof or of any other word, term, or syllable of similar import, as part of a trade name or designation such as "Expando-Glass" for, or as descriptive of, Vinylite or similar products, so as to import or imply, or the effect of which tends or may tend to convey the belief that such products are glass or contain glass or are fabricated from fibers of glass, that is to say, inorganic silica glass, as the term "glass" is ordinarily understood and accepted by the trade and the public.

(b) The use of fictitious price tags or labels indicating that his wrist watch straps sell or are intended to be sold for 50 cents, \$1, \$1.25, and \$1.50; or in any other way, directly or by implication, representing that his various types of straps or other articles of merchandise have regular values and customarily sell for sums in excess of the prices actually charged therefor. (Dec. 11, 1941.)

3317. **Uniforms—Manufacturer and Division or Branch.**—Lillian Goldbergh, an individual trading as Mills Dress & Work Clothes Co., engaged in the sale and distribution of clothing 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.

Lillian Goldbergh, in connection with the offering for sale, sale, or distribution of clothing or other merchandise in commerce as defined by the Federal Trade Commission Act, agreed she will forthwith cease and desist from representing, directly or inferentially, that she makes or manufactures uniforms or other commodities, or that the business conducted by her is "A Division of Mills Uniforms" or a division or branch of any firm, business, or establishment. (Dec. 11, 1941.)

3318. **Electrical Heating Pads—Qualities, Results, and Composition.**—Casco Products Corp., also trading as Perfection Products Co. and as Neaco Products Co., a corporation, engaged in the sale and distribution of electrical heating pads in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Casco Products Corp., in connection with the offering for sale, sale, or distribution of its electrical heating pads in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use of the words "Three Heats," "Low * * * Medium * * * High" or "Three Heat Switch" as descriptive of electrical heating pads, or the switches used therewith, not equipped or provided with adequate thermostatic or other heat controls calibrated for three different, distinct temperatures or degrees of heat; and from the use of the words, phrases or initials "Three Heats," "Low * * * Medium * * * High," "Three Heat Switch" or "L," "M," and "H," or other words, phrases, initials, or symbols of similar implication or meaning in any way so as to import or imply or the effect of which tends or may tend to convey the belief that said electrical heating pads are capable of maintaining, or that the operation of the switches used therewith effects or results in maintaining three different, distinct temperatures or degrees of heat.

(b) The use of the word "Flameproof" or other word or words of similar import or meaning as descriptive of heating pad covers which are not in fact flame proof.

(c) 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 material other than rayon, from failing to disclose, in immediate connection or conjunction with and in type equally conspicuous as the word "rayon," each constituent fiber of said product in the order of its predominance by weight, beginning with the largest single constituent. (Dec. 15, 1941.)

3319. **Wrist Watch Straps—Composition.**—Henry S. Borden, sole proprietor trading as Borden Novelty Co., engaged in the manufacture of watch straps and attachments 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.

The word "glass" as universally understood for thousands of years by the trade and the public, is an amorphous substance, usually transparent or translucent, consisting ordinarily of a mixture of silicates, as sand, fused together, and in some cases containing borates, phosphates, and other inorganic matter. There is a plastic product on the market trade-marked "Vinylite," made of petroleum, coal, and salt with special chemicals producing a synthetic resin resembling glass in appearance but which in fact is not glass. An article made of such organic substance Vinylite and marketed under a trade name containing the word "glass," or the term "glas," or other designation connoting glass, is misbranded in that it imports or implies to a substantial portion of the buying public that such product is made of inorganic silica glass or material containing glass in some form.

Henry S. Borden, in connection with the sale and distribution of his wrist watch straps or other commodities in commerce as defined by said act, agreed forthwith to cease and desist from the use, either with or without contradictory explanation, of the word "glass," or other glass-connoting term, either alone or in connection with the word "Velvet Glass" or with any other word or words; or in any way as a trade name or designation for, or as descriptive of Vinylite or similar products, so as to import or imply, or the effect of which tends or may tend to convey the belief that such products are glass or contain glass or are fabricated from fibers of glass, that is to say, inorganic silicate glass, as the term "glass" is commonly known and accepted by the trade and the public. (Dec. 15, 1941.)

3320. **Bread—Composition, Qualities, Properties or Results, Comparative Merits, and Endorsements.**—Wm. Freihofer Baking Co. and Freihofer Baking Co., engaged in the manufacture, sale, and distribution of their products, including "Hollywood Health Bread" or "Hollywood Bread," in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged in sale and distribution of similar products, entered into the following agreement to cease and desist from the alleged false advertisements as set forth therein.

Wm. Freihofer Baking Co. and Freihofer Baking Co., in connection with the offering for sale, the sale, and distribution of "Hollywood

Bread," or any similar bread, agreed—but subject to stipulation that any and all admissions of fact be solely for the purpose of the proceeding in question and the enforcement or review thereof as in said stipulation set forth—to cease and desist from directly or indirectly—

Disseminating or causing to be disseminated any advertisements by means of the United States mails, or by any means in commerce, or by any means for the purpose of inducing or which are likely to induce directly or indirectly the purchase in commerce of said bread, which advertisements represent directly or through inference:

1. That said bread product contains neither fats of any character nor any variety of sugar as an ingredient thereof.

2. That the said bread product, due to its vegetable oils content and alleged lack of sugar, is not fattening, or that the use of said product as a food will cause the consumer to stay slim or slender or to keep well.

3. That said product is substantially, if any, less fattening than other bread products, because it does not contain fats or sugar of the kinds allegedly used in such other bread products.

4. That the caloric food values of said bread are substantially, if any, less than those of other bread products which contain sugar and animal fats.

5. That the said bread product has been endorsed or sponsored by leading physicians and dietitians for reducing diets. (Dec. 16, 1941.)

3321. **Bread Mix—Composition, Qualities, Properties or Results, Comparative Merits, Endorsements, Place of Business, Etc.**—Hollywood Services, Inc.,¹ engaged in the business of selling a product called "Hollywood Mix," in interstate commerce, for use as an ingredient in the making of so-called "Hollywood Health Bread" or "Hollywood Bread" and in supplying its said customer licensed bakers with advertisements and advertising matter for their use in promoting the sale of their "Hollywood Bread," in competition with other corporations and with individuals, firms, and partnerships likewise thus engaged, entered into the following agreement to cease and desist from the alleged false advertisements as set forth therein.

Hollywood Services, Inc., in connection with the offering for sale, sale, and distribution of "Hollywood Bread," or any similar bread, agreed—but subject to stipulation that any and all admissions of fact be solely for the purpose of the proceeding in question and the enforcement or review thereof as in said stipulation set forth—to cease and desist from directly or indirectly—

Disseminating or causing to be disseminated any advertisements by means of the United States mails, or by any means in commerce, or by

¹ Name changed by order of stockholders on August 23, 1940 to National Bakers Services, Inc.

any means for the purpose of inducing or which are likely to induce directly or indirectly the purchase in commerce of said bread, which advertisements represent directly or through inference:

1. That said bread product contains neither fats of any character nor any variety of sugar as an ingredient thereof.

2. That the said bread product, due to its vegetable oils content and alleged lack of sugar, is not fattening, or that the use of said product as a food will cause the consumer to stay slim or slender or to keep well.

3. That said product is substantially, if any, less fattening than other bread products, because it does not contain fats or sugar of the kinds allegedly used in such other bread products.

4. That the caloric food values of said bread are substantially, if any, less than those of other bread products which contain sugar and animal fats.

5. That the said bread product has been endorsed or sponsored by leading physicians and dietitians for reducing diets.

6. That the said corporation has a place of business at Hollywood, Calif., or that the said bread product is sold at such place, or that said product is used as a diet by Hollywood actresses, generally. (Dec. 16, 1941.)

3322. **Electric Light Bulbs—Source or Origin and Manufacturers.**—Duo-Tint Bulb & Battery Co., engaged in the business of selling electric light bulbs called "Duo-Tint" for use in flashlights, radio panels, and similar purposes, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Duo-Tint Bulb & Battery Co. agreed that it will cease and desist from offering for sale, selling, or distributing in commerce, as commerce is defined by the Federal Trade Commission Act, imported products which are not properly marked in such readily discernible manner as to clearly and distinctly show the country of origin of said products however they may be displayed. The said corporation also agrees to cease and desist from the use on the containers of its products or in any way of the words "Made in U. S. A." or of any other words of similar implication, the effect of which tends or may tend to confuse or mislead purchasers or prospective purchasers with respect to the identity of the country of origin of said products. The said corporation further agrees to cease and desist from the use of the word "Manufacturers" as descriptive of the business in which it is engaged; and from the use of the said word 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 makes or manufactures the products which it sells or that

it actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured. (Dec. 16, 1941.)

3323. **Coal Tar Hair Dye Preparation—Safety.**—Lawrence Richard Bruce, Inc., engaged in the business of manufacturing hair dyes and other preparations for use on the hair, and owning a controlling stock interest in Amirol, Inc., engaged in the sale and distribution of products, including hair dyes manufactured by the first named corporation, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lawrence Richard Bruce, Inc., and Amirol, Inc., in connection with the dissemination, either directly or indirectly, of advertising by the means and in the manner above set out of the coal tar hair dye preparation designated "Amirol Color and Oil Shampoo Treatment," or of any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or under any other name, agreed they and each of the said corporations will cease and desist forthwith from disseminating any advertisements which fail conspicuously to reveal therein the following:

"CAUTION: This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness."

Provided, however, That such advertisement need contain only the statement:

"CAUTION: Use only as directed on label,"

if and when such label bears the first described caution conspicuously displayed thereon and the accompanying labeling bears adequate directions for such preliminary testing before each application. (Dec. 17, 1941.)

3324. **Poultry Feeds—Comparative Merits and Qualities and Results.**—Northrup, King & Co., engaged in the sale and distribution in interstate commerce of poultry feeds, designated "Sterling Growing Ration" and "Sterling Chick Ration," in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Northrup, King & Co., 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 poultry feeds designated "Sterling Growing Ration" or

"Sterling Chick Ration," or any other product composed of substantially the same ingredients, whether sold under such name or names, or any other name or names, agreed it will forthwith cease and desist from:

(a) Representing, directly or inferentially, that the use of said product or products will result in or cause the growth or development of poultry in less time than would result from the use of other poultry feeds consisting or composed of approximately the same ingredients or containing the same nutrient or food values or elements.

(b) The use of general or specific statements such as "build big, husky, well-feathered layers and broilers," "speed up pullet-building," or other statements or representations of similar import or meaning which cause or have the capacity to cause the belief or impression that, without regard to inherent strength, breeding, constitutional qualities, or other factors or conditions not related to feeding or rationing, the use of any such product will of itself result in the development of large, strong, and healthy poultry. (Dec. 17, 1941.)

3325. **Fur Garments—Source of Origin.**—Joseph Sertner, an individual trading as Sertner's Thrift Fur Shop, engaged in the sale and distribution of fur garments 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.

Joseph Sertner, in connection with the sale and distribution of fur garments in commerce as defined by the Federal Trade Commission Act, agreed he will forthwith cease and desist from any representation which imports or implies, or the effect of which conveys or has the capacity to convey, the impression or belief to the purchasing public that his second-hand fur garments, or any appreciable percentage thereof, were obtained or purchased from Estate Sales or Society Matrons; or otherwise representing the source of such second-hand garments to be other than the true source thereof. (Dec. 17, 1941.)

3326. **Photographic Products—"Bureau," Prices, History, Etc.**—A. J. Lewis, an individual trading as Washington Press-Photo Bureau, engaged in business as a portrait photographer, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

A. J. Lewis, in connection with the offering for sale, sale, or distribution of his products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed he will cease and desist forthwith from:

1. The use of the word "Bureau" as part of the trade name under which he conducts his business, and from the use of the word "Bureau" in any way, the effect of which tends or may tend to cause the belief by purchasers or prospective purchasers of his products that the business conducted by the said individual is fundamentally that of a bureau or establishment having an understanding, contractual or otherwise, with the press for the furnishing of photographs thereto.

2. Stating or representing that he has displayed or received an invitation to display indicated miniatures or portraits made by him at a photographic exhibition, or that he plans or contemplates such exhibition of said products, when in fact, no such display or invitation to display or contemplated display has been made or received or is planned by him.

3. Stating that the price of \$12.50 for which a miniature or portrait is offered for sale by him is "exactly one-half of the actual material cost required to make and process it," or, through the use of any other fictitious price figure or representation, that the production cost of the miniature or portrait is in excess of its actual cost.

4. The use of the word "new" or "different" or of any other word or words of like meaning or implication, as descriptive of his photographic products, when in fact, similar products have been offered for sale and sold by photographers for a number of years prior to respondent's. (Dec. 18, 1941.)

3327. Ladies' Shoes—Composition.—Julian & Kokenge Co., engaged in the business of manufacturing ladies' shoes made from leathers and fabrics 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.

Julian & Kokenge Co., in connection with the offering for sale, sale, or distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from:

(1) The use of the word "Alligator" either alone or in connection or conjunction with the word "Calf" or with any other word or words as descriptive of said products which are not made from the hide of an alligator; and from the use of the word "Alligator" or of any simulation of the word "Alligator" in the advertising employed by it or which it furnishes for use by others, so as to import or imply or the effect of which tends or may tend to cause the belief by purchasers that the products to which said word or words refer are made from the hide of an alligator; *Provided, however,* That the said word "alligator" may be used to designate the finish

of products which are made from other materials and which are finished or embossed to resemble alligator leather, when such word is immediately accompanied by another word or words clearly indicating that said designating word refers only to the pattern embossed on such materials;

2. Representing that the materials or leathers of which said products are made are other than the actual materials or leathers used in such products. (Dec. 18, 1941.)

3328. Roofing Nails—Comparative Merits, Qualities, and Results.—Filshie Lead Head Nail Co., engaged in the business of purchasing plain wire nails from the manufacturers thereof and equipping said nails with a secondary head of either cast lead or pressed lead and cutting a plurality of either annular rings or barbs throughout the length of shank, such nails so altered being specially designed for use to secure galvanized or other sheet metal roofing to wooden roofs, shipping same in interstate commerce in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Filshie Lead Head Nail Co., Inc., agreed that, in connection with the advertisement, offering for sale, sale, or distribution of its lead head roofing nails in commerce, as commerce is defined by the Federal Trade Commission Act, it will cease and desist forthwith from:

1. Representing, either diagrammatically or in any other manner, that its ring shanked nails have a designated holding power in excess of that possessed by other roofing nails, when in fact, the said ring shanked nails do not actually have the holding power indicated in the represented comparison with such other nails.

2. Pictorially or otherwise representing that the lead with which its nails are equipped penetrates through the hole formed by the nail shank in a sheet of metal in either an indicated manner or in a represented amount, when in fact, neither such manner nor amount of lead penetration customarily occurs. (Dec. 18, 1941.)

3329. Insecticides—Government Indorsement.—B. G. Pratt Co., engaged in the manufacture of insecticides including a preparation designated "D-X" as a spray to protect foliage or vegetation against Japanese beetles, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

B. G. Pratt Co. in connection with the offering for sale, sale, or distribution of its insecticides in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and

desist from representing, directly or inferentially, that the United States Department of Agriculture has in two consecutive seasons or years found that a spray consisting of or containing "D-X" and arsenate of lead was first in Japanese beetle protection or the most effective spray for Japanese beetles. (Dec. 19, 1941.)

3330. **Underwear and Sportswear—Doctor's Supervision, Health Features, and Manufacturer.**—Fox Manufacturing Co., Inc., engaged in the sale and distribution of underwear and sportswear in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Fox Manufacturing Co., Inc., in connection with the sale and distribution of its merchandise in commerce as defined by said act, agreed it will forthwith cease and desist from:

(a) The use of the abbreviation "Dr.," either with or without the name "Hopkins," or of other word, term, or expression connoting "doctor" in connection with or as a part of a trade designation for its garments; or in any other way, so as to import or imply that there is a doctor connected or associated with the manufacture thereof or that such merchandise has been made under the supervision or advice of a doctor.

(b) The use of the word "Health" as a part of the trade name for or as descriptive of its garments; or of such or other health-connoting terms so as to import or imply or convey the impression that said merchandise has any special health features not possessed by the ordinary run of competitive garments.

(c) The use of the word "Manufacturing" as part of its corporate or trade name, or in any manner importing or implying that said corporation makes the garments sold by it or that it owns, operates, or directly and absolutely controls the plant or factory in which such commodities are produced or manufactured. (Dec. 19, 1941.)

3331. **Fur Products—Nature.**—A. & J. Engel, Inc., 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.

A. & J. Engel, Inc., agreed that, in connection with the sale or distribution of its products in commerce as defined by the Federal Trade Commission Act, it will forthwith cease and desist from designating or referring to coats or other articles manufactured from the peltries of Metis lambs or other lambs not full breed Persians, as "Black and Gray Persian Lamb"; and from advertising, offering for

sale, selling, branding, or otherwise representing fur or furs as the product of a true species or breed of animals, unless such fur has been obtained from a true species or breed of animals. (Dec. 22, 1941.)

3332. **Fur Products—Nature.**—Max Schreibman Fur Co., Inc., 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.

Max Schreibman Fur Co., Inc., agreed that, in connection with the sale or distribution of its products in commerce as defined by the Federal Trade Commission Act, it will forthwith cease and desist from invoicing or otherwise designating or referring to coats or other articles manufactured from the peltries of Metis lambs or other lambs not full breed Persians, as "Black Persian Lamb"; and from advertising, offering for sale, selling, branding, or otherwise representing fur or furs as the product of a true species or breed of animals, unless such fur has been obtained from a true species or breed of animals. (Dec. 22, 1941.)

3333. **Coffee Filter Papers, Etc.—Source or Origin, Etc.**—Filtrator Coffee Apparatus Co., engaged in the sale and distribution of coffee apparatus and restaurant supplies, including coffee filter papers, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Filtrator Coffee Apparatus Co., Inc., in connection with the sale and distribution of its equipment and merchandise in commerce as defined by said act, agreed it will forthwith cease and desist from:

(a) Passing off coffee filter papers or other merchandise manufactured in Japan or other foreign country as and for such articles or commodities of domestic origin.

(b) Obliterating, concealing, or removing the brands or marks indicating the foreign origin of coffee filter papers or other merchandise imported into the United States; or placing such merchandise in containers which do not bear legible brands or marks fully informing prospective purchasers of the foreign origin thereof.

(c) Nondisclosure of the country of origin of any article or commodity of foreign manufacture which it offers for sale or sells.

(d) Substituting products of Japanese or other foreign origin for those of domestic origin in performance of a contract which specifies or calls for domestic products. (Dec. 22, 1941.)

3334. **Luggage—"Wholesale" and "Discount."**—Judah L. Angard and Meyer S. Friedlander, copartners trading as Windsor Luggage Co.,

engaged in the sale and distribution of luggage and other merchandise 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.

Judah L. Angard and Meyer S. Friedlander, and each of them, agreed that, in connection with the offering for sale, sale, and distribution in commerce, as defined by the Federal Trade Commission Act, of their luggage or other merchandise, they will forthwith cease and desist from:

(a) Designating, describing, or representing their business as "wholesale" in their advertising folders or catalogs or in any other manner.

(b) Using the term "discount," or representing, directly or inferentially, that the prices at which they offer for sale and sell their merchandise constitute a discount to purchasers or are wholesale prices, when in fact said prices are the usual and customary prices at which they sell said merchandise in the normal and usual course of business. (Dec. 22, 1941.)

3335. Men's Dress and Novelty Jewelry—Nature of Manufacture and Composition.—David P. Barry Corp., engaged in the sale and distribution of men's dress and novelty jewelry in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships 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 P. Barry Corp., in connection with the sale and distribution of its merchandise in commerce as defined by said act, agreed it will forthwith cease and desist from representing, or placing in the hands of others the means to represent:

(a) That the letters composing links in its "Name Key Chain" novelty item are "hand pierced"; or in any other way whatsoever that a die-cut or machine-punched design or pattern has actually been traced and cut by manual operations.

(b) That an electroplated article of jewelry is "Heavy Gold Plate," or by any other method of description that an item electroplated with a thin coat or flashing of gold is in fact heavily plated with gold or has the quality and value of an article so processed. (Dec. 23, 1941.)

3336. Flatware, Silverware, Etc.—Value, Composition, Quality, and Guarantee.—Hearn Department Stores, Inc., engaged in the operation of department stores and in the sale and distribution of merchandise in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Hearn Department Stores, Inc., in connection with the sale and distribution of its merchandise in commerce as defined by said act, agreed it will forthwith cease and desist from:

(a) Representing that flatware sold by it for 6 cents per article regularly sells for 15 cents or for any other price in excess of that for which said corporation has actually sold the same; or in any other way, representing that such merchandise or that of comparable quality has a value or price greater than that for which the same is ordinarily retailed in due course of trade; or the use of fictitious prices in any manner having the capacity or tendency to mislead or deceive prospective purchasers.

(b) Representing as "heavy silver-plated" an article merely flashed with a thin coating of silver, or which does not actually meet all the recognized standards of industry and trade for heavy silver plate; or in any other way, attributing to such article qualities, merit, or excellence which it does not in fact possess.

(c) Describing or referring to a statement or document as a "guarantee" or similar undertaking when the same fails to name the manufacturer, distributor, or other responsible party to whom the purchaser may turn for redress if the goods purportedly secured by such document fail to meet the assurance or warranty therein specified.

(d) The use of the words "guarantee," "guaranteed," "guaranty" or of any other words of similar meaning in connection with the advertising, sale, or offering for sale of products or merchandise, unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith, of exactly what is offered by way of security, as for example, replacement or refund of purchase price. (Dec. 23, 1941.)

3337. **Women's Hosiery—Composition and Nature.**—Jacob Goodman and Bertha Goodman, copartners trading under the firm name of M. Goodman & Son, engaged in a wholesale jobbing business in women's hosiery in interstate commerce, in competition with other firms and partnerships, and with individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Jacob Goodman and Bertha Goodman, and each of them, agreed that in connection with their sale and distribution of merchandise in commerce as defined by said act, they will forthwith cease and desist from the use of the designation "Crepe Finish," or of the word "crepe" with or without qualifications, as descriptive of hosiery or other merchandise which does not in its fibers, strands, and weave meet the recognized standards of a crepe fabric; and from the word "finish" or similar term in any manner so as to import or imply that the surfacing of an article has been completed with any other substance than that actually used. (Dec. 23, 1941.)

3338. **Fur Garments—Nature.**—Trugerman & Peck, Inc., engaged in the manufacture of fur garments 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.

Trugerman & Peck, Inc., in connection with the sale or distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from invoicing or otherwise designating or referring to coats or other articles manufactured from the peltries of Bessarabian lambs or other lambs not full breed or pure bred Persians as "Grey Persian Lamb" or "Grey Persian Coat" or as Persian; and from advertising, offering for sale, selling, branding, or otherwise representing fur or furs as the product of a true species or breed of animals, unless such fur has been obtained from a true species or breed of animals. (Dec. 24, 1941.)

3339. **Detective Training Correspondence Course—Opportunities, Scope, Etc.**—Robert B. Phillips, Sr., an individual trading as Phillips Secret Service and as Phillips Secret Service System, engaged in the sale and distribution in interstate commerce of a correspondence school course of instruction in detective training, 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 B. Phillips, Sr., in connection with the offering for sale, sale, or distribution of his said correspondence course of instruction in commerce as defined by the Federal Trade Commission Act, agreed he will forthwith cease and desist from:

(a) Representing that the demand for trained detectives exceeds the supply or in any other manner overstating the employment opportunities for detectives.

(b) Representing, directly or inferentially, that such course of instruction furnishes or provides knowledge comparable to that acquired by years of actual experience; or that the completion of such course of instruction will, of itself, qualify a person for a position as a competent detective.

(c) Representing that the pay or remuneration received by detectives is in excess of that received by persons in other professions or fields of employment generally, or representing, by means of comparisons or in any other manner, that the customary or regular salary or remuneration received by detectives is in excess of their actual salary or other remuneration.

(d) Making any other deceptive or misleading statements or representations concerning the character, nature, quality, value, or scope

of the course of instruction sold or offered for sale by him with a tendency or capacity to mislead or deceive students, prospective students or the public. (Dec. 24, 1941.)

3340. Floor Covering—Qualities, Properties or Results, and Scientific Facts.—Belmont Products Co., engaged in the manufacture of tile-type floor covering 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.

Belmont Products Co., in connection with the sale and distribution of its products in commerce as defined by said act, agreed it will forthwith cease and desist from representing:

(a) That the floor covering which it sells as "Belmont Copper Alundum Tile" or any product of similar composition is germicidal; or that it will keep floors of dairies, locker rooms, shower rooms, or any other floors germ free.

(b) That the organism causing the condition known as athlete's foot cannot survive contact with said material; or otherwise, by statement or by inference, that it will kill said organism, or under usual conditions will prevent the spread of skin infections or of athlete's foot.

(c) That said product is fungicidal; or that it will prevent or eliminate growth of moss, algae, or other forms of fungus in warm, damp places, greenhouses, conservatories, or elsewhere. (Dec. 24, 1941.)

3341. Casein Glue—Qualities.—Air Associates, Inc., engaged in the sale and distribution of aircraft products and accessories, including casein glue, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Air Associates, Inc., in connection with the offering for sale, sale, or distribution of its casein glue in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from the use on its labels, in its printed matter, or in any other way, of the word "waterproof" or of any other word or words of similar import as descriptive of said glue, and from the use of the word "waterproof" in any way, the effect of which tends or may tend to convey the belief that said product is impervious to water or its effects. (Dec. 24, 1941.)

3342. Hosiery—Composition, "Mills," and "Manufacturers."—Samuel I. Burd, an individual proprietor trading as Lycoming Hosiery Mills, engaged as selling agent for Burdwin Hosiery Mills, in the sale and distribution of its hosiery products in interstate commerce, in com-

petition with other individuals and 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 I. Burd, in connection with his sale of hosiery, in commerce as defined by said act, agreed he will forthwith cease and desist from:

(a) The use of the word "Nyon" in any manner so as to import or imply that hosiery or other merchandise composed of other materials is woven from nylon fibers; and from branding, labeling, stamping, or advertising such product by means of featuring the word "Nylon," or separation of words or terms to connote different phrases—one applicable to the stocking as a whole and the other to the type of toe thereof—or otherwise, with the capacity, tendency, or effect of conveying the impression or creating the belief among purchasers that a stocking with only a nylon elastic toe is actually a nylon stocking with an elastic toe, or contains any nylon aside from that in the toe.

(b) The use of the word "Mills" as part of the trade name by which he conducts his individual business of factor or manufacturer's agent, and of the word "Manufacturers" as descriptive of such merchandising business; and from the use of any other word or words of similar implication, connoting, contrary to fact, that the customer is dealing directly with the mills wherein such hosiery is manufactured and not with a middleman. (Dec. 24, 1941.)

3343. Photographs—Nature and Order Conformance.—Gibson Studios, Inc., engaged in the sale and distribution of photographs in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Gibson Studios, Inc., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from:

(a) Using the words or terms "Hand-painted in oils," and "hand-paint," or "painted," either alone or in conjunction with any other words or terms in any way to designate, describe, or refer to colored or tinted photographs or pictures produced from a photographic plate, film, base, or impression.

(b) Substituting for an oval shaped picture frame depicted in an advertisement a frame of rectangular shape or differing in any other material respect from the frame so advertised. (Dec. 24, 1941.)

3344. Greeting Cards—Nature, Source, or Origin, Guaranteed, Certified, Etc.—Michael Cohen and Frances Cohen, copartners trading under the firm name of Meryle Publishing Co., engaged in the publication of greeting cards in interstate commerce, in competition with other

firms and partnerships, and with individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Michael Cohen and Frances Cohen, and each of them, agreed that in connection with the sale and distribution of their products in commerce as defined by said act, they will forthwith cease and desist from:

(a) Representing that a fragment of stone or other object attached to a greeting card sold by them is a "Blarney Stone" or "a piece of genuine stone from the original Blarney Castle" or "A piece of guaranteed genuine stone from the original Blarney Castle in Dublin, Ireland," or is the Blarney Stone brought by them "to the consumer."

(b) Designating as "Blarney Stone" a piece of crude or rough limestone taken from a quarry; or in any way, directly, or inferentially, representing that such fragment was a part of the Blarney Stone or has come from the walls of Blarney Castle, or will bring to the possessor the "luck" or other advantages traditionally associated with the historic Blarney Stone.

(c) Representing that such fragment is "genuine" Blarney Stone or is so "guaranteed," or that its "genuineness" as such has been "verified" or otherwise confirmed or certified by a United States Consul or by any other person whatsoever; or the use of any delusive, artful, or adroit statement having the capacity or tendency to confuse, mislead, or deceive purchasers or cause the belief that such fragments were actually taken from the real Blarney Stone.

(d) Asserting or representing that an affidavit certifying a shipment of crude limestone as having been quarried from a ledge in Blarney, County Cork, is an affidavit that fragments of such limestone were part and parcel of the specific Blarney Stone embedded in Blarney Castle.

(e) Stating that an affidavit regarding said limestone was "signed by" a United States Consul; or referring to an officer of the United States Government in any manner so as to assert, import, or imply that he either has himself made such affidavit or has, formally or informally, certified the truthfulness of a statement merely sworn to before him in his official capacity. (Dec. 24, 1941.)

3345. **Books—Educational, Composition, Comparative Merits, Opportunities, Value, Etc.**—Garden City Publishing Co., Inc., engaged in publishing a number of books, one line under the designation "Blue Ribbon Books" and another as "Halcyon House Edition," and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and de-

sist from the alleged unfair methods of competition in commerce as set forth therein.

Garden City Publishing Co., Inc. in connection with the sale and distribution of its book, "High School—Self Taught," or any similar publication, in commerce as defined by said act, agreed it will forthwith cease and desist from:

(a) Characterizing, describing, or referring to said book, or the text or contents thereof, as comprising or containing a "high school education," or a "complete," "authoritative," or "modern" 4-year course, high school or otherwise; or representing in any way whatsoever that such book embraces or is equivalent to "4 years of high school study" or of "high school work," or "six courses a year for 4 years";

(b) Representing, by statement or by inference, that such book contains the "materials" or the "essentials" of a 4-year high school course, or "every subject, every fact that a high school might have given you," or "the information regularly contained in 24 complete high school courses," or "exactly what you need in 24 high school subjects"; or in any other manner asserting, importing, or implying that the reading of, or even a most intensive study of, said volume will or can of itself equip the student with the schooling, training, mental discipline, and detailed information afforded by a 4-year high school or similar course of instruction.

(c) Representing that said volume contains "24 complete subjects" or any "complete" subject, or "all that you missed—and more" by reason of not having finished school; or that such "miracle of condensation" confers upon the reader a "liberal education," or anything more than a slight or superficial acquaintance with subjects taught in high school.

(d) Representing that "15 or 20 minutes a day" or a "few minutes a day" spent with such book will give the reader a high-school education, or enable him to acquire "an authoritative understanding" of, or to "master," "any subject" selected; or that any amount of time whatsoever, confined to said volume, will accomplish such ends.

(e) Representing that "in a few weeks" one may acquire by means of said book "the same knowledge you would expect to spend months to learn in an ordinary school"; or that "in a very short time," or at all, one can, by the reading of such volume, have a "surprising command" of English or mathematics or history or literature or any of "the other important subjects" essential for an "educated" person or a "successful" person.

(f) Representing that such volume has "the making of a brilliant future" for the reader or contains "the essentials demanded" of every one by "modern business," or the background for "the position just

ahead," or will, with a few minutes' daily reading, transform one into a "confident personality"; or presentation of any other unwarranted portrayals depicting an easy and effortless advancement in business or success in undertakings as the normal or likely result of reading said book.

(g) Representing by statement or by inference that "advancement," "more money," "a better job," "a fuller life," "respect of friends," "better social position," and/or "leadership" assuredly await the reader of such book.

(h) Representing that for a reader of such book, the actual effort of acquiring an educational status comparable to that of a high school graduate, or the attainment of the financial, social, and cultural successes above indicated, is so negligible as to be "more fun than bridge or the movies" or any like pastime or social diversion.

(i) Use of the term "high school graduate" as applied to specified business qualifications, Government reports, or the earnings of those who have "finished" high school, in any manner connoting or suggesting that the reader of such book will thereby attain the status, standing, prestige, or dignity of a high-school graduate.

(j) Representing that one may "learn" any language by the mere study of said book, or can "begin speaking" either French or Spanish, from "the very first lesson," or at all.

(k) Representing in any way that for the reader of such book, physics, chemistry, astronomy, geography, economics, sociology, and biology, or any thereof, "become tools in your hands," or tools with which to work "in building your future"; or otherwise, that the information contained in said volume is sufficiently comprehensive or adequate to be of any real scientific value.

(l) Representing, directly or inferentially, that a short quiz, referred to as "self testing examinations" and consisting of questions with their corresponding answers, is the equivalent of, or will meet the requirements of, the tests exacted of a 4-year high-school student.

(m) Asserting that the offer of such book is "the greatest educational bargain in all history," or by similar extravagant expressions, representing to an unsophisticated public that said offer is astoundingly advantageous from a monetary standpoint.

Said corporation also agreed to cease and desist from the use of the name or title "High School—Self Taught" as a designation for that certain Halcyon House book edited by Lewis Copeland and copyrighted in 1936, 1938, and 1939 by Blue Ribbon Books, Inc., or for any other publication of similar content, scope, or quality. (Dec. 26, 1941.)

3346. **Garden Hose—Composition and Nature of Manufacture.**—Brown Fence & Wire Co., engaged in the mail order sale and distribution of merchandise, including garden hose, in interstate commerce, in com-

petition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Brown Fence & Wire Co. in connection with its sale and distribution of garden hose or other merchandise in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from the use of the term "3-Ply" as descriptive of garden hose which is not constructed of three layers of cotton duck or of the term "5-Ply" as descriptive of garden hose which does not contain five layers of cotton duck; and from the use of the word "ply" either alone or in connection with a designated number 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. (Dec. 26, 1941.)

3347. **Women's Hats—Old or Used as New.**—The Model Hat Co., engaged in the manufacture of women's hats and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The Model Hat Co., in connection with the offering for sale, sale, or distribution of its hats in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from:

(a) Representing that hats, composed in whole or in part of used or second-hand materials, are new or are composed of new materials by failure to stamp on the 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 then such stamping must appear on the bodies of such hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

(b) Representing in any manner that hats made in whole or in part from old, used, or second-hand materials are new or are composed of new materials. (Dec. 26, 1941.)

3348. **Furs and Fur Garments—Nature.**—Ben Kalish, an individual proprietor, engaged in the manufacture of fur garments and in the sale and distribution thereof in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Ben Kalish, in connection with his sale and distribution of furs and fur garments in commerce as defined by said act, agreed he will forthwith cease and desist from:

(a) Advertising, branding, labeling, or invoicing fur garments made from kidskin as "Caracul" coats or garments.

(b) The use, in advertisements or on labels, tags, brands, or otherwise, or any description, designation, or representation of any fur which deceptively conceals the true name or nature of the fur, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

(c) Describing furs 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 in simulating another fur, the true name of the fur appearing as the last word of the description shall be immediately preceded by the word "dyed" or "blended," compounded with the name of the simulated fur, all such descriptive words to be printed in equally conspicuous type and in a single line, as: "Silak Seal-Dyed Coney," "Silak Beaver-Dyed Coney."

(d) The use of any trade name such as "Sealine," "Beaver Coney," "Mink-Marmot" or other trade designation in a manner which is calculated to or has the capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public as to the character, name, nature, or geographical or zoological origin of any fur or fur product or a product made partly of fur, or in any other material respect. (Dec. 29, 1941.)

3349. **Electric Water Heater—Qualities, Properties or Results, Indorsements, and Safety.**—Madeline K. Tuttle, an individual, trading as Electric Heat Appliances Co., engaged in the sale and distribution of a device designated "Lightning Speed Electric Water Heater," 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.

Madeline K. Tuttle in connection with the sale and distribution of her product in commerce, as defined by said act, agreed to cease and desist from:

(a) Representing that her "Lightning Speed Electric Water Heater" or any device or article of similar construction, without re-

gard to the conditions of use, will not burn out or overheat, or is so constructed that it can be used constantly without overheating.

(b) Representing, by statements such as "Complete with 7 feet of Underwriters Approved rubber covered cord and plug" or in any other manner, that a cord not in fact suitable for the requirements of an electric water heater has been approved by Underwriters Laboratories, Inc., or other recognized institution, for such particular purpose.

(c) Representing that such device or any article of similar construction does or can soften water.

(d) Disseminating any advertisement which fails to reveal that extreme care must be exercised in the use of the aforesaid water heating device or any article of similar construction, due to potential fire hazard from overheating and potential shock hazard from careless handling thereof. (Dec. 31, 1941.)

3350. Garden Hose—Composition and Nature of Manufacture.—Western Auto Stores, engaged in operating a large number of retail stores and also in the sale and distribution of automobile accessories and other merchandise in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Western Auto Stores, in connection with its sale and distribution of garden hose or other merchandise in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from the use of the term "Triple-Ply" or the term "Three-Ply" as descriptive of garden hose which is not constructed of three layers of cotton duck, or of the term "5-Ply" as descriptive of garden hose which does not contain five layers of cotton duck; and from the use of the word "ply" either alone or in connection with a designated number 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. (Dec. 31, 1941.)

3351. Paints—Government Tests, Comparative Merits, Etc.—Seidlitz Paint & Varnish Co., a corporation, engaged in the sale and distribution of paint and associated 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.

Seidlitz Paint & Varnish Co., in connection with the offering for sale, sale, or distribution of its paint or related products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from representing, directly or inferentially, that the United States Government or any department or agency thereof has tested its paint and as a result of tests, has purchased or used such such paint; or from the use of the words "Best By Test" or any other word or words of similar implication or 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 the United States Government or any department or agency thereof has conducted tests of various paints and as a result of such tests has found or determined that its said paint or paints are the best of those tested. (Jan. 2, 1942.)

3352. **Pharmaceuticals, Flavoring Extracts, and Toiletries—Freight Allowances, Quality, Sterility, Etc.**—Pennex Products Co., Inc., a corporation, engaged in the manufacture of a line of pharmaceuticals, flavoring extracts, and toiletries, 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.

Pennex Products Co., Inc., in connection with the offering for sale, sale, or distribution of its merchandise in commerce as defined by said act, or the advertising thereof by the means or in the manner above set forth, agreed forthwith to cease and desist from representing, directly or inferentially:

(a) That purchasers do not pay freight on Pennex merchandise, or that full freight is "allowed" thereon, or that such freight charges are "eliminated"; or otherwise, by statement or by implication, that merchandise bought for a price which includes an undisclosed charge for freight is actually received by the purchaser without cost of freight.

(b) That the Pennex merchandise always exceeds rigid Government regulations in its purity and quality.

(c) That the mineral oil offered for sale by it "far surpasses," or surpasses at all, the U. S. P. requirements.

(d) That the milk of magnesia which it offers for sale "far exceeds," or does exceed, the U. S. P. requirements for purity.

(e) That its imitation vanilla flavoring is $33\frac{1}{3}$ percent stronger than Federal requirements; or by such reference to "Federal requirements" or otherwise, that any such Government requirements exist at the present time with respect to said flavoring extract.

(f) By the use of presentations such as "surgically sterile" or "may be used even in operations," or by statements or expressions of

similar implication, that the absorbent cotton or bandages sold by it will remain sterile or free from all types of bacteria after removal from the container. (Jan. 2, 1942.)

3353. **Army, Hunting, Fishing, and Camping Supplies—"Army" and Source or Origin.**—Jack B. Davis and Sylvia S. Davis, copartners trading as Army-Goods Store and Army Store, engaged in the sale in interstate commerce of merchandise including many items having the appearance of articles used by the United States Army, such as hats, coats, blankets, leggings, breeches, shirts, field glasses, and numerous others, with "insignia for all of the foregoing wearing apparel," and also paint, hunting, fishing, and camping supplies, 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.

Jack B. Davis and Sylvia S. Davis in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist:

1. From the use of the word "Army" as part of the trade name used by them or either of them in connection with the advertising, offering for sale, sale, or distribution in commerce, as defined by the Federal Trade Commission Act, of merchandise which is not, in fact, procured from the Army department of the United States Government.

2. From advertising or causing to be advertised in any newspapers, trade publications, or printed matter or on labels affixed to the containers of merchandise, or in any other way, the word "Army" as descriptive of or in connection with any merchandise to be sold or offered for sale to the public in commerce as defined by the said act, unless, in fact, the word "Army" be used specifically in connection or conjunction with particular merchandise actually procured from the Army department of the United States Government. (Jan. 2, 1942.)

3354. **Magazines, Periodicals or Books—Reprints as New, Copyrights, Etc.**—Columbia Publications, Inc., a corporation, and Louis H. Silberkleit and Harold Hammond, copartners, trading as "Atlas Fiction Group, Inc." The said Louis H. Silberkleit has formed or organized, or caused to be formed and organized, numerous corporations which he dominated and absolutely controlled. Most of the corporations so formed or organized by the said Louis H. Silberkleit have become obsolescent and the business which they formerly conducted is at the present time being operated or conducted by the aforesaid Columbia Publications, Inc., which is controlled and dominated by the said Louis H. Silberkleit. Said corporation and individuals, engaged in the sale and distribution of magazines or periodicals in interstate commerce, in competition with corporations, individuals, partnerships, 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.

Columbia Publications, Inc., by Louis H. Silberkleit and by Harold Hammond, and each of them, in connection with the offering for sale, sale, and distribution of publications in commerce as defined by said act, either individually, as a copartner or joint venturer, or as a controlling factor in any corporation or business entity or agency, agreed forthwith to cease and desist from:

1. Printing, publishing, disseminating, or causing to be printed, published, or disseminated any magazine, periodical, book, or other publication containing any reprints of stories or articles previously published unless the fact that such stories and articles are reprints be truthfully, definitely and unambiguously disclosed by:

(a) Displaying the word "reprint" or "reprints" on the front cover of such publication in type equally conspicuous as that in which the title or name of the publication appears:

(b) Conspicuously displaying the word "reprint" or "reprints" on the Table of Contents page and/or the Title or so-called "masthead" page.

(c) Displaying the word "reprint" in immediate conjunction or connection with and in type equally conspicuous as that of the title of each reprinted or second-hand story whether such title appears on the title page, at the beginning of the text of a story or elsewhere in the publication.

2. Using or substituting a new title for or in place of the original title of a reprinted story unless, whenever used, whether on the title page, at the beginning of the text of the story or elsewhere, such substitute title be immediately accompanied in equally conspicuous type by the title under which such story was originally published.

3. Changing the names of characters in reprinted stories, that is, designating characters by names other than were used in the story as originally published, or otherwise changing the text of or disguising an original story in any manner the effect of which causes or has the capacity to cause the belief or impression by readers and the consuming public that such reprinted story is an original or first run story.

4. The use of a pseudonym in lieu of the true name of an author in any manner so as to import or imply that a reprinted story or article bearing such pseudonym is new or original; or from the use of any pseudonym or so-called "pen name" in connection with a story or article unless such pseudonym or pen name has been adopted by the author of such story or article or the author of such story or article has authorized the use of such pseudonym or pen name in connection therewith.

5. Representing, by the use of the word "copyright" or any other word or words of similar import or meaning that any story, article, magazine, book or publication which has not been copyrighted is or has been copyrighted.

6. Reprinting or causing to be reprinted any copyrighted story, article, book, or publication from which the notice of original copyright has been removed or omitted or which is not supplemented with adequate copyright notice indicating the year or years when copyrighted.

7. The use of the abbreviation "Inc." or the word "incorporation" or other word or words of similar meaning as part of their trade name or in any manner so as to import or imply that their business is being conducted by a duly accredited and authorized corporate entity unless such abbreviation, word, or words are used properly as a designation for or as descriptive of a bona fide corporation. (Jan. 5, 1942.)

3355. **Knitted Underwear—Professional Connection or Supervision.**—Mount Airy Knitting Co., a corporation, engaged in the manufacture of knitted underwear and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution of similar products, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Mount Airy Knitting Co., in connection with the sale and distribution of its products in commerce as defined by said act, agreed forthwith to cease and desist from the use of the abbreviation "Dr." or of the word "Doctor" either with or without the name "Spencer," or any other word, term, or expression connoting a doctor of medicine or physician in connection with or as part of a trade designation for its garments; or in any other way, so as to import or imply that there is a physician or doctor of medicine connected or associated with the manufacture thereof or that such merchandise has been made under the supervision or advice of a physician. (Jan. 5, 1942.)

3356. **Raw Furs—Prices and Direct Dealing.**—Abe Colne, an individual, trading as American Fur Co., engaged as a dealer in the purchase and sale of raw furs in interstate commerce, in competition with other individuals and with corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Abe Colne, in connection with buying and selling furs in commerce, as commerce is defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from representing, directly or inferentially, by the use of statements such as "Trapper to Wearer," "Elimi-

nate the middleman," "savings of middleman costs," or any other statement asserting or connoting that he is not a "middleman," that he does not resell raw furs purchased by him, that all the raw furs he purchases are used by him in the manufacture of fur coats or other consumer goods, or that trappers or others selling raw furs to him realize or receive greater reimbursement or returns for such furs due to the alleged elimination or saving of middleman costs. (Jan. 5, 1942.)

3357. **Cleaning Fluid—Qualities, Properties, or Results.**—The Cummer Products Co., a corporation, engaged in the manufacture of a cleaning fluid called "Fireproof Energine," and in the sale and distribution of said product in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The Cummer Products Co. in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from the use of any statement, claim, or representation, the effect of which conveys, tends or may tend to convey, the belief to purchasers that the said product designated "Fireproof Energine," or by any other name, will completely remove spots under all conditions or regardless of their nature, or that said product may be used to clean the finest fabrics without harm thereto, or that a ring will not be left regardless of the nature of the fabric to which the product is applied, or the lack of care or skill with which it is applied. (Jan. 5, 1942.)

3358. **Worcestershire Sauce—Competitive Containers, Wrappers, or Labels, Identity, Etc.**—Mutual Spice Co., Inc., a corporation, engaged in the sale and distribution in commerce, as defined by the Federal Trade Commission Act, of food products including a condiment designated "Worcestershire Sauce" in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Worcestershire sauce originally was made in England in the County of Worcestershire over 100 years ago by Lea and Perrins, a partnership. From about 1840 until about the year 1898 said product was imported into the United States from England. From and since about the year 1898 said sauce, made in accordance with a secret formula used in England by Lea and Perrins, copartners, who later incorporated in England as Lea & Perrins, Ltd., has been manufactured, bottled, labeled, and wrapped in the United States by or for said copartners and later by a domestic corporation, Lea & Perrins, Inc., which was incorporated in the State of New York,

and which manufactures and sells its said sauce in this country. This product has been extensively sold in the United States and has attained a Nation-wide popularity. The size and shape of the bottles containing the Worcestershire sauce sold and distributed by Lea & Perrins, Inc., and the features of Lea & Perrins' label or wrapper for many years have been, and now are, definitely distinctive and constitute principally the means by which such product is identified by the purchasing public.

Mutual Spice Co., Inc., in connection with the sale and distribution in commerce, as defined by the said act, of Worcestershire sauce, whether sold under that name or any other name or names, agreed forthwith to cease and desist from:

1. Representing, or providing wholesalers, private brand distributors, or others with the means to represent, through the use of wrappers, containers, or labels which simulate the distinctive wrappers, containers, or labels used by Lea & Perrins, Inc., in marketing Worcestershire sauce, or in any other manner, that its said product is Worcestershire sauce manufactured and distributed by Lea & Perrins, Inc.

2. Using containers, wrappers, or labels, or providing wholesalers, private brand distributors, or others with containers, wrappers, or labels, or attaching or affixing wrappers or labels to containers at the request or instance of others, which containers, wrappers, or labels simulate the distinctive containers, wrappers, or labels used by Lea & Perrins, Inc., for its Worcestershire sauce. (Jan. 6, 1942.)

3359. Vacuum Cleaners—Qualities, Properties, or Results.—Filtex Corp., a corporation, engaged in the business of manufacturing electric vacuum cleaners for household use and in the sale thereof under the trade name "Filtex," in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Filtex Corp., in connection with the sale and distribution of its product in commerce, as defined by said act, agreed to cease and desist forthwith from stating or representing in any manner whatsoever that the use of said device would be of appreciable value as a means of preventing or protecting against respiratory disorders or that its use would protect against dust or germ laden air or purify and disinfect air in sick rooms. (Jan. 6, 1942.)

3360. Cat Food—Qualities, Properties, or Results.—French Sardine Co., Inc., a corporation, engaged in the sale and distribution of a food for cats designated "Stay Well Cat Food," in interstate commerce, in

competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

French Sardine Co., Inc. in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from representing that said product is a "Balanced Diet" or that it constitutes a balanced food or ration for cats generally or for cats of all breeds or ages. (Jan. 6, 1942.)

3361. Photographs—Special, Reduced, or Introductory Prices, Nature of Manufacture, Artists Limited Offer, Etc.—Clayton G. Bawden, Jesse M. Bawden, and Leslie M. Bawden, copartners, trading as Bawden Studios, engaged in the sale and distribution of photographs 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.

Clayton G. Bawden, Jesse M. Bawden, and Leslie M. Bawden, and each of them, in connection with the offering for sale, sale, or distribution of their products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Representing that the price or prices at which they offer for sale and sell their photographs are special, reduced, or introductory prices.

(b) Representing that photographs selling for \$1 formerly sold for \$5, or that any of their photographs formerly sold for a price in excess of that at which they actually have been sold by them in the regular and usual course of business.

(c) The use of the word "Etching" or any other word or words of similar import or meaning, either alone or in conjunction with any other word or words as a designation for or as descriptive of any picture, print, photograph, or other product, not produced from etched plates.

(d) Representing that their pictures, prints, or photographs are "Oil Colored Portraits," or any similar representation which causes or has the capacity to cause the belief or impression that such pictures, prints, or photographs are oil painted portraits.

(e) Representing, directly or inferentially, that said copartners, their photographers, or other employees are artists; that pictures offered for sale or sold by them are produced by artists; or that "Hollywood Lightings" are used in connection with the taking of their photographs.

(f) Representing, by statements such as "Only one offer to a family" or otherwise, that an offer is limited when in fact such offer is not limited as represented.

(g) Representing, by means of oral statements or otherwise, that a customer purchasing a photograph from them is required or obliged to purchase additional copies of such photograph; or packaging a photograph for which payment has been made with a photograph or photographs for which payment has not been made and causing the delivery of such package to be contingent upon the payment of the amount claimed for the photograph or photographs for which payment has not been made. (Jan. 6, 1942.)

3362. **Table Flatware—Value, Prices, Quality, and Special or Limited Offers.**—Franklin F. Bush, sole trader as Interstate Jewelers, engaged in the sale and distribution of table flatware and other merchandise 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.

Franklin F. Bush, in connection with the sale of table flatware or other merchandise in commerce as defined by said act, agreed forthwith to cease and desist from:

(a) Representing that a 26-piece flatware set sold by him for \$2.99 is of a type, grade, or quality for which a purchaser would expect to pay \$16.50 or any other sum in excess of that for which he actually sells the same; or in any way, representing that such merchandise has a value or customary price greater than that which the same is ordinarily retailed in the due course of trade; or the use of fictitious price figures in any manner having the capacity or tendency to mislead and deceive prospective purchasers.

(b) Representing, by descriptions or statements such as “genuine silver plate,” “fine silverplate,” “plated with pure silver on the same high quality nickel silver blanks found in the most expensive silver services,” or by warnings such as “do not confuse this with ordinary cheap silverware,” or otherwise, that such flatware actually meets all the recognized standards of industry and trade for high-grade silver plate; or in any other way attributing to said merchandise qualities, merit or excellence which it does not in fact possess.

(c) Advertising an offer of goods for their regular and customary price, as being a “sensational value scoop,” or as being limited in time and quantity “due to unsettled conditions,” or in any other manner connoting that such offer is a reduction in price, or otherwise a rare bargain for the purchaser. (Jan. 7, 1942.)

3363. **Table Flatware—Quality and Guarantee.**—Reed & Barton, engaged in the manufacture of silverware 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.

Reed & Barton, in connection with the sale and distribution of its products in commerce as defined by said act, agreed it will forthwith cease and desist from:

(a) Stamping, branding, or labeling flatware or other merchandise as "AA+" which does not actually meet all the recognized standards of trade and industry for the type of silverplating thus imported or implied, or in any other way attributing to such article qualities, merit, or excellence which it does not in fact possess; or placing in the hands of others the means to make such representations.

(b) Describing or referring to a statement or document as a "guarantee" or similar undertaking when the same fails to name the manufacturer, distributor, or other responsible party to whom the purchaser may turn for redress if the goods purportedly secured by such document failed to meet the assurance or warranty therein specified. (Jan. 8, 1942.)

3364. **Electrical Heating Pads—Qualities, Properties, or Results.**—Northern Electric Co., a corporation, engaged in the sale and distribution of electrical heating pads in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Northern Electric Co., in connection with the sale and 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 "three heat" or other words or phrases of similar implication or meaning, in any way so as to import or imply or the effect of which tends or may tend to convey the belief that said 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. (Jan. 8, 1942.)

3365. **Concentrates for Soft Drinks—Composition, Nature and Qualities, Properties, or Results.**—Bireley's, Inc., engaged in the sale and distribution in interstate commerce of food products consisting of concentrates to be used in compounding soft drinks, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and

desist from the alleged unfair methods of competition in commerce as set forth therein.

Bireley's, 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 said concentrates or any soft drink made therefrom agreed it will forthwith cease and desist from representing, directly or inferentially, by oral presentation, printed advertisements, depictions, or by any other means, or placing in the hands of others a means to represent:

(a) That the drink designated "Bireley's Orange" or any other drink composed of substantially the same ingredients is made wholly or predominantly of orange juice or that it consists substantially of fresh orange juice; that a bottle of its "Bireley's Orange" contains the juice of a whole orange when, in fact, the orange juice content of such bottle is less than that of an average sized orange; or that said drink is a prophylactic for colds, or that the use thereof will aid in the prevention of colds, prevent an oversupply of white corpuscles in the blood, or build up red corpuscles.

(b) That the drink designated "Tomato Cocktail" is composed of tomato juice or "offers a delicious fresh tomato goodness"; or that the drink designated "Bireley's Grape" is "The Natural thing to Drink" or that it is a real fruit beverage. (Jan. 9, 1942.)

3366. Magazines, Periodicals or Books—Reprints as New, Copyrights, Etc.—Newsstand Publications, Inc., Western Fiction Publishing Co., Inc., and Manvis Publications, Inc., engaged in the sale and distribution of magazines or periodicals 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.

Newsstand Publications, Inc., Western Fiction Publishing Co., Inc., Manvis Publications, Inc., Martin Goodman and Abraham Goodman, and each of them, in connection with the offering for sale, sale, or distribution of publications in commerce as defined by the Federal Trade Commission Act, agreed they will forthwith cease and desist from:

1. Printing, publishing, disseminating, or causing to be printed, published, or disseminated any magazine, periodical, book, or other publication containing any reprints of stories or articles previously published unless the fact that such stories and articles are reprints be truthfully, definitely and unambiguously disclosed by:

(a) Displaying the word "reprint" or "reprints" on the front cover of such publication in type equally conspicuous as that in which the title or name of the publication appears.

(b) Conspicuously displaying the word "reprint" or "reprints" on the table of contents page and/or the title or so-called "masthead" page.

(c) Displaying the word "reprint" in immediate conjunction or connection with and in type equally conspicuous as that of the title of each reprinted story whether such title appears on the title page, at the beginning of the text of a story or elsewhere in the publication.

2. Using or substituting a new title for or in place of the original title of a reprinted story unless, whenever used, whether on the title page, at the beginning of the text of the story or elsewhere, such substitute title be immediately accompanied in equally conspicuous type by the title under which such story was originally published.

3. Changing the names of characters in reprinted stories, that is, designating characters by names other than were used in the story as originally published, or otherwise changing the text of or disguising an original story in any manner the effect of which causes or has the capacity to cause the belief or impression by readers and the consuming public that such reprinted story is an original or first run story.

4. The use of a pseudonym in lieu of the true name of an author in any manner so as to import or imply that a reprinted story or article bearing such pseudonym is new or original; or from the use of any pseudonym or so-called "pen name" in connection with a story or article unless such pseudonym or pen name has been adopted by the author of such story or article or the author of such story or article has authorized the use of such pseudonym or pen name in connection therewith.

5. Representing, by the use of the word "copyright" or any other word or words of similar import or meaning that any story, article, magazine, book, or publication which has not been copyrighted is or has been copyrighted.

6. Reprinting or causing to be reprinted any copyrighted story, article, book, or publication from which the notice of original copyright has been removed or omitted or which is not supplemented with adequate copyright notice indicating the year or years when copyrighted. (Jan. 9, 1942.)

3367. **Animal and Poultry Feeds—Qualities, Properties, or Results, Comparative Merits, Composition, Guarantees, Etc.**—The Wadsworth Feed Co., a corporation, engaged in the sale and distribution in interstate commerce of animal and poultry feeds, in competition with other corporations and with individuals, firms, and partnerships 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 Wadsworth Feed Co., in connection with the sale or distribution of its animal or poultry feeds in commerce as defined by the Federal Trade Commission Act or the advertising thereof by the means and in the manner above set forth, agreed forthwith to cease and desist from:

(a) Representing that its feeds or the use thereof can be depended upon to produce more milk, lower cost milk, or milk with high health standards, or to keep stock in excellent physical condition.

(b) Representing that its dairy rations are higher in digestibility and feeding value than is any other stock feed or so-called dairy ration sold in competition therewith.

(c) Representing that "Wadsworth's 16% Dairy Ration" is a "Hi-Protein" ration; or the use of the words "Hi-Protein" or other word or words of similar import or meaning as descriptive of an animal or poultry feed the protein content of which is not sufficient to warrant such designation or description.

(d) Representing that its poultry rations or the use thereof can be depended upon to cause faster chick growth, lower poultry or chick mortality, or increased egg production.

(e) Representing that its poultry mashes, due to their vitamin or other content, will insure the hatchability of eggs or the longevity of poultry.

(f) Representing that its "Superior Laying Mash" will cause the production of more eggs at lower cost than will any product sold in competition therewith, or that the use of "Superior Starting and Growing Mash" will result in faster growth, lower mortality or lower feeding costs than will result from the use of any competitive product.

(g) Stating that "Wadsworth's Special Mash" or any other of its animal or poultry feeds are better than or superior to any chain store or other competitive product.

(h) Representing, directly or inferentially, that competitive animal and/or poultry feeds containing oat hulls or other roughage are, by reason of such roughage content, inferior to its animal and/or poultry feeds.

(i) The use of the word "guarantees" or any other word or words of similar meaning in connection with the advertising, offering for sale or sale of its products unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith, of exactly what is offered by way of security, as for example, refund of purchase price. (Jan. 12, 1942.)

3368. Textile Fabrics—Composition.—Wissahickon Plush Mills, Inc., a corporation, engaged in the manufacture of textile fabrics 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.

Wissahickon Plush Mills, Inc, in connection with the offering for sale, sale, or distribution of its products in commerce as defined by said act, agreed forthwith to cease and desist from:

(a) The use of the words "Synthetic Rajah Mohair" as a designation for said rayon and cotton upholstery fabric; and from the use of the word "mohair," either alone or in connection or conjunction with any other word or words, to designate a textile fabric not made from the hair of the Angora goat, 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 such textile fabric is mohair.

(b) Advertising, branding, labeling, invoicing, selling, or offering for sale products composed in whole or in part of rayon without clearly disclosing by the use of the word "Rayon" the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or materials other than rayon, from failing to disclose each constituent fiber, in the order of its predominance by weight beginning with the largest single constituent; in immediate connection or conjunction with and in type equally conspicuous as the word "rayon." (Jan. 13, 1942.)

3369. Upholstered Furniture—Composition.—Morris Chorost, Gertrude Chorost, Benjamin Miller, Florence Miller, Julius Tarr, and Alice Tarr, copartners, trading as M. Chorost & Co., engaged in the manufacture of furniture 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.

Morris Chorost, Gertrude Chorost, Benjamin Miller, Florence Miller, Julius Tarr, and Alice Tarr, and each of them, in connection with the offering for sale, sale, or distribution of their products in commerce as defined by said act, agreed forthwith to cease and desist from:

(a) The use of the words "Synthetic Rajah Mohair" as a designation for said rayon and cotton upholstery fabric; and from the use of the word "mohair," either alone or in connection or conjunction with any other word or words, to designate a textile fabric not made from the hair of the Angora goat, 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 such textile fabric is mohair.

(b) Advertising, branding, labeling, invoicing, selling, or offering for sale products composed in whole or in part of rayon without clearly disclosing by the use of the word "rayon," the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or materials other than rayon, from failing to disclose each constituent fiber, in the order of its predominance by weight beginning with the largest single constituent, in immediate connection or conjunction with and in type equally conspicuous as the word "rayon." (Jan. 13, 1942.)

3370. **Furs and Fur Garments—Nature and Composition.**—Max Hollinger, an individual, engaged in the sale and distribution of fur garments in interstate commerce, in competition with other individuals and with corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Max Hollinger, in connection with the offering for sale, sale, or distribution of fur products in commerce as defined by said act, agreed forthwith to cease and desist from invoicing or otherwise designating or describing any fur or fur garment in any manner other than by the use of the correct name of the fur as the last name of the description thereof, and when any dye, blend, or process is used in simulating another fur, the true name of the fur appearing as the last name of the description shall be immediately preceded in equally conspicuous type by the word "dyed," "blended" or "processed" compounded (hyphenated) with the name of the simulated fur. (Jan. 14, 1942.)

3371. **Chenille Fabrics—Composition.**—Carl Griesbaum, 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.

Carl Griesbaum, in connection with the offering for sale, sale, or distribution of his products in commerce, agreed forthwith to cease and desist from:

(a) 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."

(b) The use of the word Persian, or any other word or words connoting fur as descriptive of fabrics made or composed of fibers other than fur; 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. (Jan. 14, 1942.)

3372. **Corn, Callous and Bunion Salve—Qualities, Properties or Results, Safety, History, Guarantee, Testimonials, Comparative Merits, and Laboratories.**—Joseph H. Baum, sole proprietor, trading as Baum Laboratories, engaged in the sale and distribution of a preparation under the trade designation "Baum's Ace Brand Corn, Callous, and Bunion Salve," in interstate commerce, in competition with other individuals, and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Joseph H. Baum, in connection with the sale and distribution of his ointment or other commodities in commerce as defined by said act, or the advertising thereof by the means or in the manner above set forth, agreed forthwith to cease and desist from:

(a) Designating or describing such salve or ointment as a "corn, bunion, wart, and callous remedy," or representing that it is a competent treatment, effective remedy or cure for corns, callouses, warts, bunions, or ingrown toenails, or is an effectual relief from the pain of bunions or ingrown toenails, or will remove warts.

(b) Representing said ointment or any preparation of similar composition to be "harmless" or entirely safe under conditions of continued or repeated use; or that it is either "new" or a "scientific remedy" for "disfigured feet" due to corns and bunions; or that it "positively" removes every kind of corn and callous, or will remove "any" corn or callous in 3 or 4 days or other specified time.

(c) Representing that results from the use of said ointment are guaranteed; or using the words "guaranteed" or "guarantee" or any other word or words of similar meaning in connection with the advertising, offering for sale, or sale of his commodities, unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith of what is offered by way of security.

(d) Publishing or disseminating testimonials exaggerating the benefits obtainable by the use of such salve or containing any statements, assertions, or implications contrary to the terms and spirit of this agreement.

(e) Circulating or publishing unfair or disparaging statements concerning the quality of the products of competitors; or defamatory assertions to the effect that competitive preparations are always or usually inferior, useless and/or dangerous.

(f) The use of the word "Laboratories" as a part of his trade name or as descriptive of his business; or otherwise representing that he owns, operates, or controls a laboratory, as such term is understood by the trade and the public, for the compounding or manufacture of the commodities offered for sale and sold by him or of any other chemical product. (Jan. 15, 1942.)

3373. **Worcestershire Sauce—Competitive Containers, Wrappers, or Labels, and Identity.**—The Arthur-Leslie Sauce Co., a corporation, engaged in the sale and distribution in commerce, as defined by the Federal Trade Commission Act, of food products including a condiment designated "Worcestershire Sauce," in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Worcestershire Sauce originally was made in England in the County of Worcestershire over 100 years ago by Lea & Perrins, a partnership. From about 1840 until about the year 1898 said product was imported into the United States from England. From and since about the year 1898 said sauce, made in accordance with a secret formula used in England by Lea & Perrins, copartners, who later incorporated in England as Lea & Perrins, Ltd., has been manufactured, bottled, labeled and wrapped in the United States by or for said copartners and later by a domestic corporation, Lea & Perrins, Inc., which was incorporated in the State of New York, and which manufactures and sells its said sauce in this country. This product has been extensively sold in the United States and has attained a nation-wide popularity. The size and shape of the bottles containing the Worcestershire sauce sold and distributed by Lea & Perrins, Inc., and the features of Lea & Perrins' label or wrapper for many years have been, and now are, definitely distinctive and constitute principally the means by which such product is identified by the purchasing public.

The Arthur-Leslie Sauce Co., in connection with the sale and distribution in commerce, as defined by the said act, of Worcestershire sauce, whether sold under that name or any other name or names, agreed forthwith to cease and desist from:

1. Representing, or providing wholesalers, private brand distributors, or others with the means to represent, through the use of wrappers, containers or labels which simulate the distinctive wrappers, containers, or labels used by Lea & Perrins, Inc., in marketing Worcestershire sauce, or in any other manner, that its said product is Worcestershire sauce manufactured and distributed by Lea & Perrins, Inc.

2. Using containers, wrappers, or labels, or providing wholesalers, private brand distributors, or others with containers, wrappers, or

labels, or attaching or affixing wrappers or labels to containers at the request, or instance of others, which containers, wrappers, or labels simulate the distinctive containers, wrappers, or labels used by Lea & Perrins, Inc., for its Worcestershire sauce. (Jan. 19, 1942.)

3374. **Chenille Fabrics—Composition.**—Jacob Blum and Elizabeth Blum, copartners, trading as Blum Lace & Embroidery Co., engaged in the sale and distribution of chenille 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.

Jacob Blum and Elizabeth Blum, and each of them, in connection with the offering for sale, sale or distribution of their products in commerce, agreed forthwith to cease and desist from:

(a) 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";

(b) The use of the word Persian, or any other word or words connoting fur as descriptive of fabrics made or composed of fibers other than fur; 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. (Jan. 19, 1942.)

3375.¹ **Headache Powders—Safety and Qualities, Properties, or Results.**—Goody's, Inc., a corporation, engaged in the business of manufacturing or compounding powders and in the sale thereof under trade name "Goody's Headache Powders" in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Goody's, Inc., in connection with the dissemination of advertising matter, by the means and in the manner above set out, of the preparation designated "Goody's Headache Powders," or of any other preparation of substantially the same properties, whether sold under that name or any other name, agreed to cease and desist forthwith from

¹ Supplemental.

disseminating any advertisement which fails conspicuously to reveal therein that the said preparation should not be used in excess of the dosage recommended, since such use in excess of the dosage recommended may cause dependence upon the drug, skin eruptions, mental derangement, or collapse, and that it should not be taken by, or administered to, children: *Provided, however,* That such advertising need contain only the statement:

“CAUTION: Use only as directed.”,

if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said corporation also agreed to cease and desist from stating or representing in the aforesaid advertising, or by any other means, that the use of said preparation will seek or remove the cause of symptoms indicated by headache, neuralgia, muscular aches and pains, or that it has value other than as a temporary alleviating agent for such complaints. (Mar. 16, 1942.)

3376. **Women's Hosiery—Manufacturers.**—Stylewise Hosiery Sales, Inc. (formerly known as Schuster Hosiery Sales, Inc.), is a corporation, engaged in the sale and distribution of women'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.

Stylewise Hosiery Sales, Inc., in connection with its sale and distribution of women's hosiery or other products in commerce as defined by said act, agreed forthwith to cease and desist from the use of the word “Manufacturers” as descriptive of its business, and from representing that it has a plant or factory for the production of such or any other goods at Philadelphia, Pa., at Oxford, Md., or elsewhere. It also agreed to cease and desist from the use of any other word or words of similar implication, the effect of which tends or may tend to convey the belief that it makes or manufactures the products sold by it or that it actually owns and operates or directly and absolutely controls a plant or factory in which such products are made or manufactured. (Jan. 23, 1942.)

3377. **Gloves and Mitts—Source or Origin.**—Lindfelt Manufacturing Co., also trading as Lindfelt Glove Mfg. Co. and as Champion Manufacturing Co., a corporation, engaged in the sale and distribution of gloves and mitts in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lindfelt Manufacturing Co. agreed forthwith to cease and desist from offering for sale, selling or distributing in commerce, as defined by said act, any imported product the packaging or wrapping of which is not clearly and distinctly marked on the exposed surface thereof so as to disclose the country of origin of said product. (Jan. 23, 1942.)

3378. **Chicks—Tested.**—Charles P. Leister, an individual trading as C. P. Leister Hatchery, engaged in the sale and distribution of chicks in interstate commerce, in competition with other individuals and with corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Charles P. Leister, in connection with the sale or distribution of chicks in commerce as defined by said act, agreed forthwith to cease and desist from representing, directly or inferentially, that his poultry breeding stock is bloodtested for pullorum disease each year and all realtors removed or that such stock is otherwise tested and/or culled, unless all his poultry breeding stock and the flocks from which he receives eggs for hatching purposes are actually tested and/or culled as represented. (Jan. 23, 1942.)

3379. **Worcestershire Sauce—Competitive Containers, Wrappers, or Labels, Identity, Etc.**—Garber-Eagle Oil Corp., a corporation engaged in the sale and distribution in commerce, as defined by the Federal Trade Commission Act, of food products including a condiment designated "Worcestershire Sauce," in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Worcestershire sauce originally was made in England in the County of Worcestershire over 100 years ago by Lea & Perrins, a partnership. From about 1840 until about the year 1898 said product was imported into the United States from England. From and since about the year 1898 said sauce, made in accordance with a secret formula used in England by Lea & Perrins, copartners, who later incorporated in England as Lea & Perrins, Ltd., has been manufactured, bottled, labeled, and wrapped in the United States by or for said copartners and later by a domestic corporation, Lea & Perrins, Inc., which was incorporated in the State of New York, and which manufactures and sells its said sauce in this country. This product has been extensively sold in the United States and has attained a Nation-wide popularity. The size and shape of the bottles containing the Worcestershire sauce sold and distributed by Lea & Perrins, Inc., and the features of Lea & Perrins, label or wrapper for many years have been, and now are, definitely distinctive and constitute

principally the means by which such product is identified by the purchasing public.

Garber-Eagle Oil Corp., in connection with the sale and distribution in commerce, as defined by the said act, of Worcestershire sauce, whether sold under that name or any other name or names, agreed forthwith to cease and desist from:

1. Representing, or providing wholesalers, private brand distributors, or others with the means to represent, through the use of wrappers, containers, or labels which simulate the distinctive wrappers, containers, or labels used by Lea & Perrins, Inc., in marketing Worcestershire sauce, or in any other manner, that its said product is Worcestershire sauce manufactured and distributed by Lea & Perrins, Inc.;

2. Using containers, wrappers, or labels, or providing wholesalers, private brand distributors, or others with containers, wrappers, or labels, or attaching or affixing wrappers or labels to containers at the request or instance of others, which containers, wrappers, or labels simulate the distinctive containers, wrappers, or labels used by Lea & Perrins, Inc., for its Worcestershire sauce. (Jan. 26, 1942.)

3380. **Worcestershire Sauce—Competitive Containers, Wrappers, or Labels, Identity, Etc.**—Louis Gerber, Nat Gerber, and Samuel Gerber, copartners, trading as Gerber Bros. engaged in the sale and distribution in interstate commerce, as commerce is defined by the Federal Trade Commission Act, of food products including a condiment designated "Worcestershire Sauce" 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.

Worcestershire sauce originally was made in England in the County of Worcestershire over 100 years ago by Lea & Perrins, a partnership. From about 1840 until about the year 1898 said product was imported into the United States from England. From and since about the year 1898 said sauce, made in accordance with a secret formula used in England by Lea & Perrins, copartners, who later incorporated in England as Lea & Perrins, Ltd., has been manufactured, bottled, labeled, and wrapped in the United States by or for said copartners and later by a domestic corporation, Lea & Perrins, Inc., which was incorporated in the State of New York, and which manufactures and sells its said sauce in this country. This product has been extensively sold in the United States and has attained a Nation-wide popularity. The size and shape of the bottles containing the Worcestershire sauce sold and distributed by Lea & Perrins, Inc., and the features of Lea & Perrins' label or wrapper for many years have been, and now are, definitely distinctive and constitute principally the means by which such product is identified by the purchasing public.

Louis Gerber, Nat Gerber, and Samuel Gerber, and each of them, in connection with the offering for sale, sale, or distribution in commerce, as defined by said act, of Worcestershire sauce, whether sold under that name or any other name or names, agreed forthwith to cease and desist from:

1. Representing, through the use of containers, wrappers, or labels which simulate the distinctive containers, wrappers, or labels used by Lea & Perrins, Inc., in marketing its Worcestershire sauce, or in any other manner, that their said product is Worcestershire sauce manufactured and distributed by Lea & Perrins, Inc.

2. Using containers, wrappers, or labels which simulate the distinctive containers, wrappers, or labels used by Lea & Perrins, Inc., on its Worcestershire sauce. (Jan. 26, 1942.)

3381. **Mirrors—Composition and Nature of Manufacture.**—Los Angeles Period Furniture Co., a corporation, engaged in the sale and distribution of furniture, including mirrors, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Los Angeles Period Furniture Co., in connection with the offering for sale, sale, or distribution of its mirrors in commerce as defined by said act, agreed forthwith to cease and desist from designating, describing, or referring to any mirror not actually backed by genuine metallic copper applied by the electrolytic process, as being copper backed, backed with copper, or made with a copper back: *Provided, however,* That if the word "copper" is used properly to designate the copper content of backing not electrolytically applied, then the word "copper," whenever used, shall be immediately accompanied in equally conspicuous type by some other word or words clearly and definitely indicating that such mirror backing is not genuine metallic copper backing electrolytically applied. (Jan. 29, 1942.)

3382. **Electric Shavers—Unique.**—Schick Inc., a corporation, engaged in the sale and distribution in interstate commerce of electrically operated dry shavers, each being equipped with a device called "Whisk-Its" which is pivotally, or otherwise, affixed to the shaver for the purpose of catching and retaining beard clippings, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Schick Inc., in connection with the advertisement, offering for sale, or sale of its shavers equipped with the so-called "Whisk-Its" attachment in commerce, as commerce is defined by the Federal Trade Com-

mission Act, agreed to cease and desist forthwith from stating or representing that the said shavers are the only shavers which feature or include means to catch or hold and retain beard clippings. (Jan. 29, 1942.)

3383. **Soft Drink Compound—Composition and Nature.**—Benjamin Tyndale Fooks, Gulnare Estelle Fooks, and Terrell Davis Fooks, copartners, trading as B. T. Fooks Manufacturing Co., engaged in the sale and distribution in commerce of a food product designated "Grapette" or "Grapette Syrup" for use in compounding a soft drink also designated "Grapette," 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.

Benjamin Tyndale Fooks, Gulnare Estelle Fooks, and Terrell Davis Fooks, and each of them, 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 their product designated "Grapette" syrup or any other product composed of substantially the same ingredients, whether sold under such name or names or any other name or names, or a beverage made therefrom, agreed forthwith to cease and desist from the use of the word "Grapette" or the word "grape," either alone or in conjunction or combination with any other word or words or letter or letters, in any way to represent, designate, or refer to a product which is not composed of the juice of the grape or the fruit of the same, and also from authorizing or placing in the hands of others brands, labels, or representations containing the words "Grapette" or "grape" to be used in connection with the sale or offering for sale of a product which in fact is not the juice of the grape or the fruit of the same. If the product is composed in substantial part of the juice of the grape or the fruit of the same and the word "grape" or other word indicating grape is used to represent or designate said grape content, then in which case such word, wherever used, shall be accompanied by a word or words printed in type equally conspicuous as that in which the word "grape" or other word indicating grape is printed so as to indicate clearly that the product is not composed wholly of the juice of the grape or the fruit of the same, and will otherwise properly and accurately represent the ingredients therein. If the product is artificially or synthetically flavored so as to simulate the flavor of grape and the word "grape" or other word indicating grape is used to indicate such synthetic flavor, then in which case such word, whenever used, must be preceded by the word "imitation" printed in type equally conspicuous as that in which the word "grape" or other word indicating grape is printed, or by some

other word or words so as to clearly indicate that the flavoring of said product is not derived from the juice of the grape or the fruit of the same but is obtained from some artificial or synthetic flavoring. (Jan. 30, 1942.)

3384. Piano Playing Course of Instruction—Free, Special, or Limited Offers and Qualities, Properties, or Results.—Noel L. Erskine and Alena M. Erskine, copartners trading as Erskine Studio, Erskine Music Studio, and Erskine Music Studios, engaged in the sale in interstate commerce of the use of an alleged complete course of instructions in piano playing consisting of a series of 20 lessons and the rendition of individual instruction, including the answering of student questions with respect to such lessons, in competition with other partnerships and with individuals and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Noel L. Erskine and Alena M. Erskine, in connection with the advertisement, offering for sale, or sale of their course of instructions in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from stating or representing:

1. That a course of instruction offered by them is given free or as a gratuity, when in fact, the price thereof is included in the price asked and required to be paid for another course of instruction.

2. That there is a time limit within which a prospect must avail himself of an offer and/or that such offer will not be repeated, when in fact, the offer is not limited as to time but is available to all persons at any time.

3. That a 12-year old person, with no previous training, would have no trouble in learning to play the piano by applying the Erskine method.

4. That the course offered at \$3.75 is the same as the course offered at \$15, when in fact, the latter course includes benefits not available in the former course. (Jan. 30, 1942.)

3385. Wood Preservative—Government Endorsement, Tests, Comparative Merits, Qualities, Properties, or Results.—C-A Wood Preserver Co., a corporation, engaged in the sale and distribution in interstate commerce of a preparation designated "C-A Wood Preserver" allegedly for use as a wood preservative and for the destruction of certain insects, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

C-A Wood Preserver Co., in connection with the offering for sale, sale, or distribution in commerce as defined by said act, of the product

designated "C-A Wood Preserver" 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:

(a) Representing, directly or inferentially by means of statements, depictions, or in any other manner, that said product has been approved, endorsed, or recommended by the United States Government or any department or agency thereof.

(b) Representing, directly or inferentially, that said product has been tested by the U. S. Forest Products Laboratory and such tests have proven the product to be the highest quality wood preserver examined.

(c) Representing that said product or a mixture thereof with fuel oil, petroleum distillate, or used crankcase oil is superior to creosote oil as a wood preservative.

(d) Representing that said product applied to wood will prevent rot or decay or will cause the wood to be "termite proof" or immune from damage by termites. (Jan. 30, 1942.)

3386. **Water Softener Device—Scientific or Relevant Facts, Qualities, Properties, or Results and Government Endorsement.**—E. J. Segna, an individual, engaged in the conduct of a business at Pueblo, Colo., under the trade name Ideal Water Softener Co., said business including the sale and distribution in interstate commerce of devices, within the body portion of each of which was disposed a synthetic zeolite material for its softening effect on hard water passed therethrough, causing said devices, when sold by him, to be shipped from his place of business in the State of Colorado to purchasers thereof, including specialty salesmen and others, located in a State or States other than Colorado and there engaged in reselling said devices to ultimate consumers; engaged 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.

E. J. Segna, in connection with the advertisement, offering for sale, sale, or distribution of his so-called Ideal Water Softener devices in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from representing, either directly or inferentially:

1. That hard water or faucet water, such as is found in the average of localities in the United States, will destroy health or beauty, or cause enlarged pores and blackheads or dandruff, or make hair washed therewith sandy and rough like a file, or that it will cause gallstones, kidney stones, rheumatism, or arthritis.

2. That the use of water softened by said devices will stop or eliminate soap irritation or chapping, roughness, or redness of the skin,

or that any such injury as results to the skin is due in appreciable degree to the hardness constituents of the water used and not almost entirely to the increased amount of soap which may be used or is necessitated because of such water.

3. That the use of Ideal Soft Water will cause all vegetables to cook in less time and retain their color better than would be the case if hard water be used.

4. That soap savings are and prolonged usefulness of wearing apparel is accomplished in a designated amount by using soft water as compared with hard waters, without clearly disclosing the fact that such economies largely depend or are determined by the relative degree of hardness constituents in the water used and that this may and actually does vary considerably in different localities.

5. That the so-called Ideal Water Softener has been approved or endorsed by the United States Government. (Feb. 2, 1942.)

3387. **Storage Battery Solution—Comparative Merits, Qualities, Properties, or Results and Safety.**—James B. Wood, trading as Energized Electrolyte Co. and as R. J. B. Electrolyte Co., engaged in the sale and distribution of a solution for use in storage batteries designated "Energized Electrolyte," 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.

James B. Wood, in connection with the sale and distribution of his "Energized Electrolyte" or any other product composed of substantially the same ingredients, whether sold under such name or any other names, agreed forthwith to cease and desist from:

(a) Representing that batteries treated with such product require less attention, recuperate quicker after a rapid discharge, have a higher rate of charge acceptance, and when idle for a long period of time, depreciate less than would batteries treated with or containing electrolyte used in batteries generally.

(b) Representing that the charging of batteries treated with said product can be adequately accomplished in from 8 to 10 minutes or in any other period of time less than that necessarily required adequately to charge such batteries.

(c) Representing that said product is harmless to batteries or that it is unnecessary to add water to batteries treated with such product.

The said James B. Wood further agreed not to publish or disseminate any testimonials containing statements, assertions, or implications contrary to the terms of the foregoing agreement. (Feb. 2, 1942.)

3388. **Smoking Pipes—Qualities, Properties, or Results.**—S. M. Frank & Co., Inc., a corporation, engaged in the manufacture of smoking pipes and related 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.

S. M. Frank & Co., Inc., in connection with the sale and distribution of its pipes and filters in commerce, as commerce is defined by said act, agreed forthwith to cease and desist from representing, directly or inferentially:

(a) That said pipes or filters will exclude nicotine from smokers' mouths, or will obviate "tongue bite" or "raw mouth."

(b) That said pipes require no "breaking in," or that such filters are capable of "breaking in" pipes.

(c) That said pipes require no cleaning other than changing or renewing filters. (Feb. 2, 1942.)

3389. Equipment, Etc., for Making Name Plates, Signs, and Mirrors—Earnings or Profits, Special Offers, Coupon Values, and Free.—E. E. Palmer, sole proprietor, engaged in sale and distribution, in interstate commerce, of equipment and instructions for the making of name plates, signs, and mirrors, 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.

E. E. Palmer, in connection with the sale and distribution of his outfit and instructions, or other commodities, in commerce as defined by said Act, agreed forthwith to cease and desist from:

(a) Representing that huge profits, financial independence, or any other exaggerated or unusual earnings may be expected or anticipated by purchasers of his name plate outfit or other merchandise; or that such customers make or may make \$15 to \$20 a day, \$7 daily, \$18 in a day, or the price of the outfit in the first day; or directly or indirectly promising any returns in excess of the average earnings and profits that have actually been achieved by such customers under normal conditions in the due course of business.

(b) Representing in any way that his regular price and method of sale constitute a "special offer," "A greatly reduced price," or one for which the prospective purchaser "may never get another chance"; or in any other manner whatsoever that the offer is special or unusual so long as no price reduction or trade concession is made therewith.

(c) The use of a so-called "Special Offer Coupon" which does not in fact entitle the holder to some special advantage in price, quality, or terms; or representing that such coupon is "good for \$8.00" or any other sum whatsoever; or that such coupon with \$15 buys a "Regular \$23.00 Outfit," or any outfit except that which he has regularly sold for \$15 both with and without such coupon.

(d) Designating or describing as "Free," any sample coupon which must be accompanied with the cost, in whole or in part, of the merchandise referred to; or representing that a charge which includes such item is made merely "to help defray cost of wrapping and postage."

The said E. E. Palmer further agreed not to publish or disseminate any testimonials containing statements, assertions, or implications contrary to the terms and spirit of the foregoing agreement. (Feb. 3, 1942.)

3390. **Peat Product—Nature.**—William K. Stuteville, individual, trading as Lucky Gardens, engaged in the business of selling a peat product 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. Stuteville, in connection with the offering for sale, sale, or distribution of his 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 said words in any arrangement, 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 prospective customers that said product is moss peat, that is to say, a product consisting chiefly of decomposed stems and leaves derived from species of Sphagnum mosses. (Feb. 3, 1942.)

3391. **Flour—Lottery Scheme.**—Dixie-Portland Flour Co., a corporation, engaged in the purchase and blending of flour and the sale of the blended product in commerce, as commerce is defined by the Federal Trade Commission Act, such product, when sold, shipped from its place of business in the State of Tennessee to purchasers thereof, as retail dealers engaged in reselling said product to customers, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Dixie-Portland Flour Co., in connection with the sale and distribution of its flour or other products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

(a) Supplying to or placing in the hands of others, premium flour, or other merchandise, which is to be used or may be used to conduct a lottery, gaming device, or gift enterprise in the sale and distribution of flour, or other products.

(b) Supplying to or placing in the hands of others, pull cards, prize drawing cards, or other lottery devices, either with assortments

of flour or other merchandise, or separately, which said pull cards, prize drawing cards, or other lottery devices are used, or may be used, in selling or distributing such flour, or other merchandise, to the consuming public.

(c) Selling, or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (Feb. 3, 1942.)

3392. Puncture Prevention Compound—Earnings or Profits, History, Unique Qualities, Properties, or Results and Guarantees.—Air-Seal Distributors, Inc., a corporation, engaged in the manufacture of "Air-Seal," a compound designed to prevent punctures in pneumatic tires, and in the sale and distribution thereof in commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Air-Seal Distributors, Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist forthwith from:

(a) Representing that fortunes, huge profits, a permanent income, or any other exaggerated or unusual earnings may be expected or anticipated by sales persons or distributors of its merchandise; or that its sales persons make \$100 a week or its distributors \$2,000 per month; or directly or indirectly promising any returns in excess of the average earnings and profits that have actually been achieved by its dealers under normal conditions in the due course of business.

(b) Representing that Air Seal salesmen are in a new business or that they have no competition.

(c) Designating said product as "puncture proof" or representing that it is an "absolutely proven" compound which puncture proofs tires or that it prevents new punctures or eliminates punctures, or by statement or inference that it offers effective resistance to punctures or blow outs under all conditions of use.

(d) Representing that such product is a "recent scientific triumph" in the elimination of tire trouble or is the result of forty years' research, or is the first "wholly successful" method devised to render a pneumatic tire "really puncture proof" or to "get away from the defects of air filled tires;" or directly or inferentially, that it actually does accomplish either of the foregoing.

(e) Representing that said product is not affected by heat or cold, or by statement or implication that it would serve any useful purpose whatsoever when reduced to a temperature as low as 28° Fahrenheit.

(f) The use of the words "guaranteed" or "guarantee" or any other word or words of similar meaning in connection with the advertising, offering for sale, or sale of its commodities, unless, whenever used,

clear and unequivocal disclosures be made in connection therewith of exactly what is offered by way of security. (Feb. 4, 1942.)

3393. **Peat Product—Nature.**—Lee County Peat Moss Co., a Texas corporation, engaged in the business of mining and producing peat from a bog in Lew County, Tex., and in the sale of said product in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lee County Peat Moss Co., 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 part of its corporate or trade name or as descriptive of said product. It also agrees to cease and desist from the use of the said words in any arrangement, 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 customers or prospective customers that said product is moss peat, that is to say, a product consisting chiefly of decomposed stems and leaves derived from species of Sphagnum mosses. (Feb. 4, 1942.)

3394. **Chicks—Government Supervision or Endorsement.**—Reuter Seed Co., Inc., a corporation, engaged in the sale of chicks in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as forth therein.

Reuter Seed Co., Inc., in connection with the sale or distribution in commerce as defined by said act, of chicks not properly designated or described as United States Record of Performance chicks in accordance with the provisions of The National Poultry Improvement Plan, agreed to cease and desist forthwith from the use of the initials "R. O. P." or other initials, terms, or expressions of similar 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 to prospective purchasers or the consuming public that such chicks are United States Record of Performance chicks. (Feb. 5, 1942.)

3395. **Chicks—Government Supervision or Endorsement.**—Kleppisch Bros., Inc., also trading as Missouri Hatchery, a corporation, engaged in the sale and distribution of chicks in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Kleppisch Bros., Inc., in connection with the sale or distribution in commerce as defined by said act, of chicks not properly entitled to be designated or described as United States Record of Performance chicks in accordance with the provisions of The National Poultry Improvement Plan, agreed forthwith to cease and desist from using or placing in the hands of others a means to use the initials "R. O. P." or other initials, terms or expressions of similar 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 to prospective purchasers or the consuming public that such chicks are United States Record of Performance chicks. (Feb. 5, 1942.)

3396. Correspondence Courses.—Government Connection and Institute.—

Rose L. Eberle, an individual, engaged formerly in the sale and distribution in interstate commerce of correspondence school courses of instruction intended to assist students to pass civil service examinations, 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.

Rose L. Eberle, in connection with the advertisement, offering for sale, sale, or distribution of her correspondence school courses of instruction in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. The use of the words "Civil Service" as part of or in connection with a trade name under which to carry on her business, and from the use of the words "Civil Service" either alone or in connection or conjunction with any other word or words or in any way, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the business conducted by the said individual has any connection or association with the United States Civil Service Commission or that it is an agency of the Government of the United States.

2. The use of the word "Institute" as part of or in connection with the trade name under which she carries on her business, and from the use of the word "Institute" either alone or in connection with any other word or words or in any way, which tends or may tend to cause the impression by purchasers that the correspondence school operated by the said individual is an organization conducted for the promotion of learning, such as philosophy, art, or science, and has the equipment and faculty such as to entitle it to be designated an institute. (Feb. 5, 1942.)

3397. Quilt Covers—Composition, Quality, and Size.—Samuel Gottesman, an individual, trading as Gottesman Bros. Co., engaged in the business of manufacturing quilt covers, among other things, 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.

Samuel Gottesman, in connection with the offering for sale, sale, or distribution of his products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use on labels affixed to the products or in invoices or other printed matter relating to said products.

1. Of the term "Eighty Square" as descriptive of the fabric of which said products are made; and from the use of the said term or of any similar expression in any way, the effect of which tends or may tend to convey the impression or belief to purchasers or prospective purchasers that the fabric of which said products are made is composed of a designated number of threads or picks to the square inch, when in fact, the square inch thread count is other than that indicated.

2. The term "Full Size" or "Regular Size" as descriptive of said products and from the use of the said terms, or either thereof, or the figures "72 x 84," so as to import or imply that the said products are of the indicated size, that is to say, 72 by 84 inches, as the terms "Full Size" and "Regular Size" are understood in the trade. (Feb. 5, 1942.)

3398. Granite Blocks or Slabs—Qualities, Properties, or Results.—Collins Durax Co., Inc., engaged in the sale and distribution, in interstate commerce, of granite blocks or slabs for use in making monuments or memorials, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Collins Durax Co., Inc., in connection with the sale and distribution of its granite blocks or slabs in commerce as defined by said act, agreed forthwith to cease and desist from representing, by the use of the word "Imperishable" or any other word or words of similar import or meaning or in any other manner, that said products or monuments or memorials made therefrom are everlasting or will endure forever. (Feb. 9, 1942.)

3399. Tobacco and Cigarettes—Comparative Merits and Qualities, Properties, or Results.—Penn Tobacco Co., a corporation, engaged in the business of manufacturing so-called mint-cooled cigarettes and a pipe tobacco allegedly made from coarse cut white burley tobacco containing no latakia, sold pipe tobacco under brand name "Kentucky Club"

and the cigarettes under the name "Juleps," such sales of the said products being made in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Penn Tobacco Co., in connection with the advertisement offering for sale or sale of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith:

1. From stating or representing in any way that its pipe tobacco known as "Kentucky Club" smokes 25 percent cooler than other pipe tobaccos and never bites the tongue or stings.

2. From the use of the statement "Remember Juleps, forget your cough"; and from the use of the words "forget your cough" in any way so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the smoking of said cigarettes is a treatment or remedy for coughs. (Feb. 9, 1942.)

3400. Medicinal Preparations—History, Unique, Qualities, Properties or Results, Safety, Testimonials, Etc.—A. J. Whiteside, a sole trader as Whiteside Co., engaged in the compounding, sale, and distribution in interstate commerce of certain medicinal products designated "Jolo," "Liverine," "Bee Bee's," and "Ru-Ma-Sol," in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

A. J. Whiteside, in connection with the offering for sale, sale, or distribution of his products in commerce as defined by said act, or the advertising thereof by the means or in the manner above set forth, agreed he will forthwith cease and desist from representing, directly or inferentially:

(a) That any of the products offered for sale and sold by him as "Jolo," "Liverine," "Bee Bee's," and "Ru-Ma-Sol" is either a new or a scientific or a natural or an advanced medicine or medicinal compound, or is a scientific favorite or a formula of natural medicine, or acts differently from any previously known medicine upon the stomach or other organs.

(b) That "every person who suffers" may expect to be benefited by taking said medicines, and particularly suffers from stomach troubles, weak kidneys, prostatitis, lazy liver, nervousness, rheumatism, and general rundown condition; or that said medicines have

helped 95 percent of the people who have taken them, or any other percentage or proportion thereof.

(c) That each or any of said medicines will eliminate, drive out, throw off, or remove the poisons from the blood, stomach, liver, kidneys, and bowels, or will build up such organs and make them more active.

(d) That muscle pains, sore joints, stiff back, dyspepsia, indigestion, heart burn, spots before the eyes, dizziness, heavy feeling, lump in throat, gas, and nervousness are all caused by constipation; or by statement or inference that medication with Jolo will deliver one from all or any such afflictions and discomfitures.

(e) That Jolo or any similar preparation ends many forms of health troubles or any form of health trouble, or brings permanent or lasting relief from any serious disorder or affliction.

(f) That Jolo or any similar preparation has tonic action on the liver; or stimulates or wakes up the liver or permits or enables it to function properly.

(g) That Jolo or any similar preparation quiets quivering nerves or corrects nervousness or tones up the whole nervous system or strengthens or improves the nerves, or has any effect on the nerves.

(h) That Jolo or any similar preparation corrects or overcomes constipation in a natural way, or at all, or cleanses the bowels as never cleansed before, or tones the bowels; or that it will afford more than temporary relief from constipation.

(i) That Jolo or any similar preparation relieves the system of colds or brings about increased energy or builds up a rundown system or confers general health by natural means.

(j) That Jolo or any similar preparation is either a competent treatment or an effective remedy for or brings lasting or permanent, or any, relief from the various underlying conditions indicated by the following symptoms:

Muscle pains.	Stomach troubles.
Sore joints.	Ulcers.
Stiff back.	Acid condition.
Dyspepsia.	Shortness of breath.
Heart burn.	Heart palpitation.
Spots before eyes.	Headache.
Dizziness.	Belching.
Heavy feeling.	Sourness.
Lump in throat.	Skin eruptions.
Gas bloating.	Exhausted feeling.
Nervousness.	Broken sleep.

(k) That the product sold as Liverine or any similar preparation is a liver medicine or that it contains no harmful drugs.

(l) That Liverine or any similar preparation acts upon the liver or causes fresh bile to flow, or permits or enables the liver to function properly.

(m) That stagnated bile is the cause of gall stones, constipation, jaundice, indigestion, headache, biliousness, nervousness, pancreatic troubles, or piles; or that Liverine will eliminate bile stagnation or otherwise bring health to the user by natural means.

(n) That Liverine or any similar preparation cleanses the blood stream or overcomes skin eruptions or clears up skin blemishes 9 cases out of 10, or will have any effect at all on such skin blemishes as moles, warts, birth marks, wrinkles, or scars, or any skin condition.

(o) That Liverine or any similar preparation eliminates or overcomes constipation other than causing temporary evacuation of the bowels, or puts the rosy glow of health in the cheeks of persons whose blood and inner organs have been long contaminated by impurities.

(p) That Liverine or any similar preparation is either a competent treatment or an effective remedy for or brings lasting or permanent relief from the various underlying conditions indicated by the following symptoms:

Jaundice.

Yellow, muddy complexion.

Biliousness.

Dizzy spells.

Pancreatic troubles.

Foul breath.

Piles.

Exhausted feeling.

Skin blemishes.

Broken sleep.

Skin eruptions.

(q) That the product sold as Bee Bee's or any similar preparation is a genuine or a proven medicine or a new or remarkable discovery for weakened, deranged, or afflicted kidneys or for irritated bladder; or that it is safe, beneficial, or proper as a treatment for any conditions.

(r) That old age results from acidity in the kidneys, or by statement or inference that the taking of a diuretic such as Bee Bee's regardless of pathological conditions, will rectify acidity in the kidneys and thereby forestall old age, or that it will have any effect on old age.

(s) That Bee Bee's or any similar preparation purifies the blood, relieves the system of colds, corrects or removes inflammation in the bladder, urethra, or prostate gland; or would be in any way beneficially effective for the treatment of prostatic troubles.

(t) That Bee Bee's or any similar preparation is a competent treatment or an effective remedy for or brings lasting or permanent

relief from the various underlying conditions indicated by the following symptoms:

Backaches.	Smarting.
Puffy eyes.	Itching.
Leg cramps.	Sharp back pains.
Sore muscles.	Swollen legs.
Sore joints.	Kidney stones.
Dull eyes.	Kidney gravels.
Dry skin.	Swollen joints.
Night rising.	Swollen muscles.
Tired feeling.	Inflamed prostate.
Nervousness.	Burning and scalding urine.
Acid burning.	

(*u*) That uric acid deposits are recognized by science as the common cause of rheumatism, or that an acid system or deranged kidneys cause many forms of such afflictions.

(*v*) That any formula, named or unnamed, has been found within recent months, or at all, that "goes directly to the source of rheumatism," or that a medication for uric acid would reach the cause or source of rheumatism.

(*w*) That the product offered for sale as Ru-Ma-Sol or any similar preparation eliminates uric acid in the system, or goes to the very source of rheumatism, or attacks the source of rheumatic pains, or removes the same, or affords permanent relief therefrom; or is the most scientific eliminative treatment for rheumatism and similar afflictions; or an adequate remedy for any thereof; or that it acts on the poison elements that actually cause the different forms of rheumatism, or has any effect on such poisons; or that it acts to prevent poisons or toxins in the intestines from being absorbed in the blood; or that such absorption of toxins or poisons is the cause of rheumatism and similar ailments.

(*x*) That the treatment afforded by Ru-Ma-Sol varies "accordingly" for the different forms of rheumatism—inflammatory, muscular, articular, lumbago, neuritis, or sciatica, as the case may be; or otherwise by statement or inference, that any account whatsoever is taken of the particular type of disease or that change in the formula is made to meet any specified condition.

(*y*) That neuritis (inflammation of the nerves) is a form of rheumatism or is otherwise an affliction for which Ru-Ma-Sol or similar preparation would be of any beneficial use as a treatment; or that Ru-Ma-Sol is a proper treatment or adequate remedy for nervous exhaustion; or will overcome constipation in the sense of eliminating or removing the causes thereof.

(2) That Ru-Ma-Sol or any similar preparation is either a competent treatment or an effective remedy for or brings lasting or permanent relief from the various underlying conditions indicated by the following symptoms:

Rheumatic pains; swollen and stiffened fingers, hands, arms, feet, legs, or joints; agonizing aches and pains in muscles and joints; twisted and bent bodies; neuritis, sciatica, lumbago, gout; constipation; stomach pains and troubles; helpless arms and hands; or of any condition.

The said A. J. Whiteside further agreed to cease and desist from the use of the coined words "Liverine" and "Ru-Ma-Sol" as trade names or appellations for the products so heretofore designated; and from the use as a part thereof or in connection therewith, of any word, term, expression or syllable connoting, indicating or suggesting either liver or rheumatism; or from the use of any other name or appellation which would or may misrepresent such medicinal preparations.

The said A. J. Whiteside furthermore agreed not to publish or disseminate any testimonials containing statements, assertions, or implications contrary to the terms and spirit of the foregoing agreement. (Feb. 10, 1942.)

3401. Quilt Covers—Composition, Quality, and Size.—American Quilt Cover Manufacturers, Inc., a corporation, engaged in the business of manufacturing quilt covers 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.

American Quilt Cover Manufacturers, Inc., in connection with the offering for sale, sale, or distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use on labels affixed to the products.

1. Of the term "80 Square" as descriptive of the fabric of which said products are made, and from the use of the said term or any similar expression in any way, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the fabric of which said products are made is composed of a designated number of threads or picks to the square inch, when in fact, the square inch thread count is other than that indicated.

2. Of the term "Full Size" as descriptive of said products, and from the use of the said term in any way so as to import or imply that the said products are of a 72 by 84 inch size, as the term "Full Size" is understood in the trade. (Feb. 11, 1942.)

3402. **Fur Garments—Nature, Prices, and Old as New.**—Fur Outlet Co., a corporation, engaged in the sale and distribution of fur garments in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Fur Outlet Co., in connection with the sale and distribution of its fur garments in commerce as defined by said act, agreed forthwith to cease and desist from:

(a) Designating or describing any fur or fur garment in any manner other than by the use of the correct name of the fur as the last name of the description thereof; and, when any dye, blend, or process is used in simulating another fur, the true name of the fur appearing as the last name of the description shall be immediately preceded in equally conspicuous type by the word "dyed," "blended," or "processed" compounded (hyphenated) with the name of the simulated fur.

(b) Representing as the customary or regular prices or values of any of its fur garments or other merchandise prices or values which are in excess of the prices at which such merchandise is regularly and customarily offered for sale and sold by it in the normal course of business.

(c) Advertising, offering for sale, or selling any used, worn, or second-hand fur garment unless in each and every advertisement pertaining thereto and also by means of a tag or label securely attached thereto the fact be clearly indicated that said garment is used, worn, or second-hand. (Feb. 11, 1942.)

3403. **Organdies—Source or Origin.**—Waldburger, Grant & Co., Inc., a corporation, engaged in the sale and distribution of textile fabrics including organdie in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Waldburger, Grant & Co., Inc., in connection with the sale and distribution in commerce, as defined by said act, of their organdies or any other products of domestic origin, agreed forthwith to cease and desist from representing, directly or inferentially, by the use of the word "Swiss," or any other word, phrase, term, symbol, or depiction indicative of Swiss or other foreign origin, or in any manner, that such products were made in or imported from Switzerland or any other foreign country. (Feb. 11, 1942.)

3404. **Ladies' Handbags—Composition and Nature.**—Harlic Bag Co., Inc., a corporation, engaged in the business of manufacturing ladies'

handbags 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.

Harlic Bag Co., Inc., in connection with the offering for sale, sale or distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the term "Nuhyd" as a trade name, stamp, brand, or label for such of said products as are not made from hide or leather, the skin of an animal; and from the use of the letters "hyd" or other simulation of the word "hide" and of the word "leather," either alone or in connection with any other word or words or in any other way, so as to import or imply or the effect of which tends or may tend to convey the belief or impression to purchasers that a product so referred to is manufactured from leather or hide, when in fact it is not so made. (Feb. 12, 1942.)

3405. Frozen and Smoked Fish—Nature.—Slade Gorton, individual, trading as Slade Gorton Co., engaged in the wholesale distribution of frozen and smoked fish 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.

Slade Gorton, in connection with the advertisement, offering for sale, sale, or distribution of his whiting product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the word "perch" as descriptive of said product, and from the use of the word "perch" either alone or in connection or conjunction with the word "silver-sides" or "silver" or with any other word or words in referring to said fish product, the effect of which tends or may tend to convey the impression or belief to the consuming public that the said product is perch or yellow perch. (Feb. 12, 1942.)

3406. Staples—Qualities, Properties, or Results.—Consolidated Staple Co., Inc., and Champion Fastener Corp., corporations, both of which were organized and now exist and conduct business under and by virtue of the laws of the State of New York; two corporations have the same officers and directors and are located at same address in Chicago, Ill.; engaged in the business of selling in interstate commerce a certain type of stapling machine, and more particularly, staples of a design suitable for use in such machines, caused said products to be sold either through distributors or directly to industrial and other consumers, in competition with other corporations

and with individuals, firms, and partnerships likewise engaged, in the interstate sale of products designed for similar uses, such competitive products including the patented so-called Bostitch H2 Hammer Tacker and the Bostitch Spring Crown Staples for use in the said Bostitch H2 Hammer Tacker and known to the trade and the consuming public by the identifying letters and numerals "SHCR-5019." The said corporations entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Consolidated Staple Co., Inc., and Champion Fastener Corp., in connection with the advertisement, offering for sale, sale, or distribution of their staples in commerce, as commerce is defined by the Federal Trade Commission Act, they and each of said corporations agreed to cease and desist forthwith from stating or representing, either directly or inferentially, that their said products are "similar to" the Bostitch Spring Crown staples or to that type of staple known to the trade and consuming public by the identifying letters and numerals "SHCR-5019," or that their said staples are "for use in" the Bostitch H2 Hammer Tacker machine, and from the use of any statement or representation, the effect of which tends or may tend to convey the impression or belief by customers or prospective customers that their staples can be operated in the said Bostitch machine without any change in the construction of such machine or incapacitating it to accommodate successfully the Bostitch type of staple for which it was originally designed. (Feb. 13, 1942.)

3407. **Sports Footwear—Composition.**—Wallace B. Mackey, an individual trading as J. Mackey & Son, engaged in the manufacture of sports footwear, 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.

Wallace B. Mackey in connection with the advertisement, offering for sale, sale, or distribution of his so-called Espadrille shoes in commerce, as commerce is defined by the Federal Trade Commission Act, he will cease and desist forthwith from the use of the words "Ribbed Rope" as descriptive of the soles of said shoes, and from the use of the word "Rope" either alone or in connection or conjunction with the word "Ribbed" or with any other word or words so as to import or imply that the said shoes have soles of rope or ribbed rope, when in fact, the soles thereof are composed of materials other than rope. (Feb. 13, 1942.)

3408. **Sheet Metal Products—Composition and Quality.**—Victor M. Carter and Evelyn Borenstein, trading as Vimcar Steel Sash Co., and

as Primetal Specialties Co., operating as a limited partnership, engaged in the sale and distribution in interstate commerce of sheet metal products or so-called specialties such as builders' supplies, mail boxes, cabinets, and other metal products, 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.

Victor M. Carter and Evelyn Borenstein, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of any article or commodity not composed of prime or first grade stock or material, agreed to cease and desist from the use of the word "Primetal" or any other word or words of similar import or meaning in any manner so as to connote or imply or cause the belief or impression that such article or commodity is made of prime or first quality stock or material; or from the use of the word "Primetal" as part of their trade name on or in catalogs, invoices, or any trade literature, unless the designation or description of each and every article or commodity which is made of stock or material other than first grade be immediately accompanied in equally conspicuous type by some word or words definitely and unambiguously disclosing that the stock or material of such article or commodity is of second or other inferior grade. (Feb. 13, 1942.)

3409. Granite Monuments or Memorials—Qualities, Properties, or Results and Performance Bonds.—Montello Granite Co., 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.

Montello Granite Co., in connection with the sale and distribution of its monuments or memorials in commerce as defined by said act, agreed forthwith to cease and desist from:

(a) Representing by the use of the words "last forever" or "will never fade or bleach" 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.

(b) Representing, directly or inferentially, that it issues or provides bonds for the performance of its guaranty agreements (Feb. 18, 1942.)

3410. Paper Shipping Containers or Boxes—Manufacturer.—Gates Container Corporation, engaged in the assembling of paper containers for use in the shipment of commodities by freight, parcel post, and express, and in the sale thereof in interstate commerce, in competi-

tion with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Gates Container Corporation, in connection with the offering for sale, sale, or distribution of its shipping containers or boxes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from marking or stamping said boxes or causing the same to be marked or stamped with the purported certificate of a box maker together with such use of the corporate name "Gates Container Corporation" as tends or may tend to create the impression that the said Gates Container Corporation makes or manufactures said boxes. Said corporation also agreed to cease and desist from the use on its stationery or printed matter of whatever kind or description of the word "Manufacturers" or of any other word of similar meaning or implication, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the said corporation actually owns and operates or directly and absolutely controls the plant or factory in which said boxes are made or manufactured. (Feb. 18, 1942.)

3411. Novelty Jewelry—Importers, Manufacturers, and Guarantee.—Moritz Pintchman, an individual, trading as Moray Jewelry Co. and as Majestic Bead & Novelty Co., engaged in the sale and distribution of novelty jewelry and other products in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Moritz Pintchman, in connection with the sale and distribution of novelty jewelry or other products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use of the word "Importers" or any other word or words of similar meaning on or in invoices, stationery, or other trade literature as descriptive of his business or in any manner so as to connote or imply that he imports commodities or articles of merchandise which are not imported by him.

(b) The use of the word "Manufacturers" or any other word or words of similar meaning on or in catalogs, invoices, stationery, or other trade literature in any manner so as to import or imply or the effect of which tends or may tend to convey the belief that he makes or manufactures the commodities sold by him or that he actually owns and operates or directly and absolutely controls a plant or factory in which such commodities are made or manufactured.

(c) The use of the word "Guarantee" or any other word of similar import or meaning, either alone or in connection with any other word or words as a designation for, description of, or in connection with any offer, agreement, or writing which is not in fact a bona fide guarantee. (Feb. 18, 1942.)

3412. **Electrical Testing and Measuring Devices—Qualities, Properties, or Results and Comparative Merits and Prices.**—Max Steir and Maxwell M. Hauben, copartners trading as Superior Instruments Co. and as Radio Construction Laboratories, engaged in the sale and distribution in interstate commerce of electrical testing and measuring devices including a device designated "Utility Tester," 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.

Max Steir and Maxwell M. Hauben, and each of them, agreed that, in connection with the sale and distribution of their device designated "Utility Tester" or any other device or devices of substantially the same construction, whether sold under said name or any other name or names, they will forthwith cease and desist, directly or inferentially, from representing:

(a) That said device can be depended upon accurately to measure or determine the wattage consumption of electrical appliances; accurately to measure electrical current up to 100 amperes; or that said devices are of any practical value in measuring or testing the higher voltage or amperage ranges heretofore designated in their advertising literature.

(b) That the price of comparable electrical testing or measuring devices offered for sale and sold in competition with their said device is \$50, or any other amount in excess of the actual selling price of such comparable devices. (Feb. 18, 1942.)

3413. **Oilskin Zipper Pouches, Beach Novelties, Etc.—Qualities, Properties, or Results and Quantity.**—Star Band Co., Inc., engaged in business as a converter and distributor of hair ornaments, beach novelties, and household products, the latter including oilskin zipper pouches and also utility covers made of the same material, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Star Band Co., Inc., in connection with the offering for sale, sale, or distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from:

1. Stating or representing that the said products are odorless, when in fact they are not free from odor;

2. The use of pictorial or other representations on or in connection with its packaged products so as to import or imply or the effect of which tends or may tend to convey the impression or belief to prospective purchasers that the package contains a number or type and size of such products in excess of the number or type and size of products actually contained therein. (Feb. 19, 1942.)

3414. Quilt Covers—Composition, Quality, and Size.—Benjamin Wolovnick and Isidore Nusblatt, copartners trading as Carol Textile Co., engaged in the wholesale distribution of quilt covers, among other merchandise, in interstate commerce, in competition with other partnerships and with corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Benjamin Wolovnick and Isidore Nusblatt, 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 of labels affixed to the products, in their invoices, or in any other way—

1. Of the term "80 Square" as descriptive of the fabric of which said products are made, and from the use of the said term or any similar expression in any way, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the fabric of which the products are made is composed of the designated number of threads or picks to the square inch, when in fact, the thread count is other than that indicated;

2. Of the term "Full Size" as descriptive of said products, and from the use of the said term in any way so as to import or imply that the said products are of a 72 by 84 inch size, as the term "Full Size" is understood in the trade. (Feb. 19, 1942.)

3415. Peat Product—Nature.—George S. Groves, an individual trading as National Peat & Humus Co., engaged in the business of selling a peat product 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 S. Groves agreed he will cease and desist forthwith from the use of the words "peat moss" as descriptive of the peat product offered for sale, sold and distributed by him in commerce, as commerce is defined by the Federal Trade Commission Act, and from the use of the words "peat moss" or "moss peat" 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 customers or prospective customers that said product is moss peat, that is to say, a product consisting chiefly of decomposed stems and leaves derived from species of Sphagnum mosses. (Feb. 19, 1942.)

3416. Water Filters—Qualities, Properties, or Results, Tests, Government Use, Indorsements, Etc.—Hygeia Filter Co., a corporation, engaged in the manufacture of a line of water filters including a stone type called the "Lynn Filter" 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.

Hygeia Filter Co., in connection with the offering for sale, sale, or distribution of its products in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner set forth, agreed forthwith to cease and desist from representing, directly or inferentially:

(a) That "pure" water is obtainable by filtration, or that filtration through the devices offered for sale and sold by it "purifies" the water or delivers it "absolutely free from all impurities," or removes all bacteria or takes out all suspended matter.

(b) That such filters are "absolutely germ proof" or in fact are germ proof as such term is commonly known to science and to the public; or that the largest and most reliable laboratories, or any laboratories, have so "proven"; or that bacteriological reports from such authorities are "on file," or in existence.

(c) That such filters are capable of rendering river water absolutely sterile, or by themselves can render any water sterile; or that on United States Government boats such filters are relied upon to make river water absolutely safe for drinking purposes.

(d) That the boiling of water-borne germs will not necessarily kill them or that many, or any, such germs require 244 to 254 degrees to be destroyed or that boiling and distillation of water deprives the human body of essential minerals and salts; or by implication or otherwise that the body depends to any appreciable extent upon its drinking water for such mineral and saline elements.

(e) That such filters are absolute proof against typhoid, diphtheria, cholera, malaria, or dysentery germs or have been approved by "leading authorities on sanitation" for such purpose; or would have any deterrent effect whatsoever upon diphtheria, malaria, or other germs not water-borne.

(f) That ice made from water filtered by such devices can be used without the least danger of contamination.

(g) That clothes laundered in filtered water do not require bleaching to be properly whitened or to remove stains.

(h) That the same water, circulated through such filters, can be used in a swimming pool for a month or more, or for any specified time, with "perfect safety."

The said Hygeia Filter Co. further agreed not to publish or disseminate any testimonials containing statements, assertions or implications contrary to the terms and spirit of the foregoing agreement; or any purported testimonials or reports, the originals of which are not available or the dates of which are not given, or which are antiquated, obsolete, or no longer reflect current scientific opinion. (Feb. 23, 1942.)

3417. Tents, Tarpaulins, Etc.—Weight or Quality.—Mellus Bros. & Co., Inc., a corporation, engaged in the sale and distribution of tents, tarpaulins, and other products made of duck or canvas in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships 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 cotton duck or canvas products industry and trade the weight of a duck or canvas product indicates the weight on a square-yard basis of the original grey goods used in the manufacture of such product. Commercial Standards CS 28-32, effective January 1, 1932, as adopted by representative manufacturers, distributors, and users of cotton-fabric tents, tarpaulins, and covers, read in part as follows:

"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. Such ounce weight designation on the fabric shall be carried to the nearest $\frac{1}{100}$ ounce * * *"

Mellus Bros. & Co., Inc., in connection with the sale and distribution of its tents, tarpaulins, or other products made of duck or canvas in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from designating or indicating as the weight of the fabric or material thereof any weight in excess of the weight per square yard of the original grey goods used in the manufacture of such products; or from the use of any figures, words, or symbols in sales promotional literature or in stamps or labels on such products which tend or may tend to cause the belief or impression that the weight per square yard of the original grey goods used therein is in excess of the true weight thereof. (Feb. 23, 1942.)

3418. Rugs, Carpets, Ironing Pads, and Mats—Composition.—Thermwool Products Co., Inc., a corporation, engaged in the business of manufacturing rugs and carpets, ironing pads and mats, 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.

Thermwool Products Co., Inc., agreed to cease and desist forthwith from the use of the word "wool" in connection with the word "Therm" as part of the corporate or trade name under which it advertises, offers for sale, sells, or distributes products not composed of wool in commerce, as commerce is defined by the Federal Trade Commission Act; and from the use of the word "wool" either alone or in connection or conjunction with the word "Therm" 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 impression or belief to purchasers or prospective purchasers that the said products are composed of wool. (Feb. 25, 1942.)

3419. "Effervescent Seltzer" and "Breath Purifier"—Safety, Competitive Containers, Qualities, Properties, or Results, Earnings or Profits, and Place of Business.—Honoroff Laboratories, Inc., engaged since about 1934, under the direction and active management of its president, Fred A. Honoroff, in the manufacture of an analgesic preparation and in the sale thereof, under the brand name "Effervescent Seltzer," in interstate commerce and also engaged in the sale, under the trade name Ritz Laboratories, of a so-called "Ritz Breath Purifier" in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Honoroff Laboratories, Inc., a corporation, and Fred A. Honoroff, an individual, agreed, that, in connection with the dissemination of advertising matter, by the means and in the manner above set out, of the preparation designated "Effervescent Seltzer," 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 and he will cease and desist forthwith from disseminating any advertisement which fails conspicuously to reveal therein that the said preparation should not be used in excess of the dosage recommended, since such use may cause dependence upon the drug, skin eruptions, mental derangement, or collapse, and that it should not be taken by, or administered to, children; *Provided, however,* That said advertising need contain only the statement:

"CAUTION: Use only as directed.",
if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said corporation and the said individual also agreed to cease and desist forthwith from offering for sale or selling in commerce, as defined by the act, the so-called "Effervescent Seltzer" preparation packed in containers whose dress or appearance is contrived or formed, as by means of the coloring effects, shape, design, and labeling used, or in any way, so as to simulate the dress or appearance of the containers in which merchandise is sold or offered for sale by a competitor, with the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that the aforementioned preparation is the commodity of a competitor.

Said corporation and the said individual also agreed, whether trading under the name "Ritz Laboratories" or under any other name, that, in connection with the advertisement, offering for sale, or sale of the preparation called "Ritz Breath Purifier," it and he will cease and desist forthwith from stating or representing in any manner that the said preparation will prevent bad breath or destroy breath odors, when in fact it only masks or disguises them.

Said corporation and said individual agreed that it and he will cease and desist forthwith from

1. representing any specified sum of money as possible earnings or profits of salesmen or distributors of the said preparation for any given period of time which is not a true representation of the average net earnings or profits consistently made by the said salesmen or distributors in the ordinary course of business under normal conditions and circumstances.

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

The said corporation and the said individual, trading as "Ritz Laboratories" or under any other name, also agreed to cease and desist from representing, as through the use of the words "New York" on their stationery or printed matter or in any other way, that they have or maintain an office or establishment in New York, when in truth, such is not presently the fact. (Feb. 27, 1942.)

3420. Razor Blades—Prices.—Club Razor & Blade Manufacturing Corporation, engaged in the wholesale distribution of razor blades, including a so-called "Fan" brand, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Club Razor & Blade Manufacturing Corporation, in connection with the offering for sale, sale, or distribution of its razor blades or

other products in commerce, as commerce is defined by the Federal Trade Commission act, agreed to cease and desist forthwith from the use on the containers of its products, or in its printed or advertising matter referring thereto, or in any other way, of any price marking or other means of purportedly representing the retail selling price of the products, when in fact, said price marking or purported selling price is fictitious, exaggerated, or in excess of the price for which said products are customarily sold in the usual course of retail trade. (Feb. 27, 1942.)

3421. Shoes—Competitors' Name or Label and Source or Origin.—Curtis Shoe Co., Inc., engaged in the manufacture of shoes and in the sale thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Curtis Shoe Co., Inc., in connection with the advertisement, offering for sale, sale, or distribution of its shoe products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from:

1. The use of the words "J. W. Stetson," or the word "Stetson," either alone or in connection or conjunction with any other word or letter, or in any way, so as to simulate the brand or label or name heretofore used by the Stetson Shoe Co., Inc., of Weymouth, Mass., in the sale and distribution of its shoes; and from the use of the word "Stetson" in any way in connection with the marking, stamping, branding, labeling, or advertising of its shoes, the effect of which tends or may tend to convey the belief to purchasers that said shoes are products made by or for or in accordance with the standards and specifications of the Stetson Shoe Co., Inc.

2. The use of the words "Hinchley & Haig, Bootmakers, Ltd.," or "Piccadilly British," or of any other word or words customarily identified with the British Isles, as a brand name for or to otherwise purportedly describe or refer to its domestically made products, the effect of which tends or may tend to convey the impression or belief to purchasers that the said products are of British origin. (Feb. 27, 1942.)

3422. Pharmaceutical Products—Qualities, Properties or Results, History, Success, Use, or Standing, Chemists, Manufacturer and Testimonials.—Verne N. Seeley, Herman P. Doyle, and Fred D. Grantham, copartners trading as Hoyt Chemical Co., engaged in the sale and distribution in interstate commerce of pharmaceutical products designated "Hoyt's Compound" and "Hoyt's Blue Laxa-Tabs," 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.

Verne N. Seeley, Herman P. Doyle, and Fred D. Grantham, agreed, and each of them agreed that, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, or the advertising, of the product designated "Hoyt's Compound" or any other product or preparation composed of substantially the same ingredients or possessing substantially the same properties, whether sold under such name or any other name or names, they will forthwith cease and desist from:

1. Representing, directly or inferentially, or providing others with a means to represent:

(a) That said product is a competent remedy or effective treatment for kidney distress or affections, biliousness, nervousness, rheumatism, stomach distress or ailments, bloating, indigestion, or colds.

(b) That the use thereof will build up resistance to colds; that it is a tonic or will tone up the system; or that its use will restore health, pep, or vigor or result in increased energy or more vitality.

(c) That it is an effective bowel regulator; that it will leave the intestinal tract pure and clean or free of poisonous waste matter; that it will cleanse or purify the blood stream; that it will relieve insomnia or induce sleep; that its use will relieve dizziness or spots before the eyes; that it is a weight reducer; or that it will prevent aging.

(d) That it is a new or modern discovery, a sensational preparation or is made by the foremost authority in the United States.

(e) That it is sold by all druggists or by druggists everywhere or that said copartners have sold boxcar loads thereof.

2. The use of the word "Chemical" as part of their trade name or the use of the word "Chemical" or "Chemists" or any other word or words of similar meaning in any manner so as to import or imply that they are chemists.

3. The use of the word "Manufacturing" or any other word or words of similar implication in any manner so as to import or imply or the effect of which tends or may tend to convey the belief that they make or manufacture the products sold by them or that they actually own and operate or directly and absolutely control a plant or factory in which such products are made or manufactured.

4. The use of testimonials containing any statements, assertions, or implications contrary to the terms and spirit of this agreement. (Feb. 27, 1942.)

3423. Shampoo—Prices.—F. W. Fitch Co., a corporation, engaged in the manufacture of a line of preparations for the hair, including "Fitch's Dandruff Remover Shampoo," 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.

F. W. Fitch 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 representing, by statements, reference, or suggestion, or from placing in the hands of others the means to represent that its No. 6 size bottle of shampoo is the "75¢ Size" or has a "Regular Retail Price of 75¢"; and from identifying any item of commerce by means of a fictitious or excessive price figure which does not reasonably indicate the going retail price or the market value thereof; or in any other way, directly or by implication, representing that its various types of merchandise have regular values and customarily sell for sums in excess of the prices actually charged the public therefor. (Feb. 25, 1942.)

3424. Floor Coverings—Nature of Manufacture.—Delaware Floor Products, Inc., a corporation, engaged in the business of manufacturing hard surface floor coverings 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.

Delaware Floor Products, Inc., in connection with the advertisement, offering for sale, sale, or distribution of its product designated "Kolorflor" or by any other name, in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the word "Inlaid" as descriptive of said product, and from the use of the word "Inlaid," either alone or in connection with any other word or words or in any other way, so as to import or imply that said product is a floor covering manufactured by the process or art of inlaying, when in fact the same is not inlaid.—(Mar. 2, 1942.)

3425. Tents Tarpaulins, Etc.—Weight or Quality.—H. Wenzel Tent & Duck Co., a corporation, engaged in the sale and distribution of tents, tarpaulins, and other products made of duck or canvas in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships 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 cotton duck or canvas products industry and trade the weight of a duck or canvas product indicates the weight on a square-yard basis of the original 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 Standards CS 28-32, effective January 1, 1932, as adopted by representative manufacturers,

distributors, and users of cotton fabric tents, tarpaulins, and covers, read 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 and 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. Such ounce weight designation on the fabric shall be carried to the nearest $\frac{1}{100}$ ounce * * *."

"It is recommended that no marking or sales descriptions be used referred to the finished or loaded weight of waterproof-treated cotton fabric tents, tarpaulins, and covers."

H. Wenzel Tent & Duck Co., in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of its tents, tarpaulins, or other products made of duck or canvas, agreed forthwith to cease and desist from designating or indicating as the weight of the duck or fabric thereof any weight in excess of the actual weight per square yard of the original grey goods used in the manufacture of such products; or from the use of any figures, words, or symbols on such products or the wrappings thereof or in invoices or other trade literature pertaining thereto which tend or may tend to cause the belief or impression that the weight per square yard of the original grey goods used in the manufacture thereof is in excess of the true weight of such original grey goods. (Mar. 2, 1942.)

3426. Jewelry, Silverware, Luggage, Gift Ware, Etc.—Prices, Discount, and Wholesale.—Henry J. Ludwig, an individual, engaged in the sale and distribution of jewelry, silverware, luggage, gift ware, 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.

Henry J. Ludwig, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of his jewelry, silverware, luggage, gift ware, or other merchandise to the purchasing public, other than the retail trade dealing in such products, agreed forthwith to cease and desist from the use of the words "list" or "discount," or from representing, directly or inferentially, that the

prices at which he offers for sale or sells his various products constitute a discount to purchasers or are wholesale prices, when in fact, said prices are the usual and customary prices at which he sells said products in the normal and usual course of business.

The said Henry J. Ludwig also agreed to cease and desist from the use or dissemination of the aforesaid so-called "SPECIAL CO-OPERATIVE DISCOUNT CARD" or any similar writing or device purporting to enable the holder or bearer to receive a "discount" or other financial advantage in the purchase of merchandise when the recipient or holder thereof does not in fact receive a credit, deduction, or other material financial or trade advantage based upon the usual and customary price of said merchandise. (Mar. 3, 1942.)

3427. **Flour and Feed Stuffs—Lottery.**—Cosby-Hodges Milling Co., a corporation, engaged in the sale and distribution of flour and feedstuffs in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Cosby-Hodges Milling Co., in connection with the sale and distribution of its flour or other products in commerce as defined by said act, agreed forthwith to cease and desist from:

(a) Supplying to, or placing in the hands of others, pull cards, prize drawing cards, or other lottery devices either with assortments of flour or other merchandise, or separately, which said pull cards, prize drawing cards, or other lottery devices are to be used, or may be used, in selling or distributing such flour or other merchandise to the public.

(b) Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (Mar. 3, 1942.)

3428. **Upholstery Fabrics—Mills.**—Mid West Mills, Inc., a corporation, engaged in the sale and distribution of upholstery 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.

Mid West Mills, Inc., in connection with the sale and distribution of its upholstery fabrics or other merchandise in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the word "Mills" as part of its corporate or trade name, and from the use of such word or any other word of similar implication or meaning in any manner so as to import or imply the effect of which tends or may tend to convey the belief or impression that it makes or manufactures the merchandise sold by it or that it actually owns and operates or directly and absolutely controls a plant

or factory in which such merchandise is made or manufactured. (Mar. 4, 1942.)

3429. **Pipe Tools — Composition and Qualities, Properties, or Results.**—Ridge Tool Co., a corporation, engaged in the business of manufacturing pipe tools, including pipe threading devices and chaser dies, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Ridge Tool Co., in connection with the advertisement, offering for sale, sale, or distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use:

1. Of the words "all-steel malleable-alloy" as descriptive of its pipe threading devices; and from the use of the word "steel," either alone or in connection with the word "all," or with any other word or words, so as to import or imply that said devices are composed of parts all of which are made of that metal properly designated and classified as "steel," when in fact, said parts, or any thereof, are not made of steel.

2. Of the words "semihigh-speed tool steel" as descriptive of its chaser dies; and from the use of the words "high speed"; either alone or in connection with the word "semi," or with any other word or words, the effect of which tends or may tend to convey the belief or impression to purchasers or prospective purchasers that the metal of which said tools are made is that type of metal-cutting tool steel that maintains its hardness and cutting ability practically unimpaired, as when heated to visible red temperature, when in fact, said tools are not made of metal of that type. (Apr. 4, 1942.)

3430. **Hearing-Aid Device—Comparative Merits, Qualities, Properties, or Results, Unique, and History.**—Mears Radio Hearing Device Corp., a corporation, engaged in the business of assembling a number of different types of hearing-aid devices, including one known as a vacuum tube crystal hearing-aid and which the said corporation designates "Aurophone Model No. 98," in interstate commerce; Charles W. Hoyt Co., a corporation, engaged in the advertising business and, for more than one year last past, has participated with the said Mears Radio Hearing Device Corp. in the preparation and dissemination of advertisements and advertising matter used by the latter corporation in connection with the offering for sale and sale of its aforesaid products in competition with other corporations and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Mears Radio Hearing Device Corp. and Charles W. Hoyt Co., in connection with the offering for sale, sale, or distribution of the hearing-aid device called "Aurophone Model No. 98" or by any other name, the said corporations and each of them agreed to cease and desist forthwith from disseminating or causing the dissemination of any advertisement or printed matter:

1. By United States mails, and in commerce, as defined by the Federal Trade Commission Act, for the purpose of inducing, and which is likely to induce, directly or indirectly, the purchase of said hearing-aid devices, and/or

2. By other means, for the purpose of inducing, and which is likely to induce, directly or indirectly, the purchase in commerce of said devices, that directly asserts, or imports or implies, or the effect of which tends or may tend to convey the belief to customers or prospective customers:

1. That the said device is better suited to supply the hearing-aid needs of persons regardless of the degree and kind of their hearing afflictions.

2. That it will assure all deaf or partially deaf persons clear, natural, and understandable sounds or will assure immeasurably better hearing under all conditions and on all occasions.

3. That it will retard deafness by stimulating and activating the ossicles in the middle ear, or that any improvement in hearing which may result from the use of said device is due to the fact that it stimulates or exercises the organs of hearing.

4. That the said device is an entirely new hearing-aid quite different from any other on the market or that it is the lightest or smallest hearing-aid now marketed. (Mar. 6, 1942.)

3431. Toilet Goods—Source or Origin and Domestic as Imported.—D'Orsay Sales Corp., a corporation, engaged in the sale and distribution of toilet goods, including perfumes and bouquets, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

D'Orsay Sales Corp., in connection with the offering for sale, sale, or distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use on its labels or boxes, in its advertising or printed matter, or in any other way, of the word "Paris," either alone or in connection or conjunction with any other word or words of French or other foreign derivation, so as to import or imply that the products so labeled or advertised are manufactured, mixed,

blended, or compounded in Paris, France, and imported, as finished products, into the United States of America: *Provided that*, When said products are domestically made or manufactured into the finished products from ingredients, all or a substantial portion of which have been obtained from France, and the word "Paris" is used to indicate the foreign origin of such ingredients, then in that case, such word shall be accompanied by some other word or words which shall indicate clearly that the finished products are made or manufactured in the United States of America, and that will otherwise indicate clearly that said finished products are not of French make or manufacture. The said corporation also agreed to cease and desist from the use in any way of the statement "designed by LaLique" in referring to its American-made bottle containers, the effect of which tends or may tend to convey the impression or belief to purchasers or prospective purchasers that said containers are other than of domestic make. (Mar. 6, 1942.)

3432. **Tuna Fish—Source or Origin and Domestic as Imported.**—Franco-Italian Packing Co., Inc., a corporation, engaged for some time past in the business of packing tuna fish and in the sale and distribution of such canned food product in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Franco-Italian Packing Co., Inc., in connection with the offering for sale, sale, or distribution of its domestically obtained tuna fish products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use on labels affixed to the containers of said products, or in any other way, of the word "Tonno" either alone or in connection with any other Italian word or words, pictorial representation, insignia, or otherwise, so as to import or imply or the effect of which tends or may tend to convey the impression or belief to purchasers or to the ultimate consumer that the said products are products obtained from the waters in or about the coasts of Italy and/or were imported from that country. (Mar. 6, 1942.)

3433. **Caskets—Qualities, Properties, or Results.**—Batesville Casket Co., a corporation, engaged in the business of manufacturing burial devices, including a metal casket called "Monoseal" which it has sold in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Batesville Casket Co., in connection with the offering for sale, sale, or distribution of its "Monoseal" casket in commerce, as com-

merce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from stating or representing in its advertisements and advertising matter of whatever kind or description, or in any other way, that the said casket possesses airtight and waterproof qualities and a tendency to effectively resist corrosion which will endure after its burial underground, or that the said casket will remain in such condition after burial as to afford or assure permanent protection or absolute security to the body encased therein "for centuries" or for any other stated period of time. (Mar. 10, 1942.)

3434. Photographs—Nonprofit or Eleemosynary and Veterans' Organization.—Blind and Disabled Veterans, Inc., engaged in the sale and distribution of photographs of the Tomb of the Unknown Soldier in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Blind and Disabled Veterans, Inc., in connection with the sale and distribution of photographs or other commodities in commerce as defined by said act, agreed it will forthwith cease and desist from representing that it is a nonprofit or eleemosynary corporation or that the proceeds from the sale of such pictures or other commodities sold by it have been or are being used in aiding or assisting blind or disabled veterans. (Mar. 10, 1942.)

3435. Candy—Lottery.—Griggs, Cooper & Co., a corporation, engaged in the business of manufacturing certain candy assortments and in the sale and distribution thereof under the adopted trade name "Sanitary Food Manufacturing Company," in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Griggs, Cooper & Co., whether trading under the name "Sanitary Food Manufacturing Company" or under any other name, in connection with the sale and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

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

2. Supplying to or placing in the hands of others, punchboards, push or pull cards or other lottery devices, either with candies or other merchandise, or separately, which said punchboards, push or

pull cards or other lottery devices are to be used, or may be used, in selling or distributing such merchandise to the public.

3. Selling, or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (Mar. 10, 1942.)

3436. Photographs—History and Special Price.—Underwood & Underwood, a corporation, engaged in the photography business and in the sale and distribution of photographs in interstate commerce, as commerce is defined by the Federal Trade Commission Act, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Underwood & Underwood, in connection with the sale and distribution of miniatures or photographs in commerce as defined by said Act, agreed forthwith to cease and desist from:

(a) Representing directly or inferentially, that any miniature or photograph which has not, in fact, been prepared for and displayed at an exhibit has been prepared for exhibition purposes or displayed at an exhibition.

(b) The use of the phrase "The extremely low price of \$12.50" or any other words or phrases of similar implication in connection with the sale of said "Gold Tone Miniatures"; or any representation which tends or may tend to convey the belief or impression to the purchasing public that the regular price at which a commodity is sold in the usual course of business is a special price or is less than the usual or regular price of such commodity. (Mar. 16, 1942.)

3437. Photographs—History and Special Prices.—Seymour M. Blaufarb, also known as Sidney M. Barton, trading as Continental Galleries, an individual, engaged in the sale and distribution of photographs designated "Gold Tone Miniatures" in interstate commerce, as defined by the Federal Trade Commission Act, 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.

Seymour M. Blaufarb, also known as Sidney M. Barton, in connection with the sale and distribution of miniatures or photographs in commerce as defined by said Act, agreed forthwith to cease and desist from:

(a) Representing, directly or inferentially, that any miniature or photograph which has not, in fact, been prepared for and displayed at an exhibit has been prepared for exhibition purposes or displayed at an exhibition.

(b) The use of the phrases "the extremely low price of \$12.50" or "regular price of such miniature when made on order is \$50.00" or any other words or phrases of similar implication in connection with the sale of said "Gold Tone Miniatures"; or any representation which tends or may tend to convey the belief or impression to the purchasing public that the regular price at which a commodity is sold in the usual course of business is a special price or is less than the usual or regular price of such commodity. (Mar. 16, 1942.)

3438. **Animal Feeds—Qualities, Properties, or Results and Comparative Merits.**—Charles Utley Noble and H. T. Noble, copartners trading as The Mor-Milk Co., engaged in the sale and distribution in interstate commerce of animal feeds designated "Mor-Milk for Calves" and "Mor-Milk for Pigs," 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.

Charles Utley Noble and H. T. Noble, and each of them, agreed that, in connection with the sale and distribution in commerce as defined by said Act or the advertising, by the means and in the manner above set forth, of their products designated "Mor-Milk for Calves" and "Mor-Milk for Pigs" or any other product or preparation composed of substantially the same ingredients, whether sold under such name or names or any other name or names, they will forthwith cease and desist from representing, directly or inferentially, or placing in the hands of others a means to represent:

(a) That said product or products constitute a competent remedy or effective treatment for "scours" or "worms" of calves, pigs, hogs, or other animals, or are efficacious in preventing such condition or conditions.

(b) That a 25-pound pail of said product or products is a substitute for or is comparable in feeding value to 1,200 pounds of whole milk; or, by any other comparison or statement, that the feeding value of said product or products is in excess of the true or actual feeding value thereof.

(c) That a mixture composed of 1 pound of such product or products and 10 gallons of water constitutes a rich and nutritious skim milk food; or that any mixture of said product or products with water or other product constitutes a rich, nutritious, or adequate food or diet when such mixture does not, in fact, constitute a rich, nutritious, or adequate food or diet as represented. (Mar. 16, 1942.)

3439. **Shoes—Source or Origin.**—E. E. Taylor Corp., a corporation, engaged in the business of manufacturing shoes at its factory in Augusta, Me., and in the sale thereof in interstate commerce, from its factory in Augusta, Me., and from its place of business in Boston,

Mass., as retail dealers in competition with other corporations and with individuals, firms, and partnerships likewise engaged entered into the following agreement to cease and desist from the alleged unfair methods of competition on commerce as set forth therein.

E. E. Taylor Corp., in connection with the offering for sale, sale, or distribution of its shoe products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the words "Cross & Cross Custom Boots Southampton" or "Churchill, Ltd., London" or of any other word or words usually associated with the British Isles, so as to import or imply and the effect of which tends or may tend to cause or convey the impression or belief to purchasers that the said products are of British origin. (Mar. 17, 1942.)

3440. Card Tables—Prices.—Shwayder Brothers, Inc., a corporation, engaged in the manufacture of card tables 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.

Shwayder Brothers, Inc., in connection with the sale and distribution of its card tables in commerce, as defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from using, or placing in the hands of others for their use, fictitious price labels or markings on said products or the packaging thereof; or representing as the customary or regular retail prices for such products, prices which in fact are fictitious and in excess of the prices at which said products are regularly and customarily offered for sale or sold at retail. (Mar. 17, 1942.)

3441. Home Recording Outfit—History, Qualities, Properties, or Results, Opportunities, Indorsements, Refunds and Guarantee.—Joseph Zweigenthal, a sole trader as Home Recording Co., engaged in the manufacture of a device designed to record and reproduce from phonographic records the human voice and musical and other sounds, 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.

Joseph Zweigenthal, in connection with the sale and distribution of his home recording device, or other commodities, in commerce as defined by the said act, agreed he will forthwith cease and desist from representing:

(a) That the recording outfit or unit offered for sale and sold by him as "Home Recordo" or any similar instrument or device is a new invention or is capable of making a professional-like record of singing, talking, or instrument playing; or in any other way representing directly or inferentially that such instrument is a suitable, efficient, or effective device to make auditions acceptable to a reliable radio or theatrical agency, or to bringing one's talents before the proper authorities or to the attention of "The movie stars, radio stars, stage in both Broadway and Hollywood".

(b) That said recording unit operates on "any electric or old type phonograph" either adequately or satisfactorily.

(c) That said device will enable one to find out if he has professional talents; or that "movie stars" or "radio stars" are "ever seeking new talent"; or that by the use of such instrument one might find fame and success in the entertainment field.

(d) That any professional musician, vocalist, or radio, movie, or theatrical star uses or has ever used said home recording outfit for checking music scores, for making records for their own collections, or for any purpose whatsoever; or by means of published pictures, statements, or inference, that any such artist has endorsed, recommended, or approved such instrument.

(e) That any purchaser who is "not absolutely satisfied," with Home Recordo will receive full refund upon return of the set within 3 days or other specified time; or that any refund is "guaranteed" when the conditions thereof, as for example, observance of instruction for operation, are not fully disclosed in the contact advertisements. (Mar. 19, 1942.)

3442. Candies—"Certified."—Luden's, Inc., a corporation, engaged in the business of manufacturing candies 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.

Luden's, Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist forthwith from the use of the term "Certified," either alone or in connection or conjunction with any other word, term, or phrase, or in any way, so as to import or imply or the effect of which tends or may tend to cause or convey the impression or belief to purchasers, or others, that the said merchandise has been tested and approved by an adequately equipped independent organization or agency engaged in the business of conducting impartial tests of the character indicated, when in fact, such merchandise has not actually been so tested and approved. (Mar. 20, 1942.)

3443. **Perfumes—Domestic as Imported.**—Theodore W. Messick, a sole trader as Themes-Perfumers, engaged in the sale and distribution of perfumes 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.

Theodore W. Messick in connection with the sale and distribution of perfumes or other commodities in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the word "French" as part of the trade designation for or as descriptive of a perfume or other commodity made in the United States, and from the use of any word or term of like import which has or may have the capacity or tendency to cause the belief that such domestic merchandise was manufactured or compounded in France or other foreign country. (Mar. 26, 1942.)

3444. **Dresses Lingerie, Etc.—Designer and Manufacturer.**—Janalene, Inc., a corporation, engaged in the sale and distribution of dresses, lingerie, and other wearing apparel in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Janalene, Inc., in connection with the sale and distribution of its products in commerce as commerce is defined by the Federal Trade Commission Act, agreed it would forthwith cease and desist from representing by means of statements or depictions or in any manner, directly or inferentially:

(a) That it is a designer of dresses, lingerie, or other wearing apparel, or that it designs such products, until said products actually are designed by it.

(b) That it is a manufacturer of dresses, lingerie, or other wearing apparel, or that it manufactures such products, until said products actually are made or manufactured in a plant or factory owned and operated or directly and absolutely controlled by it. (Mar. 26, 1942.)

3445. **Wheat Germ Oil—Competitive Products, Qualities, Properties, or Results, Comparative Merits, Etc.**—Archer-Daniels-Midland Co., a corporation, engaged in the sale and distribution of a product designated "ADM Wheat Germ Oil" in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Archer-Daniels-Midland Co., in connection with the sale and distribution in commerce as defined by said Act or the advertising by the means and in the manner above set forth of its product designated "ADM Wheat Germ Oil" or any other product or preparation composed of substantially the same ingredients or possessing substantially the same properties, whether sold under said name or any other name or names, agreed forthwith to cease and desist from representing, directly or inferentially, or placing in the hands of others a means to represent:

(a) That the use of wheat germ oil or vitamin E produced by the solvent extracted process causes or may cause cancerous growths or cancer; or from any other representation which unwarrantedly disparages competitive products either as to the alleged danger incident to the use thereof or in any other material respect.

(b) That said product can be depended upon to overcome sterility of farm animals or make sterile animals fertile or to improve reproductive performance of livestock and poultry; or that its use assures strong, healthy calves, larger and stronger litters of pigs, or increased egg production.

(c) That the rations ordinarily fed farm animals and poultry are deficient in vitamin E or require supplementing with vitamin E.

(d) That the use of vitamin E is indicated as a supplement to the ration of farm animals or poultry unless, in immediate connection with any such representation, it be clearly and unambiguously stated that the diet of such animals and poultry rarely is deficient in vitamin E and that any benefits claimed will be obtained only when there is a deficiency or suboptimal supply of such vitamin in the diet and then only when such vitamin is added to the ration in a quantity sufficient to supply such vitamin deficiency.

(e) That said product is a competent remedy or effective treatment for nervousness, lack of vitality, hay fever, dry skin and hair, or dandruff or that its use will prevent colds.

(f) That said product can be depended upon to overcome "Female Sterility" or affect women's ability successfully to conceive or bear children. (Mar. 27, 1942.)

3446. "Dry-Lube" Products—Earnings or Profits, Opportunities, and Success, Use, or Standing.—William L. Reardon, an individual trading under the names "Reardon Products Company" and "GrafiZe Products Company," engaged in the business of manufacturing products in tablet form for use in connection with gasoline, motor oils, and greases allegedly to make for better lubrication, sold and now sells said products, referred to as "Dry-Lube" 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 L. Reardon, whether trading under the name "Reardon Products Company" or under any other name, in connection with the advertisement, offering for sale, sale, or distribution of his product designated "Dry-Lube," or by any other name, in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from representing, either directly or by implication, (a) that prospective purchasers of his product can make profits or earnings which are in excess of the average net profits or earnings which have been theretofore consistently made by purchasers of his products in the ordinary and usual course of business or under normal conditions and circumstances; (b) that the said products have "captivated the motoring world" or that they offer "a gold mine" or an opportunity to "share in a vast profit bonanza" to agents or to those who undertake the sale of said products, when in fact, said products are not so widely or extensively known and in such demand by motorists as is indicated by such representations. (Mar. 27, 1942.)

3447. Ladies' Handbags—Composition and Nature.—Classy Leather Goods Corporation, engaged in the manufacture of ladies' handbags made from imitation leather, 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.

Classy Leather Goods Corporation, in connection with the sale and distribution of its handbags or other products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease from the use in its advertising, trade literature, or otherwise, either with or without contradictory explanation, of the words or terms "Calf," "Calf Grain," "Buffalo," "Buffalo Grain," "Antelope," "Alligator," "Lizard," "Crushed Kid," "Patent," "Morocco," "Shrunken Pig," "Pig Grain," "Pigtex," or other term of similar meaning, to designate or describe articles not actually made of the leathers so imported or implied; or in any way representing that products made of materials other than leather are leather products. If the name of a leather be used properly to describe the surface, grain, or appearance only, of said leather, then such word shall be immediately accompanied, in type of equal size and prominence, with another word or words clearly indicating that said designation refers only to the pattern or semblance of such material and not to the substance thereof; for example, "Imitation Calf Grain," "Imitation Alligator." (Mar. 27, 1942.)

3448. **Boats—Prices, Premiums, and Limited Stock and Offer.**—Frederick Stockhausen, a sole trader, as Kayak Boat Co., engaged in the manufacture of small boats of varied types, and in the sale and distribution thereof in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Frederick Stockhausen, in connection with the sale and distribution of his products in commerce as commerce is defined by the Federal Trade Commission Act, agreed he will forthwith cease and desist from representing that an offer of prices and/or premiums made periodically or otherwise in the ordinary or usual course of business is due to stock reduction, factory enlargement, or other unusual circumstances, or that the stock available at the prices so offered is limited in quantity; and from representing that prices or premiums are applicable for a limited time only, when in fact orders are accepted and filled after such time period has elapsed. (Mar. 30, 1942.)

3449. **Mattresses, Pillows, Etc.—Composition and New.**—John P. Dowd, an individual doing business as Bennettsville Mattress Factory, engaged in the business of manufacturing mattresses and pillows and, to some extent, in interstate commerce, in competition with other individuals, and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

John P. Dowd, in connection with the offering for sale, sale, or distribution of mattresses, pillows, or related products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. The use of the words "Cotton Linters" as descriptive of a mattress or a related product, the filling of which is not made from or composed of cotton linters.

2. Representing, by the use of the words "New Materials," or any other word or words of similar meaning or implication, that a mattress or related product or the filler thereof, which is made either in whole or in part from old, used, or second-hand materials, is new or is made entirely from new materials.

3. The use of the word "new" in connection with the word "Kopox," or with any other simulation of the word "Kapok" as descriptive of the filler of a product which is not made wholly from new Kapok material." (Mar. 30, 1942.)

3450. **Sound-Slide—Film Projectors or Equipment—History and Unique.**—The Magnavox Co., Inc., engaged in the manufacture of

sound-slide-film projectors or equipment and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The Magnavox Co., Inc., in connection with the sale and distribution of its aforesaid sound-slide-film projectors or equipment in commerce as defined by said act, agreed it will forthwith cease and desist from representing that said products are the most powerful made or the most powerful type ever manufactured. (Apr. 1, 1942.)

3451. Correspondence Courses—"Institute," Earnings, or Profits, Opportunities, Special Price, Etc.—Harold W. Underhill, an individual trading under the name "Minix Institute," engaged in the sale and distribution in interstate commerce, of a correspondence course of instruction represented to comprise some forty lessons designed to fit students thereof to become pest control operators, 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.

Harold W. Underhill agreed that in connection with the advertisement, offering for sale or sale of his correspondence course of instruction in commerce, as commerce is defined by the Federal Trade Commission Act, he will cease and desist forthwith from:

(a) The use of the word "Institute" as part of or in connection with the trade name under which he carries on his business, and from the use of the word "Institute" in any way which tends or may tend to cause the impression or belief to purchasers that the correspondence school operated by the said individual is an organization conducted for the promotion of learning, such as philosophy, the arts, or sciences, and has the equipment and faculty such as to entitle it to be designated an institute.

(b) Representing, directly or inferentially that the offered course of instruction is of such scope as would enable a student who lacks practical experience, to earn from \$35 to \$60 weekly as a pest control operator, or of any other stated amount in excess of what he actually would be likely capable of earning in view of his lack of experience.

(c) Representing that the course of instruction consists of any stated number of lessons in excess of what is actually the fact.

(d) Stating or representing that the price for which the course of instruction is offered for sale or sold is either special or reduced, when in fact said price is the regular price customarily charged for the course of instruction in the usual course of business. (Apr. 1, 1942.)

3452. Moth Protection and Cleansing Agent—Qualities, Properties, or Results.—Whisk Co. of New York, Inc., a corporation, engaged in the

sale and distribution of an alleged moth protection and cleansing agent designated "Whisk," in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Whisk Co. of New York, Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from representing or placing in the hands of others a means to represent that the use of "Whisk" as a treatment for rugs or other products containing wool or animal fibers renders such rugs or other products immune to attack by moths or that it affords positive or complete protections against damage by moths. (Apr. 1, 1942.)

3453. Venetian Blinds—Composition.—Clipay Corp., engaged in the manufacture of window shades, venetian blinds, and other household articles, and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Clipay Corp., in connection with the sale and distribution of its products in commerce as defined by said act, agreed it will forthwith cease and desist from representing that the slats of its venetian blinds are composed by Chestnut fibre, and from the use of the word "Chestnut" as descriptive thereof or with reference thereto, or in any other manner having the tendency or capacity to convey the impression or belief that such slats contain Chestnut either in whole or to any substantial degree. (Apr. 1, 1942.)

3454. Cleaning Fluid—Qualities, Properties, or Results.—Albert S. Bierfield, an individual trading as Alfield Co., engaged in the business of manufacturing a product intended primarily for use as a cleaning fluid on ladies' garments, and in the sale thereof under the trade designated "Spot Chek," in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Albert S. Bierfield in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from the use:

1. Of the statements "Stop Those Costly Lipstick Losses," "Removes Lipstick Stains," or of any other statement or representation of similar implication, so as to import or imply that the use of said product will have the effect of preventing or completely removing lipstick stains from all kinds of fabric materials.

2. Of the statement "Leaves no rings," or of any other similar representation, the effect of which tends or may tend to convey the belief that the said product, when applied only to the stain to be removed from certain kinds of garments, as silk or rayon, will leave no ring or will not cause a resultant discoloration. (Apr. 2, 1942.)

3455. **Fluorescent Mix—Safety.**—Harry Weiss, an individual trading under the name "Superior Neon Products Company," engaged for some time past in the business of manufacturing a fluorescent mix containing denatured alcohol as a vehicle or solvent medium and designed to coat the inner surfaces of glass tubes, such as are used for neon light signs, under the brand name "Pioneer," 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 Weiss, trading as "Superior Neon Products Company," or under any other name, agreed that in connection with the advertisement, offering for sale, sale, or distribution of his product called "Pioneer" or by any other name, in commerce, as commerce is defined by the Federal Trade Commission Act, he will cease and desist forthwith from stating or representing in any manner whatsoever that fluorescent mixes or compounds which use methyl or wood alcohol as a vehicle, or that the fumes or vapor generated by the use of said product, are dangerous or constitute a hazard to the health of those who use the said product to coat the inner surfaces of glass tubes. (Apr. 2, 1942.)

3456. **Pillows—Composition.**—Vitkin, Lee Feather Co., engaged in the business of manufacturing pillows 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.

Vitkin, Lee Feather Co., in connection with the offering for sale, sale, or distribution of its pillows, or other related products, in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from the use of the term "100% White Goose Down" on labels affixed to said products or in any way as descriptive of products which actually are not so filled; and from the use of the word "down" either alone or in connection with the word "goose" 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 cause or convey the impression or belief that the said products are filled entirely with down or that they do not contain any material or substances other than down. (Apr. 2, 1942.)

3457. **Hosiery—Doctor's Design or Supervision, Qualities, Properties, or Results, Etc.**—David M. Conn, an individual, engaged in the wholesale distribution of hosiery, in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

David M. Conn in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from:

(a) The use of the abbreviation "Dr." or of the word "Doctor" either with or without the name "McKenzie," or any other word, term, or expression connoting a doctor of medicine or physician in connection with or as part of a trade designation for his hosiery; or in any other way, so as to import or imply that there is a physician or doctor of medicine connected or associated with the manufacture thereof or that such merchandise has been made under the supervision or advice of a physician.

(b) The use of the word "Health" as part of the trade designation for or as descriptive of hosiery products offered for sale and sold by him, or of any other word or assertion which imports or may import or imply that said hosiery has special health features capable of warding off or ameliorating disease or pain—for example, "Recommended by Dr. E. McKenzie." (Apr. 3, 1942.)

3458. **Silverware—Prices, Discounts, and Manufacturer.**—The Heather-Mathews Co., Inc., a corporation, engaged in the sale and distribution of silverware and other merchandise, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The Heather-Mathews Co., Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from:

(a) Using the term "list prices" or any other term of similar import or meaning to designate, describe, or refer to prices which are not, in fact, bona fide retail prices, established by actual retail sales of said products or similar products of comparable value sold in the usual and normal course of business.

(b) Representing, directly or inferentially, that a fictitious or marked-up price is a "low" price or is the customary or usual price of such products; or that "Chairmen of Trophy Committees" or any other persons or organizations are accorded discounts or price reductions of 40 percent or any other percentage or amount not in fact based upon

bona fide list or retail prices established by actual retail sales or established by the retail prices of similar products of comparable value sold in the usual or normal course of business.

(c) The use of the word "manufacturing" or any other word or words of like meaning to designate, describe or refer to its business, or in any manner so as to import or imply that it makes or manufactures the products sold by it or that it actually owns and operates or directly and absolutely controls a plant or factory in which such products are made or manufactured. (Apr. 3, 1942.)

3459. **Dry Cleaning Fluid—Mothproofs.**—Research, Inc., a corporation, engaged in the production and packing of a dry cleaning fluid and in the sale thereof under the brand name "Des-Tex," in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Research, Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from stating or representing that said product "mothproofs as it cleans" fabrics to which it is applied, and from the use of the term "mothproof" in any way so as to import or imply that the application of said product to fabrics will render them immune from the attacks of moths or moth larvae. (Apr. 3, 1942.)

3460. **Medicinal Preparation—Comparative Merits, Qualities, Properties, or Results, Composition, Safety, Etc.**—Robert C. Harman, an individual trading as Carob Products Co., engaged in the business of bottling a certain preparation and in the sale thereof under the brand name "Thypernal," 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.

Robert C. Harman in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from stating or representing, directly or inferentially, that the said product has five times the killing power of carbolic acid; that it may be freely used on burns; that its use, as a first aid application to wounds, will arrest dangerous infections instantly; that it will heal or promote healing of the wounds; that it will effectively kill germs even though it be diluted 400 times; that it would be effective against Athlete's foot or would relieve pain; that it contains no drugs; that it obviates the necessity of any other cleansing agent when it is used; that it is absolutely or positively nonpoisonous, without proper qualification; or that staphylococcus aureus is not difficult to control. (Apr. 6, 1942.)

3461. Shoes—Doctor's Design or Supervision and Qualities, Properties, or Results.—Merritt Shoe Co., Inc., a corporation, engaged in the business of selling shoes, as a wholesale jobber, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Merritt Shoe Co., Inc. in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from the use of the words "Dr. Merritt's Health Shoes" in connection with the marking, stamping, or branding of its aforesaid children's shoes; and from the use of the word "Doctor" or the abbreviation "Dr.", either alone or in connection with a name or with the word "Health" or with any other word or words as a trade name, brand or designation for its products, or in any other way, so as to import or imply or the effect of which tends or may tend to convey the belief or impression to purchasers or prospective purchasers that the said products have been made in accordance with the design or under the supervision of a physician and/or that they contain special scientific, orthopedic, or health features which are the result of medical determination or services. (Apr. 6, 1942.)

3462. Stationery—Nature and Composition.—Milton Paper Co., Inc., a corporation, engaged in the sale and distribution of stationery in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships 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 Paper Co., Inc., in connection with the advertisement, offering for sale, sale, or distribution of its stationery in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the term "linen" as a brand name or watermark for, or in any way to designate or refer to, those of its paper commodities which are not made from linen. (Apr. 8, 1942.)

3463. Leather—Nature and Composition.—Allied Kid Co., a corporation, engaged in the tanning business and in the sale and distribution of leather in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Allied Kid Co., in connection with the sale and distribution in commerce as defined by said act of leather not made from the hide of an alligator, agreed to cease and desist from the use of the words "Alligator Doeskin" as descriptive of said product and from the use of

the words "Alligator Doeskin" or the word "alligator" in any way so as to import or imply or the effect of which tends or may tend to convey the belief that such product is made from the hide of an alligator. (Apr. 8, 1942.)

3464. **Bowl Covers—Qualities, Properties, or Results.**—Richards, Boggs & King, Inc., a corporation, engaged in the business of manufacturing bowl covers and other articles of merchandise made from a synthetic material called Pliofilm and which consists of rubber and a plasticizer, which it sells in interstate commerce, in competition with other corporations and with individuals, firms, and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Richards, Boggs & King, Inc., in connection with the offering for sale, sale, or distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the word "Odorless," or of any other word or term of similar implication, with reference to or as descriptive of bowl covers or other articles of merchandise made from Pliofilm which are not, in fact, odorless—free from odor. (Apr. 8, 1942.)

3465. **Men's Shirts—Composition and Qualities, Properties, or Results.**—Barry Morell Manufacturing Co., Inc., a corporation, engaged in the sale and distribution of men's shirts in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Barry Morell Manufacturing Co., Inc., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use of the word "Crepe" or the coined word "Silko" or any other words or coined words connoting silk in or on advertisements, trade literature, labels, invoices, or otherwise to designate or describe fabrics or merchandise not composed of silk, the product of the cocoon of the silkworm. If the products are composed in part of silk and in part of some other fiber material, and the word "Silk" or similar word is used to refer to the silk content of such products, then such word, whenever used, shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that the products are not composed wholly of silk. If the fiber other than silk constitutes the major content of such products, the name of the predominating material shall precede the word "Silk," as for example, "Cotton and Silk."

(b) Advertising, branding, labeling, invoicing, selling, or offering for sale shirts or other products composed in whole or in part of rayon without clearly and unequivocally disclosing such rayon content on or in each advertisement, brand, label, invoice, or other sales media pertaining thereto; and, when the product is composed in part of rayon and in part of a material or materials other than rayon, from failing to disclose in such trade literature each constituent fiber or material by name in the order of its predominance by weight, beginning with the largest single constituent.

(c) The use of the term or word "Full Shrunk" or other word or words of like import, as descriptive of goods which are not in fact shrinkage-proof or nonshrinkable or have not been fully shrunk to the extent that no residual shrinkage is left remaining therein. If the term "Shrunk" or similar term or terms be properly used to indicate that goods have undergone the application of a shrinking process but as to which there remains a certain amount of residual shrinkage, then such term or terms shall be accompanied, as an integral part thereof, and in immediate conjunction therewith, by a statement definitely and clearly indicating in percentage or percentages the amount of residual shrinkage remaining in both the warp and the filling or in the warp or filling, whichever has the greater residual shrinkage, for example, "Shrunk—Will not shrink more than —% under Commercial Standards CS59-36." (Apr. 23, 1942.)

3466. **Cosmetics—Prices, Value, Special, or Limited Offer, Coupons, and Source, or Origin.**—Albert H. Bach and Pincus Bach, copartners, trading under the firm name of The Beauty House, engaged in the sale and distribution of a line of cosmetics under the brand name "Beauty House" in interstate commerce, in competition with other firms and partnerships and with individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Albert H. Bach and Pincus Bach, and each of them, in connection with the offering for sale, sale, or distribution of their merchandise in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner set forth, agreed forthwith to cease and desist from:

(a) Representing as the customary or regular prices of their products, prices, and values which are in fact fictitious and in excess of the prices at which such products are customarily offered for sale.

(b) Quoting a figure purporting to be the regular or actual value of an article of merchandise in excess of the price for which the same or similar merchandise is sold or may be available in the retail market in the usual course of business.

(c) Representing that an offer of the regular price charged for an article is "introductory" or limited as to time; or in any other manner representing that the advertised offer is unusual or special so long as no price reduction or other trade concession is made therewith.

(d) Representing that any articles of merchandise regularly sold in connection with the use of a coupon or similar device have any value in excess of the actual money price required to be paid; that by mailing such coupon "today," or at all, the customer will "save \$5.25" or any sum whatsoever; or otherwise, that a coupon, certificate, or like contrivance has any monetary or preferential value in the purchase of an article which is regularly sold with or without the same at the price required to be paid.

(e) Designating or referring to their blend of face powder as "Hollywood;" or the use otherwise, of geographic or cosmetic names or terms betokening an origin, process, or formula which the production so denoted does not in fact possess. (Apr. 14, 1942.)

3467. **Mattresses—Old as New, and Prices.**—Evansville Mattress & Couch Co., Inc., a corporation, engaged in the business of manufacturing bedding, including mattresses, 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.

Evansville Mattress & Couch Co., Inc., in connection with the labeling, tagging, or other advertisement of its products which are offered for sale, sold, or distributed in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. Designating, describing, or representing products which are made, either in whole or in part, of used or second-hand materials to be products made or containing all new materials.

2. Failing to clearly and unequivocally disclose that said products are composed in whole or in part, as the case may be, of used or second-hand materials.

3. The use on or in connection with said products of any false, fictitious, or misleading price representation which purports to be the retail sales price of said products but which, in fact, is in excess of the price for which said products are customarily sold in the usual course of retail trade. (Apr. 15, 1942.)

3468. **Bowl Covers and Food Bags—Qualities, Properties, or Results.**—Harold I. Nicholas, sole trader, as Marvel Products Co., engaged in the manufacture of a line of bowl covers and food bags, and in the sale and distribution thereof, under the brand name "Red Seal," 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.

Harold I. Nicholas, 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 "odorless" or other explicit or categorical term of similar implication with reference to or as descriptive of bowl covers, food bags or other articles of merchandise which are not in point of fact devoid of scent or odor. (Apr. 15, 1942.)

3469. **Fabrics for Bowl Covers, Etc.—Qualities, Properties, or Results.**—Electro-Technical Products, Inc., a corporation, engaged in the business of selling, in interstate commerce, fabrics treated with a coating composed of various mixtures, including formaldehyde or synthetic resin diluted with mineral spirits, to purchasers thereof who are engaged principally in the business of fabricating from such fabrics food container covers for bowls, dishes, glass bottles, and the like; said corporation engaged in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Electro-Technical Products, Inc., in connection with the offering for sale, sale, or distribution of its fabrics in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the word "odorless," or of any other word or term of similar implication, with reference to or as descriptive of said fabrics which are not, in fact, odorless—free from odor. (Apr. 15, 1942.)

3470. **Soaps and Toiletries—History, Time in Business, and Manufacturer.**—Shulton, Inc., engaged in the sale and distribution of soaps and toiletries in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Shulton, Inc., in connection with the sale and distribution of its merchandise in commerce as defined by said act, agreed it will forthwith cease and desist from representing directly or inferentially that it is or has been, for 31 years or any other period of time, a manufacturer of soaps or toiletries, or that the products which it distributes are made in its own factory, or that it owns, operates or directly and absolutely controls the plant in which the same are compounded; or that by its president or otherwise, it supervises the creation or production thereof—as connoted or implied by expressions

such as "31 years of soap-making," "brings to the creation (of its products) the wealth of 30 years experience," and "Factory 1500 Hudson Street Hoboken New Jersey." (Apr. 1, 1942.)

3471. Knives and Forks—Composition and Qualities, Properties or Results.—United Wire Goods Manufacturing Co., Inc., engaged in the sale and distribution in interstate commerce of housefurnishing and hardware products, including knives and forks for table use, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

United Wire Goods Manufacturing Co., agreed that in connection with the sale and distribution of its knives and forks in commerce as defined by the Federal Trade Commission Act, it will forthwith cease and desist from:

(a) Using the word "stainless" as a designation for or as descriptive of its said products, and from the use of the word "stainless" or other word or words of similar meaning in any way so as to import or imply that such products are made of stainless steel.

(b) Representing, directly or inferentially, that such products have been rendered resistant to corrosion by an alleged stainless plate process or any process, or that they are corrosion resistant. (Apr. 21, 1942.)

3472. Bowl Covers, Food Bags, Etc.—Qualities, Properties, or Results.—Benjamin J. Levinson and Molly Levinson, copartners, trading under the firm name of Fabric Products Manufacturing Co., engaged in the manufacture of bowl covers, food bags, and similar items under the trade designation "Frigerettes," and in the sale and distribution thereof in interstate commerce, in competition with other firms and partnerships and with individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Benjamin J. Levinson and Molly Levinson, and each of them, in connection with the sale and distribution of their products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the word "odorless" or other explicit or categorical term of similar implication with reference to or as descriptive of bowl covers, food bags, or other articles of merchandise which are not in point of fact devoid of scent or odor. (Apr. 21, 1942.)

3473. Butane Gas Systems—Manufacturer.—Charles J. Bender and W. H. Bryant, copartners, trading under the firm name and style of "Automatic Gas Equipment Company," engaged in the sale of so-

called butane gas systems in interstate commerce, from a plant or factory in Texas, where the various parts composing the gas systems have been assembled into the finished complete products, to purchasers thereof located in other States, in competition with other partnerships and with individuals, 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.

Charles J. Bender and W. H. Bryant, in connection with the offering for sale, sale or distribution of their so-called butane gas systems in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use, in their advertising or printed matter of whatever kind or description, of any photographic or picture display of a building, as a plant or factory, either alone or in connection or conjunction with the word "manufacturers," or with any other word or words of similar implication, so as to import or imply, or the effect of which tends or may tend to convey the belief or impression that the copartners, trading as Automatic Gas Equipment Company, or under any other name, actually own and operate or directly and absolutely control the building displayed in their advertising. The said copartners also agreed to cease and desist from the use of the word "manufacturers" or of any other word or words of similar import as descriptive of their identity with respect to the tank or any other designated part or parts used in the construction of their gas systems, but which designated parts are not made or manufactured by the said copartners. (Apr. 22, 1942.)

3474. **Mattresses—Prices, Limited or Special Offers, and Manufacturer.**—Jerome L. Joss, an individual, doing business under the name "Mohawk Bedding Company," engaged in the sale and distribution of mattresses; called "Health Rest," 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.

Jerome L. Joss, in connection with the offering for sale, sale, or distribution of his mattresses in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use in his radio advertising, or in any other way:

1. Of any price figure which is represented or purports to be the regular retail price of each such mattress, but which price, in fact, is fictitious, that is to say, in excess of the price for which the mattress is customarily sold in the usual course of business.

2. Of any purported price representation, in connection with a suggested retail price of less amount, so as to import or imply or the effect of which tends or may tend to convey the belief or impression that the price of the mattress has been reduced and/or that the purchaser obtains for the lower figure a mattress customarily sold at the higher figure.

3. Of the phrase "Selling for a limited time only" or of any other phrase of similar implication, in referring to the advertised offer of a mattress, so as to import or imply that the offer is a special one or is one for a fixed period of time only and/or that it is other than the customary offer made in the usual course of business.

4. Of the words "makers of" or the phrase "Direct from factory to you" or of any other words, phrase or statement of similar implication, the effect of which tends or may tend to convey the impression or belief that the said Jerome L. Joss makes or manufactures the products offered for sale and sold by him, or that he actually owns and operates or directly and absolutely controls the plant, mill or factory in which said products are made or manufactured. (Apr. 21, 1942.)

3475. Gasoline Additive Preparation—Qualities, Properties, or Results.—John P. Wenston & Co., a corporation, engaged in the production of a gasoline additive preparation called "Wenston's Motor Life Gas Tonic," and in the sale and distribution thereof in commerce, as commerce is defined by the Federal Trade Commission Act, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

John P. Wenston & Co., in connection with the advertisement, offering for sale, sale, or distribution of its gasoline additive preparation in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from representing, either directly or inferentially, that the addition of said preparation to low grade gasoline will augment the power of such gasoline to that of high grade gasoline, that its addition to gasoline will increase the volatility thereof so as to assure easier starting and better running of a car in cold weather, that it will add 50 percent, or any appreciable amount, to the life of the motor, or that it will eliminate or prevent carbon and thereby, or otherwise, effect an appreciable reduction of engine friction or any increase in power economy. (Apr. 27, 1942.)

3476. Shampoo—Composition and Qualities, Properties, or Results.—Jean Jordeau, Inc., a corporation, engaged in the manufacture of cosmetics, and in the sale and distribution thereof in interstate com-

merce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Jean Jordeau, Inc., in connection with the offering for sale, sale, or distribution of its products in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner set forth, agreed forthwith to cease and desist from:

(a) Designating or referring to its shampoo as "waterless," or otherwise representing by statement or inference that said product contains no water.

(b) Representing, by the use of expressions such as "Eliminates dandruff," "Ideal for eliminating dandruff," or words or terms of like import, that said product or any similar preparation is a competent treatment or an effective remedy for dandruff; or in any other way, connoting that it will do more than remove the scales of dandruff, or that such removal is permanent in the sense that said scales will not recur.

(c) Representing that the use of said shampoo or of any preparation of like composition avoids, prevents or combats colds or head colds; or by statements of similar implication, that the same is a competent treatment or effective remedy for or an adequate preventive of colds. (Apr. 27, 1942.)

3477. Home Remedies—Qualities, Properties, or Results.—Perceville E. Walker, an individual, trading as P. E. Walker & Co., engaged in the preparation of two home remedies, one designated "Walker's Indian Herbs," the other "Walker's Health Tonic"; the formulae for the two preparations differ only in that the former contains a menthyl (sic) salicylate, while the latter does not contain such ingredient. The said individual has sold said products in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Perceville E. Walker, in connection with the advertisement, offering for sale, or sale of his commodities in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from stating or representing, either directly or through the use of testimonials, or otherwise,

1. That the commodity designated "Walker's Indian Herbs," or by any other name, will cure or be of any value in the treatment of diabetes, or that continued use of the said commodity will enable a patient to gradually use less insulin.

2. That the commodity called "Walker's Health Tonic," or by any other name, will be of value for stomach troubles and ulcers generally, or that it will clean the blood, restore action to the liver and kidneys, and remove gravel or gall stones and make one feel the thrill of youth again, or that it will serve other than as a bitter stomachic, a mild laxative, and a diuretic. (Apr. 27, 1942.)

3478. Artificial Flowers—Sources or Origin and Foreign as Domestic.—Burros & Burros, a corporation, engaged in the manufacture and importation of artificial flowers, 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.

Burros & Burros, in connection with the sale and distribution of its merchandise in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Representing in any manner that artificial flowers or other products made in Japan or any other foreign country are made or manufactured in the United States of America.

(b) Obliterating, concealing, or removing brands or marks indicating the foreign origin of artificial flowers or other merchandise made in Japan or other foreign country; or placing such merchandise either alone or commingled with domestic merchandise in containers which do not bear legible brands or marks fully informing prospective purchasers of the foreign origin thereof.

(c) Branding, labeling, invoicing, selling, or offering for sale merchandise made in Japan or other foreign country without clearly and definitely disclosing the country of origin thereof.

(d) The use of the words and initials "Made in U. S. A." or other words, initials or symbols of like meaning on packages containing artificial flowers or other products made in Japan or other foreign country: *Provided*, That if an assortment of artificial flowers or other merchandise consists in part of American-made products and in part of foreign-made products, and the words and initials "Made in U. S. A." or other statements of like meaning be used properly to designate only those products actually made in the United States of America, then such words and initials or statements shall be immediately accompanied in equally conspicuous type by suitable phraseology clearly and definitely indicating the country of origin of such foreign-made part of the assortment. (Apr. 27, 1942.)

3479. Luggage—Composition and Nature.—Abraham Klotz, trading as Acme Brief Case Co., an individual, engaged in the manufacture of luggage and 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.

Abraham Klotz, in connection with the sale and distribution of his luggage in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of the words "split cowhide," "leather," or any other word or words connoting leather as a designation for or as descriptive of a laminated product containing paper or material other than leather, or a product which does not consist wholly of leather: *Provided*, That if the word or words "split cowhide," "leather," or other leather connoting word or words be used correctly to designate or describe the leather constituent of a product composed in part of a material or materials other than leather, then said word or words shall be immediately accompanied in equally conspicuous type by a word or words clearly, definitely, and truthfully describing the product as, for example, "paper-filled split cowhide." (Apr. 29, 1942.)

3480. Luggage—Composition.—J. & A. Friedberg, Inc., a corporation, engaged in the manufacture of luggage and 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.

J. & A. Friedberg, Inc., in connection with the sale and distribution of its luggage in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use of the word "Genuine" or other term or representation of similar import in any way as descriptive of split leather.

(b) Selling or offering for sale brief cases or other articles of luggage made of or containing split leather, unless stamps, tags, or labels showing that such leather is split or cut from the under side of the hide and is not top grain leather be attached or affixed thereto in sufficiently secure manner as to remain on the articles until they reach the ultimate purchaser or consumer after having passed through the ordinary channels of trade. If such brief cases or other articles of luggage are in fact composed of split cowhide, they shall be so designated. (Apr. 29, 1942.)

3481. Decalomania Letterings, Emblems, and Designs—Manufacture and Patent Applied For.—Mary S. Jacobs, sole trader, as Jaco-Lac Decal Co., engaged in sale and distribution of decalomania letterings, emblems and designs 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.

Mary S. Jacobs, in connection with the sale and distribution of her decalomania commodities or other items of merchandise in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Representing that she is a "Manufacturer" of decals and advertising decalomania, or in any other way importing or implying that she owns and operates or directly and absolutely controls the plants or factories in which the products sold by her are generally made.

(b) The use of statements such "Patent applied for," or assertions of similar meaning in connection with a book of decal letters or other unpatentable article so as to import or imply, or the effect of which is to convey or tend to convey the belief to purchasers that a patent is pending for said book or article; or that such purported application affords protection against infringement until issuance of a patent therefor. (Apr. 29, 1942.)

3482. **Electrical Supplies—Prices, Discounts, and Comparative Prices.**—Charles Mostow, an individual, trading as Majestic Electric Supply Co., engaged in the sale and distribution of electrical supplies 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.

Charles Mostow, in connection with the sale and distribution of his merchandise in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Representing or placing in the hands of others a means to represent that a fictitious or marked-up price is the customary or usual retail price of such merchandise.

(b) The use of excessive or delusory discount quotations, either alone or in connection with fictitious or marked-up price figures in any manner, so as to import or imply that resulting net prices are less than those of competitors. (May 1, 1942.)

3483. **Welders—Qualities, Properties or Results, Opportunities, Earnings or Profits, and Free Goods.**—Joseph H. Trindl, Inc., and Trindl Products, Ltd., also trading as Dynamic Welder Co. and as Electro-Torch Co., corporations, engaged in the manufacture of electric welding equipment, including welders designated "Dynamic Super-Charged Welder" and "3 in 1 Electric Torch," and in the sale and distribution thereof in commerce between and among various States of the United States, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following

agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Joseph H. Trindl, Inc., and Trindl Products, Ltd., and each of them, in connection with the sale and distribution of their said products in commerce as defined by said Act, agreed forthwith to cease and desist from:

(a) Representing, directly or inferentially, that automobile axles can be satisfactorily welded by the use of said welders; or that any metal or metal part which, due to its composition, weight, or thickness is not subject to successful welding by said welders, can be welded satisfactorily by the use thereof.

(b) Representing that persons generally, without training, experience, or mechanical skill can, by using their welders, do first class or professional quality welding, brazing, or soldering.

(c) Representing that inexperienced operators generally, by using said welders, will "make as much as \$15.00-\$20.00 a day" or \$5 in less than 1 hour; or otherwise representing any specified sum of money as possible earnings or profits which might accrue to purchasers of said welders by reason of their use thereof; which is not a true representation of the average earnings or profits consistently made by purchasers in the ordinary course of business and under normal circumstances.

(d) The use of the word "free" or other term or expression of like meaning to describe or refer to goods, when such goods are not a gratuity, and the recipient is required either to pay the purchase price thereof, to purchase some other article or articles, or to render some service in order to obtain the same. (May 20, 1942.)

3484. Pharmaceutical Preparation—Scientific or Relevant Facts, Qualities, Properties or Results, Safety and Price.—Edgar S. Gebhart, also trading as The Miami Advertising Agency, engaged in the sale and distribution of a pharmaceutical preparation designated "Old Mohawk," offered for use as a laxative, 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.

Edgar S. Gebhart, in connection with the advertising by United States mails or by any means in commerce, as defined by said Act, of the pharmaceutical preparation "Old Mohawk" or any other preparation composed of substantially the same ingredients or possessing substantially the same properties, whether sold under such name or any other name or names, agreed he will forthwith cease and desist from:

(a) Listing or designating symptoms of diseases or conditions which are not generally or usually caused by or directly associated with constipation, in any manner so as to represent directly or inferentially that

such symptoms are typical manifestations of constipation or that the presence of said symptoms indicates that the sufferer therefrom has constipation or is in need of a laxative; or representing that improper bowel elimination results in or causes poisons or a toxic condition in or of the system.

(b) Representing, directly or inferentially, that said preparation is a cure or competent remedy for dizzy spells, biliousness, gas, bloating, unsound sleep, pain in the arms, back of legs, stiffness or swelling, stomach acidity, rheumatic or neuritis pains, tired feeling, indigestion, or similar conditions; or that it has any therapeutic value except as a temporary laxative for the relief of constipation.

(c) Representing, directly or inferentially, that said preparation is or may be effective as a liver stimulant or as a treatment for maladies or diseases of the liver; or representing, by the use of statements such as "due to lazy liver," that the liver is other than an automatic organ.

(d) The use of the statement "Old Mohawk Bitters is beneficial to everybody" or other statement of like meaning in any manner so as to import or imply that any or all persons, regardless of condition of health, would be benefited by using said preparation.

(e) Disseminating or causing to be disseminated any advertisement pertaining to said preparation which represents, directly or inferentially, that its use is safe, or which fails to reveal the potential danger in the use thereof in the presence of nausea, vomiting, abdominal pain, or other symptoms of appendicitis: *Provided, however,* That if the directions for the use of such preparation, whether they appear on the label, in the labeling, or in both label and labeling, contain an adequate warning of its potential danger to health as aforesaid, said advertisement need contain only the cautionary statement: **CAUTION, Use only as directed.**

(f) Representing that the price regularly and customarily charged for said preparation is a special or reduced price or is other than the usual and customary price at which such preparation is sold in the normal course of business; or that said preparation originally sold for \$1.00 or for any other amount in excess of 49 cents. (May 26, 1942.)

3485. Pharmaceutical Preparation—Scientific or Relevant Facts, Qualities, Properties or Results, Safety, and Price.—J. W. Daugherty, an individual trading as Mohawk Medicine Co., and The Quaker Herb Co., also trading as The Quaker Medicine Co., engaged in the sale and distribution in interstate commerce of a pharmaceutical preparation designated "Old Mohawk" offered for use as a laxative, in competition with other individuals and corporations and with firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

J. W. Daugherty, and The Quaker Herb Co., and each of them, agreed; that, in connection with the sale and distribution in commerce as defined by said act, or the advertising by the means and in the manner above set forth, of the pharmaceutical preparation designated "Old Mohawk" or any other preparation composed of substantially the same properties, whether sold under such name or any other name or names, they will forthwith cease and desist from:

(a) Listing or designating symptoms of diseases or conditions which are not generally or usually caused by or directly associated with constipation, in any manner so as to represent directly or inferentially that such symptoms are typical manifestations of constipation or that the presence of said symptoms indicates that the sufferer therefrom has constipation or is in need of a laxative; or representing that improper bowel elimination results in or causes poisons or a toxic condition in or of the system.

(b) Representing, directly or inferentially, that said preparation is a cure or competent remedy for dizzy spells, biliousness, gas, bloating, unsound sleep, pain in the arms, back of legs, stiffness or swelling, stomach acidity, rheumatic or neuritis pains, tired feeling, indigestion, or similar conditions; or that it has any therapeutic value except as a temporary laxative for the relief of constipation.

(c) Representing, directly or inferentially, that said preparation is or may be effective as a liver stimulant or as a treatment for maladies or diseases of the liver or that its use promotes digestion or improves appetite.

(d) Disseminating or causing to be disseminated any advertisement pertaining to said preparation which represents, directly or inferentially, that its use is safe, or which fails to reveal the potential danger in the use thereof in the presence of nausea, vomiting, abdominal pain or other symptoms of appendicitis: *Provided, however,* That if the directions for the use of such preparation, whether they appear on the label, in the labeling, or in both label and labeling, contain an adequate warning of its potential danger to health as aforesaid, said advertisement need contain only the cautionary statement: CAUTION, Use only as directed.

(e) Representing that the price regularly and customarily charged for said preparation is a special or reduced price or is other than the usual and customary price at which such preparation is sold in the normal course of business; that said preparation sells or ever has sold for \$1 or any other amount in excess of 49 cents; or that offers to sell for a price of 49 cents or any other price are limited as to time when such offers are not actually limited as represented.
(May 26, 1942.)

3486. Cigarettes—Qualities, Properties or Results, and Comparative Merits.—Brown & Williamson Tobacco Corp., engaged in the manu-

facture of tobacco products including a mentholated brand of cigarettes known as "Kool" 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 as set forth therein.

Brown & Williamson Tobacco Corporation, in connection with the offering for sale, sale, or distribution of its products in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner above set forth, agreed to cease and desist from representing, directly or inferentially:

(a) That smoking of Kool cigarettes or any product of similar composition will keep the head clear during winter weather or at any other time.

(b) That one should "play safe" or "be on guard" by smoking Kools or that said cigarettes "give extra protection" or are an "excellent safe-guard" during cold months; or by statement or implication that they constitute a remedy for or a protection from colds, or that by changing to Kools one having a cold may expect healing or curative results.

(c) That the smoke from Kools is easier on one's throat than that of other cigarettes; leaves the nose and throat actually cleaner or clearer; or soothes, rests or relaxes the throat or mouth "no matter how hot the weather or how long or hard you smoke," or at all.

(d) That because of its menthol or other content, a smoker of Kools receives "extra benefit" during cold weather or at all; or, by the use of expressions such as "The beneficial head-clearing quality of menthol has made it a favorite ingredient in cold remedies for years," "Doctors know the beneficial head-clearing quality of menthol," or in any other way, importing, connoting or suggesting that the smoker of Kools thereby receives therapeutic benefits for colds or any other condition. (May 22, 1942.)

3487. Hair Preparation—Scientific or Relevant Facts and Qualities, Properties, or Results.—Mahdeen Co., a corporation, engaged in the manufacture of a hair preparation and in the sale and distribution thereof under the brand name or trade designation "Mahdeen," in interstate commerce, in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Mahdeen Co., in connection with the offering for sale, sale, or distribution of its products in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in

the manner above set forth, agreed forthwith to cease and desist from representing, directly or inferentially:

(a) That dandruff is the most common scalp trouble, in the sense of physical distress, ailment, or health affliction as denoted by such use of the term "scalp trouble."

(b) That Mahdeen is designed for the "correction" of dandruff, itching scalp, or falling hair; or, by similar statement or implication, that it is a competent treatment or an effective or reliable remedy for such conditions.

(c) That dandruff "disappears" after a few applications of Mahdeen or any number thereof, insofar as it would cease to be; or, by any similar statement or suggestion, that Mahdeen has the capacity to or may be relied upon to extricate or eradicate dandruff from the head of the user, or achieve more than a removal of the exfoliated scales of dandruff.

(d) That Mahdeen keeps the hair and scalp healthy or the scalp in fine healthy condition; that, without regard to circumstances, the Mahdeen three point program secures or maintains "perfect scalp health"; that Mahdeen "revitalizes" hair health; that millions of users have so found.

(e) That Mahdeen promotes the growth of hair or brings about a natural nourishment of the hair, by some purported effect on the sebaceous glands or in any other way.

(f) That Mahdeen is a competent or efficacious remedy for the treatment of exematic scalp trouble or any similar affliction. (June 1, 1942.)

3488. **Permanent Wave Pads—Comparative Merits and Prices.**—Herbert Lipman, Sidney R. Lipman, and Elmer Lipman, copartners, trading as Velva Supply Co., as Velva Beauty Products, and as Evans-Crowder Co., engaged in the sale and distribution of cosmetics and beautician supplies, including permanent wave pads designated "Patriot Croco Pads," 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.

Herbert Lipman, Sidney R. Lipman, and Elmer Lipman, and each of them, in connection with the sale and distribution of their permanent wave pads in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from representing, directly or inferentially, that permanent wave pads generally, sold in competition with their said pads, are made of or contain aluminum or aluminum foil; that their said pads are stronger or better than foil-flannel pads, or are 40 percent stronger or any stronger than all pads sold in competition therewith; that they undersell everybody; or that

their selling price or their margin of profit is less than that of all competitors. (June 1, 1942.)

3489. **Collar Cloth—Composition.**—Carleton Woolen Mills, Inc., a corporation; Edward P. Leveen, Sr., and Anna M. Leveen, copartners, trading as Edward P. Leveen and Co.; the said Carleton Woolen Mills, Inc., engaged in the manufacture of textile fabrics including so-called "collar cloth," a wool product which is used by clothing manufacturers as a reinforcement for the under side of coat collars, and in the sale and distribution thereof in interstate commerce, and the said Edward P. Leveen, Sr., and Anna M. Leveen, engaged in the sale and distribution in interstate commerce of "collar cloth" manufactured for them by the said Carleton Woolen Mills, Inc.; said corporation and copartners, engaged in competition with 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.

Carleton Woolen Mills, Inc., and Edward P. Leveen, Sr., and Anna M. Leveen, and each of them, in connection with the introduction or manufacture for introduction, into interstate commerce, or the sale, transportation, or distribution, in commerce, of their "collar cloth," or other wool product, agreed forthwith to cease and desist from manufacturing or delivering for shipment, or shipping, selling, or offering for sale in interstate commerce, any such product which is not marked with or does not bear a stamp, tag, label, or other means of identification showing and displaying upon the product in legible, conspicuous, and nondeceptive manner of form the percentage of the total fiber weight thereof, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of wool, reprocessed wool, reused wool, each fiber other than wool, if said percentage by weight of such fiber is 5 per centum or more, and the aggregate of all other fibers; the maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter; and the name of the manufacturer of the wool product and/or the name of one or more persons subject to section 3 of the Wool Products Labeling Act of 1939 with respect to such wool product.

It is understood that this stipulation shall be subject to and shall be carried out in accordance with the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations issued thereunder, and that the aforesaid Carleton Woolen Mills, Inc., and Edward P. Leveen, Sr., and Anna M. Leveen shall fully comply with the provisions of the said act and rules and regulations in manufacturing their said products for introduction into commerce or in the sale, transportation, or distribution thereof in commerce.

The terms "commerce," "wool products," "wool," "reprocessed wool," and "reused wool" shall be construed as having the respective meaning of these terms as set out in the Wool Products Labeling Act of 1939. (June 1, 1942.)

3490. **Livestock Preparation—Qualities, Properties, or Results, and Scientific or Relevant Facts.**—Lee Earl Simpson and Theodore S. Simpson, Jr., are copartners, trading under the firm name Raven Sales Co., engaged in the business of selling, in interstate commerce, various preparations designed for livestock, including a product designated Raven "Stopzit," manufactured by Raven Mills, Inc., a corporation, controlling interest of which is owned by the two individuals named above who serve as the president and the vice president-treasurer, respectively, of said corporation; said copartners in competition with other partnerships, corporations, individuals, and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Raven Mills, Inc., a corporation, and Lee Earl Simpson and Theodore S. Simpson, Jr., in their capacity as copartners, individuals or as officers of said corporation, in connection with the advertisement, sale or distribution of the product called Raven "Stopzit," or by any other name, in interstate commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of any statement, claim, or representation, the effect of which tends or may tend to convey the belief or impression to customers or prospective customers that the said product would constitute an adequate treatment for white scours or scours in sheep, swine, or cattle, or that the condition known as white scours is caused by changes in the weather. (June 1, 1942.)

3491. **Fish—Nature.**—Gloucester Fish Pier Fillet Co., Inc., a corporation, engaged in the sale and distribution of fresh and frozen fish in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Gloucester Fish Pier Fillet Co., Inc., in connection with advertisement, offering for sale, sale, or distribution of its food fish 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 "perch" as descriptive of such of said products as are, in fact, known to the consuming public as rosefish; and from the use of the word "perch" either alone or in connection or conjunction with the word "sea" or "ocean," or with any other word or words, in referring

to such rosefish product, so as to import or imply or the effect of which tends or may tend to convey the impression or belief to the consuming public that said product is perch or yellow perch. If, however, the words "Sea Perch" or "Ocean Perch" are used to designate or refer to rosefish, then in that case, the said words "Sea Perch" or "Ocean Perch," in each instance of such use, shall be immediately accompanied by the word "rosefish," or some other word or words, printed in equally conspicuous type and in such manner as to indicate clearly that said product is not perch or yellow perch. (June 1, 1942.)

3492. **Nursery Stock—Qualities, Properties, or Results, Special Price or Offer and Refunds.**—The Gardner Nursery Co., an Iowa common-law trust, engaged in operating a nursery and in the sale and distribution of plants, flowers, and other nursery stock in interstate commerce, in competition with corporations, firms, partnerships, 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.

The Gardner Nursery Co., in connection with the sale and distribution of its nursery stock in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) Making any deceptive, misleading, or exaggerated statement or representation concerning the size, quality, or probable growth or in any other material respect concerning its so-called "trees" or other nursery stock with the capacity or tendency to mislead or deceive purchasers, prospective purchasers, or the public relative thereto.

(b) Representing that the usual or customary price charged for its products or assortments thereof is a special, advertising, or introductory price or that an offer is "special" when, in fact, it is a regular offer.

(c) The use of the statement "it won't cost you a cent because we'll refund your money promptly" or other statement or representation of like meaning in any manner so as to import or imply that the entire amount paid by a purchaser, including the amount paid for packaging and mailing, will be refunded when, in fact, such entire amount is not promptly refunded as represented. (June 5, 1942.)

3493. **Eyeglass Devices—Qualities, Properties, or Results, and Prices.**—Beck Jewelry Enterprises, Inc., a corporation, engaged in the retail sale of jewelry and eyeglasses, which it ships to 29 retail stores operated by it in 8 different states, generally under the name "Beck Jewelry & Optical Company," and engaged in the sale of said products to the purchasing public, in interstate commerce, in competition with other corporations and with individuals and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Beck Jewelry Enterprises, Inc., in connection with the offering for sale and sale of its eyeglass devices, either directly or through its retail store agencies, agreed to cease and desist forthwith from the use, in advertisements or advertising matter of whatever kind or description disseminated in commerce, as commerce is defined by the Federal Trade Commission Act, of the term "Kant-Break" as a trade name for said devices or the lenses used in the construction thereof; and from the use of the said term or of the statement "they won't break," or of any other statement or representation of similar meaning or implication, so as to import or imply, or the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that said devices, or the lenses used in the construction thereof, are unbreakable or cannot be broken. The said corporation also agreed to cease and desist from the use in its advertising matter disseminated in commerce, as defined by said act, of the purported retail price "\$3.33" or otherwise to represent that its eyeglass devices equipped with the so-called "Kant-Break" lenses are being sold at retail for \$3.33, or any other designated price, when in fact the price customarily charged for such devices is in excess of the designated price. (June 5, 1942.)

3494. **Hair Preparation—Qualities, Properties, or Results.**—Alexander C. Brent, Jr., individual, trading as Cuban Cosmetic Co., engaged in the sale and distribution in interstate commerce of a cosmetic preparation for use on the hair, designated "Four-In-One Cuban Combination Hair Treatment," 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.

Alexander C. Brent, Jr., in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, or the advertising by the means and in the manner set forth, of the cosmetic preparation designated "Four-In-One Cuban Combination Hair Treatment" or any other preparation 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 the use of the statement "Restores the hair to its natural color;" or from any other representation of similar implication or meaning the effect of which tends or may tend to convey the belief or impression that said preparation, or the use thereof, will restore gray hair to its natural color. (June 7, 1942.)

3495. **Used Vacuum Cleaners—Old Parts as New, Maker, Direct from Factory, and Price.**—United Vacuum Cleaner Stores, Inc., a corporation, operating a number of retail stores, generally under the name "United Vacuum Cleaner Stores," located in different cities within the State of Ohio and from which it sells and has sold, not only its

own brand of new vacuum cleaner called "Good Housekeeper," but also various makes of trade-in or used vacuum cleaners, including the widely and well known Hoover vacuum cleaners manufactured by the Hoover Co., and which have been allegedly rebuilt by the United Vacuum Cleaner Stores, Inc.; sales of various types of such rebuilt vacuum cleaners have been and are now made by the latter corporation at its retail outlets in interstate commerce, in competition with other corporations and with individuals and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

United Vacuum Cleaner Stores, Inc., in connection with the advertisement, offering for sale, or sale of its reconstructed Hoover vacuum cleaner devices in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use.

1. Of the statement "new parts throughout" or any other statement of similar import as descriptive of those of such devices in which a part or parts used in the rebuilding thereof are not, in fact, new.

2. Of the word "genuine" in connection with the word "Hoover," in referring to said devices, so as to import or imply that all of the parts used in rebuilding said devices are of the same make or manufacture as the corresponding part or parts utilized in the construction of similar models of Hoover devices manufactured by the Hoover Company.

3. Of the phrase "Direct from Factory" or "Right off the Production Lines" or of any other phrase of like import, the effect of which tends or may tend to convey the impression or belief to prospective purchasers that the devices offered for sale and sold by said corporation have been made or manufactured or rebuilt from Hoover parts in the Hoover Company factory or that the said United Vacuum Cleaner Stores, Inc., is a factory representative of the Hoover Company.

4. Of "\$12.95" or of any other purported price figure, either with or without the pictorial representation of an indicated model of cleaner device, so as to import or imply that said price is the price of the cleaner device pictured or otherwise described or referred to, unless the designated price is in fact the price of and does refer to the device so pictured or described. (June 7, 1942.)

3496. Metal Household Appliances—Nature of Manufacture.—Keystone Silver, Inc., a corporation, engaged in the manufacture of metal household appliances, including two lines of houseware made from aluminum, and in the sale thereof in interstate commerce, in compe-

tion with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Keystone Silver, Inc., in connection with the advertisement, offering for sale, sale, or distribution of its wares in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the words "hand hammered," "hand wrought," or "hand forged" as descriptive of such of said wares as are not hammered, wrought or forged by hand; and from the use of the word "hand" in connection with the word "hammered," "wrought," or "forged," or with any other word or words, the effect of which tends or may tend to convey the impression or belief to purchasers or prospective purchasers that the said wares have been worked or fashioned into shape by hand, either in whole or in part, when in fact, they are not of such construction. (June 15, 1942.)

3497. Aluminumware Supplies—Nature of Manufacture.—L. Luria and Son, Inc., a corporation, engaged as jobber in the sale and distribution of aluminumware supplies including a line of so-called "Paisley" aluminumware manufactured by Keystone Silver, Inc., of New York, N. Y., in interstate commerce; the said L. Luria and Son, Inc., in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

L. Luria and Son, Inc., in connection with the advertisement, offering for sale, sale, or distribution of its wares in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the words "hand hammered" or "hand wrought" as descriptive of such of said wares as are not hammered or wrought by hand; and from the use of the word "hand" in connection with the word "hammered" or "wrought" or with any other word or words, the effect of which tends or may tend to convey the impression or belief to purchasers or prospective purchasers that said wares have been worked or fashioned into shape by hand, either in whole or in part, when in fact they are not of such construction. (June 15, 1942.)

3498. Pharmaceuticals, Biologics, and Serums for Animal Diseases—"Certified," Unique, Tested, Comparative Merits, and Competitive Products.—Norden Laboratories, a corporation, engaged in the manufacture of pharmaceuticals, biologics, and serums for animal diseases, 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.

Norden Laboratories, in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(a) The use on its labels or in its trade publicity of the word "certified" either independently or in connection with the word "Norden," as applied to a product the merit of which has not been duly authenticated by a competent, authoritative, independent agency; or of any word, term, or expression of like import having the capacity or tendency to cause the belief by purchasers that such product has received the attested approval of some competent authority, governmental, scientific, or commercial, or possesses merit or excellence as determined by sources or organizations other than the manufacturer or vendor thereof.

(b) Asserting or implying that its hog cholera serum is the only one certified out of 42 different brands by any governmental or other independent agency; or from the use of the word "certified" or any other word or words of like meaning in any manner so as to impart or imply that said serum has been certified by or received the attested approval of some competent, authoritative, independent agency, either governmental, scientific or commercial.

(c) Representing directly or by implication that said product is the only serum tested under U. S. B. A. I. supervision for purity and potency; or otherwise disparaging competitive products by unwarranted innuendo that they are not in the same manner tested, prior to marketing, under the supervision of the United States Bureau of Animal Industry. (June 15, 1942.)

3499. Brewers' Malt—Bribing Customers' Employees.—National Malting Co., engaged in the sale and distribution of brewer's malt in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships 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 Malting Co., in connection with the sale and distribution of its brewer's malt in commerce as defined by said act, agreed it will forthwith cease and desist from giving, or offering to give, sums of money, or other things of value to officials or employees of its customers or prospective customers, without the knowledge or consent of said customers, for the purpose of inducing said officials or employees to purchase its brewer's malt for use by their employers or to recommend the purchase of the same by their employers, or as payments to said officials or employees for having induced the purchase or recommended the use of said corporation's product by their employers. (June 18, 1942.)

3500. **Books—Quality, Composition, Size, Nature of Manufacture, and Value.**—Doubleday, Doran and Co., Inc., a corporation, engaged in the sale and distribution of books in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Doubleday, Doran and Co., Inc., in connection with the sale and distribution of its books in commerce as commerce is defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from publishing, or causing to be made or published, directly or indirectly, any misleading or deceptive statement or misrepresentation, whether in the form of advertisement, testimonial, endorsement, depiction, illustration, or other form of representation however disseminated or published, concerning the grade, quality, material, substance, size, manufacture, or value of the binding of any book or the lettering thereon. (June 18, 1942.)

3501. **Hair Preparation—Qualities, Properties, or Results.**—Etta Hector, an individual trading as Madame Hector Products Co., engaged in the sale and distribution in interstate commerce of a cosmetic preparation for use on the hair designated "Madame Hector's Pomado" or as "Mme. Hector's Pomado," 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.

Etta Hector, in connection with the sale and distribution in commerce as defined by said act, or the advertising by the means and in the manner above set forth, of the cosmetic preparation designated "Madame Hector's Pomado" or "Mme. Hector's Pomado" or any other preparation composed of substantially the same ingredients or possessing substantially the same properties, whether sold under such names or any other name or names, agreed she will forthwith cease and desist from representing, directly or indirectly, that said preparation or the use thereof will increase the growth of hair, prevent the loss of hair, or correct the cause of falling hair. (June 19, 1942.)

3502. **Blanket Binding Ribbons—Nature of Manufacture.**—Freydberg Bros., Inc., engaged in the manufacture of a binding ribbon, designated "blanket binding," in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Freydberg Bros., Inc., in connection with the sale and distribution of its said merchandise in commerce as defined by said act, agreed

it will forthwith cease and desist from advertising, branding, labeling, invoicing, selling, or offering for sale any blanket binding ribbons having cut edges unless full and nondeceptive disclosure of such process of manufacture is made by clearly and nondeceptively designating such process or method by the use of some generally understood descriptive term or terms; as, for example, "Cut-Edge Blanket Binding." (June 19, 1942.)

3503. **Blanket Binding Ribbon—Nature of Manufacture, Composition, and "Manufacturers."**—Poirier & Lindeman Co. and Beacon Cut Products Corp., New York corporations have their respective places of business in the city and State of New York. The said Beacon Cut Products Corp., engaged in the manufacture of a binding ribbon, designated "blanket binding" and the said Poirier & Lindeman Co., engaged in the sale and distribution of blanket binding ribbon in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Poirier & Lindeman Co. and Beacon Cut Products Corp., and each of them, agreed that, in connection with the sale and distribution of blanket binding ribbon or other merchandise in commerce as defined by said act, they will forthwith cease and desist from:

(a) Advertising, branding, labeling, invoicing, selling, or offering for sale any blanket binding ribbons having cut edges unless full and nondeceptive disclosure of such process of manufacture is made by clearly and nondeceptively designating such process or method by the use of some generally understood descriptive term or terms; as for example, "Cut-Edge Blanket Binding."

(b) Advertising, branding, labeling, invoicing, selling, or offering for sale products composed in whole or in part of rayon without clearly disclosing by the use of the word "rayon", the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or materials other than rayon, from failing to disclose each constituent fiber, in the order of its predominance by weight beginning with the largest single constituent, in immediate connection or conjunction with and in type equally conspicuous as the word "rayon."

Poirier & Lindeman Co. also agreed that, in connection with the sale and distribution of said merchandise in commerce as defined by said act, it will forthwith cease and desist from the use of the word "manufacturers" or any other word or words of similar implication in any manner so as to import or imply or the effect of which tends or may tend to convey the belief that it makes or manufactures the products sold by it or that it actually owns and operates or directly and abso-

lutely controls a plant or factory in which such products are made or manufactured. (June 19, 1942.)

3504. **Publications or Reprints—"Complete and Unabridged."**—Random House, Inc., engaged in business, under the adopted trade name "Modern Library," as a publisher of books, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Random House, Inc., in connection with the advertisement, offering for sale or sale of its publications, or reprints thereof in commerce as commerce is defined by the Federal Trade Commission Act, it will cease and desist forthwith from the use of the words "Complete and Unabridged" as descriptive of those of its publications, or reprints thereof, which are not, in fact, full, absolute, total, exact transcripts of the named author's work or works; and from the use of either the word "complete" or the word "unabridged," or of any other word or words of similar import, as descriptive of an abridged publication, or reprint thereof, the effect of which tends or may tend to convey the impression or belief that the text of such publication or reprint is a facsimile of the named or indicated author's work, with no part, or element thereof lacking. (June 26, 1942.)

3505. **Bronze Tablets or Plates—"Foundry" and Unique.**—United States Bronze Sign Co., Inc., and Bronze Tablet Foundry, Inc., a wholly-owned subsidiary of the aforesaid United States Bronze Sign Co., Inc., both engaged in the sale and distribution of bronze tablets and plates in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

United States Bronze Sign Co., Inc., and Bronze Tablet Foundry, Inc., and each of them, agreed that, in connection with the sale and distribution of their bronze tablets or plates in commerce as defined by said act, they will forthwith cease and desist from:

(a) The use of a trade name or corporate name which includes the word "Foundry" in combination with the words "Bronze Tablet" or words of like import, and from representing by statements such as "Buy Direct From The Foundry And Save," "For Complete Satisfaction Come To The Complete Plant," "Operates Its Own Foundry" or other statement or representation of like meaning, that they own or control a foundry, or that the bronze tablets or plates by them sold come direct from manufacturer to purchaser, unless and until they actually own and operate, or directly and absolutely control, the foundry or plant wherein is made any and all of the products by them

sold or offered for sale under such title or name or by or through any advertisement or other representation of ownership of such foundry or plant.

(b) The use of the statement "The Only Bronze Sign Co. In New York City That Operates Its Own Foundry" or other statement or representation of like meaning in any manner so as to import or imply that no other firm engaged in the sale of bronze tablets or plates in said city, casts or otherwise manufactures such products. (June 26, 1942.)

3506. **Watches—Reconditioned or Second-hand as New.**—The E. Ingraham Co., engaged in the manufacture of watches in interstate commerce in competition with other corporations and with individuals, firms, and partnerships 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 E. Ingraham Co., in connection with the sale and distribution of watches in commerce as defined by said act, agreed it will forthwith cease and desist from delivering or distributing to jobbers, retail merchants, or others any reconditioned, repaired, rebuilt, used, or second-hand watches unless it shall clearly, definitely and unambiguously indicate in its invoices and by means of labels or tags securely attached to or packaged with such watches that they are reconditioned, repaired, rebuilt, used, or second-hand. (June 26, 1942.)

3507. **Correspondence Courses—"Institute," Qualities, Properties, or Results, Success, Use, or Standing, Opportunities, Indorsements, Offices, Etc.**—The Pelham Institute of America, Inc., engaged in the sale and distribution in interstate commerce of home study courses of instruction including a course designated "Pelman Institute's Complete Course of Correspondence Instruction in Scientific Mind Training," in competition with other corporations and with individuals, firms, and partnerships 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 Pelman Institute of America, Inc., agreed that in connection with the sale and distribution in commerce as defined by said act of its home study courses of instruction, it will forthwith cease and desist from:

1. The use of the word "Institute" as part of its corporate or trade name; and from the use of the word "Institute" or other word of like meaning either alone or in connection with any other word or words in any manner so as to import or imply 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 that "Pelmanism" or said home study course: Discloses mysterious power; Performs miracles; Forces success; Brings success or accomplishment to carry one to his goal; Meets every modern, scientific test; Tones up the mind; Trains the mind as a physical instructor trains the body; Brings hidden, sleeping qualities into full development or dynamic action; Develops or molds character; Helps to make friends, create funds, or open the way to honor, wealth or happiness; Shows how to carry things through to success; Causes one to acquire qualities necessary for success; Re-creates faculties; Causes the will to become strong or decisive; Increases energy or enlarges capacities for enjoyment; Imparts the secret of self-confidence, of a powerful memory, of unflagging concentration, or of keen imagination; Shows how to banish forgetfulness, brain fag, indecision, self-consciousness, lack of ideas, mind wondering, lack of system, procrastination or timidity; Teaches one how to acquire a keen or infallible memory or a masterful personality; Is the "exact and unfailing science of success"; Imparts the ability "to do the things you want to do, to be what you want to be, to get what you want, and to get where you want"; or Opens the pathway of financial independence, causes money to flow in or assures success.

3. The use of misleading or exaggerated statements such as "This book has led 750,000 men and women to happiness, more successful careers."

4. Representing that "Pelmanism" can be depended upon to cause students thereof to attain financial, social, and intellectual success; or to receive quick promotion, doubled or trebled salary, or salary increases of 30 percent or 50 percent or other monetary advantages, or assure them the retention of their positions or enable them to save money.

5. The use of statements such as "You are only one-tenth as successful as you could be! Why? Because, you are using only one-tenth of your real brain-power"; or representing that faculties become atrophied through disuse.

6. Stating that "Pelmanism" is endorsed by the world's leading educators.

7. Representing that said corporation has offices in London, England; Melbourne, Australia; Durban, South Africa; Delhi, India; Paris, France; Stockholm, Sweden; or in any other city or place in which it does not in fact have offices.

8. Representing that such school has a staff or corps of trained psychologists or a faculty of instructors, or that students of said course receive personal instruction.

9. Representing that students completing its course of instruction or any other person who has no voice in the determination of the

policy of said corporation has been admitted to membership in or is a member of such corporation.

10. Making any other deceptive or misleading statement or representation concerning the character, nature, quality, value, or scope of the course or courses of instruction sold or offered for sale by said corporation with a tendency or capacity to mislead or deceive students, prospective students, or the public. (June 26, 1942.)

3508. Skiing Equipment—Manufacturer.—Siegmond Werner, Inc., engaged in the sale and distribution of ski poles, ski bindings, and other skiing equipment in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Siegmond Werner, Inc., in connection with the sale and distribution of its skiing equipment in commerce, agreed it will forthwith cease and desist from representing by statements such as "We manufacture what we Sell" or other statements of similar implication or meaning, that it is the owner of or controls a skiing equipment factory, or that the skiing equipment sold by it comes direct from manufacturer to purchaser, unless and until it actually owns and operates, or directly and absolutely controls, a factory or plant wherein is made any and all skiing equipment by it sold under such statement or representation. (June 30, 1942.)

3509. Watches—Reconditioned or Second-hand as New.—The New Haven Clock Co., a corporation, engaged in the manufacture of watches, and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The New Haven Clock 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 delivering or distributing to jobbers, retail merchants, or others any reconditioned, repaired, rebuilt, used, or second-hand watches unless it shall clearly, definitely, and unambiguously indicate in its invoices and by means of labels or tags securely attached to or packaged with such watches that they are reconditioned, repaired, rebuilt, used or second-hand. (June 30, 1942.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS¹

0304.² Drug Products—Qualities, Properties or Results, Composition, Comparative Merits, Manufacturer, Safety, Etc.—A. G. Luebert, an individual, 126 South Fifth Avenue, 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.

(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.

¹ The stipulations in question are those of the radio and periodical division with vendor-advertisers. Period covered is that of this volume, namely, November 1, 1941, to June 30, 1942, inclusive. For digests of previous stipulations, see vols. 14 to 33 of Commission’s decisions.

² Revised supplemental.

- (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 the statement; "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

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 the statement; "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

It is hereby stipulated and agreed that upon acceptance and approval by the Commission this revised supplemental stipulation supersedes and is to be considered in substitution of a certain supplemental stipulation previously submitted by A. G. Luebert and accepted and approved by the Federal Trade Commission on June 16, 1941,¹ and considered supplemental to a stipulation (No. 0304) executed by A. G. Luebert and which stipulation was accepted and approved by the Federal Trade Commission on May 23, 1932, and which stipulation remains in full force and effect. (Dec. 23, 1941).

0904.² Carded Merchandise—Employment, Terms and Conditions, Free, Opportunities and Unique.—H. B. Laymon, an individual, trading as World's Products Co., Spencer, Ind., vendor-advertiser, was engaged in selling merchandise mounted on cards for display on store counters variously designated Laymon's Carded Merchandise and Laymon's Display Cards For Counter Use and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That he is seeking men for employment by him to solicit steady sales routes or that established routes are available or that he is seeking persons to take over or handle established routes unless it is explained in direct connection therewith that such routes as are available must be purchased from their individual owners.

(b) That no money or capital is needed by prospective agents, salesmen, distributors, dealers, or other representatives, or that merchandise, samples, sales kits, or other items are supplied without charge.

(c) That his counter-display-card merchandise is the only such line which is nationally advertised.

(d) That he furnishes agents, salesmen, distributors, dealers, or other representatives with service cars or delivery trucks, or that acting as his agent, salesman, distributor, dealer, or other representative makes possible the owning or use of one of his service cars or delivery trucks without the purchase thereof.

The said H. B. Laymon, agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 4, 1941.)

01239.² Washing and Bleaching Solution—Qualities, Properties or Results, and Tested.—J. L. Prescott Co., a corporation, 27 Eighth Street, Passaic, N. J., vendor-advertiser, was engaged in selling a sodium hypochlorite washing and bleaching solution designated "Oxol" and

¹ See 33 F. T. C. 1715.

² Supplemental.

agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That Oxol is a sterilizer, or sterilizes.
- (b) That Oxol kills all germs or bacteria in dishwater within three minutes after being added.
- (c) That Oxol removes grease stains.
- (d) That Oxol removes all stains from tile and porcelain.
- (e) That Oxol is kind to the hands.
- (f) That Oxol has been tested on the viri of common colds, measles and found to destroy them.

The said J. L. Prescott Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 1, 1942.)

01719.¹ **Cereal Products—Composition and Qualities, Properties, or Results.**—The Cream of Wheat Corp., a corporation, Minneapolis, Minn., vendor-advertiser, was engaged in selling a cereal product designated Cream of Wheat and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That Cream of Wheat contains all of the food values a person needs.
- (b) That cooked Cream of Wheat contains as much protein as soft cream cheese.
- (c) That cooked Cream of Wheat contains more carbohydrates than bread; and
- (d) That Cream of Wheat will supply strength when needed.

The said The Cream of Wheat Corp. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

It is further agreed that this stipulation is supplemental to a stipulation entered into on March 26, 1937,² between the Federal Trade Commission and The Cream of Wheat Corp., which stipulation remains in full force and effect. (Nov. 14, 1941.)

01780.¹ **Radio Receiving Sets—Economy or Saving, Manufacturer, Guarantee, Free Trial and Corporation.**—Chester Miller, an individual doing business as Goldentone Radio Co., 15123 Warren Avenue, Dearborn, Mich., vendor-advertiser, was engaged in selling a line of radio receiving sets under the brand name Goldentone and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That 50% or any other substantial amount of money can be saved by the purchase of his radios.
2. That he owns, operates, or controls the factory in which said radios are made or that said radios can be purchased from him at factory prices or that by purchasing said radios from him, that the profit of either a dealer, jobber, or salesman is eliminated.

¹ Supplemental.

² See 24 F. T. C. 1557.

3. That the guarantee issued by him to customers includes a guarantee of many years of trouble-free and enjoyable reception.
4. That a 10 day free trial or any free trial is given by him to a customer upon the purchase of one of said radios.
5. By the use of the word "President" in his guarantee or in any other manner that the business operated by him is a corporation.

The said Chester Miller agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Mar. 26, 1942.)

01906.¹ Medicinal Preparation—Qualities, Properties or Results, Safety, and History.—Pickgan Labrofacts, Inc., a corporation, 250 East Forty-third Street, New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation in tablet form designated Allay, alleged to be effective as an analgesic in such cases as headaches, rheumatism, and neuritis and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) Through the use of the word "pain" unqualified to indicate the types of pain for which the product normally will afford some measure of relief, or in any other manner that such preparation has any appreciable effect upon persistent and frequently recurring pain.

(b) Through the use of such terms and expressions as "pain banisher," "get rid of pain," "insure freedom from pain," "drives away pain," "kills pain," or in any other manner, that such product terminates pain or has any effect on pain in excess of affording temporary relief.

(c) That such product is safe for use, or that it is a new preparation on the market or affords a new method for relieving pain.

(d) That such product has any efficacy in preventing the development of colds, is an effective remedy for colds, or has any influence upon stuffiness, congestion, or coryza due to colds.

(e) That such product acts or commences to act in three seconds after the tablets are taken, or in any other manner that it produces effective results in any definite period of time.

The said Pickgan Labrofacts, Inc., further agreed not to publish or cause to be published, any advertisement which fails clearly to reveal that said preparation should not be used in excess of the dosage recommended since such use, if too frequent or long continued, may be dangerous; *Provided, however*, That such advertisement need only contain the statement; "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said Pickgan Labrofacts, Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 24, 1942.)

¹ Revised.

02101.¹ **Cosmetics and Drugs and a "Dream Book"**—Qualities, Properties or Results, Opportunities, Earnings or Profits, Nature, Free, Composition, Safety, Etc.—Lucky Heart Laboratories, Inc., a corporation trading as Lucky Heart Co. and Erbru Medicine Co., 388-400 Mulberry, Memphis, Tenn., vendor-advertiser, was engaged in selling various cosmetics and drugs and a "dream book," under the brand name of "Lucky Heart" products and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That application of its Bleaching Cream will make the skin ten or any other number of shades lighter, or that through its use one may have as light a skin as desired, or that it will brighten or lighten dark skin at all unless limited to a temporary lightening of the skin.

(b) That its Double Strength Cream gives the user light, smooth skin the first day.

(c) That its Lemon Bleaching and Cleansing Cream bleaches the skin or sinks deep into the pores, or brings out dirt or impurities.

(d) That the Instant Pink Cream keeps the skin young.

(e) That its perfumes will bring good luck to the user, that its Mystic Mojo will enable one to win or rule in love, or that its Fortune Telling and Dream Book will foretell the future or give lucky numbers or signs.

(f) That any of its products will rid the body of offending odors or prevent body odors.

(g) That any of its products prevents or kills dandruff or by any other terminology that any such product is a competent treatment or effective remedy for dandruff, unless limited to the removal of dandruff scales.

(h) That any of its products will stop falling hair.

(i) That any of its products removes, eradicates, corrects, or remedies pimples, blemishes, blackheads, or dark splotches, or clears rough, bumpy, sallow, or dark skin, or that any such product will cause such conditions to disappear, or by any other terminology that it is an effective remedy for or would cure any of such conditions.

(j) That its Vanishing Cream heals the skin, or makes the skin firm or beautiful, removes or prevents wrinkles.

(k) That its Rosebud Skin Bloom will give the skin new life, youth, or will prevent dry skin.

(l) That its Coconut Oil Shampoo will prevent scalp troubles.

(m) That it pays any salary to its agents, or that it will pay salaries to persons to give away samples.

(n) 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 earnings or profits which have theretofore been consistently made in like periods of time by its active full-time agents, salesmen, distributors, dealers, or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

(o) By the use of such words as "up to," "as high as," or other words or terms of like import, that prospective agents, salesmen, distributors, dealers, or other representatives can make earnings or profits within any specified period of time of any amounts which are in excess of the net average earnings

¹ Amended and substitute.

or profits within like periods of time made by a substantial number of its active full-time agents, salesmen, distributors, dealers, or other representatives in the ordinary or usual course of business and under normal conditions and circumstances.

Lucky Heart Laboratories, Inc., further agreed to cease and desist from the use of the phrase "hair grower" in the designation of any of its products or from otherwise representing, directly or indirectly, that any of its products will cause the hair to grow.

Lucky Heart Laboratories, Inc., further agreed to cease and desist from representing as "free" any article when the cost thereof is included in the price charged for other articles whose purchase is required as a prerequisite to the gift, or where any charge at all is made for the gift, unless the purchaser or recipient of the gift is fully apprised of all the terms and conditions of the offer in direct connection with the statement that the article is "free."

It is further agreed by Lucky Heart Laboratories, Inc., that in the dissemination of advertising by the means and in the manner above set out, for medicinal preparations now designated Erbru Laxative and Erbo, or any other preparations of substantially the same composition or possessing substantially the same properties it will forthwith cease and desist from representing directly or by implication:

(p) That its product heretofore designated Erbru Laxative contains herbs or roots in their natural or fresh state.

(q) That its preparation Erbo has any general systemic effect.

Lucky Heart Laboratories, Inc., further agreed to cease and desist from disseminating any advertisement for any laxative product which fails to reveal that it should not be used when abdominal pains (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 the dependence on laxatives: *Provided, however*, That such advertisement need only contain the statement: "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

Lucky Heart Laboratories, Inc., further agreed to cease and desist from the use of the phraseology "Coal Breaker" in designation of the product hereinbefore referred to as Coal Breaker Brand Pills, or any other brand name which represents directly or indirectly or by similarity of sound, that this product, or any other preparation of substantially the same composition or possessing substantially the same properties, will break a cold, or any other representation, by brand name or otherwise, that this product will relieve feverishness associated with colds.

The said Lucky Heart Laboratories, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

It is hereby further stipulated and agreed that upon acceptance and approval by the Commission, this stipulation supersedes and is to be considered in substitution of the stipulation herein referred to (No. 02101), previously submitted by the Lucky Heart Laboratories, Inc., and accepted and approved by the Federal Trade Commission April 7, 1938.¹ (Nov. 14, 1941.)

02711.² **Nose Drops—New, Rare, and Safety.**—A. Marks, an individual doing business as The Sumlar Co., 1 Sickles Street, New York, N. Y., vendor-advertiser, was engaged in selling a certain nose drop medicinal preparation designated Kloronol and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That said product is “new” or “rare.”

A. Marks further agreed that with respect to advertising for such product disseminated by the means and in the manner above set out, he will forthwith cease and desist from disseminating any advertisement representing directly or by implication that its continuous use is safe, or that it may be continuously used without harm in certain pathological conditions such as sinusitis, or which advertisement fails to reveal that its continued or frequent use may cause nervousness, restlessness or sleeplessness, and also fails to reveal that individuals suffering from high blood pressure, heart disease, diabetes or thyroid trouble, should not use this preparation except on competent advice, *Provided, however*, That such advertisements need only contain the statement, “CAUTION, Use only as directed,” if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

Said A. Marks further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement.

It is further stipulated and agreed that upon approval and acceptance by the Commission, this stipulation supersedes and is to be considered in substitution of stipulation No. 02711 previously submitted by the said A. Marks and approved and accepted by the Federal Trade Commission on the 10th day of January, 1941.³ (Dec. 18, 1941.)

02736.⁴ **Cosmetic Cream Preparation—Qualities, Properties, or Results, Comparative Merits and Composition.**—The Pompeian Co., Inc., a cor-

¹ See 26 F. T. C. 1467.

² Revised.

³ See 32 F. T. C. 1759.

⁴ Amended and substitute.

poration, 4201 Philadelphia Avenue, Baltimore, Md., vendor-advertiser, engaged in selling a cosmetic cream recommended as a cleansing agent for the skin and designated Pompeian Milk Massage Cream; and The Joseph Katz Co., a corporation, 16 East Mount Vernon Place, Baltimore, Md., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of The Pompeian Co., Inc., agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the use of Pompeian Milk Massage Cream will remove dirt to a greater extent than ordinary cleansing methods, including soap and water, or will remove "pore" deep dirt, or will do more than remove surface accumulation of dirt from the "pore" orifices; or

(b) That said cream, when used for blackheads or whiteheads, will do more than aid in or facilitate the mechanical removal of such skin blemishes; or

(c) That the use of said preparation will leave the face "looking years younger"; or

(d) That said preparation contains pure milk; or

(e) That said preparation will nourish the skin.

The said The Pompeian Co., Inc., and the said The Joseph Katz Co., and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 1, 1942.)

02741.¹ Medicinal Preparation—Qualities, Properties or Results, Safety, Comparative Merits, and Laboratories.—Sal-Fayne Corp., a corporation, Dayton, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation designated Sal-Fayne and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said preparation banishes headaches, distress after overindulgence, periodic pains or muscular pains or that said preparation is an effective remedy or competent treatment for post-operative pains, or that it has any therapeutic value in the treatment of the aforesaid disorders or conditions in excess of a palliative affording temporary relief; or

(b) Through the use of such words as "other aches and pains" or through the use of such an expression as "keeps you feeling fit" that said preparation is an effective remedy or competent treatment for aches or pains in excess of affording temporary relief from minor aches or pains; or

(c) That said preparation stops or prevents the development of colds or is an effective remedy for colds, or has any influence upon coughs or coryza due to colds; or

(d) That said preparation prevents the development of flu; or

(e) That said preparation relieves mental or physical dullness, refreshes or tones the nerves or is an effective treatment for nerves; or

(f) That said preparation is safe for use or otherwise representing that said product is unconditionally safe for use; or

¹ Revised.

(g) That said preparation will not cause the unpleasant after-effects caused by other products used for similar purposes, or otherwise representing that said preparation does not cause any unpleasant after-effects.

The said Sal-Fayne Corp. further agreed not to publish or cause to be published any advertisement which fails to reveal that the frequent or continued use of said preparation may be dangerous, causing serious blood disturbances, and that no more than the dosage recommended should be taken: *Provided, however*, That such advertisements need only contain the statement; "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling contain a caution or warning to the same effect.

The said Sal-Fayne Corp. further agreed to forthwith cease and desist from using the word "laboratory" or "laboratories" as part of any trade name, and from making any representation in any form by any means that states or implies that it has a laboratory unless it owns and operates, or controls and operates a place that is adequately and properly equipped to conduct scientific experiments and tests of the products made and sold by it in interstate commerce, and the materials composing the same, and operated under the direct supervision of a person qualified to conduct such experiments and tests.

The said Sal-Fayne Corp. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

It is hereby further stipulated and agreed that, upon acceptance and approval by the Commission, this stipulation supersedes and is to be considered in substitution of Stipulation No. 02741 previously submitted by Sal-Fayne Corp. and accepted and approved by the Commission on February 12, 1941.¹ (May 11, 1942.)

02745.² **Medical Preparation—Qualities, Properties, or Results, Comparative Merits, and Safety.**—A. Medrano, an individual doing business under the trade name of Rumagol Laboratories, Rio Grande Pharmacy and Rio Grande Drug Co., 4164 Brooklyn Avenue, Los Angeles, Calif., vendor-advertiser, was engaged in selling a medicinal preparation designated Rumagol and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That it is a competent remedy or an effective treatment or analgesic for rheumatoid arthritis, muscular pains, lumbago, sciatica, gout, neuritis, arteriosclerosis, painful or twisted joints or nerves, or so-called "rheumatism."

(b) That it will reduce and eliminate excess uric acid by its action on the kidneys.

¹ See 32 F. T. C. 1777.

² Revised.

It is also agreed by the said A. Medrano that in connection with the dissemination of advertising by the means and in the manner above set out, he will forthwith cease and desist from representing, directly or by implication:

(c) That preparations sold in competition with Rumagol such as rubefacient or counter-irritating liniments or ointments are ineffective in the treatment of rheumatoid arthritis, muscular pains, lumbago, gout, sciatica, neuritis, arteriosclerosis, painful or twisted joints or nerve or so-called "rheumatism."

The said A. Medrano further agreed, in connection with the advertising by the means and in the manner above set out, to cease and desist from disseminating any advertisements for the said preparation which fail to reveal that it should not be used when abdominal pain (stomach ache, cramps, colic), nausea, vomiting (stomach sickness), or other symptoms of appendicitis are present, and also that frequent or continued use thereof may result in dependence on laxatives: *Provided, however*, That such advertisements need only contain the statement, "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

The said A. Medrano further agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

It is further stipulated and agreed that upon approval and acceptance by the Commission, this stipulation supersedes and is to be considered in substitution of stipulation No. 02745 previously submitted by the said A. Medrano and approved and accepted by the Federal Trade Commission on the 17th day of February, 1941.¹ (Dec. 18, 1941.)

02751.² Medicinal Preparation—Safety.—J. H. Schenck & Son, Inc., a corporation, P. O. Box 1861, Philadelphia, Pa., vendor-advertiser, was engaged in selling a medicinal preparation recommended for the treatment of constipation designated "Dr. Schenck's Mandrake Pills" and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisements which fail to reveal that the said pills should not be used when abdominal pain (stomach-ache, cramps, colic), nausea, vomiting (stomach sickness), or other symptoms of appendicitis are present, and that frequent or continued use thereof may result in dependence on laxatives, *Provided, however*, That such advertisements need only contain the statement: "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

¹ See 32 F. T. C. 1779.

² Revised.

The said J. H. Schenck & Son, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

It is hereby stipulated and agreed that upon acceptance and approval by the Commission, this stipulation supersedes and is to be considered in substitution of Stipulation No. 02751 previously submitted by J. H. Schenck & Son, Inc. and accepted and approved by the Federal Trade Commission March 4, 1941.¹ (Nov. 28, 1941.)

02787.² Medicinal Preparation—Qualities, Properties, or Results and Safety.—Chelf Chemical Co., 118 South Seventeenth St., Richmond, Va.

02795.³ Medicinal Preparation—Qualities, Properties, or Results, Composition and Safety.—R. V. Annen, an individual doing business under the trade name of General Vitamins Co., 565 West Washington Boulevard, Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated VEV, represented as a remedy for constipation and the symptoms and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) By the use of the words "end" and "eliminate" or any other word or words of similar import or meaning that said preparation is a remedy for or will cure constipation or has any value in the treatment of constipation in excess of affording temporary relief from the symptoms thereof.

(b) That said preparation has any value for any symptom or condition in excess of affording temporary relief or benefit for such symptoms or conditions as are due to constipation.

(c) That said preparation is a vitamin laxative, or by any other terminology that vitamins are present in this product in an amount sufficient to accomplish any therapeutic or dietetic effect.

It is further agreed that R. V. Annen will cease and desist from disseminating any advertisements for its products which fail to reveal that said product should not be used when abdominal pain (stomach ache, cramps, colic), nausea, vomiting (stomach sickness), or other symptoms of appendicitis are present, and also, that frequent or continued use thereof may result in dependence on laxatives: *Provided, however,* That such advertisements need only contain the statement, "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

¹ See 32 F. T. C. 1782.

² Revised stipulation in this matter, approved December 15, 1941, which superseded similarly numbered stipulation approved April 24, 1941, 32 F. T. C. 1800, was rescinded and case reopened on April 14, 1942. Matter involved said vendor-advertiser's misrepresentation of its medicinal preparation in granular form, which contained, among other ingredients, potassium bromide and acetanilid, and was designated Chelf's C. C. Comp'd., also C. C. C. C. and 4C's, and recommended for use by persons suffering from headaches, colds, neuralgic and muscular pains, nervousness, and other symptoms and conditions.

³ Revised.

The said R. V. Annen further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

It is hereby further stipulated and agreed that, upon acceptance and approval by the Commission, this stipulation supersedes and is to be considered in substitution of Stipulation No. 02795 previously submitted by R. V. Annen and accepted and approved by the Federal Trade Commission on May 14, 1941.¹ (Jan. 28, 1942.)

02802.² *Hair and Scalp Preparations—Qualities, Properties, or Results, and Safety.*—Adolph R. Phillips and Daniel B. Scott, Jr., copartners, operating under the trade name of Adolph's Beauty Products Co., 330 North Fifty-fifth Street, Philadelphia, Pa., vendor-advertiser, were engaged in selling an alleged treatment for the hair and scalp designated Formula-X, which consists of two medicinal preparations bearing the brand names Formula-X Liquid and Formula-X Pomade, respectively and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) that it will cause hair to grow.
- (b) that it is of value in the treatment of dandruff in excess of loosening dandruff scales and temporarily relieving itching.
- (c) that it is of value in the treatment of Eczema in excess of softening excessive epithelium and temporarily relieving itching.
- (d) that it is of value in the treatment of falling or brittle hair.

The said Adolph R. Phillips and Daniel B. Scott, Jr., further agreed, in connection with the advertising by the means and in the manner above set out, to cease and desist from disseminating any advertisement for Formula-X Liquid, independently or as a component part of the treatment hereinbefore referred to as Formula-X, which fails to reveal that unless used in specified proper dilution, it would cause a marked local inflammation or, due to absorption, possible damage to the kidneys if used over a long period of time, or if a large surface were covered at any one time: *Provided, however,* That such advertisements need only contain the statement, "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labelling or in both label and labelling contain a caution or warning to the same effect.

The said Adolph R. Phillips and Daniel B. Scott, Jr., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

It is hereby stipulated and agreed that upon acceptance and approval by the Commission, this stipulation supersedes and is to be considered in substitution of Stipulation No. 02802 previously sub-

¹ See 32 F. T. C., 1806.

² Revised.

mitted by the said Adolph R. Phillips and Daniel B. Scott, Jr., and accepted and approved by the Commission May 29, 1941.¹ (Dec. 10, 1941.)

02807.² **Coal Tar Hair Dye Product—Qualities, Properties or Results.**—G. P. Brandt, an individual trading as Zephyr Laboratories, 4358 North Kenmore Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling a certain coal tar hair dye product designated Brandt's Olive-oil Shampoo Tint and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

By the use of the word "restores" or by any other means that his product will restore the original or natural color to the hair.

The said G. P. Brandt further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

It is further stipulated and agreed that this stipulation is supplemental to a certain stipulation No. 02807 signed by G. P. Brandt and accepted and approved by the Federal Trade Commission May 21, 1941,³ which stipulation remains in full force and effect. (Nov. 25, 1941.)

02831.⁴ **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 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 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

¹ See 32 F. T. C. 1810.

² Supplemental.

³ See 32 F. T. C. 1811.

⁴ Revised.

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 only contain the statement; "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

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.

It is hereby stipulated and agreed that upon acceptance and approval by the Commission, this stipulation supersedes and is to be considered in substitution of Stipulation No. 02831 previously submitted by J. R. Hodges and accepted and approved by the Federal Trade Commission on July 11, 1941.¹ (Dec. 22, 1941.)

02852.² Turkish Bath Cabinet—Qualities, Properties, or Results, and Safety.—Irene G. Fenton, an individual trading as Perspir-Ator Manufacturing Co., First and Utah Streets, 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.

¹ 33 F. T. C. 1727.

² Revised.

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 only contain the statement: "CAUTION, Use only as directed," if and when the directions which accompany said device 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.

It is hereby stipulated and agreed that upon acceptance and approval by the Commission, this stipulation supersedes and is to be considered in substitution of Stipulation No. 02852 previously submitted by Irene G. Fenton and accepted and approved by the Federal Trade Commission August 1, 1941.¹ (Dec. 1, 1941.)

02862.² Drug Preparations—Qualities, Properties, or Results, Unique, and Safety.—Stop-Lite Products, Inc., a corporation, 849 South Sixth East Street, Salt Lake City, Utah, vendor-advertiser, engaged in selling three drugs designated Stop-Lites, Haps, and Anti-Acid Tablets; and W. E. Featherstone, an individual operating under the trade name of W. E. Featherstone Advertising Agency, 723-724 McIntyre Building, Salt Lake City, Utah, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named products on behalf of Stop-Lite Products, Inc., 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., and W. E. Featherstone, and each of them, further agreed to cease and desist from representing that the product Stop-Lites is safe, and from disseminating any advertisement therefor which fails clearly to reveal that said preparation should not be used in excess of the dosage recommended since such use, if too frequent or long continued, may be dangerous, and that the said preparation is not to be used when abdominal pain (stomach-ache,

¹ See 33 F. T. C. 1740.

² Revised.

cramps, colic), nausea, vomiting (stomach sickness), or other symptoms of appendicitis are present; and from disseminating any advertisement for Haps which fails clearly to reveal that said preparation should not be used in excess of the dosage recommended since since such use, if too frequent or long continued, may be dangerous: *Provided, however*, That such advertisements need only contain the statement: "CAUTION, Use only as directed" if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said Stop-Lite Products, Inc., and W. E. Featherstone, and each of them, further agreed not to publish, disseminate, or cause to be published or disseminated any testimonial containing any representation contrary to the foregoing agreement.

It is hereby further stipulated and agreed that upon acceptance and approval by the Commission, this stipulation supersedes and is to be considered in substitution of Stipulation No. 02862, previously submitted by Stop-Lite Products, Inc., and accepted and approved by the Federal Trade Commission on December 1, 1942,¹ and that it also supersedes and is to be considered in substitution of Stipulation No. 02889, previously submitted by W. E. Featherstone and accepted and approved by the Federal Trade Commission on September 22, 1941.² (Apr. 29, 1942.)

02863.³ 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 Fourteenth 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 under-

¹ See 33 F. T. C. 1747.

² See 33 F. T. C. 1765.

³ Revised.

weight, 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 non-fattening, 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, sleeplessness, sour stomach, bad blood, colds, catarrh, overweight, acidosis, prostaticitis, 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 advertisements need only contain the statement: "CAUTION, Use only as directed," if and when the directions for use wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

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 advertisements need only contain the statement: "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

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.

It is hereby further stipulated and agreed that upon acceptance and approval by the Commission, this stipulation supersedes and is to be considered in substitution of Stipulation No. 02863 previously submitted by Walter Camp and Werner Orbach and accepted and approved by the Federal Trade Commission on August 11, 1941.¹ (Dec. 12, 1941.)

02876.² 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, engaged in selling a medicinal preparation designated Hexin; and Benson & Dall, Inc., a corporation, 327 South LaSalle Street, Chicago, Ill., engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Consolidated Royal Chemical Corp., agreed, in connection with the dissemination of future advertising, to 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.

Consolidated Royal Chemical Corp., and Benson & Dall, Inc., and each of them, further agreed to cease and desist from disseminating

¹ See 33 F. T. C. 1748.

² Revised.

any advertisement for Hexin which fails clearly to reveal that said preparation should not be used in excess of the dosage recommended since such use, if too frequent or long continued, may be dangerous; *Provided, however,* That such advertisement need only contain the statement: "CAUTION, Use only as directed" if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said Consolidated Royal Chemical Corp. and Benson & Dall, Inc., and each of them, further agreed not to publish, disseminate, or cause to be published or disseminated any testimonial containing any representation contrary to the foregoing agreement.

It is hereby further stipulated and agreed that upon acceptance and approval by the Commission, this stipulation supersedes and is to be considered in substitution of Stipulation No. 02876 previously submitted by Consolidated Royal Chemical Corp., and accepted and approved by the Federal Trade Commission on September 3, 1941,¹ and that it also supersedes and is to be considered in substitution of Stipulation No. 02890 previously submitted by Benson & Dall, Inc., and accepted and approved by the Federal Trade Commission on September 23, 1941.² (Apr. 28, 1942.)

02901.³ 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., 535-537 Southwest 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 poultry rations; or that it supplies Vitamin D to stock rations, unless it does in fact supply an appreciable amount of Vitamin D in a form assimilable by the stock to which it is fed.

¹ See 33 F. T. C. 1757.

² See 33 F. T. C. 1760.

³ Substitute.

(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.

It is further agreed that this stipulation, upon acceptance by the Commission, supersedes and is to be considered in substitution of Stipulation No. 02901, executed by Fred K. Chandler and accepted and approved by the Federal Trade Commission October 14, 1941.¹ (Apr. 10, 1942.)

02908. Medicinal Preparations—Qualities, Properties, or Results, Manufacturer and Factory Prices.—H. G. Bernstein, an individual, trading as Purity Certified Products, 716-724 West Madison Street, Chicago, Ill., vendor-advertiser, was engaged in selling a preparation containing drugs known as "Stop," and alleged breath deodorant, together with sundry other medicinal preparations and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That such preparation purifies the breath, that it "kills," "destroys," or "neutralizes" unpleasant breath odors, that it does not act as a perfume, and from representing in any other manner that the effect of the preparation is substantial or complete, or that the preparation possesses efficacy except to the extent that it may partially and temporarily mask unpleasant breath odors.

The said H. G. Bernstein further agreed to cease and desist from using as a designation for his product now known as "Stop," such name or any other designation which implies that the preparation stops bad breath.

The said H. G. Bernstein further agreed, in connection with the advertising of all and sundry medicinal preparations not manufactured, produced or compounded by him, that he will forthwith cease and desist from representing, directly or by implication, through the use of such terms as "direct from manufacturers,"

¹ See 33 F. T. C. 1775.

"factory prices" and similar terms, or the words "direct," "manufacturers," "factory," or by any other means or manner that such preparations are by him so manufactured, produced or compounded; or that any of the said preparations including the one designated "Stop" are by him sold at factory prices when such is not the case.

The said H. G. Bernstein further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 7, 1941.)

02909. Medicinal Preparation and Devices—Qualities, Properties, or Results, and Approval.—Ralph Hess, an individual, 1503 Hollywood Avenue, Cincinnati, Ohio, was engaged in the business of conducting an advertising agency which disseminated advertisements for a medicinal preparation and devices designated Hayrin Nasal Filter Pad Fluid, and Hayrin Nasal Filters, and Hayrin Filter Pads on behalf of Medical Products Institute, Inc., Cincinnati, Ohio, 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.

(f) That Hayrin Filter Pad Fluid will overcome the symptoms due to pollens and molds which might enter the body. (Nov. 7, 1941.)

02910. Devices—Qualities, Properties, or Results.—Ralph Hess, an individual, 1503 Hollywood Avenue, Cincinnati, Ohio, was engaged in the business of conducting an advertising agency which disseminated advertisements for 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 on behalf of Allergy Research Institute, Inc., Cincinnati, Ohio, 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. (Nov. 7, 1941.)

02911. **Insecticide—Comparative Merits, and Qualities, Properties, or Results.**—Earl E. May Seed Co., a corporation, Shenandoah, Iowa, vendor-advertiser, was engaged in selling an insecticide designated Earl May's Bug Dust and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That Rotenone is stronger than lead arsenate as a stomach poison to all bugs and insects.
- (b) That Earl May's Bug Dust combats Strawberry Weevil.
- (c) That Earl May's Bug Dust contains sufficient pyrethrum to be effective in combatting flies and other insects.
- (d) That Earl May's Bug Dust is an effective repellent of cut worms.
- (e) That Earl May's Bug Dust has a repellent effect against mice, or ground squirrels.
- (f) That Earl May's Bug Dust is a germ killer.

The said Earl E. May Seed Co. agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 12, 1941.)

02912. **Medicinal Preparation—Qualities, Properties, or Results.**—Goldie V. Fowlkes, an individual trading as The Ringo Co., 3039 Webb Avenue, Detroit, Mich., vendor-advertiser, was engaged in selling a medicinal preparation alleged to be helpful in the treatment of various skin disorders, designated Ringo and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That Ringo can be relied upon to cure stubborn cases of ringworm and athlete's foot.
- (b) That Ringo is a remedy or treatment for psoriasis or soft corns.
- (c) That Ringo will remedy or cure poison ivy, eczema or burns.
- (d) That Ringo is a cure or remedy for skin diseases in general.

The said Goldie V. Fowlkes further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 13, 1941.)

02913. **Wearing Apparel and Soap—Composition, Nature of Manufacture, Qualities, Properties, or Results, Opportunities, Earnings, Etc.**—B. J. Melville Co., a corporation, Cincinnati, Ohio, vendor-advertiser, was engaged in selling dresses, slips, hosiery and other articles of wearing apparel, and a soap designated Pine Needle Oil Soap and agreed, in connection with the dissemination of future advertising, to cease and desist from:

- (a) Representing by the use of the terms "crepe," "satin," "taffeta," "pure high twist silk," "pure thread silk" or "chiffon," or otherwise, that any article contains silk when such is not a fact.
- (b) Representing by use of the word "fleece" or any other word or term descriptive of wool, that any article contains wool when such is not a fact.

(c) Using the word "acetate" to designate or describe any article containing rayon unless the word "rayon" is used in direct connection therewith with equal conspicuousness and emphasis.

(d) Representing that the rayon contained in any article was manufactured by the acetate process, when in fact it was manufactured by both the acetate and viscose processes, or from otherwise misrepresenting the process or processes by which it was manufactured.

(e) Representing directly or by implication that the trimmings on its garments contain gold.

(f) Using the term "Pine Needle Oil" to designate or describe its soap, or from otherwise representing that its soap contains a substantial amount of pine needle oil.

(g) Representing that its soap produces a healthy skin.

(h) Representing that its salespersons become wholesalers.

(i) Representing that its salespersons can make profits or earnings within a specified period of time, which are in excess of the average net profits or earnings which have theretofore been consistently made in like periods of time by its active full-time salespersons in the ordinary and usual course of business, and under normal conditions and circumstances.

(j) Representing by the use of such words as "up to," "as high as," or any words or terms of like import that prospective salespersons 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 salespersons in the ordinary, and usual course of business and under normal conditions and circumstances.

B. J. Melville Co. further agreed that in computing the period of time during which specified earnings or profits were made, it will include all of the time actually used for demonstrations, solicitations, and any other services performed in connection with either the sale, delivery, or collection of the purchase price by the particular salesperson who is alleged to have made such earnings or profits.

The said B. J. Melville Co. further agreed to cease and desist from using the term "free" or any other term of similar import or meaning to describe or refer to articles offered as compensation for distributing its merchandise unless all the terms and conditions of such offer are clearly and unequivocally stated with equal conspicuousness, and in immediate connection or conjunction with the term "free" or other term of similar import or meaning, and there is no deception as to the price, quality, character or any other feature of such articles, or as to the services to be performed in connection with obtaining them.

It is further agreed that whenever an article is composed of rayon, B. J. Melville Co. will clearly disclose that the article is rayon, and whenever an article is composed in part of rayon and in part of other fibers or materials, B. J. Melville Co. will name all fibers or materials including the rayon with equal conspicuousness in the order of their predominance by weight, beginning with the largest single constituent.

The said B. J. Melville Co. agreed that no provision contained in this stipulation shall be construed as authorizing or permitting the

labeling of any wool product in any manner other than in strict conformity with the provisions of the Wool Products Labeling Act of 1939.

The said B. J. Melville Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 13, 1941.)

02914. Medicinal Preparation—Qualities, Properties, or Results.—Max H. Newman, an individual, trading as the Tummy Toner Co., 320 East Forty-second Street, New York, N. Y., vendor-advertiser, was engaged in selling a preparation designated "Tummy Toner" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That said preparation will promote nutrition or aid digestion.
- (b) That said preparation will sustain health or provide a short cut to better health.
- (c) That it will help build one up.
- (d) That said preparation will curb one's appetite for rich, fattening foods.
- (e) That said preparation will make milk more digestible or double its nutritional value.
- (f) That said preparation is rich in Vitamin B.
- (g) That said preparation will give one extra or added energy.
- (h) By the use of the expression "Tummy Toner" as the brand name of the preparation or by any other expression, words or means, that the said preparation will tone the stomach or have any value with respect thereto.

The said Max H. Newman further agreed not to publish, or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Nov. 21, 1941.)

02915. Medicinal Preparations—History, Qualities, Properties, or Results, and Comparative Merits.—Harry Florian, an individual trading as Florian Drug Co., 2200 South Crawford Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling various medicinal preparations, designated Rhumo-Tabs, Healo-Salv, Rhumo-Rub, and At-Letes Foot Liquid Balm and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That the product Rhumo-Tabs is a new discovery in the treatment of rheumatism.
2. That the product Rhumo-Rub constitutes an effective remedy for colds.
3. That the product Rhumo-Rub is superior in effectiveness and rapidity of action to all competitive products.
4. That the product heretofore known as Healo-Salv heals or aids in the healing of ulcers, boils and open sores, cuts, wounds, distended and painful veins, or conditions that are considered incurable.
5. That the product At-Letes Foot Liquid Balm is a cure for scabies or barber's itch.

It is hereby further agreed by Harry Florian that in the dissemination of advertising by the means and in the manner above set out, he

will forthwith cease and desist from the use of the term "Healo" to designate or describe the product heretofore designated "Healo-Salv" or from otherwise representing that said product is a cure or remedy.

The said Harry Florian further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 24, 1941.)

02916. Medicinal Preparation—Qualities, Properties, or Results and Safety.—Calafco Co., Inc., a corporation 514 Rives-Strong Building, Los Angeles, Calif., vendor-advertiser, was engaged in selling a medicinal preparation designated Calafco Liquid, which it has recommended for use by persons suffering from bronchial asthma and hay fever and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That this preparation will check the tendency toward attacks of asthma and hay fever.

The said Calafco Co., Inc. further agreed, in connection with the advertising by the means and in the manner above set out, to cease and desist from disseminating any advertisements which fail to reveal that the preparation should not be used by those suffering from lung disease or chronic cough, goiter or thyroid disease, except upon the advice of a physician, that if a skin rash appears its use should be discontinued, that continued use over extended periods of time should be avoided except on competent advice, and that it is not intended for use by children: *Provided, however, That such advertisements need contain only the statement "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.*

The said Calafco Co., Inc. further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 28, 1941.)

02917. Food Product—Qualities, Properties, or Results.—Ralston Purina Co., Inc., a corporation, Checkerboard Square, St. Louis, Mo., vendor-advertiser, was engaged in selling a food product designated "Ry-Krisp" 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 Ry-Krisp alone or as a part of a reducing diet will cause a reduction in weight of 7 pounds per month or any other definite amount within a specified time.

(b) That Ry-Krisp is a good source of energy.

(c) That the use of Ry-Krisp will accomplish a reduction in weight except as a part of a planned diet control program.

The said Ralston Purina Co., Inc. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 28, 1941.)

02918. Oil Burners—Qualities, Properties or Results, History, Comparative Merits, Manufacturer, Earnings, or Profits, Etc.—A. L. Kaysing and Edward I. Turecek, copartners operating under the firm name of Thrifty-Heat Oil Burner Co., 5310 West Avenue, St. Louis, Mo., vendor-advertisers, were engaged in selling oil burners designated "Thrifty-Heat Oil Burner" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the Burner affords unequalled economy, or that it provides heat at a lower cost in all sections of the United States than the heat provided by other methods or that it is more economical generally than other methods.

(b) That results which may have occurred in specific cases or particular localities represent the average performance of the Burner or that such results may be expected by all users.

(c) That the amount of heat afforded when the product burns for twelve hours on one gallon of oil is sufficient for space heating or that the amount of heat afforded when the product burns for any other length of time on any other amount of oil is sufficient for space heating unless the space is specified and the statements are in accordance with the facts.

(d) That the Burner will enable one to heat the home quicker or better.

(e) That the Burner has twice the heat efficiency of, or that it gives twice as much heat as a coal burner when the burners use the same weights of oil and coal respectively.

~~(f) That the Burner is of a new type, or that all of its features are automatic, or that it affords a controlled temperature.~~

~~(g) That any stove is made into a gas stove by the installation of the Burner.~~

(h) That the Burner completely eliminates waste of fuel through combustion loss.

(i) That there is scientific basis for the claim that the heat obtained from the burner is hotter than any other heat.

(j) That the stack loss of the burner is 7.67% or any other definite percentage or amount in all installations.

(k) That the proportion of air to oil consumed in the burner is so substantially different from the proportion of air to oil generally consumed in other burners as to be a factor of economical use for consideration in connection with the purchase of the burner.

(l) That they maintain a factory or that they manufacture the burner unless and until they actually own, control, maintain, and operate a factory wherein the product is manufactured.

(m) That exclusive trade territory is allotted to or reserved for each agent.

(n) That any testimonial is the testimonial of one of their sales persons when such is not the fact, or that the volume of sales or earnings which may have been achieved by sales persons representing another firm is indicative of what may be achieved by their sales persons.

(o) That prospective sales persons can make profits or earnings within a specified period of time which are in excess of the average net profits or earnings

which have theretofore been consistently made in like periods of time by their active full-time sales persons in the ordinary and usual course of business and under normal conditions and circumstances.

A. L. Kaysing and Edward I. Turecek further agreed that in computing the period of time during which specified earnings or profits were made they will include all of the time actually used for demonstrations, solicitations, and any other services performed in connection with either the sale, delivery, or collection of the purchase price by the particular sales person who is alleged to have made such earnings or profits.

The said A. L. Kaysing and Edward I. Turecek further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 28, 1941.)

02919. Medicinal Preparation—Qualities, Properties or Results.—May Seed and Nursery Co., a corporation, Shenandoah, Iowa, vendor-advertiser, was engaged in selling a medicinal preparation for the prevention and treatment of various diseases in swine, said preparation being designated Master Liquid Hog Medicine and, agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that said preparation constitutes a general tonic or conditioner, or is effective as an antiseptic, or is effective as a treatment or preventive for swine influenza, or for any species of worms infesting swine or for common swine diseases generally, or is effective as a treatment or preventive for any swine disease or disorder, when such is not the case.

The said May Seed and Nursery Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 1, 1941.)

02920. Book—Qualities, Properties or Results, and Indorsement or Approval.—Benjamin H. Levine, an individual doing business as Harvest House, 70 Fifth Avenue, New York, N. Y., vendor-advertiser, was engaged in selling a book designated "Short Stature and Height Increase" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said book contains methods for increasing height by growth; or

(b) Through the use of such words as "medically-approved," or in any other manner, that the methods contained in said book for increasing one's appearance of height have been approved by a medical group, association, or society.

The said Benjamin H. Levine, agreed not to publish, or cause to be published any testimonials containing any representation contrary to the foregoing agreement. (Dec. 3, 1941.)

02921. Correspondence Club and Magazines—Qualities, Properties, or Results, Opportunities, Earnings, Guarantee, Special Offers, Etc.—C. Ready,

an individual doing business under the trade names Cupid's Mail Correspondence Club, Zane's Social Service and Highways to Romance Syndicated Publications, 2149 Jackson Boulevard, Chicago, Ill., vendor-advertiser, was engaged in selling lists of names purporting to be the names of members of Cupid's Mail Correspondence Club, and Zane's Social Service; also certain magazines devoted to the promotion of correspondence clubs under the general name of Highways to Romance Syndicated Publications and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That he has State lists of persons desiring introductions from every State in the United States or that he can furnish such lists in all instances.
- (b) That members are introduced to other members of said clubs until suited or married; or that members are suited or married as a result of said membership unless such representations are supported by sufficient investigation as to the actual facts.
- (c) That his statements relating to the financial or other standing, education, character, age, occupation, or profession of those whose names appear on such lists are other than the mere statements of those persons themselves, in the absence of some reasonable investigation into the truth or falsity of such statements.
- (d) That the Highways to Romance Syndicated Publications is a true or proven money maker, will bring big returns, or that purchasers of any of said magazines will receive checks, money orders, or cash in the daily mail or every time the mail carrier comes, or will build a big money order business.
- (e) That any of the results claimed in the advertising are guaranteed.
- (f) That any offer is "special" unless it is less in price than the usual or regular price and limited in time.
- (g) That the particulars regarding letter writing, stationery, blank forms, advice, or service are free when the price thereof is included in the price charged for lists of names.

The said C. Ready agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Dec. 4, 1941.)

02922. Shoe Polishes—Comparative Merits and Qualities, Properties, or Results.—Mervin E. Lyons, Clarence B. Lyons and Ida A. Lyons, copartners trading as Lyons & Co., 122 Duane Street, New York, N. Y., vendor-advertisers, were engaged in selling shoe polishes designated KIWI and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That said shoe polishes are superior to all other shoe polishes in prolonging life of footwear; or
- (b) That the continued use of said shoe polishes will cause shoes to last a great number of years or any specified period of time.

That said Mervin E. Lyons, Clarence B. Lyons, and Ida A. Lyons agreed not to publish, or cause to be published any testimonial con-

taining any representation contrary to the foregoing agreement. (Dec. 8, 1941.)

02923. Medicinal Preparation—Composition.—Petrolagar Laboratories, Inc., a corporation, 8134 McCormick Boulevard, Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated "Petrolagar" and agreed, in connection with the dissemination of future advertising, to cease and desist from use of the term "Petrolagar" to designate, describe or refer to such preparation, and to forthwith cease and desist from use of the term "Petrolagar" in its corporate or trade name. (Dec. 9, 1941.)

02924. Medicinal Preparation—Qualities, Properties, or Results.—H. V. Laboratories, Inc., a corporation, 208 North Twenty-second Street, St. Louis, Mo., vendor-advertiser, was engaged in selling a medicinal preparation designated H. V. 222 and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That H. V. 222 is a remedy or cure for skin eruptions or skin irritations, skin rash or eczema, or that it has any value in the treatment of such conditions beyond the relief of itching associated therewith.

(b) That this product is a cure for or will prevent athlete's foot; or that it will penetrate, or kill such of the fungi of athlete's foot as may develop beneath the corneous layer of the unbroken skin; or that in the treatment of athlete's foot it has any beneficial effect upon tissues deeper than those supplied by the peripheral vascular system beneath an unbroken skin; or that it will remove the blisters manifesting the condition known as athlete's foot; or that it meets or overcomes the germs of athlete's foot almost immediately; or that it, diluted or undiluted, kills the germ infection or fungi of athlete's foot in thirty seconds, or in any other definitely stated period of time.

(c) That H. V. 222 is a panacea.

(d) That the use of this preparation prevents or stops bleeding or causes coagulation.

The said H. V. Laboratories, Inc., further agreed not to publish or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Dec. 11, 1941.)

02925. Poultry Feed—Qualities, Properties, or Results.—The Blair Elevator Corp., a corporation, Atchison, Kans., vendor-advertiser, was engaged in selling a certain commercial poultry feed designated Blair's Round Worm Control Measure and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That it is an effective treatment preventive, or control measure for Blackhead.

(b) That it possesses any value in the treatment, prevention or control of poultry infestations by tapeworms, cecal worms, or other parasites with the exception of large round worms.

(c) That it will be of value in the prevention or control of diseases that may be caused by tapeworms, cecal worms or other parasites with the exception of

such diseases as may be caused by or attributable to the presence of large round worms.

The Blair Elevator Corp. further agreed not to publish, or cause to be published, any testimonials containing any representations contrary to the foregoing agreement. (Dec. 11, 1941.)

02926.¹ Coal Tar Hair Dye Product—Qualities, Properties, or Results, Nature, Etc.—H. L. Baum, an individual trading as Beauty Products, 1625 Court Place, Denver, Colo., vendor-advertiser, was engaged in selling a certain coal tar hair dye product, designated Noreen Super Color Rinse and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That Noreen Super Color Rinse gives life to the hair.
- (b) That use of Noreen Super Color Rinse eliminates mixing.
- (c) That Noreen Super Color Rinse does not stain the scalp or fingers.
- (d) That Noreen Super Color Rinse contains more or truer color.
- (e) That Noreen Super Color Rinse is not a dye.

The said H. L. Baum further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 16, 1941.)

02927. Stove—Qualities, Properties, or Results, Free, Tests, Etc.—Henry F. Jumper, an individual trading as Ashley Automatic Wood Stove Co., Columbia, S. C., vendor-advertiser, was engaged in selling a wood burning stove designated Ashley Automatic Wood Burning Stove and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That all users of said stove will effect an economy in heating costs, or that any user will effect an economy in heating costs of any definitely stated amount; or
- (b) That said stove will not cause any smoke or soot; or
- (c) That said stove is one hundred percent automatic; or
- (d) That said stove burns ashes, or that, when said stove is used, there will be no ashes to remove; or
- (e) That said stove will prevent, or help rid one of, winter colds and kindred ailments; or
- (f) That the device which is furnished with said stove for preventing the formation of creosote is a creosote eliminator; or
- (g) That any equipment furnished with said stove is free when in fact the cost thereof is included or reflected in the purchase price of said stove; or
- (h) That said stove has been tested or approved by any qualified and impartial experts or group of experts when such is not the fact; or
- (i) That said stove will provide the correct temperature at all times or in all parts of the house; or
- (j) That said stove will adequately heat any definite number of rooms irrespective of such conditions as their size, construction, arrangement, and geographical location.

¹ Supplemental.

The said Henry F. Jumper agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 16, 1941.)

02928. **Mineral Water Product—Qualities, Properties, or Results, and Unique.**—Robert Enrico, an individual trading as Arsenic Spring Water Co., 237 Mount Ida Street, Hot Springs, Ark., vendor-advertiser, was engaged in selling a mineral water product designated Arsenic Spring Water and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication; that said product constitutes a remedy or cure, or is indicated as a treatment, for diabetes, high blood pressure, constipation, rheumatism, or malaria, or constitutes a remedy or cure, or is indicated as a treatment, for diseases and ailments of the liver, stomach, bladder, or kidneys, or is a tonic or an alterative, or has no equal as a diuretic, or will flush the kidneys, or will, when taken internally, cleanse the skin, or is of therapeutic value for cutaneous diseases, or has a significant laxative effect.

The said Robert Enrico further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 19, 1941.)

02929. **Medicinal Preparation—Safety.**—Kemp & Lane, Inc., a corporation, Le Roy, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated "Orangeine" for the relief of simple headache, simple neuralgia, and the discomforts arising from head colds and agreed, to cease and desist from the dissemination of any advertising for a medicinal preparation designated Orangeine, or any other preparation of substantially the same properties, whether sold under that name or any other name, which fails to reveal that said preparation should not be used in excess of the dosage recommended; that its frequent or continued use may be dangerous, causing collapse or a dependence on the drug; and that it should neither be taken by nor administered to children; *Provided, however,* That such advertisements need only contain the statement: "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

The said Kemp & Lane, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 22, 1941.)

02930. **Poultry Products—Qualities, Properties, or Results.**—The Potts-Turnbull Co., a corporation, 912 Baltimore Avenue, Kansas City, Mo., was engaged in the business of conducting an advertising agency which disseminated advertisements for certain poultry products designated Staley Four Bells Growing Mash, Staley Four Bells

Grower Pellets, Master Growing Pellets, Master Growing Mash, Masher Chick All Mash, and Master Chick All Mash Pellets on behalf of Staley Milling Co., of Kansas City, Mo., and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that any of said products, or any combination thereof:

(a) Produces chicks of any definite weight or quality within any definite or specified period of time; or

(b) Enables the user to count upon any definite percentage or proportion in raising chicks.

The said The Potts-Turnbull Co., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 22, 1941.)

02931. Poultry Products—Qualities, Properties, or Results.—Staley Milling Co., a corporation, Kansas City, Mo., vendor-advertiser, was engaged in selling poultry products designated "Staley Four Bells Growing Mash," "Staley Four Bells Grower Pellets," "Master Growing Pellets," "Master Growing Mash," "Master Chick All Mash," and "Master Chick All Mash Pellets" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that any of said products, or any combination thereof:

(a) Produces chicks of any definite weight or quality within any definite or specified period of time; or

(b) Enables the user to count upon any definite percentage or proportion in raising chicks.

The said Staley Milling Co., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 23, 1941.)

02932. Hair-Removing Device—Qualities, Properties, or Results.—Edward A. Hochbaum, an individual trading as Lanzette Laboratories, Annette Lanzette and Lanzette, P. O. Box 4040, Merchandise Mart, Chicago, Ill. vendor-advertiser was engaged in selling a device for the removal of superfluous hair, designated Lanzette and agreed in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) Through the use of the words "rid," "gone," "disappeared," or "overcome" or similar expressions in connection with the removal of superfluous hair from the body, that said device will permanently terminate the growth of superfluous hair or otherwise representing a definite termination of hypertrichosis; or

(b) That through the use of said device one will have a clearer complexion, or otherwise representing that the use of said device will have a beneficial effect on the skin, or the appearance of the skin, in excess of a transient glow or ruddiness.

The said Edward A. Hochbaum further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 26, 1941.)

02933. **Medicinal Preparation—Safety.**—F. A. Hughes Co., Inc., a corporation, Taylor Building, Rochester, N. Y., was engaged in the business of conducting an advertising agency which disseminated advertisements for the product designated Orangeine on behalf of Kemp & Lane, Inc., LeRoy, N. Y., and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, disseminating or causing to be disseminated any advertisements which fail to reveal that said preparation should not be used in excess of the dosage recommended; that its frequent or continuous use may be dangerous; causing collapse or a dependence on the drug; and that it should neither be taken by nor administered to children: *Provided, however,* That such advertisements need only contain the statement, "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said F. A. Hughes Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 31, 1941.)

02934. **Dog Food—Qualities, Properties, or Results, and Comparative Costs.**—C. Wendel Muench, an individual, trading as C. Wendel Muench & Co., 210 East Ohio Street, Chicago, Ill., was engaged in the business of conducting an advertising agency which disseminated advertisements for a dog food designated Gaines Dog Meal, which is also referred to as Gaines Dog Food and Gaines and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Gaines Dog Food will prevent skin troubles in dogs, unless such troubles are of nutritional origin.

(b) 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.

(c) That Gaines Foods will make pups more true to type.

(d) That Gaines Dog Meal will reduce feeding costs by 50% or effect any definitely stated percentage savings when compared with other dog foods of similar type.

The said C. Wendel Muench further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Dec. 31, 1941.)

02935. **Medicinal Preparation—Qualities, Properties or Results, and Composition.**—Father John's Medicine Co., Inc. (formerly Carleton & Hovey Co.) a corporation, 73 Market Street, Lowell, Mass., vendor-

advertiser, was engaged in selling a medicinal preparation designated *Father John's Medicine* and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That it is a remedy or an efficacious treatment for the correction of colds or bronchial or throat irritations.

(b) That it will reduce the incidence, duration, or severity of colds or have any value in building resistance thereto or in the prevention thereof except to supply vitamin A in those instances where the body resistance is low due to an insufficient supply of such vitamin in the daily diet.

(c) That it will increase one's appetite.

(d) That it will build up the health, fortify or build up one's system, give one more vigor or strength, or possesses any therapeutic value with respect thereto in excess of its ability to supply vitamins A and D in those instances where a deficiency of such vitamins is indicated.

(e) That it is rich in vitamins other than vitamins A and D.

(f) That it will build resistance to bronchial or throat irritations or have any value in the preventive treatment thereof except to supply vitamin A in those instances where the resistance of the body is low due to an insufficient supply of such vitamin in the daily diet.

The said *Father John's Medicine Co., Inc.*, further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement.

It is also stipulated and agreed that the provisions of Stipulation No. 0958 accepted by the Federal Trade Commission from *Carleton & Hovey, Inc.*, on October 4, 1935,¹ is to remain in full force and effect, with the exception of Inhibition (a) and Inhibition (e), part 3, and that the terms and agreements contained therein are not to be considered as nullified, revised or amended in any way by this supplemental stipulation, except as hereinbefore indicated. (Jan. 2, 1942.)

02936. Correspondence Course—Jobs and Employment, Qualities, Properties or Results, Prices, and Terms, and Conditions.—National Radio Institute, a corporation, Sixteenth and U Streets, NW., Washington, D. C., vendor-advertiser, was engaged in selling a correspondence course designated *Course in Practical Radio and Television* and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That National Radio Institute has secured employment for students with any particular radio concern when such is not a fact.

(b) That the course covers all the radio requirements for a license to serve as Ship Radio Operator.

The said National Radio Institute further agreed that in its advertising referring to radio positions requiring a knowledge of code and in all of its enrollment blanks, it will reveal conspicuously the fact that there is an extra charge for the course covering code instruction.

¹ See 21 F. T. C. 1028.

The said National Radio Institute further agreed to reveal conspicuously in its advertising material stating the terms under which a student may pay for the course, the fact that there is a 2½ year limitation allowed for completing the course and that in the event a student has not finished the prescribed program within 2½ years from the date of his enrollment, he may be charged over and above such terms before being allowed to continue with the course.

The said National Radio Institute agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 9, 1942.)

02937. **Correspondence Courses—Unique and Qualities, Properties, or Results.**—R. D. Cortina Co., Inc., a corporation trading as Cortina Academy, 105 West Fortieth Street, New York City, vendor-advertiser, was engaged in selling correspondence courses in foreign languages and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the Cortina method is the quickest and easiest way ever devised to study a foreign language.

(b) That the Cortina method will enable a person to speak Spanish or any other foreign language at once.

(c) That the Cortina method will enable a person within any definitely stated period of time to obtain mastery of a foreign language or to speak a foreign language fluently and correctly with perfect understanding and full knowledge of its finer shades of meaning or to speak a foreign language sufficiently well to qualify him or her for jobs or positions requiring ability to speak the language like a native.

The said corporation agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 15, 1942.)

02938.¹ **Cosmetic Preparations and Goat's Milk—Qualities, Properties or Results, Comparative Merits, Unique and Scientific, or Relevant Facts.**—Marion E. Baldwin, an individual doing business as Hillshire Down, R. F. D. 2, Killingly, Conn., vendor-advertiser, was engaged in selling cosmetic preparations designated Hillshire Down Goat Milk Hand and Arm Cream, Hillshire Down Goat Milk Massage and Cleansing Cream, and Hillshire Down Lotion, and also goat's milk. Also, prior to June 21, 1940, she sold a cosmetic preparation designated Hillshire Down Goat Milk Tissue and Foundation Cream, which product she now sells under the designation Hillshire Down Goat Milk Night and Foundation Cream and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

¹ Revised.

(a) That the said cosmetics will in any way enable the human body to which they are applied to breathe through the skin, or that the said cosmetics will have any effect whatever in purifying the blood, or that they possess any superiority over competitive products due to such alleged effects.

(b) That any of said preparations will reach deeply into the pores or get under the skin, will bring out impurities, remove deep-seated and every particle of dirt, or cleanse the skin thoroughly.

(c) That any of said preparations is a tonic for the skin or the nerves, or will tighten the muscles of the face, feed the skin, nourish the skin tissue, rid the face of large pores or wrinkles, help retain the natural oil, banish blackheads or blemishes, or leave the skin satiny-smooth, rejuvenate the skin, or stimulate the circulation and the tissues of the skin, or cause fatigue to vanish, or is rich in vitamins and proteins.

(d) That any of said preparations will aid in producing healthy skin, or be non-allergic to all persons, or correct dryness or excessive oiliness of the skin, or restore actual oil to the skin, or will affect dryness of the skin except temporarily to the extent of their emollient properties.

(e) That any of said preparations has unique value in the treatment of, or will correct acne and eczema, or will rejuvenate the skin or have the effect of keeping the skin flawlessly clear and healthful.

(f) That any of said preparations will produce complete, clear, or new skin tissue, or will cause marked improvement in the condition of the skin in a short while or in any definite specified period of time.

(g) That any of said preparations will cause lines and crow's feet to disappear or produce a beautiful skin for those whose skin is marred by ugly blemishes.

(h) That the curds of goat's milk used in these preparations are a tonic, or are vital to health and beauty of body.

(i) That said preparations are taking precedence over all other preparations.

(j) That the ingredients consisting of goat's milk curds and whey impart unique value to these preparations.

(k) That goat's milk—

Will purify the blood stream, is rich in alkaline or has an alkaline reaction in the stomach, is assimilated in thirty minutes, will help overcome or be a remedy or cure for the cause of stomach disorders, is an adequate or competent treatment for, and has unique value in the treatment of eczema, ulcers of the stomach, or tuberculosis, and will be nonfattening.

(l) That the nutritional value of three quarts of goat's milk is equivalent to that of eight quarts of ordinary milk.

(m) That the low initial bacterial count of goat's milk is inherent in the fact that it is goat's milk.

(n) That goat's milk has a larger content of body and health building minerals than cow's or mother's milk.

The said Marion E. Baldwin further agreed that she will cease and desist from using the word "tissue" or any abbreviation thereof or any other word, term, or abbreviation of similar import or meaning as any part of a brand name to designate or describe in advertising or otherwise any of her preparations, or in any manner or by any means indicate or represent that any of her preparations will in any manner affect the tissue of the skin other than to clean the surface of the outer skin tissues.

The said Marion E. Baldwit further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 19, 1942.)

02939. **Book of Instructions—Qualities, Properties, or Results.**—Erwin W. Hasebroock, an individual, 307 South Second Street, Norfolk, Nebr., vendor-advertiser, was engaged in selling a book of instructions for the treatment of asthma and sinusitis designated Permanent Relief from Sinus Trouble and Asthma and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That an observance of the advice contained in his book will have any effect in the treatment of asthma; that an observance of such advice will afford permanent relief from sinusitis.

The said Erwin W. Hasebroock agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 19, 1942.)

02940. **Worm Remedy—Qualities, Properties or Results, and Safety.**—Raymond G. Burfeind, an individual trading as Chemical Products Co. and Chemical Products Laboratory, Ellsworth, Minn., vendor-advertiser, was engaged in selling an anthelmintic designated Sixty Minute Worm Expeller and Sixty Minute Worm Remedy and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That this product expels all worms from dogs, cats or foxes.

(b) By the use of the designation "Sixty Minute" in the brand name of the product or by any other means, that this product expels worms in sixty minutes, or in any other specified period of time.

(c) That this product is always effective or is dependable in all cases and under all conditions or absolutely certain in its action.

(d) That this product is harmless or safe unless it is explained in direct connection therewith that the product may not be safe to administer to weak or sick animals.

(e) That this product cures dogs of running fits.

(f) That this product should be administered to full grown dogs or cats every four months or to puppies when six weeks old.

(g) That administering this product to dogs reduces the danger of fits, dis-temper, paralysis, eczema, or other diseases.

(h) That administering this product to puppies reduces mortality.

The said Raymond G. Burfeind further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 20, 1942.)

02941. **Cosmetic—Qualities, Properties, or Results.**—Conti Products Corp., a corporation, 45 Clinton Avenue, Brooklyn, N. Y., vendor-advertiser, was engaged in selling a cosmetic designated Conti Complexion Cream and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Conti Complexion Cream is effective in preventing or correcting skin dryness; or

(b) That Conti Complexion Cream is effective in helping maintain the proper moisture balance of the skin; or

(c) That Conti Complexion Cream is effective in conditioning the facial muscles, or that said preparation will have a beneficial effect upon the facial muscles; or

(d) That Conti Complexion Cream will have a beneficial effect upon so-called "worry lines;" or

(e) Through the use of the word "tissue" in describing Conti Complexion Cream, or in any other manner, that said preparation builds up, nourishes, or otherwise beneficially affects the tissues of the skin.

The said Conti Products Corp., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 20, 1942.)

02942. Booklet and Courses of Instruction—Qualities, Properties or Results, Guaranteed, and Limited Offers.—Anthony Matysek, an individual doing business as such and under the trade name of Antone Matysek, 2219 East Biddle St., Baltimore, Md., vendor-advertiser, was engaged in selling a booklet entitled "Physique Control Course" and courses of instructions designated "Health-O-Flex System Courses" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said physique control course reveals new strength secrets or will relieve fatigue; control constipation; build the body; revitalize the spine, heart, lungs, kidneys, muscles or glands; produce a transparent complexion, glistening moist eyes, or an attractive, healthy body; make inactive bowels respond; expel gas out of the system, or to give aid in preventing delay in the digestion of food; strengthen the nerves or internal organs; control the muscles of the body; increase virility, reactivation of the body, life energy, relaxation, contraction, effective breathing; increase the chest, or create perfect blood circulation; correct rounded shoulders; control the shoulder blades, or thicken the shoulders; influence the trapezius, pelvis, or cartilage; or enable one to be immune from rupture; or that the observance of its teachings will enable one to achieve such results.

(b) That Health-O-Flex System Courses teach one how to make his weakest spots strongest or to double or increase his strength or endurance; or that the observance thereof would produce such results.

It is hereby further agreed by Anthony Matysek that in connection with the dissemination of advertising by means and in the manner above set out, he will forthwith cease and desist from representing, directly or by implication, that the device designated "Health-O-Flexer":

(c) Is an improved method of physical culture or that it gives strength, health, or attractiveness to the body; controls or reactivates the muscles of the body; makes the weakest spots strongest; produces superiority, super-vitality, an active mind, a robust physique, or youthfulness; eliminates body poisons, fatigue or sluggishness.

(d) Reactivates the glands or ligaments; invigorates the heart, liver, kidneys, stomach, lungs, ductless glands or other internal organs; or enables one to gain or keep health.

(e) Helps to eliminate surgical operations, drugs, medicines, loss of time; or enables one to realize immense powers that will take him ten times as far.

(f) Prevents colds, headaches, backaches, sickness, or suffering.

(g) Increases or reduces the weight as desired; reduces or normalizes the abdomen or invigorates vital organs; reduces or melts away fat; induces sleep; retards degeneration of the body; establishes functional equilibrium or form; builds up new cells; makes one physically fit.

The said Anthony Matysek further agreed to cease and desist from representing in his advertising that any specific results claimed in the advertising, or benefits to be derived from the use of his said products, are guaranteed; that any offer is limited as to time unless orders received after the expiration of said time limit are refused, or that any offer is limited in time when such is not the fact.

The said Anthony Matysek further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 26, 1942.)

02943. **Laxative Preparation—Qualities, Properties or Results, and Safety.**—Cal-Par Corp., a corporation, 685 Broadway, New York, N. Y., vendor-advertiser, was engaged in selling a laxative preparation designated Bolk and agreed, in connection with the dissemination of future advertising, to cease and desist:

(a) From representing, directly or by implication, that said preparation relieves constipation in a natural manner, or is a food auxiliary, or is safe to use in cases of colitis or in all cases of constipation or in spastic constipation; or

(b) From representing, directly or by implication, that said preparation acts as an intestinal tonic; or

(c) From representing, directly or by implication, that said preparation will always be of benefit where symptoms of headaches, furred tongue, skin blemishes, nausea, dizziness, dimmed eyesight, weakness, or lethargy are present; or

(d) From representing, directly or by implication, that said preparation will prevent toxins from breaking down the intestinal walls and entering the blood stream, or will prevent degenerative changes in nerves, tissues, glands or body organs, or is a safeguard against obesity to the extent of preventing the addition of pound after pound of unwanted flesh; or

(e) From quoting, using or referring to the statements of others in such manner that the true meaning and import of such statements are not conveyed and with the result that the therapeutic value of said preparation is exaggerated; or

(f) From using any advertisement which fails to reveal that said preparation should not be used when abdominal pain (stomachache, cramp, colic), nausea, vomiting (stomach-sickness), or other symptoms of appendicitis are present, *Provided, however*, that such advertisement need contain only the statement: "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

The said Cal-Par Corp. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 26, 1942.)

02944. Electric Shavers—Qualities, Properties, or Results.—Remington Rand, Inc., a corporation, 465 Washington Street, Buffalo, N. Y., vendor-advertiser, was engaged in selling various electric shavers designated as the 'Speekad, the Rand Close Shaver, the Remington Close Shaver, and the Remington Dual Close Shaver and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Remington Rand Electric Shavers can't irritate the skin or that they will cure ingrown hairs.

(b) That Remington Rand Electric Shavers will eliminate or prevent the formation of scar tissue.

The said Remington Rand, Inc., also agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 27, 1942.)

02945. Bronze Plates for Use in Making Memorials—Terms and Conditions, Opportunities, and Earnings or Profits.—Engval Vaatveit, an individual, McIntosh, Minn., vendor-advertiser, was engaged in selling bronze plates for use in making memorials and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That persons engaged in the business of making memorials from bronze plates procured from him require no capital, nor do they need to make any investment in the business.

(b) That prospective agents, salesmen, distributors, dealers, or other representatives can make profits or earnings within a specific period of time, which are in excess of the average net profits or earnings which have theretofore been consistently made in like periods of time by his active full-time agents, salesmen, distributors, dealers, or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

Engval Vaatveit 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 Engval Vaatveit agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 27, 1942.)

02946. Medicinal Preparations—Qualities, Properties or Results.—Erwin, Wasey & Co., Ltd., a corporation, 230 North Michigan Avenue, Chicago, Ill., was engaged in the business of conducting an ad-

vertising agency which disseminated advertisements for certain medicinal preparations now designated LD-Lax and Lacto-Dextrin on behalf of The Battle Creek Food Co. of Battle Creek, Mich. 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 is a remedy or cure for constipation.
- (c) That it prevents the return of constipation.
- (d) That it frees the intestinal system of poisonous wastes or putrefactive poisons.
- (e) That it is of value as a treatment for stomach distress or stomach disorders.
- (f) That it drives bacteria or germs out of the colon.
- (g) That Lacto-Dextrin insures health, restores the intestinal system to a healthy balance, restores health or restores health to the digestive system; or
- (h) That it will prevent stomach misery.

The said Erwin, Wasey & Co., Ltd., further agreed not to disseminate or cause to be disseminated any testimonial containing any representation contrary to the foregoing agreement. (Feb. 2, 1942.)

02947. **Electric Tooth Brush—Qualities, Properties, or Results.**—Dalmo Manufacturing Co., a corporation, and Tomlinson I. Moseley, an individual, 511 Harrison Street, San Francisco, Calif., vendor-advertisers, were engaged in selling a device designated Motodent Electric Tooth Brush and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That the product removes irritants which cause trauma.
- (b) That use of the product will be beneficial for gingivitis unless limited to those cases of gingivitis which are not caused by syphilis.
- (c) That the product is unexcelled for cleaning plates and dentures.
- (d) That the product will remove tobacco stains unless limited to such tobacco stains as are fresh and superficial.
- (e) That the product removes or checks tartar, or that tartar does not collect when the product is used.
- (f) That the product whitens the teeth.

The said Dalmo Manufacturing Co. and Tomlinson I. Moseley further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Feb. 9, 1942.)

02948. **Household Products—Success, Use, or Standing, and Qualities, Properties, or Results.**—R. M. Hollingshead Corp., a corporation, 840 Cooper Street, Camden, N. J., vendor-advertiser, was engaged in selling three household products designated Whiz Self-Polishing Floor Wax, Whiz Bed Bug Destroyer, and Whiz No. 500 Pine Oil disinfectant and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Whiz Self-Polishing Floor Wax is used by the Bell Telephone System or by any party when such is not the fact.

(b) That Whiz Bed Bug Destroyer is the most effective product of its kind ever developed, or that more Whiz Bed Bug Destroyer has been sold than all other brands combined.

(c) That one application of Whiz Bed Bug Destroyer will rid the most badly infested rooms of bed bugs.

(d) That Whiz No. 500 Pine Oil Disinfectant when used as a spray will revitalize or purify the air in a room.

The said R. M. Hollingshead Corp. agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 9, 1942.)

02949. Dentifrices—Qualities, Properties, or Results.—E. R. Squibb & Sons, a corporation, 745 Fifth Avenue, New York, N. Y., vendor-advertiser, engaged in selling certain dentifrices designated Squibb Dental Cream and Squibb Tooth Powder and Geyer, Cornell & Newell, Inc., a corporation, 745 Fifth Avenue, New York, N. Y., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named products on behalf of E. R. Squibb & Sons, agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the use alone of these dentifrices contributes to a material degree to the prevention of tooth decay; or

(b) That the milk of magnesia in these dentifrices is concentrated.

The said E. B. Squibb & Sons, and Geyer, Cornell & Newell, Inc., and each of them, further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representation contrary to the foregoing agreement. (Feb. 10, 1942.)

02950. Electric Fence Controllers—Economy or Savings, Comparative Value, and Merits and Qualities, Properties, or Results.—Farm Electric Manufacturing Co., a corporation, Rural Route No. 4, North Kansas City, Mo., vendor-advertiser, was engaged in selling electrical devices for electrically charging fences, generally designated Big Six Electric Fence Chargers and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the use of its electric fence controllers will effect any stated amount or percentage of saving in "farm fencing costs" as compared with the costs of other types of fences without stating the type or types of 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.

(b) That the use of its electric fence controllers with an electric fence is more effective to confine live stock than any nonelectric fence no matter how strong or heavy, and regardless of type or construction; or

(c) That the use of its electric fence controllers with a single wire enclosure confines all live stock, or any animal of a size which would enable that animal to readily pass under or over that wire without coming in contact with it, or any animal whose natural covering or coat would serve to insulate it from electric shock at the probable point of its contact with the wire, or solves every fencing problem.

The said Farm Electric Manufacturing Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 9, 1942.)

02951. **Electric Fence Controllers—Manufacturer, History, Qualities, Properties, or Results, Government Approval, Tests and Economy, or Savings.**—Guaranteed Products Corp., a corporation, Wellington, Ohio, vendor-advertiser, was engaged in selling certain electric fence controllers designated Shox Stok Fence Controllers, Ever Best Fence Controllers, Felco Fence Controllers, and Tru Test Fence Controllers, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That it manufactures the electric fence controllers which it sells.

(b) That its electric fence controllers operate by means of any revolutionary or new principle of electricity.

(c) That its electric fence controllers require no attention, care, maintenance service, or will not wear out or will not become inoperative.

(d) That its electric fence controllers have been approved or certified by the National Bureau of Standards of the United States Department of Commerce.

(e) That its model PH electric fence controller has been approved or certified by any officially recognized testing authority; or

(f) That the use of its electric fence controller will effect any stated amount or percentage of saving in farm fencing costs as compared with the costs of other types of fences without stating the type or types of fence used as a basis for such comparison, and without taking into consideration in such comparison all costs, including both initial costs, and costs of maintenance.

The said Guaranteed Products Corp. agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 10, 1942.)

02952. **Flour—Comparative Merits.**—Omar Inc., a corporation, 1910 Harney Street, Omaha, Nebr., vendor-advertiser, was engaged in selling a flour designated Omar Wonder Flour and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That bread made with Omar Wonder Flour rises quicker than bread made with any other flour; or

(b) That by using Omar Wonder Flour one will get one-third more bread, or otherwise representing incorrectly the quantity of bread produced through the use of said flour in comparison with other flours on the market.

The said Omar Inc. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 19, 1942.)

02953. **Systems of Collection Letters—Qualities, Properties or Results, Earnings or Profits, Size of Business, Etc.**—Bureau of Credit Control, Inc., a corporation, and Louis Possenheim, an individual doing business as Bureau of Credit Control, Accounts Receivable Control Service, Delinquent Account Control System, Bureau of Credit Control "Special" Service, Credit Collection Control, and Delinquent Account Special Control Service, Rives-Strong Building, Los Angeles, Calif., vendor-advertisers, were engaged in selling systems of collection letters generally designated "Delinquent Account Control System" 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 any of their systems or methods for the collection of delinquent accounts receivable, and bad debts will result in the collection of a definite and specified amount of money on those accounts receivable, or bad debts or any percentage of the cost of said systems or methods or from guaranteeing any specified amount of money which can be collected by the use of their systems or methods.

(b) That they do not own, operate or conduct a business for the collection of delinquent accounts receivable or bad debts.

(c) That they do not solicit accounts for collection.

(d) That the use of any of their systems for the collection of bad debts, and delinquent accounts receivable will prevent credit losses.

(e) That prospective agents, salesmen, distributors, dealers, or other representatives can make profits or earnings within a specified period of time, which are in excess of the average net profits or earnings which have theretofore been consistently made in like periods of time by its active full-time agents, salesmen, distributors, dealers, or other representatives, in the ordinary and usual course of business and under normal conditions and circumstances; or

(f) By the use of pictorial representations or photographs, that the physical facilities of the offices or quarters used by them in the conduct of their business are any greater than the facilities they own, operate or control at the time such pictorial representations or photographs are disseminated.

The said Bureau of Credit Control, Inc., and Louis Possenheim agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 24, 1942.)

02954. **Lists of Names and Memberships in Correspondence Club—Results Guarantee, Free, Etc.**—Edith McDonald, an individual, doing business under the trade name of The Mutual Welfare Correspondence Club, Post Office Box 753, San Francisco, Calif., vendor-advertiser, was engaged in selling memberships in The Mutual Welfare Correspondence Club, and lists of names purporting to be members of said club and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the \$1.00 fee charged to ladies is used to cover the expenses incident to the sale of her memberships or lists of names.

(b) That any of the results claimed in the advertising are guaranteed.

(c) That any particulars or descriptions are free to members when the prices thereof are included in the prices charged for such memberships or lists of names.

(d) That her statements relating to the financial or other standing, education, character, age, occupation or profession of those names who appear on such lists are other than the mere statements of those persons themselves, in the absence of some responsible investigation into the truth or falsity of such statements.

The said Edith McDonald agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Feb. 24, 1942.)

02955. Lipstick—Qualities, Properties, or Results, and Safety.—R. W. Appleton, an individual doing business as Parker-Bouldin Co., 500 Robert Street, St. Paul, Minn., vendor-advertiser, was engaged in selling a cosmetic designated Priscilla Parker Breath Correcting Lipstick and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said lipstick is effective in neutralizing offensive breath, or in neutralizing, deodorizing, or correcting breath odors caused by eating, smoking, drinking alcoholic beverages, or odors resulting from any other cause, or causes; or

(b) That the ingredients contained in said lipstick are harmless, or otherwise representing that none of the ingredients in said lipstick are harmful.

The said R. W. Appleton further agreed to cease and desist from use in the brand name of said lipstick of the words "Breath Correcting," or "Deodorizing," or any other terminology, representing, importing or implying that said lipstick corrects or neutralizes breath odors.

The said R. W. Appleton further agreed not to publish, or cause to be published, any advertisement which fails to reveal that the continued use of said lipstick over too prolonged periods of time, may in certain individuals cause exfoliation of the skin; *Provided, however,* That such advertisement need only contain the statement: "CAUTION; Use only as directed," if and when the directions for using wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

The said R. W. Appleton further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 2, 1942.)

02956. Rice Products—Qualities, Properties, or Results, Comparative Merits, Etc.—Southern Rice Sales Co., Inc., a corporation, 11 Beach Street, New York, N. Y., vendor-advertiser, was engaged in selling a brown rice product designated River Brand Brown Rice, and a puffed brown rice product designated River Brand Puffed Brown Rice and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That River Brand Brown Rice will regularly provide per ounce as many as 56.8 International units of Vitamin B₁, or 25.6 micrograms of Vitamin B₂, or, when eaten in quantities ordinarily consumed, will supply a child's or an adult's daily minimum nutritional requirement for Vitamin B₁; or

(b) That River Brand Brown Rice will keep one healthy; or

(c) That any one of the vitamins contained in River Brand Puffed Brown Rice is the health vitamin; or

(d) That River Brand Puffed Brown Rice is comparable, in its Vitamin B₁ and Vitamin B₂ content, to unpuffed brown rice.

The said Southern Rice Sales Co., Inc., further agreed not to publish, or cause to be published any testimonials containing any representations contrary to the foregoing agreement. (Mar. 6, 1942.)

02957. Rice Products—Qualities, Properties, or Results, Comparative Merits, Etc.—Donahue & Coe, Inc., a corporation, Rockefeller Center, 1270 Sixth Avenue, New York, N. Y., was engaged in the business of conducting an advertising agency which disseminated advertisements for a brown rice product designated River Brand Brown Rice, and a puffed brown rice product designated River Brand Puffed Brown Rice on behalf of Southern Rice Sales Co., Inc., of New York City and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That River Brand Brown Rice will regularly provide per ounce as many as 56.8 International units of Vitamin B₁ or 25.6 micrograms of Vitamin B₂, or when eaten in quantities, ordinarily consumed, will supply a child's or an adult's daily minimum nutritional requirement for Vitamin B₁; or

(b) That River Brand Brown Rice will keep one healthy; or

(c) That any one of the vitamins contained in River Brand Puffed Brown Rice is the health vitamin; or

(d) That River Brand Puffed Brown Rice is comparable in its Vitamin B₁ and Vitamin B₂ content, to unpuffed brown rice.

The said Donahue & Coe, Inc., further agreed not to publish, or cause to be published, any testimonials containing any representation contrary to the foregoing agreement. (Mar. 6, 1942.)

02958.¹ Hotel Training Course—Opportunities.—Lewis Hotel Training Schools, Inc., a corporation, 2301 Pennsylvania Avenue, N.W., Washington, D. C., vendor-advertiser, was engaged in selling a course of training for various positions in the hotel and allied fields and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said course of training will qualify persons without previous experience, and with only a grade school education, to fill, in the hotel and allied fields, any position at any salary which in fact calls for educational qualifications, specialized training, or practical experience not provided by said course of training; or

¹ Supplemental.

(b) That said course of training will insure success, or that persons, by reason of having taken said course of training, will be assured of security and advancement in the hotel and allied fields; or

(c) That, by reason of having taken said course of training, those persons having reached the age of 40 are assured of continued employment in the hotel field; or

(d) That the Lewis Hotel School graduate, upon graduation, can qualify for any stated salary in a beginner's position greater than the average salary received in such positions by a representative number of Lewis Hotel School graduates upon their graduation.

The said Lewis Hotel Training Schools, Inc., agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Mar. 6, 1942.)

02959. Medicinal Preparations—Qualities, Properties or Results and Limited Offers.—Dr. Peter Fahrney & Sons Co., a corporation, 2501-17 Washington Boulevard, Chicago, Ill., vendor-advertiser, was engaged in selling medicinal preparations designated Forni's Alpenkrauter, also designated Dr. Peter's Novoro, and Hoboko; Forni's Magolo, and Forni's Heil-Oel Liniment, also designated Oleum Liniment, and Lecivy Olej Liniment and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

Forni's Alpenkrauter

(a) That this product will "regulate" the bowels.

(b) That a sale offer of this product is limited as to time when such is not the fact.

(c) That this product will relieve rheumatic pains.

Forni's Magolo

(d) That this product will neutralize acids in the stomach, or correct acidity, or will be beneficial in cases of diarrhea due to "summer complaint."

Forni's Heil-Oel Liniment

(e) That this product may be used for backache with beneficial results, unless limited to the type of this ailment in which such results may be obtained.

(f) That this product will saturate the skin.

It is hereby further agreed by Dr. Peter Fahrney & Sons Co. that in the dissemination of said advertising, it will continue to cease and desist from representing directly or by implication:

Forni's Alpenkrauter

(g) That this product will prevent sickness, keep the body firm and strong or ward off disease.

(h) That this product has beneficial effects in cases of skin eruptions.

(i) That this product is beneficial in cases of biliousness.

Forni's Heil-Oel Liniment

(j) That this product is a competent treatment for wounds caused by rusty nails, or in cases of burns severe enough to cause scars, or for corns or calluses.

(k) That this product may be used as a mouthwash or gargle.

The said Dr. Peter Fahrney & Sons Co. further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 11, 1942.)

02960. Medicinal Preparation—Qualities, Properties or Results.—William G. Carr and Ronald Brunswick, Jr., trading as American Ru-Mari Co., 172 North La Brea, Los Angeles, Calif., vendor-advertisers, engaged in selling a medicinal preparation designated Ro-Mari, and W. C. Jeffries, an individual doing business as W. C. Jeffries Co., 816 West Fifth Street, Los Angeles, Calif., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of American Ru-Mari Co., 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 an effective treatment for arthritis, neuritis, rheumatism, sciatica, lumbago, or gout, or for pain associated with said conditions, or will prevent a recurrence of said conditions, or will strike at the cause of pain or stiffness; or

(b) That said preparation deadens pain or otherwise representing that it possesses pain-deadening properties; or

(c) That said preparation will restore the normal alkalinity of the blood or tissues, or is an effective treatment for harmful acid conditions; or

(d) That said preparation has an effective diuretic action; or

(e) That said preparation is as strong as the ordinary alkaline prescription.

The said William G. Carr and Ronald Brunswick, Jr., further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

The advertising agent 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 an effective treatment for arthritis, neuritis, rheumatism, sciatica, lumbago or gout, or for pain associated with said conditions.

The said W. C. Jeffries further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 17, 1942.)

02961. Medicinal Preparation—Qualities, Properties, or Results, Composition, Reduced Price, Success, Use, or Standing and Safety.—Arthur T. Wilson, trading as The Sas-Nak Co., Post Office Box 4671, Kansas City, Mo., vendor-advertiser, was engaged in selling certain black and

certain yellow drug tablets, to be taken conjointly, designated Sas-Nak and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That the product is a cure or remedy or constitutes a competent or effective treatment for:

- (a) Indigestion.
- (b) Gas.
- (c) Bloating.
- (d) Night rising.
- (e) Palpitation from gas.
- (f) Stomach ulcers.
- (g) Sour stomach.
- (h) Stomach acidity.
- (i) Spitting up of food.
- (j) Shortness of breath.
- (k) Kidney, bladder, liver and stomach conditions.
- (l) Rheumatism and rheumatic pains.
- (m) Run-down condition.
- (n) Colds.
- (o) Chills.
- (p) Influenza.
- (q) Fever.
- (r) Pains in the back, shoulders and hips.
- (s) Headaches.
- (t) Neuritis.
- (u) Distress after eating.
- (v) Dizziness and nervousness associated with high blood pressure.
- (w) Constipation.
- (x) The laxative habit.
- (y) Bladder irritation and weakness.
- (z) Loss of appetite.
- (aa) Skin eruptions.
- (ab) Gallstone attacks.
- (ac) Sallow or "muddy" complexion due to sluggish liver.
- (ad) Sleeplessness.

or that it has any value in the treatment thereof in excess of the temporary relief it may afford by causing a partial evacuation of the intestinal tract, a stimulus to the flow of gastric juice and a mild stimulus to the appetite.

2. That the product makes digestive organs sweet and clear, tones up the system, contains a therapeutically significant amount of iron, or clears away old bile deposits.

3. That the price at which it is offered is a reduced price.

4. That the sales of the product have created a sensation in the drug world and otherwise from representing that the number of sales of the product are in excess of what they actually are.

Arthur T. Wilson further agreed that in the dissemination of advertising by the means and in the manner above set out, of the medicinal preparation now designated Sas-Nak, or any other preparation of substantially the same composition, or possessing the same properties, whether sold under that name or any other name, he will

forthwith cease and desist from disseminating any advertisement which states that the product should be taken regularly every day, or which fails to reveal:

I. That the product should not be used when abdominal pains, nausea, vomiting, or other symptoms of appendicitis are present.

II. That frequent or continued use of the product may result in dependence on laxatives.

III. That the product contains the powerful poison strychnine in quantities sufficient to be dangerous to the health if taken in excess of the dosage recommended.

Provided, however, That such advertisements need contain only the station: "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said Arthur T. Wilson further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Mar. 17, 1942.)

02962. Health Books and Foods—Qualities, Properties, or Results.—Benedict Lust, an individual doing business as Health Book Service and Benedict Lust Publications, 343 Lexington Avenue, New York, N. Y., vendor-advertiser, was engaged in selling pamphlets, books, and other publications designated "The Philosophy of Fasting," "The Natural Method of Healing," "Return to Nature," "The Water-Cure," also known as "The Kneipp Cure," and "The Naturopath" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That by reading and following the instructions contained in the publication entitled "The Philosophy of Fasting" a person can cure or relieve blindness or any other body pain or ailment.

(b) That by reading and following the instructions contained in the publications entitled "The Natural Method of Healing," and "Return to Nature" a person will be able to heal any body ailment or to immunize himself from sickness.

(c) That by reading and following the instructions contained in the publication entitled "The Water Cure," or "The Kneipp Cure," a person will be able to cure or relieve all forms of chronic diseases.

(d) That by reading and following the instructions contained in the publication entitled "The Naturopath," a person will be able to "generate" his own health, and to cure himself at home of any disease, acute or chronic, and to maintain his health.

It is further agreed by Benedict Lust, that in the dissemination of advertising by the means and in the manner above set out of so-called Health Foods, and the product designated "Lust's Barley Malt Coffee," he will forthwith cease and desist from representing, directly or by implication:

(e) That his health foods will cure diseases or restore organs to their proper functions.

(f) That "Lust's Barley Malt Coffee" is nerve building.

The said Benedict Lust further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 20, 1942.)

02963. Medicinal Preparation—Scientific or Relevant Facts, Qualities, Properties, or Results, Approval, Comparative Merits, Laboratories, Etc.— Edgar B. Penney, Minnie F. Penney, F. S. Penney, and Fred D. Penney, copartners operating under the firm name of C. A. Mosso Laboratories, 215 South Leavitt Street, Chicago, Ill., vendor-advertisers, were engaged in selling a drug product designated Oil-of-Salt and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That any definite percentage of injuries becomes infected or that any definite percentage of infections is due to any condition or that infected injuries cost any definite percentage of compensation paid unless limited to injuries of which records are kept and the statements are in accord with the facts as shown by the records.

(b) That the product is of value in the treatment of burns caused by molten metal or of acid burns or that it is of any value in the treatment of other burns or of scalds other than those of a minor nature.

(c) That the product is of value in the treatment of bruises.

(d) That the product stimulates granulosis or checks the flow of blood, tends to check bleeding or capillary bleeding, or that it is hemostatic, or from otherwise representing or implying that it possesses any hemostatic properties.

(e) That the product causes healing or that it affords healing results.

(f) That the product promotes sun tan.

(g) That the product is of value in the treatment of athlete's foot or other foot troubles, unless the particular cases of athlete's foot or other foot troubles for which it may be beneficial are specified in direct connection therewith.

(h) That the product is of value in the treatment of insect bites other than those resulting from nonpoisonous insects.

(i) That it is the experience of the executives in any number of industrial concerns that the product is the most effective used by them or that the majority of them use it exclusively when such statements are not supported by the facts.

(j) That ordinary antiseptic products are hard or drastic in action or that they retard healing opportunities, or from otherwise disparaging products used for the same purposes.

(k) That the product is an effective relief in the treatment of poison ivy.

(l) That the product affords sure results.

(m) That the product will prevent what would otherwise be expensive or long drawn out cases or that it will forestall the serious results which may follow minor injuries.

The said Edwar B. Penney, Minnie F. Penney, F. S. Penney, and Fred D. Penney further agreed to cease and desist from using the word "Laboratories" as a part of their firm name, or from otherwise representing or implying that they maintain a laboratory, unless and until they actually own and operate or control and operate a laboratory for the purpose of testing and experimenting with the product.

The said Edgar B. Penney, Minnie F. Penney, F. S. Penney, and Fred D. Penney further agreed to cease and desist from representing by the use of the brand name, "Oil-of-Salt," or otherwise that the preparation possesses salt in any therapeutic quantity.

The said Edgar B. Penney, Minnie F. Penney, F. S. Penney, and Fred D. Penney further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 20, 1942.)

02964. **Water Treating Device—Nature and "Distilled."**—Illinois Water Treatment Co., a corporation, 840 Cedar Street, Rockford, Ill., vendor-advertiser, was engaged in selling an apparatus for chemically treating ordinary city or well water, designated as the Illico Still and agreed, in connection with the dissemination of future advertising, to cease and desist from the use of the word "Still" as a part of the brand name of the said apparatus, or otherwise representing that the apparatus is a still.

The said Illinois Water Treatment Co. further agreed that in its future advertising it will cease and desist from using the word "distilled" as descriptive of any water or fluid treated by said apparatus, or from the use of any word or words impliedly or directly which represent that any water or fluid treated by said apparatus is distilled.

The said Illinois Water Treatment Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 24, 1942.)

02965. **Stop-Leak or Cement—Nature and Qualities, Properties, or Results.**—A. H. Graenser and Peter B. Kobeliensky, copartners, trading as Presto Products Co., 4650-H Chene Street, Detroit, Mich., vendor-advertisers, were engaged in selling a stop-leak or cement designated Presto Liquid Weld and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) By designation of the product as a weld (a) or by use of the word "weld" in the name thereof, that the product is a weld;
- (b) That the product welds or repairs by welding;
- (c) That the product effects a permanent repair.

The said individuals agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 24, 1942.)

02966. **Motor Tune-Up Product—Qualities, Properties, or Results, Tests, and Comparative Merits.**—R. M. Hollingshead Corp., a corporation, Camden, N. J., vendor-advertiser, was engaged in selling a motor tune-up product designated Whiz Motor Rythm and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Whiz Motor Rythm guarantees the starting of an automobile engine in freezing or other weather or at all;

(b) That Whiz Motor Rythm, when used as a lubricant anti-freeze, permits motor oil and gear lubricants to flow freely at 40° below zero or at any other specified temperature when such is not the fact established by a competent test conducted by an adequately equipped independent establishment engaged in the business of conducting impartial tests of the character represented;

(c) That Whiz Motor Rhythm will restore old cars to their former power and efficiency.

(d) That one quart of Motor Rythm oiliness base has lubricating value equal to that of sixty-five quarts of motor oil or any other quantity of motor oil that has not been established by a competent test made by an adequately equipped independent establishment engaged in the business of conducting impartial tests of the character represented;

(e) That Whiz Motor Rhythm will eliminate engine drag.

The said R. M. Hollingshead Corp. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 27, 1942.)

02967. Washing Machines—Guarantee and Comparative Merits.—The Dexter Co., a corporation, Fairfield, Iowa, vendor-advertiser, was engaged in selling Dexter washing machines and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That said machines are backed by a gold bond or that they carry a lifetime guarantee, or

2. That said machines hold the world's record for quick washing or wash clothes 20 percent cleaner than any other washing machine.

The said The Dexter Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 30, 1942.)

02968. Medicinal Preparation—Qualities, Properties, or Results, Comparative Merits, and Composition.—James J. Bessemer, an individual operating under the names of Bessemer Health Products and Bessemer Chemical Co., 181 Northeast Eightieth Terrace, Miami, Fla., vendor-advertiser, was engaged in selling a drug designated Odoform and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or indirectly:

1. That the use of the preparation provides relief from pain caused by rheumatism, gout, arthritis or neuritis.

2. That Odoform cleanses the pores or draws out poisons from the body.

3. That Odoform baths surpass world renowned mineral baths.

4. That Odoform is a vegetable product or that it contains no chemicals.

5. That, when used in accordance with directions, Odoform is antiseptic or prophylactic, or has sterilizing properties.

6. That Odoform is valuable in the treatment or cure of gout, rheumatism, dropsy, paralysis, skin disorders, sexual disorders, blood disorders, diabetes, indigestion, bladder troubles, kidney troubles, febrile or inflammatory diseases, nervous disorders, fatigue debility or auto-intoxication.

7. That Odoform is of value in the treatment of bunions, corns, bolls or carbuncles, or as a douche.

The said James J. Bessemer further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 30, 1942.)

02969. **Electric Fence Controllers—Tested, Approved, or Certified, Economy, or Savings, Etc.**—The Sparks-Withington Co., a corporation, Jackson, Mich., vendor-advertiser, was engaged in selling certain electric fence controllers designated Sparton Sting-Ray Electric Fence Controllers and agreed, in connection with the dissemination of future advertising to cease and desist from representing directly or by implication:

(a) That its electric fence controllers have been tested, approved or certified by Underwriters' Laboratories, Inc., without revealing with equal conspicuousness and in direct connection therewith which model or models of its electric fence controllers have been so tested, approved or certified.

(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 in such comparison, all costs, including both initial costs and costs of maintenance; or

(c) That the cost of constructing an electric fence is less than \$10.00 per mile or any other amount less than the actual cost of constructing such a fence.

The Sparks-Withington Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 14, 1942.)

02970. **Bread—Composition, Qualities, Properties, or Results, History, and Indorsements, or Approval.**—Gordon Baking Co., a corporation, 2303 East Vernor Street, Detroit, Mich., vendor-advertiser, engaged in selling a bread product designated Silvercup Roman Meal Bread and Barton A. Stebbins, an individual, 811 West Seventh Street, Los Angeles, Calif., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Gordon Baking Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Silvercup Roman Meal Bread contains all the necessary vitamins, or that said bread, when eaten in quantities ordinarily consumed, will supply the minimum daily nutritional requirement for any one vitamin; or

(b) That said bread is incapable of adding excess body weight, or will in and of itself reduce excess body weight or that a reduction of excess body weight will be assured where said bread is made part of the normal diet; or

(c) That said bread embodies a new health secret or will enable persons to eat their way to health; or

(d) That said bread is served to, and is indorsed and approved by, famous movie stars when such is not the fact.

The said Gordon Baking Co. and the said Barton A. Stebbins, and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 3, 1942.)

02971. Poultry and Livestock Feeds—Comparative Merits, Composition, and Qualities, Properties, or Results.—Schultz, Baujan & Co., Inc., a corporation, Beardstown, Ill., vendor-advertiser, engaged in selling certain poultry and livestock feeds designated "Critic Egg Mash," "Critic Growing Mash," "Critic Starting Mash," "Critic All Mash," "Honest Starting and Growing Mash," "Honest Broiler Ration," "Honest Egg Mash," "Critic 28% Pig & Hog Meal," "Critic 32% Mineralized Hog Supplement," and "Critic 40% Hog Concentrate," and Mace Advertising Agency, Inc., a corporation, Lehmann Building, Peoria, Ill., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named products on behalf of Schultz, Baujan & Co., Inc., agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Critic Egg Mash is a superior feed or contains an ingredient that gives it a plus value; that it increases laying quantity or quality; gives a high or maximum egg production, builds up egg laying endurance, gives the same benefits as derived from Spring range or tender grasses, or supplies an adequate amount of minerals.

(b) That Critic Growing Mash develops chicks into profitable layers.

(c) That Honest Starting and Growing Mash develops robust, producing pullets, or contains adequate amounts of vitamins, minerals or protein for growth.

(d) That Honest Broiler Ration of itself produces fast growth or fat accumulation in the shortest time, or that it produces the heaviest dressed weight in any definite or specified period of time.

(e) That Honest Egg Mash will give high egg production.

(f) That Critic Starting Mash or Critic All Mash are extra rich in minerals or vitamins.

(g) That Critic 28% Pig & Hog Meal will enable farrowing sows to produce strong or healthy pigs, build sturdy frames, build solid or healthy pork flesh, or is a health promoter.

(h) That Critic 32% Mineralized Hog Supplement will tone up pigs, keep hogs in good health, or is a completely balanced feed.

(i) That Critic 40% Hog Concentrate is a worm expeller, or assures faster gains or better health, or is the only supplement containing complete minerals or animal regulators, or prevents constipation or feverishness in brood sows.

(j) That Critic hog feeds contain everything necessary for healthy or fast-growing hogs.

The said Schultz, Baujan & Co., Inc. and Mace Advertising Agency, Inc., and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 15, 1942.)

02972. Clothing, Blankets and Other General Merchandise—Old as New, Composition, Nature, Etc.—Celia Wlodinger, Joe Wlodinger, and Arthur Hertz, copartners, doing business under the trade name of Farmers' Mail Order House, 75 Grand Street, New York, N. Y., were engaged in selling men's and women's wearing apparel, blankets and other general merchandise and agreed, in connection with the dissemination of future advertising, to cease and desist from:

(a) Representing that merchandise composed in whole or in part of renovated, old, used, reclaimed, or made over or second-hand materials is new or composed of new materials by failure to disclose in their advertisements that said merchandise is composed in whole or in part of renovated, old, used, reclaimed, or made over or second-hand materials.

(b) Representing that merchandise composed in whole or in part of renovated, old, used, reclaimed, or made over or second-hand materials is new or composed of new materials by failure to stamp thereon in conspicuous or in legible terms, which cannot be removed or cannot be obliterated without mutilating said merchandise, a statement that said garments are composed in whole or in part of renovated, old, used, reclaimed, or made over or second-hand materials.

(c) Representing by the use of the terms "crepe," "satin," "silk," or "chiffon" or otherwise, that any article contains silk when such is not a fact.

(d) Using the word "acetate" to designate or describe any article containing rayon unless the word "rayon" is used in direct connection therewith with equal conspicuousness and emphasis.

(e) Using the word "fur" or any other word that simulates "fur" in sound or spelling; or the words "Persian" or "Persian Ombre" or any other words or terms that contain the word "Persian" or any word that simulates "Persian" in sound or spelling; or the words "seal" or "Hudson Seal," or any other words or terms that contain the word "seal" or any word that simulates "seal" in sound or spelling; or the word "Caracul," or any word that simulates "Caracul" in sound or spelling; or the words "Lepan" or "Lapin" or any word that simulates "Lapin" in sound or spelling; or the name of any animal or fur to designate or describe the fabrics from which their pile fabric coats are manufactured which are not made of the fur of the animal designated, or any other animal, unless immediately preceded by the words "cloth imitation of" in clear, plain conspicuous type.

(f) Using the word "Indian" to designate or describe blankets not made by the American Indians.

(g) Using the word or words "flannel," "wool," or "all wool" or any other word, words, or term descriptive of wool to designate or in any way refer to the fiber in fabric which is not composed wholly of wool; *Provided, however,* That in the case of fabrics or products composed in part of wool and in part of fibers other than wool, there is used in immediate connection and conjunction with the word "wool," in letters of at least equal size and conspicuousness, words truthfully describing or designating each constituent fiber or material thereof in the order of its predominance by weight, beginning with the largest single constituent.

It is further agreed that whenever an article is composed of rayon, Celia Wlodinger, Joe Wlodinger, and Arthur Hertz will clearly dis-

close that the article is rayon, and whenever an article is composed in part of rayon and part of other fibers or materials, Celia Wlodinger, Joe Wlodinger, and Arthur Hertz will name all fibers or materials including the rayon with equal conspicuousness in the order of their predominance by weight, beginning with the largest single constituent.

It is further agreed by the said Celia Wlodinger, Joe Wlodinger, and Arthur Hertz that no provision contained in this stipulation shall be construed as authorizing or permitting the labeling of any product in any manner other than in strict conformity with the provisions of the Wool Products Labeling Act of 1939.

The said Celia Wlodinger and Joe Wlodinger, and Arthur Hertz agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 15, 1942.)

02973. **Rubefacient Preparation—History and Qualities, Properties, or Results.**—Muscle-Rub Co., Inc., a corporation, and Herman H. Kronberg, an individual trading as Muscle-Rub Co., 1631 Vine Street, Philadelphia, Pa., vendor-advertisers, were engaged in selling a rubefacient preparation which is designated "Muscle-Rub" and which is recommended for the relief of pain due to such conditions as rheumatism, neuritis, neuralgia, lumbago, and sciatica 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 new discovery, or that said preparation is effective in the relief of pain due to rheumatism, lumbago, neuritis, sciatica, neuralgia, or lameness, or that said preparation possesses any therapeutic value in excess of affording temporary relief as a mild counter-irritant rub in those cases of minor pain or discomfort where use of a counterirritant rub is indicated.

The said Muscle-Rub Co., Inc., and the said Herman H. Kronberg, and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 21, 1942.)

02974. **Hog Medicinal Preparation—Qualities, Properties, or Results, Unique, Tests, and Nature.**—D. Henry Allen, an individual, trading as National Hog Remedy Co., P. O. Box 1634, Raleigh, N. C., vendor-advertiser, was engaged in selling a medicinal preparation for hogs, designated National Hog Remedy and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That the use of said preparation will rid hogs of worms or regulate the liver.

2. That said preparation is of benefit in remedying or curing hogs of any sickness in excess of such benefit as may result from such action as it may have as a tonic, mineral supplement and appetizer.
3. That said preparation puts hogs in best condition and keeps them that way.
4. That said preparation is the only product of its kind manufactured solely for hogs.
5. That all hogs require a tonic such as said preparation.

The said D. Henry Allen further agreed that in the dissemination of advertising by the means and in the manner above set out he will not publish or cause to be published any representation relating to any tests conducted at the Experiment Station of the North Carolina State College which fails to reveal all facts material in the light of the representation, including when such tests were made or reported and the feed used during the said tests.

It is hereby further agreed by D. Henry Allen that in the dissemination of advertising by the means and in the manner above set out, he will forthwith cease and desist from the use of the word "Remedy" or any other word of similar import or meaning as part of the name of his organization, or to designate, describe, or in any way refer to such preparation.

The said D. Henry Allen further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 27, 1942.)

02975. **Radio Broadcasting—Qualities, Properties, or Results.**—Southern Broadcasting Stations, Inc., a corporation operating Radio Station WGST, Forsyth Building, Atlanta, Ga., vendor-advertiser, was engaged in selling to vendors of various commodities for advertising purposes the facilities, radio power, and energy of Radio Station WGST and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that the power of said station is 5000 watts unless and until such power is actually authorized for use and used by said radio station during its entire broadcasting period, or unless it is clearly explained in direct connection with such representation that such power is authorized and used only during certain specified hours, and further that its radio station WGST has more listeners than any other radio station in Atlanta unless and until such be the fact. (Apr. 27, 1942.)

02976. **Medicinal Preparation—Qualities, Properties, or Results.**—Claude R. Wadlington, John T. King, and G. P. Thomas, copartners doing business under the firm name Claude R. Wadlington Co., Hopkinsville, Ky., vendor-advertisers, were engaged in selling a medicinal preparation recommended for the treatment and relief of sinusitis, eczema, hay fever, hemorrhoids, head colds, chest colds, bronchitis, burns, skin irritations, rheumatism, influenza, and cuts, designated "Apolene," and

agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Apolene is a remedy for, or possesses any therapeutic value in the treatment of sinusitis, hay fever, head colds, chest colds, bronchitis, influenza, or eczema.

(b) That Apolene has any therapeutic value for skin irritations in excess of its ability to temporarily allay the itching or discomfort incident thereto.

(c) That Apolene is a remedy for, or possesses therapeutic value in the treatment of hemorrhoids, without expressly limiting such claim to temporary relief of external hemorrhoids.

(d) That Apolene has any therapeutic value in the treatment of cuts or burns, without expressly limiting said claim to relief for minor cuts and burns.

(e) That Apolene is a remedy for, or possesses any therapeutic value in the treatment of rheumatism.

The said Claude R. Wadlington, John T. King and G. P. Thomas further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (May 1, 1942.)

02977. Baking Powder—Economy or Savings, History, Unique Qualities, Properties, or Results, and Success, Use, or Standing.—The Heekin Co., an Ohio corporation, Walnut and Water Streets, Cincinnati, Ohio, vendor-advertiser, engaged in selling a certain product designated "Happy Family Baking Powder" and J. F. Koons and M. E. Koons, copartners doing business under the firm name Midland Advertising, 111 East Fourth Street, Cincinnati, Ohio, advertising agents, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of The Heekin Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said baking powder is more economical or gives better results than other baking powders, even when $\frac{1}{4}$ less is used.

(b) That said baking powder—

1. Is the first improved baking powder in fifty years.
2. Is the only improved baking powder in fifty years.
3. Controls the rise.
4. Prevents sag and fall.
5. Makes all baking better.
6. Eliminates baking failures; or
7. Makes all cakes, biscuits, pancakes, waffles, lighter and more tender.

(c) That said baking powder is used by outstanding bakers in hotels and restaurants, until such a statement has been established as a fact by competent and impartial survey.

The said The Heekin Company and J. F. Koons, and M. E. Koons, and each of them, further agreed not to publish, disseminate or cause to be published or disseminated any testimonial containing any representation contrary to the foregoing agreement. (May 1, 1942.)

02978. Surfacing Preparation—Qualities, Properties, or Results, and Government Indorsement or Approval.—United Laboratories, Inc., a corporation, 16801 Euclid Avenue, Cleveland, Ohio, vendor-advertiser, was engaged in selling a mastic preparation for surfacing or re-surfacing floors, steps, roofs, and the like, designated as "Plastic Rock" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That a surfacing of the said product will never become slippery, unless the conditions under which the said surfacing will never become slippery are specifically set forth.

(b) That the United States Army or Navy specifies Plastic Rock.

(c) That Plastic Rock, when applied to the surfaces of floors, makes them fast, skidproof, dragless, unless the conditions under which the said surface is fast, skidproof, or dragless are specifically stated.

(d) That Plastic Rock surfacing has been subjected to sufficient foot traffic to demonstrate that it will wear permanently or indefinitely.

The said United Laboratories, Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 1, 1942.)

02979. Furniture Polish, Cleaner, Stop Leak Compound, Vending Machine and Glue—Qualities, Properties, or Results.—E. T. Barron, an individual doing business under the trade names E. T. Barron & Co., and Barron Chemical Products Co., 19 East Lake Street, Minneapolis, Minn., vendor-advertiser, was engaged in selling products designated "Barron's Piano and Furniture Polish," "Barron's Master Cleaner," "Barron's Stop Leak Compound," "Barron's Model 39 Bell Vending Machine," "Barron's Lightning Hand Cleaning Powder," and "Barron's Double Strength Glue" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That "Barron's Piano and Furniture Polish" produces a wax-like finish.

(b) That "Barron's Master Cleaner" leaves no ring.

(c) That "Barron's Boiler Stop Leak Compound"—

1. Will repair a leaky boiler to the complete satisfaction of the user.

2. Will seal joints and fittings in new hot water systems so as to eliminate call backs and repair bills; or

3. Has a solder action which seals permanently.

(d) That "Barron's Lightning Hand Cleaning Powder" is antiseptic.

(e) That "Barron's Double Strength Glue" mends broken crockery, glassware, china; or any other article that will be kept in water or used as a water container.

(f) That the "Model 39 Bell Vending Machine" eliminates competition.

The said E. T. Barron agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 4, 1942.)

02980. **Livestock Powder—Qualities, Properties, or Results.**—R. E. Webster, an individual trading as G. H. Murry & Co., Madison, N. C., vendor-advertiser, was engaged in selling Murry's Dollar Stock Powder, also designated Murry's Cattle Powders and Murry's Horse and Cattle Powders 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 remove onion or vegetable taste from milk or butter, or prevent milk from having such tastes.

(b) That said preparation will increase the purity, richness or flow of milk.

(c) That said preparation will keep horses, mules, cows, hogs, or other stock healthy or has any therapeutic value as a conditioner for horses, mules, cows, hogs, or other stock.

(d) That said preparation will prevent dogs from having fits, or has any therapeutic value in the treatment of dogs that have running fits.

The said R. E. Webster agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 4, 1942.)

02981. **Drug Preparation—Qualities, Properties, or Results, and Safety.**—Arthur T. Wilson, an individual, trading as The Fernal Co., 800 North Clark Street, Chicago, Ill., vendor-advertiser, was engaged in selling a drug preparation designated "Fernal Concentrate" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

that said preparation is of any value in taking off fat or effecting a reduction in body weight.

It is further agreed by the said Arthur T. Wilson that, in soliciting the sale of a medicinal preparation now designated Fernal Concentrate, 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, or causing to be disseminated by the means and in the manner above set out, any advertisement which represents, directly or by implication, that said preparation will in no case have any deleterious effects or is free from harm in all cases, or which fails to reveal—

that continued or frequent use of said preparation may result in severe gastrointestinal irritation and interference with the digestive processes, and may also result in dependence on laxatives, and that said preparation should not be used in cases of nausea, vomiting, abdominal pains, or other symptoms of appendicitis: *Provided, however,* That such advertisements need contain only the statement "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a warning to the same effect.

The said Arthur T. Wilson also agreed not to publish, or cause to be published any testimonial contrary to the foregoing agreement. (May 7, 1942.)

02982. **Skin Preparation—Qualities, Properties, or Results.**—Elizabeth Redden, an individual doing business under her own name, 52 West Fifty-third Street, New York, N. Y., vendor-advertiser, was engaged in selling a skin preparation alleged to be effective in the treatment of various skin disorders, designated Honey Facial Bath and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Honey Facial Bath will correct, cure or banish oiliness, enlarged pores, wrinkles, surface pimples, or blackheads.

(b) That Honey Facial Bath is an astringent, or will tone or bleach the skin.

(c) That the superficial application of Honey Facial Bath furnishes the skin with vitamins.

The said Elizabeth Redden further agreed to cease and desist from representing that because of its honey content her product possesses therapeutic value in excess of its action as a detergent and an emollient.

The said Elizabeth Redden further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 7, 1942.)

02983. **Headache Powders—Safety.**—Garfield Tea Co., Inc., a corporation, 313 Forty-first Street, Brooklyn, N. Y., vendor-advertiser, was engaged in selling a preparation known as Garfield Headache Powders and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement which fails clearly to reveal that said preparation should not be used in excess of the dosage recommended, since such use may cause dependence upon the drug, or collapse, and that it should not be taken by, or administered to, children; *Provided, however*, That such advertisement need only contain the statement: "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

The said Garfield Tea Co., Inc., further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 14, 1942.)

02984. **Toilet Bowl Cleaner—Qualities, Properties or Results.**—Plee-Zing, Inc., a corporation, 176 West Adams Street, Chicago, Ill., vendor-advertiser, was engaged in selling a toilet bowl cleaner designated Plee-Zing Bowl Cleaner and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Plee-Zing Bowl Cleaner will eliminate odors from toilet bowls.

The said Plee-Zing, Inc., agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 14, 1942.)

02985. Coal Tar Hair Dye Product—Safety.—Ar-Jay Laboratories, Inc., a corporation, 304 East Sixth Street, Ontario, Calif., vendor-advertiser, was engaged in selling a certain coal tar hair dye product designated “Ar-Jay Liquid Color Rinse” 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. (May 20, 1942.)

02986. Poultry Preparation—Qualities, Properties, or Results.—Germo Manufacturing Co., a corporation, 112 South Main Street, St. Louis, Mo., vendor-advertiser, was engaged in selling a drug preparation for poultry designated “Cholerine” and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Cholerine promotes or maintains the health, vitality or vigor of poultry.

(b) That the administration of Cholerine to baby chicks will normalize their appetite, or will make them strong or healthy.

(c) That Cholerine is indicated or is an effective or proper treatment for such conditions or symptoms as a listless, lifeless, or dull appearance of any young chickens.

(d) That Cholerine assures increased weight, more eggs, or better profits when administered to poultry.

(e) That Cholerine is a tonic; and

(f) That Cholerine is effective in the treatment of such diseases as cause an abnormal coating of mucus upon the lining membrane of the intestines of chicks, or that it improves the functioning of the digestive organs by the removal of mucus from the intestines.

The said Germo Manufacturing Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 22, 1942.)

02987. **Spring Water—Qualities, Properties, or Results, Competitive Products, and Unique.**—Chippewa Springs Corp., a corporation, 177 Colfax Avenue North, Minneapolis, Minn., and Vince B. Nyhan, an individual operating under the trade name of Chippewa Spring Water Co. of Chicago, 1318 South Canal Street, Chicago, Ill., vendor-advertisers, engage in selling a beverage designated Chippewa Natural Spring Water; and Hutchinson Advertising Co., a corporation, 1000 Hodgson Building, Minneapolis, Minn., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Chippewa Springs Corp. and Vince B. Nyhan, agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Chippewa Natural Spring Water will cleanse the system.

(b) That the minerals contained in competitive commercial waters are of no benefit to the user.

Chippewa Springs Corp. and Vince B. Nyhan agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Chippewa Natural Spring Water will rid the system of poisons, toxins or wastes, or will remove all impurities from the system.

(b) That Chippewa Natural Spring Water is the only natural spring water which can be given to infants without boiling or with safety.

(c) That Chippewa Natural Spring Water possesses any therapeutic properties in the treatment of kidney disorders, rheumatism or arthritis, or that it possesses any peculiar properties which will preserve health.

(d) That the minerals contained in competitive commercial waters are of no benefit to the user.

and Chippewa Springs Corp. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Chippewa Natural Spring Water, when eliminated, carries with it more waste matter than do other competitive commercial waters.

The said Chippewa Springs Corp., Hutchinson Advertising Co. and Vince B. Nyhan further agreed not to publish or cause to be published any testimonial containing any representation contrary to their respective agreements as set forth above. (May 22, 1942.)

02988. **Medicinal Preparations—Qualities, Properties or Results, Nature, and Safety.**—Joseph Triner Corp., a corporation, 1333-1345 South Ashland Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling medicinal preparations designated Triner's Bitter Wine and Triner's Wine Tonic, the latter of which has also been designated Triner's Angelica Bitter Tonic and agreed, in connection with the dis-

semination of future advertising, to cease and desist from representing directly or by implication:

Triner's Bitter Wine

That this preparation

- (a) Will relieve insomnia, headaches, irritability or nerve disease.
- (b) Is a remedy for stomach disturbances, poor appetite, faulty digestion.
- (c) Will clean the stomach.
- (d) Will increase the resistance of the body or raise the general vitality thereof.
- (e) Will prevent colds.

Triner's Wine Tonic

That this preparation

- (f) Will clear the system of accumulated poisons or have any other effect upon the system as a whole.
- (g) Is effective in the treatment of nervousness, headaches or stomach disorders.
- (h) Will produce intestinal regularity or make a person less susceptible to colds or other ailments.
- (i) Will cleanse one internally, or cleanse the intestines, put bowels in order, or will evacuate the stomach.
- (j) Will maintain good health.
- (k) Will assure sleep.
- (l) Is beneficial for persons who do not feel well, for tired feeling, for fits of ill temper or in cases of nervous irritability.
- (m) Will restore appetite and digestion.
- (n) Will brighten the mind or cause one to be full of energy.
- (o) Will help the kidneys and liver to function or will invigorate the blood.
- (p) Will build up sapped health or stimulate the digestive organs.
- (q) Will be beneficial in convalescence following serious illness or malarial attacks.

The said Joseph Triner Corp. further agreed that in the dissemination of advertising by the means and in the manner above set out, it will cease from representing by the use of the word "tonic" in the designation of its preparation Triner's Wine Tonic, or otherwise representing that said preparation is a general tonic.

The said Joseph Triner Corp. further agreed that in the dissemination of advertising by the means and in the manner above set out of the medicinal preparations now designated, Triner's Bitter Wine and Triner's Wine Tonic or any other preparations of substantially the same properties, it will forthwith cease and desist from disseminating any advertisement which fails to reveal that there is potential danger in their 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 those preparations may result in dependence on laxatives: *Provided, however,* That such advertisement need only contain the statement: "CAUTION, Use only as directed" if and when the directions

for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

The said Joseph Triner Corp. further agreed not to publish, or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (May 27, 1942.)

02989. **Electric Fence Controllers—Comparative Merits, Unique, and Qualities, Properties, or Results.**—Babson Bros. Co., a corporation, 2845 West Nineteenth Street, Chicago, Ill., vendor-advertiser, was engaged in selling certain electric fence controllers designated Surge Fencers and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the Surge Hi-Line Fencer is the only safe electric fence controller.

(b) That the Surge Hi-Line Fencer is the only fully effective electric fence controller without correctly defining what is meant by the term "fully effective," namely, that it will produce the maximum current permitted under the Wisconsin Code for electric fence controllers at all voltage settings.

(c) That the mercury switch in its electric fence controller permits an accuracy of timing not approached by any other kind of timing or impulse measuring device; or

(d) That there are no competitive alternating-current type electric fence controllers which comply with the Wisconsin Code and which are satisfactory.

The said Babson Bros. Co. agreed not publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 27, 1942.)

02990. **Drug Preparation—Safety, Opportunities, Comparative Merits, Success, Use, or Standing, Qualities, Properties or Results, and Earnings.**—Rex Remedy Co., a corporation, 315-319 South Morgan Street, Shelby, N. C., vendor-advertiser, was engaged in selling a preparation known as Rex-Lex and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement which fails clearly to reveal that said preparation should not be used in excess of the dosage recommended, since such use may cause dependence upon the drug, skin eruptions, mental derangement, or collapse, and that it should not be taken by, or administered to, children: *Provided, however,* That such advertisement need only contain the statement: "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

It is also hereby agreed by the said Rex Remedy Co. that in the dissemination of advertising by the means and in the manner above set out it will forthwith cease and desist from representing directly or by implication that:

(a) Openings exist for factory representatives on the Rex Remedy Company's staff when such openings are to be filled by salesmen who stand in the relationship of independent contractors with the said Rex Remedy Co.

(b) Rex-Lex is superior to all other competing makes or brands of headache remedies.

(c) Rex-Lex outsells all other competing brands of headache remedies.

(d) Rex-Lex renders any advantages not rendered by the use of other similar preparations sold in competition with it.

(e) The use of Rex-Lex will produce a rested feeling; always relieve nervousness, dizziness, or will relieve "all kinds of pain."

(f) Prospective agents, salesmen, distributors, dealers, or other representatives can make profits or earnings within a specified period of time, which are in excess of the average net profits or earnings which have theretofore been consistently made in like periods of time by its active fulltime agents, salesmen, distributors, dealers or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

The said Rex Co. further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 1, 1942.)

02991. Washing Machines—Reduced Price and Guaranteed or Warranted.—Electric Household Utilities Corp., a corporation, trading as Hurley Machine Division of Electric Household Utilities Corp., 54th Avenue and Cermak Road, Chicago, Ill., vendor-advertiser, was engaged in selling various washing machines designated generally as "Thor Washers" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That any washing machine, other than a current model customarily selling in the regular and ordinary course of business as a part of its regular line, originally sold at a certain price without disclosing in the advertisement the year in which the machine sold at the price so advertised.

(b) That any washing machine is being sold at a reduced price or at a saving where such reduced price is obtained by comparison with any other price than that at which the same model formerly was customarily sold.

(c) That Thor Washing Machines are guaranteed or warranted without at the same time and place plainly disclosing the exact terms and conditions of such guaranty or warranty. (June 1, 1942.)

02992. Hair Dye Preparation—Qualities, Properties, or Results, and Safety.—Coffelt Chemical Co., Inc., a corporation, 700 Elton Avenue, New York, N. Y., vendor-advertiser, was engaged in selling a hair dye preparation designated Coffelt's Never Failing Hair Coloring and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) By the use of the word "restores" or by any other means, that Coffelt's Never Failing Hair Coloring restores the original or natural color of the hair.

(b) That Coffelt's Never Failing Hair Coloring nourishes or rejuvenates the hair or is a hair rejuvenator.

It is also hereby agreed by the said Coffelt Chemical Co., Inc., that in the dissemination of advertising, by the means and in the manner above set out, of a hair dye preparation designated Coffelt's Never

Failing Hair Coloring, or of any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, it will forthwith cease and desist from disseminating any advertisements which fail to reveal that the said preparation contains a metallic salt, that it should be used with care and only if the scalp is free from abrasions, sores, cuts or infections: *Provided, however,* That such advertisements need only contain the statement; "CAUTION, Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said Coffelt Chemical Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 2, 1942.)

02993. Flour—Success, Use, or Standing.—General Foods Corp., a corporation, 250 Park Avenue, New York, N. Y., vendor-advertiser, engaged in selling a flour designated Swans Down Cake Flour; and Young & Rubicam, Inc., a corporation, 285 Madison Avenue, New York, N. Y., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of General Foods Corp. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That in the baking of cakes three times as many users prefer Swans Down Cake Flour to any other flour; or

(b) That three times as many home bakers use Swans Down Cake Flour as any other cake flour without plainly excluding from such comparison all-purpose flour.

The said General Foods Corp. and Young & Rubicam, Inc., further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (June 2, 1942.)

02994. Bath Cabinet—Qualities, Properties, or Results and Safety.—Louis Gordon, an individual trading as Gordon Brothers, 654 Grand Street, Brooklyn, N. Y., vendor-advertiser, was engaged in selling a portable 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 is a cure, remedy, or a competent modality in the treatment of excess weight.

(b) That the use of said device will keep the pores open or induce proper elimination of body poisons.

(c) That the use of said device will afford relief to the nervous manifestations of women during menopause.

(d) That the use of said device will cure, or is beneficial in the treatment of colds.

(e) 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.

(f) That the use of said device is a cure, or remedy for symptoms of over-indulgence.

(g) That the use of said device will remove offensive wastes or make the body more hygienically clean, internally and externally.

It is further agreed by Louis Gordon that in connection with the dissemination of advertising by the means and in the manner above set out he will forthwith cease and desist from 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 only contain the statement: "CAUTION, Use only as directed," if and when the directions which accompany said device contain a caution or warning to the same effect.

The said Louis Gordon further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 2, 1942.)

02995. **Rat Poison—Safety, Qualities, Properties, or Results, Commodities, Sold, Branches, and Size of Business.**—George T. Wells, Trustee, doing business under the name and style of E. S. Wells Estate, 706-708 Grand Street, Jersey City, N. J., vendor-advertiser, was engaged in selling a poison for rats and mice, designated Rough On Rats and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Rough on Rats is safe to handle.

(b) That rats and mice which are induced to take a lethal dose of Rough On Rats will leave the house to die.

(c) That he sells toilet, pharmaceutical or household specialties.

(d) That he maintains branches, agencies or depots in every country in the world.

The said George T. Wells further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 5, 1942.)

02996. **Livestock Preparation—Qualities, Properties, or Results.**—Sears, Roebuck and Co., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated Dr. Overfield's Farm Mixture and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) Through such statements as "worm remedy" or "will keep them free from worms" or in any other manner that the product is effective in the prevention of worm infestation in hogs, pigs, sheep or goats.

(b) That the product can be depended upon to insure health, growth of bone, or body in pigs, or that it can be depended upon to help keep brood sows in condition to have and raise big, strong litters, or better, healthier pigs.

(c) That the product will cure, remedy, prevent or control Bull Nose, Necro or other similar diseases in pigs, or is useful in the prevention of Anemia in pigs after weaning.

The said Sears, Roebuck and Co. further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 9, 1942.)

02997. Medicinal Preparation—Qualities, Properties or Results, and Safety.—E. L. Bachman and V. E. Chambers, copartners, doing business under the firm name Sarco Remedy Co., Sidney, Ohio, vendor-advertisers, were engaged in selling a medicinal preparation recommended for the treatment of asthma, hay fever, and bronchial trouble designated "Minton's Asthma Remedy" 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 prevent, cure, remedy or correct asthma or any underlying cause of it, or has any therapeutic value in the treatment thereof in excess of furnishing limited, temporary relief from the paroxysms due to or associated with asthma.

(b) That said preparation is a preventive, corrective remedy, or cure for hay fever or a treatment for bronchial trouble in excess of its action as an expectorant in case of minor bronchial irritations, or that it has any substantial therapeutic value in the treatment of such disorders; or

(c) That said preparation will restore health.

The said E. L. Bachman and V. E. Chambers further agreed that they will not disseminate, or cause to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, the purchase of said preparation, which fails to reveal that the said preparation should not be taken by persons suffering from active or arrested tuberculosis or toxic goiter without first consulting a qualified physician, and should nausea or skin eruptions follow its use, the dose should be reduced, provided, however, that such advertisement need contain only the statement "CAUTION: Use only as directed," if and when the directions for use, whenever they appear on the label, in the labeling or elsewhere contain a warning to the above effect.

The said E. L. Bachman and V. E. Chambers further agreed to forthwith cease and desist from using the word "remedy" or any abbreviation thereof, or any other term, word or abbreviation whose phonetics, spelling or appearance simulates, implies or suggests that said preparation is a preventive, cure, corrective or remedy for asthma, hay fever, or bronchial troubles, as any part of a trade name for advertising or selling the said preparation or as a brand name to designate the preparation.

The said E. L. Bachman and V. E. Chambers further agreed not to publish, or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (June 9, 1942.)

02998. **Jewelry and Books—Free, Commodities Sold, Composition, Special Offer, and Business Status.**—C. E. Griffey, an individual doing business as Royal Diamond Co., Jim the Diamond Man and American Bible Club, 769 Insurance Building, Omaha, Nebr., vendor-advertiser, was engaged in selling various articles of jewelry, said jewelry being for the most part simulated diamond engagement rings and wedding rings, and certain publications, said publications being a Holy Bible and a dictionary and combined atlas and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) From using the terms "free," "gift," or any other term or terms of similar import or meaning to designate or describe any article which is not in fact given free, or which is included in a combination offer with any other article or articles for which a charge is made.

(b) From representing, by the use of the word "diamond" or any abbreviation thereof as a part of his trade name, or otherwise, that he sells diamonds.

(c) From advertising for sale any finger ring marked in any manner so as to exaggerate or otherwise misrepresent the total or real amount or fineness of the gold contained either in the structure or plate.

(d) From representing that any offer is special, or get-acquainted unless the offer expires at a definite predetermined time, and at which time the offer is in fact terminated, after which time acceptances of such offer are rejected.

(e) From the use of the word "Club" as a part or in connection with the trade name, or from otherwise representing that his articles are offered for sale by a club or organization.

The said C. E. Griffey agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 9, 1942.)

02999.¹ **White Shoe Dressing—Qualities, Properties, or Results.**—Griffin Manufacturing Co., Inc., a corporation, 410-424 Willoughby Avenue, Brooklyn, N. Y., vendor-advertiser, was engaged in selling a white shoe dressing designated Griffin Allwite and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that said dressing will not rub off.

The said Griffin Manufacturing Co., Inc., agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1942.)

03000. **White Shoe Dressing—Qualities, Properties, or Results.**—Dyer-Johnson, Inc., a corporation, 619 East Vermont Place, Indianapolis, Ind., vendor-advertiser, was engaged in selling a white shoe dressing designated Johnson's White Leather Wax and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

¹ Supplemental.

(a) That said dressing will not rub off; or

(b) That said dressing will cause shoe to become waterproof.

The said Dyer-Johnson, Inc., agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1942.)

03001. **White Shoe Dressing—Qualities, Properties, or Results.**—Edison Brothers Stores, Inc., a corporation, 710 North Twelfth Boulevard, St. Louis, Mo., vendor-advertiser, was engaged in selling a white shoe dressing designated Klean-M-White and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that said dressing will not rub off.

The said Edison Brothers Stores, Inc. agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1942.)

03002. **White Shoe Dressing—Qualities, Properties, or Results.**—Gadi Co., Inc., a corporation, Monroe at Lauderdale, Memphis, Tenn., vendor-advertiser, was engaged in selling a white shoe dressing designated Gadi White Way and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that said dressing will not rub off.

The said Gadi Co., Inc., agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1942.)

03003. **White Shoe Dressing—Qualities, Properties, or Results.**—Ace Sales Corp., a corporation, 74-76 Gold Street, New York, N. Y., vendor-advertiser, was engaged in selling a white shoe dressing designated "White Ace" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that said dressing will not rub off.

The said Ace Sales Corp. agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1942.)

03004. **White Shoe Dressing—Qualities, Properties, or Results.**—Manhattan Kreole Products, Inc., a corporation, 172-176 North Tenth Street, Brooklyn, N. Y., vendor-advertiser, was engaged in selling a white shoe dressing designated "Milk White" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication; that said dressing will not rub off.

The said Manhattan Kreole Products, Inc., agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1942.)

03005. **White Shoe Dressing and Cleaner—Qualities, Properties, or Results.**—Consolidated Royal Chemical Corp., a corporation, 544 South

Wells Street, Chicago, Ill., vendor-advertiser, was engaged in selling a white shoe dressing and cleaner designated Gem White Shoe Cleaner and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that said product will not rub off.

The said Consolidated Royal Chemical Corp. agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1942.)

03006. White Shoe Dressing—Qualities, Properties, or Results.—Shu-Milk Products Corp., a corporation 27 Eight Street, Passaic, N. J., vendor-advertiser, was engaged in selling a white shoe dressing designated Snow White Shu-Milk and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that said dressing will not rub off.

The said Shu-Milk Products Corp. agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1942.)

03007. White Shoe Dressing—Qualities, Properties, or Results.—Wilbert Products Co., Inc., a corporation, 805 East One Hundred and Thirty-Ninth Street, New York, N. Y., vendor-advertiser, was engaged in selling a white shoe dressing, designated "Wilbert's No-Rub Shoe White" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that said dressing will not rub off.

The said Wilbert Products Co., Inc., agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1942.)

03008. White Shoe Dressing—Qualities, Properties, or Results.—Pee-Chee Cleaner, Inc., a corporation, 869-875 East One hundred and Fortieth Street, Cleveland, Ohio, vendor-advertiser, was engaged in selling a white shoe dressing designated Pee-Chee White Shoe Cleaner and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that said dressing will not rub off.

The said Pee-Chee Cleaner, Inc., agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1942.)

03009. Shoe Polishes and White Shoe Dressings—Qualities, Properties, or Results and Nature.—Whittemore Bros. Corp., a corporation, 68 Albany Street, Cambridge, Mass., vendor-advertiser, was engaged in selling shoe polishes designated Whittemore's Oil Paste Polish, and Whittemore's Cadet Oiliquid, and White shoe dressings designated Whittemore's Cadet White, Whittemore's Cadet Shoe Soap, Whittemore's Bostonian Shoe Soap, and Whittemore's Bostonian White (liquid

and paste) and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That any of its said white shoe dressings will not rub off; or

(b) From representing, directly or by implication, that Whittemore's Oil Paste Polish will restore to shoes their natural color and finish; or

(c) From distributing Whittemores' Cadet Oiliquid in its present carton and immediate container without clearly and conspicuously indicating on said carton the exact contents of the immediate container.

The said Whittemore Bros. Corp. agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1942.)

03010. **White Shoe Dressing—Qualities, Properties or Results.**—James V. Lobell, John J. Lobell, William Hoehn, and William Hoehn, Jr., copartners trading as Cavalier Co., Key Highway, Jackson and West Streets, Baltimore, Md., vendor-advertisers, were engaged in selling a white shoe dressing designated "Cavalier Domino Shoe White" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that said dressing will not rub off.

The said James V. Lobell, John J. Lobell, William Hoehn, and William Hoehn, Jr. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1942.)

03011. **White Shoe Dressing—Qualities, Properties, or Results.**—Carbona Products Co., a corporation, 304 West Twenty-sixth Street, New York, N. Y., vendor-advertiser, was engaged in selling a white shoe dressing compounded and distributed as a liquid, as a cream, and as a soap, said white shoe dressing being designated Carbona Shoe Whitener and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that said dressing will not rub off.

The said Carbona Products Co. agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1942.)

03012. **Cigars—Composition and Source, or Origin.**—Webster Eisenlohr, Inc., a corporation, 187 Madison Avenue, New York, N. Y., vendor-advertiser, was engaged in selling certain cigars designated "Webster-Eisenlohr Smokers" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

By the use of such statements as "100% Long Imported Filler" or "All-Imported Filler," or otherwise, that the filler of the cigars designated Webster-Eisenlohr Smoker, which are composed in part of Porto Rican tobacco, is composed entirely of tobacco imported into the United States.

The said Webster Eisenlohr, Inc., agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 18, 1942.)

03013. Dog Food Preparation—Composition.—Leo E. Thornton, an individual, trading as Mi-Dog Food Co., 189 Foster Avenue, Battle Creek, Mich., vendor-advertiser, was engaged in selling a dry dog food preparation designated “Mi-Cooked Ready to Feed Dog Ration” also referred to in the advertising as “Mi-Dog Ration” and agreed, in connection with the dissemination of future advertising, to cease and desist from using the terms “meat,” “meat scraps” and “meat-cereal food” or any other terms of similar import or meaning to designate or describe dehydrated meat meal, or any product which is not meat in fact.

The said Leo E. Thornton further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 18, 1942.)

03014. Drug Product—Nature and Qualities, Properties, or Results.—Valentine Greenewald, an individual trading as Professor V. Greenewald, R. R. 5, Box 36, Covington, Ky., vendor-advertiser, was engaged in selling a drug product designated “Nature Nervine” and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that the preparation is a remedy of nature or has any beneficial therapeutic effect on the nerves or in the treatment of nervous disorders or conditions.

The said Valentine Greenewald further agreed to forthwith cease and desist from representing directly or by implication:

(a) That such product is of any benefit for nervousness, nervous afflictions, nervous dyspepsia, neurasthenia, epilepsy, nervous debility, exhaustion, weakness, anemia, melancholia, insomnia, palpitations of the heart, or stomach troubles.

(b) That such product forms blood, strengthens the nerves, builds the brain, invigorates, promotes health, or has any effect on nerve centers.

(c) That such product possesses any therapeutic value or affords any physiological effects whatsoever except insofar as, and to the extent that it may act as a stomachic and mild carminative.

The said Valentine Greenewald agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 22, 1942.)

03015. Gas Burner—Safety, History, Qualities Properties or Results, Economy or Savings, Comparative Merits, Etc.—Food Display Machine Corp., a corporation, trading as Liberty Burner Co., 620 North Michigan Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling a product designated as the “Liberty Dortane Gas Burner” and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That this burner is free from danger, can be safely operated by children, and utilizes no explosive oils.

(b) That it is a new type or revolutionary invention, or that its operation involves any new principle or that it burns cheap oil in a new way.

(c) That the gas created by this burner is instantly or immediately available as fuel at the turn of a valve, or by the use of any other language purporting to represent that intense heat or gas may be had at the turn of a valve.

(d) That it will end or solve all cooking or heating problems.

(e) That this burner is a "gas" burner as same is commonly known, understood and accepted by the purchasing public, or that the gaseous vapor produced by this product had been named or recognized as "Dortane" gas.

(f) That it will save one-half or more on fuel bills over other and usual methods of utilizing fuel or that it is more economical when compared with city gas unless such comparison definitely states that section or area of the country where use of kerosene as fuel would be more economical than city gas.

(g) That this burner is more efficient in its operation for the purposes intended than are appliances that utilize coal, wood or coke as fuel.

(h) That it is cool in its operation.

(i) That it can be installed by an inexperienced person in twenty minutes or less and after installation there is no further service problem.

The said corporation agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 22, 1942.)

03016. Food Product—Nature and Qualities, Properties, or Results.—Yoghurt Products, Inc., a corporation, 108 Denny Way, Seattle, Wash., vendor-advertiser, was engaged in selling a food product designated as Yoghurt Ferment Capsules to be combined with milk for the purpose of forming Bulgarian Milk and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That its product of itself is Bulgarian milk.

(b) That the fluid which results from mixing its product with milk:

1. Is healing, purifying or life renewing.
2. Purifies the blood or energizes organic activities.
3. Builds the body or that it will enable one to get well, or to keep well or to stay young.
4. Is effective in the treatment or prevention of early senility or that it is effective in combating or destroying disease-breeding bacterias.
5. Arrests abnormal fermentation or decomposition.
6. Restores or produces digestion or a rational appetite or that it causes false appetites to disappear.
7. Eliminates toxic poisons or that it is of aid in staying the ravages of sickness or disease.

The said Yoghurt Products, Inc., further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 22, 1942.)

03017. **Coal Tar Hair Dye Product and a Hair Rinse—Nature, Qualities, Properties, or Results and Safety.**—Samuel Abrams, an individual, trading as Luxe Manufacturing Co., 147 Manhattan Avenue, Brooklyn, N. Y., vendor-advertiser, was engaged in selling a coal tar hair dye product designated “Luxe Hair Dye” also known as “Luxe Hair Coloring,” and a hair rinse designated “Superglo Henna Rinse” and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Superglo Henna Rinse is not a dye.

(b) That Superglo Henna Rinse imparts a natural shade to the hair.

It is also hereby agreed by the said Samuel Abrams that in connection with the dissemination of advertising by the means and in the manner above set out of the said coal tar hair dye preparation now designated Luxe Hair Dye, also known as Luxe Hair Coloring, or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, he will forthwith cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

CAUTION: This product contains ingredients which may cause skin irritation on certain individuals, and 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.

The said Samuel Abrams further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 22, 1942.)

03018. **Medicinal Preparation—Safety.**—Besol, Inc., a corporation, 5713 Euclid Avenue, Cleveland, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation recommended for the treatment of the paroxysms of asthma designated “Besol” and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisements which fail to reveal that the said preparation should not be used by individuals suffering from high blood pressure, heart disease, diabetes, thyroid, goiter or lung diseases, or should a skin rash appear, and that the prescribed dosage should be diminished or its use discontinued if sleeplessness or nervousness should develop, *Provided, however,* That such advertise-

ments need only contain the statement: "CAUTION: Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect.

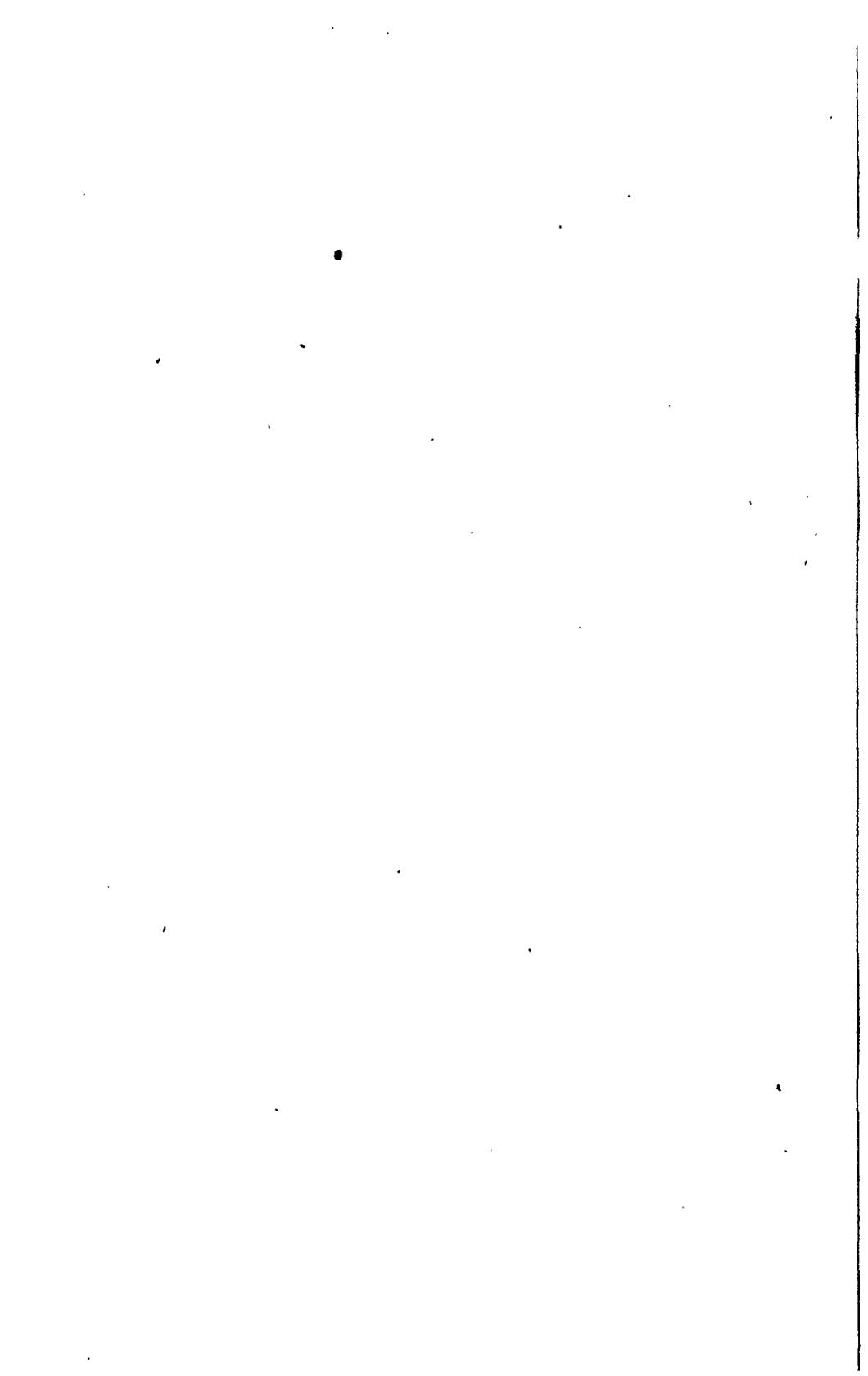
The said Besol, Inc. further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 24, 1942.)

03019. Hair Dye Preparation—Qualities, Properties or Results, and Safety.—Swiss Pine Importing Co., Inc., a corporation, 611 Broadway, New York, N. Y., vendor-advertiser, was engaged in selling a hair dye preparation designated "Naturene" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That Naturene restores the original or natural color of the hair.
- (b) That Naturene is safe or harmless.
- (c) That Naturene does not stain the scalp.

It is also hereby agreed by the said Swiss Pine Importing Co., Inc., that in the dissemination of advertising by the means and in the manner above set out, of a hair dye preparation designated Naturene, or any other preparation of substantially the same composition, or possessing substantially the same properties, whether sold under that name or any other name, it will forthwith cease and desist from disseminating any advertisements which fail to reveal that the said preparation contains a metallic salt, and that it must be used with care; *Provided, however,* That such advertisements need only contain the statement: "CAUTION: Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said Swiss Pine Importing Co., Inc., further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 24, 1942.)



DECISIONS OF THE COURTS

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION

BENJAMIN JAFFE v. FEDERAL TRADE COMMISSION¹

No. 7510—F. T. C. Dock. 3662

(Circuit Court of Appeals, Seventh Circuit. Nov. 14, 1941)

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PRIOR COURT PROCEEDINGS—WHERE DECISION OF SAME ISSUES IN, AND INSTANT PETITIONER PRESIDENT OF DEFENDANT CORPORATION THEREIN.

Where every question raised by petitioner seeking to review an order of the Federal Trade Commission essential to the validity of the order was decided in a former case wherein an order was directed against a corporation of which petitioner was president, the order in the instant case would be affirmed not because the former case was *res judicata* but because the reasoning employed and conclusions reached were applicable and controlling in the instant case. Federal Trade Commission Act, sec. 5, 15 U. S. C. A. sec. 45.

(The syllabus, with substituted caption, is taken from 123 F. (2d) 814)

On petition to review order of Commission, order affirmed, etc.

[815] *Mr. Benjamin F. Morrison*, of Chicago Ill., for petitioner.

Mr. W. T. Kelley, chief counsel, and *Mr. Martin A. Morrison*, asst. chief counsel, both of Washington, D. C., for respondent.

Before *EVANS* and *MAJOR*, *Circuit Judges*, and *LINDLEY*, *District Judge*.

MAJOR, Circuit Judge:

This is a petition to review an order of the Federal Trade Commission, entered September 5, 1940, under the authority of Section 5 of the Federal Trade Commission Act (15 U. S. C. A., Sec. 45). Petitioner was engaged in the sale of a variety of merchandise to customers located in a great number of states. The plan of disposal contemplated that it would be done by petitioner's customers in accordance with the

¹ Reported in 123 F. (2d) 814. For case before Commission, see 31 F. T. C. 835.

plan submitted and provided by petitioner. Such plan included, among other things, push or punch cards. That petitioner's plan for the disposal of its merchandise involved a game of chance or lottery was found by the Commission and is not disputed.

Respondent asserts that every issue presented in the instant case was decided by this court in *Chicago Silk Co. v. F. T. C.*, 90 F. (2d) 689 [25 F. T. C. 1692]. Petitioner argues that this case is not *res adjudicata* of the case now before us. That, however, is not the question. The fact is that in the Chicago Silk Company case the order was directed against a corporation of which the petitioner in the instant case was president. Petitioner fails to point out any distinction between this case and that one except to argue that there must be a difference, or there would have been no occasion for respondent initiating the instant proceeding. What purpose respondent had in instituting the present action, when it had an order in the other case directed against the corporation and its officers, including the instant petitioner as president, is of no concern.

We are satisfied that every question raised by the petitioner in the instant case essential to the validity of the Commission's order was decided in the former case. Under such circumstances, a discussion of the points argued by petitioner would serve no useful purpose. The Commission's order in the instant case is affirmed, not because the former case is *res adjudicata*, but because the reasoning employed and conclusions reached are applicable and controlling here.

TUBULAR RIVET & STUD COMPANY v. WILLIAM A. AYRES,
 EWIN L. DAVIS, GARLAND S. FERGUSON, ROBERT E.
 FREER, AND CHARLES H. MARCH, AS THEY ARE MEM-
 BERS OF FEDERAL TRADE COMMISSION, AND FEDERAL
 TRADE COMMISSION¹

No. 13585—F. T. C. Dock. 4113

(District Court for the District of Columbia. Nov. 18, 1941)

Decision and decree granting, for lack of jurisdiction, as below set forth, motion of Commission (1) to dismiss plaintiff's complaint for injunction to restrain and enjoin the Commission from proceeding against plaintiff under the complaint in Docket 4113 by reason of Commission's action culminating in denial of motion to dismiss the complaint prior to proceeding with the hearing of the matter, but without prejudice to renewing the same upon final argument, and after permitting the filing of a brief in support of said motion but not oral argument, and for other relief; and (2) to dismiss plain-

¹ Not reported in Federal Reporter. Appeal to Court of Appeals of the District was dismissed by plaintiff on Feb. 17, 1942.

tiff's motion for preliminary injunction and for temporary injunction pending the final disposition of the cause.²

Mr. Robert A. B. Cooke, of Boston, Mass. (Mr. Louis M. Denit, of Washington, D. C., on the brief), for plaintiff.

Mr. J. J. Smith, Jr., assistant chief counsel, and Mr. Gerard A. Rault, special attorney, both of Washington, D. C., for the Commission.

Before O'DONOGHUE, Judge.

CONCLUSIONS OF LAW

This Court is of the opinion:

(1) That the statute under which the Federal Trade Commission's complaint was issued against plaintiff (15 U. S. C. A. secs. 14, 21) gives to the Commission in the first instance and to the appropriate United States Circuit Court of Appeals on petition to review any order to cease and desist which may be entered by the Commission, exclusive jurisdiction to determine every question raised by plaintiff's complaint and motion.

(2) That therefore this Court is without jurisdiction of the subject matter of the suit and has no power to grant the relief which plaintiff seeks. (Compare: *Meyers, et al. v. Bethlehem Shipbuilding Corporation*, 303 U. S. 41; *Newport News Building & Dry Dock Company v. Schauflyer, et al.*, 303 U. S. 54; *Anniston Manufacturing Co. v. Davis*, 301 U. S. 337, 345-346).

DECREE

This cause coming on to be heard at this term of Court upon the plaintiff's Complaint for Injunction and other Relief, upon plaintiff's Motion for Preliminary Injunction and for Temporary Injunction and upon defendant's Motion to Dismiss said complaint, said matters by agreement of counsel having been heard on the same date, and the Court being of the opinion that it is without jurisdiction to entertain this action because of the conclusions of law separately stated and filed herewith:

It is adjudged, ordered, and decreed that plaintiff's said motion be, and the same hereby is, denied, that defendants' said motion be, and

² Said complaint, presently pending, charged plaintiff, respondent therein, with dealing on exclusive and tying basis in violation of sec. 3 of the Clayton Act, in connection with the alleged leasing and licensing of its rivet setting machines, for use on the condition, agreement or understanding that the lessees or licensees will not use the same for setting any other tubular and bifurcated rivets than those made by the respondent or sold under its authority, and on the further condition, etc., that they will allow the said respondent or its agents to inspect the said machines at all reasonable times, with the result that the effect of said provisions might be to substantially lessen competition or tend to create a monopoly in respondent in tubular and bifurcated rivets in commerce.

the same hereby is, granted, and the plaintiff's complaint be, and the same hereby is, dismissed with costs to be borne by the plaintiff.¹

VON SCHRADER MANUFACTURING COMPANY, ET AL. v.
FEDERAL TRADE COMMISSION²

No. 7755—F. T. C. Dock. 3924

(Circuit Court of Appeals, Seventh Circuit. Nov. 26, 1941)

Order, dismissing, pursuant to stipulation of counsel, petition for review of order of Commission in Docket 3924, 33 F. T. C. 58, 65, requiring respondents, their representatives, etc., in connection with the offer, etc., in commerce, of rug and carpet cleaning machines, to cease and desist from representing that their rug and carpet washer will restore the original color, or destroy germs in rugs and carpets, etc., and from misrepresenting profits of operators of their said rug and carpet washer, as in order in detail set forth.

Mr. Frank W. Sullivan of *Mayer, Meyer, Austrian & Platt*, Chicago, Ill., for petitioners.

Mr. W. T. Kelley, chief counsel, and *Mr. James W. Nichol*, special attorney, both of Washington, D. C., for the Commission.

Before EVAN A. EVANS, *Circuit Judge*.

ORDER

Pursuant to stipulation of counsel, it is ordered that the petition for review of an order of the Federal Trade Commission, entered on June 11, 1941, in this cause, be, and it is hereby, dismissed.

¹ Plaintiff's "Complaint for Injunction and Other Relief," as respects the prayer thereof that order or notice of rule issue, requested that the defendants therein be directed to appear and "show cause, if any they have, why they should not be ordered, required, and directed:

"1. To dismiss forthwith their complaint against the plaintiff herein.

"2. To grant and allow to the plaintiff the right to be heard orally upon the plaintiff's motion to dismiss defendants' complaint, and plaintiff's motion to vacate defendants' order of June 21, 1940. [Said order, as set forth in the complaint, denying plaintiff's motion to dismiss without hearing, was followed by a later one permitting the filing of briefs but not oral argument, and final order denying the motion without prejudice to renewal upon final argument on the merits].

"3. To furnish to plaintiff forthwith, or within a reasonable time to be fixed by this Court, an adequate and complete bill of particulars, and specifications of defendants' charges against plaintiff.

"4. To desist and refrain from holding or conducting any hearings on or under their complaint against plaintiff for at least thirty days from and after the time when defendants shall have furnished plaintiff with an adequate and complete bill of particulars or specifications of their charges against plaintiff.

"5. To dismiss their complaint against plaintiff if they shall fail, neglect, or refuse to furnish to plaintiff an adequate and complete bill of particulars or specifications of their charges against plaintiff within 30 days after having been ordered so to do by this Court."

Commission's motion to dismiss was based on the ground (1) that the Court was without jurisdiction over the subject matter of the suit; (2) that the Court had no jurisdiction to grant the relief prayed; and (3) that plaintiff had a plain, adequate and complete remedy at law.

² Not reported in Federal Reporter. For case before Commission, see 33 F. T. C. 59.

ANCHOR HOCKING GLASS CORPORATION, LANCASTER,
OHIO, AND W. H. PETERSON v. FEDERAL TRADE COM-
MISSION¹

No. 9062—F. T. C. Docket. 3861

(Circuit Court of Appeals, Sixth Circuit. Dec. 4, 1941)

Per curiam order, upon application of petitioners, etc., dismissing petition to review Commission's order in Docket 3861, 33 F. T. C. 547, at 559, requiring respondents (as modified subsequent to said petition), their representatives, etc., in connection with offer, etc., in commerce, of glassware, to cease and desist from entering into, or assisting each other in carrying out, any conspiracy, etc., to refuse to sell glassware to any person, etc.; to cut off the source or sources of supply of any person, etc.; and to determine or designate who shall be a wholesaler of glassware and who not in the Milwaukee or any other trade area in the United States, etc.; as in said order set forth.

On petition to review order of Commission, petition dismissed as below set forth.

Deffenbaugh & Miller, of Lancaster, Ohio, for petitioners.

Mr. W. T. Kelley, chief counsel, of Washington, D. C., for Commission.

Per Curiam:

Upon application of the petitioners herein, and it being brought to the attention of this court that subsequent to the filing herein of the petition for review, the respondent, Federal Trade Commission, has issued a modified order to cease and desist, it is therefore ordered that said petition for review be, and the same is hereby, dismissed without costs to the petitioners.

ALEXANDER WEILER ET AL., DOING BUSINESS AS NEW
YORK PREMIUM NOVELTY COMPANY v. FEDERAL
TRADE COMMISSION²

No. 17650—F. T. C. Docket. 3579

(Circuit Court of Appeals, Second Circuit. Dec. 5, 1941)

Order dismissing, pursuant to motion of Commission so to do, for petitioners' failure to proceed actively with the prosecution of the case, as in said motion set forth, petition to review order of Commission in Docket 3579, 32 F. T. C. 517, 524, requiring respondents, their representatives, etc., in connection with offer, etc., in commerce, of jewelry, cosmetics, cigarette lighters, and various merchandise, to cease and desist from—

(1) Supplying, etc., others with push or pull cards, punchboards, or other devices which are to be used or may be used in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme;

¹ Reported in 124 F. (2d) 187. For case before Commission, see 33 F. T. C. 547.

² Not reported in Federal Reporter. For case before Commission, see 32 F. T. C. 517.

- (2) Shipping, etc., to agents or distributors or to members of the public push or pull cards, etc., which are to be used or may be used in the sale or distribution of said merchandise, as above set forth; and
- (3) Selling, etc., any merchandise by means of a game of chance, gift enterprise or lottery scheme.

Mr. Arthur D. Herrick, of New York City, for petitioners.

Mr. W. T. Kelley, chief counsel, *Mr. Joseph J. Smith, Jr.*, assistant chief counsel, and *Mr. James W. Nichol*, special attorney, all of Washington, D. C., for the Commission.

Before CHASE, *Circuit Judge*.

ORDER

This matter coming on to be heard upon the motion of respondent, and the Court being fully advised in the premises—

It is ordered that the motion of the respondent to dismiss the petition for review be and the same hereby is granted.

FONG POY ET AL. v. FEDERAL TRADE COMMISSION¹

No. 9865—F. T. C. Dock. 3964

(Circuit Court of Appeals, Ninth Circuit. Dec. 8, 1941)

Per curiam order dismissing, on account of petitioners' default and abandonment, petition to review Commission's order in Docket 3964, 32 F. T. C. 1566 at 1581, and affirming and commanding obedience to said order requiring respondents, their representatives, etc., in connection with offer, etc., of their herbs, to cease and desist representing falsely that their said products constitute a cure or remedy for and possess substantial therapeutic value in the treatment of numerous diseases and disorders, including cancer, tuberculosis, diabetes and many others, and that named respondent has ability to diagnose diseases and ailments and prescribe remedies therefor, as in said order in detail set forth.

On petition to review order of Commission, order affirmed, etc., as below noted.

Mr. Elliott Johnson, of Oakland, Cal., for petitioners.

Mr. W. T. Kelley, chief counsel, of Washington, D. C., for Commission.

Before GARRECHT, HANEY, and STEPHENS, *Circuit Judges*.

Per Curiam:

The default of petitioners in depositing the estimated expense of printing the transcript of record herein having been noted, and peti-

¹ Reported in 124 F. (2d) 398. For case before Commission, see 32 F. T. C. 1566.

tioners having indicated by letter that the petition to review herein has been abandoned, it is ordered, pursuant to provisions of 15 U. S. C. A., sec. 45 (c), that a decree of this Court be filed and entered herein affirming the order of the Federal Trade Commission, and commanding obedience to the terms of such order of said Commission.

NOTE.—Said decree, entered on Dec. 8, 1941, is set forth below :

DECREE

The petitioners herein, having filed with this Court on, to wit, July 14, 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 May 24, 1941, under the provisions of Section 5 of the Federal Trade Commission Act; and a copy of said petition having been served upon the respondent herein; and said respondent having thereafter certified and filed herein, as required by law, a transcript of the entire record in the proceeding lately pending before it, in which said order to cease and desist was entered, including all the evidence taken and the report and order of said respondent; and this cause coming on regularly on notice issued by the Clerk of this Court to counsel for the petitioners that the matter of default in payment of the estimated expense of printing the transcript of record herein would be presented on December 8, 1941, to the Court; and counsel for petitioners having indicated by letter dated November 5, 1941, that petitioners had abandoned their said petition for review; and it appearing from the records of the Court that petitioners have failed to deposit the estimated expense of printing the transcript of record in this cause; and this Court thereafter, on December 8, 1941, pursuant to the provisions of Section 5 of said Federal Trade Commission Act, having ordered that a decree of this Court be filed and entered herein affirming said order to cease and desist and commanding obedience to the terms thereof—

Now, therefore it is hereby ordered, adjudged and decreed, That said order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of May 24, 1941, be, and the same hereby is, affirmed.

And it is hereby further ordered, adjudged, and decreed, That the petitioners, Fong Poy, also known as Fong Wan; and Fong Kwongii, Yee Nun Yet, Chan Woon Sheung, and Lee Bing Lim, individually and trading as Fong Wan, or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their herbs, or any products of substantially similar composition or possessing substantially similar properties, whether

sold under the same name or under any other name, 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 petitioners' herbs constitute cures or remedies for, or possess any therapeutic value in the treatment of, cancer, tuberculosis, diabetes, Bright's disease, influenza, prostate gland disorders, paralysis, varicose veins, hardening of the arteries, cross-eyes, obesity, gallstones, stomach ulcers, or pyorrhea.

(b) That petitioners' herbs are cures or remedies for heart trouble, kidney trouble, bladder trouble, liver trouble, stomach trouble, blood disorders, high or low blood pressure, or bronchial disorders, or constitute competent or effective treatments therefor.

(c) That petitioners' herbs constitute cures or remedies for arthritis or rheumatism or have any therapeutic value in the treatment of such conditions in excess of affording temporary relief from the symptoms of pain.

(d) That petitioners' herbs constitute a cure or remedy for asthma or have any therapeutic value in the treatment of such condition in excess of furnishing temporary relief from the paroxysms of asthma.

(e) That petitioners' herbs constitute cures or remedies for colds or have any therapeutic value in the treatment thereof in excess of affording temporary relief from the symptoms of congestion of the mucous membrane.

(f) That petitioners' herbs constitute a cure or remedy for goiter or have any therapeutic value in the treatment of such condition in excess of that afforded by supplying iodine in those cases where a deficiency of iodine exists.

(g) That said herbs will build up the body, purify the blood, or renew strength.

(h) That said herbs wash away diseases from the body.

(i) That petitioner Fong Poy or Fong Wan, or any of the petitioners, have the ability to diagnose diseases or ailments or prescribe remedies therefor.

(2) Disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of petitioners' herbs, which advertisement contains any of the representations prohibited in paragraph (1) hereof and respective subdivisions thereof.

And it is hereby further ordered, adjudged, and decreed, That the petitioners hereinabove named shall, within ninety (90) days after

the entry of this decree, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which they have complied with this decree.

Without prejudice to the right of the United States, as provided in section 5 (1) of the Federal Trade Commission Act, to prosecute suits to recover civil penalties for violations of the said order to cease and desist hereby affirmed, this Court retains jurisdiction of this cause to enter such further orders herein from time to time as may become necessary effectively to enforce compliance in every respect with this decree and to prevent evasion thereof.

SCIENTIFIC MANUFACTURING CO., INC. ET AL. v.
FEDERAL TRADE COMMISSION ¹

No. 7756—F. T. C. Dock. 3874

(Circuit Court of Appeals, Third Circuit. Dec. 19, 1941)

FEDERAL TRADE COMMISSION ACT—SECTION 5—“UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN COMMERCE”—WHEELER-LEA AMENDMENT—COMPETITION.

The Federal Trade Commission Act was amended by adding a denouncement of “unfair or deceptive acts or practices in commerce” for purpose of clothing Federal Trade Commission with jurisdiction to act in respect of unfair acts or practices in commerce regardless of their effect upon competition, and effect of amendment was to so broaden commission’s jurisdiction as to enable commission to act where only public interest was adversely affected by the unfair practices. Federal Trade Commission Act, sec. 5 (a), and as amended, 15 U. S. C. A., sec. 45 (a).

FEDERAL TRADE COMMISSION ACT—SECTION 5—“UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN COMMERCE”—WHEELER-LEA AMENDMENT—COMPETITION—PERFORMANCE IN TRADE AFFECTED.

Under amendment to Federal Trade Commission Act by adding a denouncement of “unfair or deceptive acts or practices in commerce”, the Federal Trade Commission’s intervention is limited to acts or practices in the affected trade, the restrainable acts or practices in commerce continuing to be such as are performed or perpetrated in the trade affected by the offenses, whether or not there is competition. Federal Trade Commission Act, sec. 5 (a), and as amended, 15 U. S. C. A., sec. 45 (a).

FINDINGS OF COMMISSION—APPELLATE PROCEDURE AND PROCEEDINGS—EVIDENCE—WHERE SUPPORTED BY.

Under statute, the findings of Federal Trade Commission as to facts, if supported by testimony, are conclusive, and courts are bound to accept them as such. Federal Trade Commission Act, sec. 5, as amended, 15 U. S. C. A., sec. 45.

¹ Reported in 124 F. (2d) 640. For case before Commission, see 32 F. T. C. 493.

CEASE AND DESIST ORDERS—METHODS, ACTS OR PRACTICES—DISPARAGEMENT—PUBLICATIONS—WHERE PUBLISHER NOT MATERIALLY INTERESTED IN TRADE AFFECTED—ALUMINUM COOKING UTENSILS.

The Federal Trade Commission could not enjoin sale and distribution in interstate commerce of pamphlets concerning the use of aluminum cooking utensils to effect that use of aluminum for cooking purposes was dangerous, where publishers of pamphlets were not engaged or materially interested in cooking utensil trade. Federal Trade Commission Act, sec. 5, as amended, 15 U. S. C. A., sec. 45.

METHODS, ACTS AND PRACTICES—DISPARAGEMENT—PUBLICATIONS—TRADE INVOLVED—IF SELLER, ETC., OF MATTER NOT INTERESTED IN FINANCIALLY.

The publication, sale, and distribution of matter concerning an article of trade by a person not engaged or financially interested in commerce in that trade is not an "unfair or deceptive act or practice" within contemplation of Federal Trade Commission Act, as amended, if the published matter, even though unfounded or untrue, represents the publisher's honest opinion or belief. Federal Trade Commission Act, sec. 5 (a), and as amended, 15 U. S. C. A., sec. 45 (a).

CEASE AND DESIST ORDERS—METHODS, ACTS OR PRACTICES—DISPARAGEMENT—TRADE INVOLVED—IF SELLER, ETC., OF MATTER NOT INTERESTED IN FINANCIALLY.

The Federal Trade Commission's interpretation of amendment to Federal Trade Commission Act, which added a denouncement of "unfair or deceptive acts or practices in commerce", as authorizing Commission to enjoin sale and distribution of pamphlets concerning use of aluminum cooking utensils, published by publishers who are not engaged or materially interested in cooking utensil trade, would be rejected, since such interpretation would threaten validity of amendment under constitutional inhibition of abridgment of "freedom of speech and of press". Federal Trade Commission Act, sec. 5 (a), and as amended, 15 U. S. C. A., sec. 45 (a) ; U. S. C. A., Const. Amend. 1.

METHODS, ACTS AND PRACTICES—DISPARAGEMENT—PUBLICATIONS—TRADE INVOLVED—IF SELLER, ETC., NOT INTERESTED IN FINANCIALLY—EXPRESSION OF OPINION.

Although Congress did not intend to authorize Federal Trade Commission to foreclose expression of honest opinion in course of one's business of voicing opinion, such opinion may become material to jurisdiction of the commission and enjoined by it if, wanting in proof or basis in fact, it is utilized in the trade to mislead or deceive the public or to harm a competitor. Federal Trade Commission Act, sec. 5, as amended, 15 U. S. C. A., sec. 45.

(The syllabus, with substituted captions, is taken from 124 F. (2d) 640.)

On petition to review and set aside order of Commission, order set aside.

Mr. William DuBose Sheldon, of Washington, D. C. (*Mr. William Jenks Woolston*, of Philadelphia, Pa., on the brief), for petitioners.

Mr. Allen C. Phelps, Special Attorney, of Washington, D. C. (*Mr. W. T. Kelley*, Chief Counsel, *Mr. James W. Nichol*, *Mr. Harry D. Michael*, *Mr. E. G. Pabst*, and *Mr. R. E. Schrimsher*, Special Attorneys, all of Washington, D. C., on the brief), for Commission.

[641] Before MARIS, JONES, and GOODRICH, *Circuit Judges*.

JONES, *Circuit Judge*:

This matter is here on petition to review¹ a cease and desist order entered by the Federal Trade Commission against the present petitioners (respondents below).

The facts whereon the Commission acted are not in dispute. The petitioner, Scientific Manufacturing Company, Inc., is a Pennsylvania corporation having its place of business in Scranton, Pennsylvania, which is also the place of residence of Force, the other petitioner, who, with members of his immediate family, owns all of the capital stock of the company. Force, as president of the company, controls and directs its activities and practices. Among the latter are the publication and sale of pamphlets containing two articles² written by Force in intended exposition of alleged dangers to health from poisoning which, according to him, attend the use of aluminum utensils in the preparation or storage of food for human consumption.

The Commission found that Force and his company sold and distributed many of the pamphlets throughout the United States "to the public and to various manufacturers, distributors, dealers and salesmen of cooking and storage utensils made of materials other than and competitive with utensils made of aluminum."³ Neither Force nor his company was engaged in any way or interested materially in the manufacture, sale or distribution of cooking utensils of any sort. As indicated by the Commission's findings, the petitioners' course of trade in interstate commerce was limited to the sale and distribution of the pamphlets. This activity was motivated by a zeal on the part of Force, who is a graduate pharmacist and chemist of some twenty-odd years' experience, to propagate his own unorthodox ideas and theories by independently disseminating what, unquestionably, he believes to be the truth concerning the effect of aluminum metals upon foods. The Commission further found that the statements and representations

¹ Sec. 5 of the Federal Trade Commission Act, as amended, 52 Stat. 111, 15 U. S. C. A. § 45.

² The pamphlet articles, which are entitled "Poisons Formed by Aluminum Cooking Utensils" and "Are You Heading for the 'Last Round-up'?", represent, as the Commission correctly summarized, "that aluminum is a poisonous metal and that the use of aluminum utensils for the preparation, cooking or storage of food is unsafe, deleterious, disease producing, poisonous, death dealing and otherwise dangerous to health because of the aluminum imparted to foods during such process and the resulting absorption and accumulation of such metal in the system of the consumer of foods so prepared, cooked or stored; and further that aluminum utensils are manufactured of a soft metal, that such utensils easily become corroded and pitted when used for cooking and tend to provide lodgment for food particles which operate as culture media for bacteria and spores, both poisonous and otherwise."

³ The complaint had alleged that the petitioners sold and distributed the pamphlets principally through manufacturers of cooking utensils in competition with aluminum ware, but the Commission made no finding in such relation. According to the record, however, about twenty per cent. of the pamphlets distributed by the petitioners came into the hands of manufacturers or distributors of non-aluminum utensils.

respecting aluminum utensils, as contained in the pamphlets, were "false, misleading and disparaging"⁴; that they serve to "mislead and deceive a substantial portion of the purchasing public with the false and erroneous belief that cooking utensils made from aluminum are * * * harmful and are dangerous to the consumers of food prepared or stored" therein; and that the present petitioners through their sale and distribution of the [642] pamphlets supply an "instrumentality by means of which uninformed or unscrupulous manufacturers, distributors, dealers and salesmen may deceive or mislead members of the purchasing public and induce them to purchase utensils made from materials other than aluminum."

On this factual basis, the Commission concluded that the acts and practices of the present petitioners were "to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act." The cease and desist order thereupon ensued.⁵

(1) The petitioners assail the order on the grounds that the Commission was without jurisdiction under the facts of the instant case because the petitioners had no material interest in or connection with the manufacture, sale, or distribution of cooking utensils of any kind; that (2) the publication and sale of pamphlets containing statements which, even though unfounded or untrue, express the honest belief of the publisher are not unfair or deceptive acts or practices as contemplated by Section 5 of the Federal Trade Commission Act as amended; and that (3) the Commission's order abridges the peti-

⁴ On this issue of scientific fact, the Commission heard only the witness Force (who represented himself) for the one side and, in opposition thereto, five witnesses who were closely associated with or employed by the Aluminum Company of America or affiliates.

⁵ The Commission's order, in material part, is as follows:

"It is ordered that the respondents' Scientific Manufacturing Company, Inc., and its officers, and Howard J. Force, individually and as president of the Scientific Manufacturing Company, Inc., and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of pamphlets in commerce, as 'commerce' is defined in the Federal Trade Commission Act, do forthwith cease and desist from;

"(1) Representing that the use of food prepared or kept in aluminum utensils is dangerous to the health of the consumer;

"(2) Representing that the preparation or storage of food in aluminum utensils causes the formation of poisons;

"(3) Representing that the preparation, cooking or storage of food in aluminum utensils imparts aluminum in quantities sufficient to cause injury to the health of the consumer, or that the aluminum so imparted has a cumulative effect upon the system of the consumer;

"(4) Representing that aluminum utensils easily corrode or pit and thereby provide lodgment for bacteria and spores, both poisonous and otherwise;

"(5) Representing that the consumption of food prepared or stored in aluminum containers will cause cancer, Bright's Disease, diabetes, liver trouble, indigestion, constipation, ulcers, carbuncles, nervousness, poisoning, or any other disease or ailment of the human body;

"(6) Making or causing the making of any false statements or representations with respect to the effect that the consumption of food prepared, cooked or stored in such utensils might have, or has had, on the health of the consumer or consumers of such foods, which statements unfairly disparage the quality value or use of aluminum cooking or storage utensils."

tioners' freedom of speech and of press in violation of the First Amendment of the Federal Constitution.

The Commission contends that its jurisdiction in the circumstances shown derives from the amendment of March 21, 1938 (c. 49 Sec. 5 (a), 52 Stat. 111, 15 U.S.C.A. §45 (a)) which enlarged the original Federal Trade Commission Act by adding thereto a denouncement of "unfair or deceptive acts or practices in commerce" and by correspondingly empowering and directing the Commission to prevent the use of such acts or practices. From this, the Commission argues that the petitioners, being commercially engaged in an interstate business (the sale and distribution of pamphlets) are amenable to the Commission's interdictions when any of their acts or practices are found by the Commission to be unfair or deceptive in respect of some article of commerce in an unrelated trade and notwithstanding such acts or practices are neither unfair nor deceptive in respect of the petitioners' trade in interstate commerce. As a corollary of the Commission's argument, if the subject matter of the petitioners' pamphlets were contained in an article in a newspaper, magazine or book of interstate circulation, such publication would be equally restrainable at the instance of the Commission. Obviously, a grant of power so vast is not to be accorded an administrative body except upon plain legislative direction within constitutional bounds. This brings us then to the matter of congressional intent for first consideration.

As originally enacted in 1914, the Federal Trade Commission Act declared "unfair methods of competition in commerce" to be unlawful and empowered the Feder[643]al Trade Commission to prevent the use of such methods. Thenceforth, a train of litigated cases^o

^o Misleading advertising: *Electro-Thermal Co. v. Federal Trade Commissioner*, 51 F. (2d) 477 (C. C. A. 9); *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307 (C. C. A. 7);

Combinations to suppress competition: *Fashion Originators' Guild of America, Inc. et al. v. Federal Trade Commission*, 81 S. Ct. 703; *Butterick Pub. Co. et al. v. Federal Trade Commission*, 85 F. (2d) 522 (C. C. A. 2);

Price fixing by associations or combinations: *California Rice Industry v. Federal Trade Commission*, 102 F. (2d) 716 (C. C. A. 9);

Practices considered contrary to public policy and morals: *Federal Trade Commission v. R. F. Keppel & Bro., Inc.*, 291 U. S. 304;

Use of containers similar to those of another manufacturer which tend to mislead purchasing public: *Federal Trade Commission v. Balme*, 23 F. (2d) 615 (C. C. A. 2);

Use of deceptive names which tend to mislead: *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212;

Misleading representation of a product: *Federal Trade Commission v. Winsted Hostery Company*, 258 U. S. 483;

Price maintenance policy by manufacturer: *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441; *Armand Co., Inc. v. Federal Trade Commission*, 78 F. (2d) 707 (C. C. A. 2); *Toledo Pipe-Threading Mach. Co. v. Federal Trade Commission*, 11 F. (2d) 837 (C. C. A. 6);

Misbranding of a product: *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67;

Untruthful statements about a competitor: *Chamber of Commerce of Minneapolis et al. v. Federal Trade Commission*, 13 F. (2d) 673 (C. C. A. 8);

False therapeutic claims for a product: *Justin Haynes & Co., Inc. v. Federal Trade Commission*, 105 F. (2d) 988 (C. C. A. 2).

delineated a wide and varied range for the exercise of the Commission's jurisdiction but always, it is believed, in matters involving unfair trade or commercial acts or practices for the advantage of the offender over competitors and to the detriment of the public. The presence of the public interest was essential to an exercise of the Commission's jurisdiction. *Federal Trade Commission v. Klesner*, 280 U. S. 19, 27 [13 F. T. C. 581].

Then came the decision in *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 654, where the Supreme Court held that "one of the facts necessary to support [the Commission's] jurisdiction to make the final order to cease and desist, is the existence of competition;" etc. It will be remembered that the proscription in the original Act was limited to "unfair methods of competition in commerce". In the presence of this jurisdictional requirement, it became apparent that there could be instances of unfair or deceptive acts or practices in commerce injurious to the public which the Commission was without jurisdiction to prevent. Such was the case where the offender had a monopoly (i. e., no competitors) or where all competitors in a particular trade made use of the same practices. Moreover, even where competition did actually exist, although obscure, it was time-consuming and expensive for the Commission to develop the essential fact of competition. It was for the purpose of clothing the Commission with jurisdiction to act in respect of unfair acts or practices in commerce regardless of their effect upon competition that the amendment of 1938 was offered and enacted.⁷ True enough, as the Commission argues, the effect of the amendment was to so broaden the Commission's jurisdiction as to enable it to act where only the public interest was adversely affected by the unfair practices. None the less, it was still the unfair acts of traders in the affected commerce that the Commission was empowered to enjoin. The public interest to be served is no different under the amendment than it was under the original Act. The change effected by the amendment lay in the fact that the Commission could thenceforth prevent unfair or deceptive acts or practices in commerce which in[644]juriously affected the public interest alone, while under the original Act the Commission's power to safeguard the public against unfair trade practices depended upon whether the objectionable acts or practices affected competition. But the restrainable acts or practices in commerce continued to be such as are performed or

⁷ See Report of Committee on Interstate and Foreign Commerce, 75th Cong. 1st Sess., House Reports 1613, p. 1; letter on behalf of the Federal Trade Commission by Acting Chairman Ferguson to Senator Wheeler, Chairman of the Senate Committee on Interstate Commerce, printed in report of hearings on S. 3744, p. 6; and explanation of the amendment by Congressman Wolverton, Congressional Record, 75th Cong. 1st Sess., p. 551.

perpetrated in the trade affected by the offenses,⁸ whether or not there is competition. In short, the Commission's intervention is limited to acts or practices in the affected trade. If the amendment were given any broader scope, the Act would relate to far more than trade practices and the Commission would become the absolute arbiter of the truth of all printed matter moving in interstate commerce, even where scholars in the particular field of knowledge were in wide disagreement. "The findings of the Commission as to facts, if supported by testimony, shall be conclusive."⁹ The courts are bound to accept them as such. *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 117 [25 F. T. C. 1715, 1719]; *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 73 [18 F. T. C. 669].

It follows from what we have said that, the present petitioners not being engaged or materially interested in the cooking utensil trade, the Commission was without power to enjoin their sale and distribution of the pamphlets which they published concerning the use of aluminum cooking utensils and, further, that the publication, sale, and distribution of matter concerning an article of trade by a person not engaged or financially interested in commerce in that trade is not an unfair or deceptive act or practice within the contemplation of the Federal Trade Commission Act, as amended, if the published matter, even though unfounded or untrue, represents the publisher's honest opinion or belief.

In the view we thus take of the intent of the Federal Trade Commission Act as amended, no question of abridgment of the petitioners' freedom of speech or of press arises. However, we may say that the constitutional inhibition of any such abridgment, which the Commission's interpretation of the amendment to the statute at once involves, would so seriously threaten its validity as to justify rejection of the Commission's contention. *Blodgett v. Holden*, 275 U. S. 142, 148; *United States v. Standard Brewery*, 251 U. S. 210, 220; *United States v. Delaware & Hudson Co.*, 213 U. S. 366, 407-408; and *United States v. Jin Fuey Moy*, 241 U. S. 394, 401.

The petitioner Force dealt in opinions and no more. Nor does the Commission alter their category by tabulating them statements of fact. They are theories or ideas, false, it may well be, but sincerely

⁸ In *Perma-Maid Company v. Federal Trade Commission*, 121 F. (2d) 282, where a distributor of stainless steel cooking utensils procured some of the Force pamphlets for use of its salesmen in inclining prospective customers to stainless steel rather than aluminum ware, the Federal Trade Commission restrained the distributor's use of the pamphlets and its action was sustained by the Circuit Court of Appeals for the Sixth Circuit. The *Perma-Maid* case, involving as it does the use of the pamphlets which Force publishes and distributes, well illustrates a permissible exercise of the Commission's jurisdiction and serves to point the pertinent distribution between that case and the present.

⁹ Federal Trade Commission Act, September 26, 1914, 38 Stat. 717, 15 U. S. C. A. § 45.

held none the less, and that, too, in a field of knowledge where even experts at times must be content with approximations to verity. To the situation here presented the words of Mr. Justice Holmes are apposite,—“Certitude is not the test of certainty. We have been cocksure of many things that were not so. * * * But while one’s experience thus makes certain preferences dogmatic for oneself, recognition of how they came to be so leaves one able to see that others, poor souls, may be equally dogmatic about something else.”¹⁰ Surely Congress did not intend to authorize the Federal Trade Commission to foreclose expression of honest opinion in the course of one’s business of voicing opinion. The same opinion, however, may become material to the jurisdiction of the Federal Trade Commission and enjoined by it if, wanting in proof or basis in fact, it is utilized in [645] the trade to mislead or deceive the public or to harm a competitor. Cf. *Perma-Maid Company, Inc. v. Federal Trade Commission*, 121 F. (2d) 282 (C. C. A. 6) [33 F. T. C. 1803].

The order of the Federal Trade Commission is set aside.

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JOE B. HILL, ET AL., TRADING AS McAFEE CANDY COMPANY AND LIBERTY COMPANY v. FEDERAL TRADE COMMISSION¹¹

No. 9849—F. T. C. Dock. 4114

(Circuit Court of Appeals, Fifth Circuit. Dec. 23, 1941)

RULES OF PRACTICE OF COMMISSION—EFFECT.

Rules adopted by the Federal Trade Commission for purpose of carrying out provisions of the Federal Trade Commission Act have the force and effect of law. Federal Trade Commission Act, sec. 6 (g), 15 U. S. C. A., sec. 46 (g).

JUDICIAL ADMISSIONS—IN GENERAL.

Judicial admissions are proof possessing the highest possible probative value.

CEASE AND DESIST ORDERS—PLEADING AND PRACTICE—ADMISSIONS AND WAIVERS—RULES OF PRACTICE—IF RECEIVED AND ALLEGATIONS OF COMPLAINT ADMITTED.

Where candy manufacturer was notified of hearing on Federal Trade Commission’s complaint charging manufacturer with violating Federal Trade Commission Act and received an excerpt from commission’s rules of practice respecting pleading, and manufacturer, before testimony was taken, filed answer admitting material allegations of fact in complaint and waiving further hearing as to such facts, a cease and desist order entered by commission upon complaint and answer was valid, even if no testimony was taken. Federal Trade Commission Act, secs. 5, 6 (g), 15 U. S. C. A., secs. 45, 46 (g).

¹⁰ Natural Law (1918) 32 Harvard Law Review 40, 41.

¹¹ Reported in 124 F. (2d) 104. For case before Commission, see 32 F. T. C. 453.

CEASE AND DESIST ORDERS—SCOPE—COMPLAINT—LOTTERY MERCHANDISING—MANUFACTURER'S ASSORTMENTS SO PACKED AS TO INVOLVE, IN SALE TO CONSUMER—PROHIBITION WHERE DIRECT SALE TO PUBLIC NOT ALLEGED.

A provision in a cease and desist order of the Federal Trade Commission directing a candy manufacturer to cease selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise or lottery scheme was within scope of commission's complaint charging manufacturer with violating Federal Trade Commission Act by selling to wholesalers and retailers assortments of candy so packed as to involve use of games of chance when sold to consumers, although there was no allegation in complaint that manufacturer sold to the public. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

CEASE AND DESIST ORDERS—EXTENT OF ORDER—LOTTERY MERCHANDISING—MANUFACTURER'S ASSORTMENTS SO PACKED AS TO INVOLVE IN SALE TO CONSUMER—IF GAMBLING DEVICE'S USE COMPLETELY PROHIBITED ALSO.

In proceedings against a candy manufacturer charged with violating the Federal Trade Commission Act by selling to wholesalers and retailers assortments of candy so packed as to involve use of gambling devices when candy was sold to consumers, it was competent for the Federal Trade Commission to embrace in its cease and desist order a complete prohibition against use of gambling devices in selling candy, whether at wholesale or retail. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

CEASE AND DESIST ORDERS—EXTENT—LOTTERY MERCHANDISING—MANUFACTURER'S ASSORTMENT SO PACKED AS TO INVOLVE IN SALE TO CONSUMER—ASSORTMENTS, ETC., SUCH THAT SALES OF GOODS TO BE OR WHICH "MAY" BE MADE, BY CHANCE, PROHIBITED.

Under a provision in a cease and desist order of the Federal Trade Commission directing a candy manufacturer to cease supplying to, or placing in hands of others, candy or other merchandise so packed or assembled that sales of candy or merchandise to the public were to be made "or may be made" by means of a game of chance, gift enterprise or lottery scheme, use of quoted language was not prejudicial against manufacturer as rendering manufacturer liable for acts of others. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

CEASE AND DESIST ORDERS—EXTENT—LOTTERY MERCHANDISING—MANUFACTURER'S ASSORTMENT SO PACKED AS TO INVOLVE IN SALE TO CONSUMER—ASSORTMENTS, ETC., SUCH THAT SALES OF GOODS TO BE OR WHICH "MAY" BE MADE, BY CHANCE, PROHIBITED—AS PROSPECTIVE AND INVOLVING PRACTICES TO WHICH MANUFACTURER A PARTY, ETC.

Prohibitions in a cease and desist order of the Federal Trade Commission directing a candy manufacturer to cease supplying to or placing in hands of others candy so packed that sales thereof might be made by means of a game of chance, gift enterprise or lottery scheme were prospective in operation, and prohibitions prohibited only those practices which manufacturer had in some way made itself a party to and assisted in carrying out. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

On petition to review order of Commission, order affirmed.

Mr. W. A. Bootle, of Macon, Ga., for petitioner.

Mr. W. T. Kelley, chief counsel, *Mr. Joseph J. Smith, Jr.*, and *Mr. Martin A. Morrison*, assistant chief counsels, Federal Trade Commission, *Mr. Lunsford P. Allen, Jr.*, and *Mr. James W. Nichol*, special attorneys, Federal Trade Commission, all of Washington, D. C., for respondent.

[105] Before FOSTER, HUTCHESON, and HOLMES, *Circuit Judges*.

HUTCHESON, *Circuit Judge*:

Petitioners are engaged in the manufacture of candy and its sale and distribution to wholesale dealers, jobbers, and retail dealers in various parts of the United States, in competition with other individuals, partnerships and corporations, engaged in the candy business. This petition to set aside as invalid, a cease and desist order of the commission,¹ or in the alternative, to modify it, presents three grounds for doing so. The ground for setting it aside as invalid is that it was entered, not after a hearing and on evidence, but upon the complaint and answer. The modifications sought are, (1) to strike from it, as not within the scope of the complaint or the findings, paragraph 4 thereof, and (2) to strike the words "*or may be made*" from paragraph 1, because susceptible of the construction that petitioners could be held accountable for acts done by others with which they had nothing to do. (Italics supplied.)

The complaint in a careful and detailed way, sets out the facts as to the complained of activities of the petitioners and charges that they constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, within the prohibitions of the Federal Trade Commission Act.² The gist of the wrongful practices complained of, is the selling to wholesale dealers, jobbers, and retail dealers, of 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.

¹ "(1) Supplying to or placing in the hands of others, candy or any other merchandise, so packed or assembled that sales of such candy or other merchandise to the public are to be made, or may be made, by means of a game of chance, gift enterprise or lottery scheme;

"(2) Supplying to or placing in the hands of others, candy or any other merchandise, together with punch boards, push or pull cards, or other lottery devices which said punch boards, push or pull cards or other lottery devices are to be used, or may be used, in selling or distributing such candy or other merchandise to the public;

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

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

² 15 U. S. C. A., sec. 45.

A hearing was fixed for May 31, 1940, a notice was given containing, among other things, an excerpt from the rules of practice of the commission. "If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations."

[106] The matter was set for the taking of testimony, but before any testimony was taken petitioners filed answer. "Come now the respondents, Joe B. Hill and C. O. McAfee, individually and trading as McAfee Candy Co. and Liberty Candy Co., and answering the complaint in this proceeding state that they admit all of the material allegations of fact set forth in said complaint and waive all intervening procedure and further hearing as to said facts." Thereafter, in faithful accord with the allegations of the complaint, the commission made the findings and issued the order complained of. Here, pointing out that they are based upon the admissions of the answer, the commission insists that there is no merit in the attack on them or on the order as a whole. It consists too that the attempt to modify the order is no better based, for operating not by way of penalty for past performance, but prospectively, *Standard Container Manufacturers' Assn. v. Federal Trade Commission*, 119 F. (2d) 262 [32 F. T. C. 1879] clause 4 is reasonably within the scope of the complaint and findings, and the words "or may be made" as used in clause 1, are not reasonably subject to the construction petitioners would place on them.

We agree with the commission. The statute gives it express authority "to make rules and regulations for the purpose of carrying out the provisions of the act."⁸ These rules have the force and effect of law. *National Candy Co. v. Federal Trade Commission*, 104 F. (2d) 999, 1003 [29 F. T. C. 1557, 1563]; *Hughes v. Federal Trade Commission*, 62 F. (2d) 362 [20 F. T. C. 734]. They were faithfully followed and complied with here. But these rules aside, it is fundamental that judicial admissions are proof possessing the highest possible probative value. Indeed, facts judicially admitted are facts established not only beyond the need of evidence to prove them, but beyond the power of evidence to controvert them. A fact admitted by answer is no longer

⁸ 15 U. S. C. A., sec. 46 (g).

a fact in issue. Considered as a whole then, the order stands as valid beyond dispute.

The attack upon clause 4 as prohibiting petitioners from doing that which they are not even charged with, and the effort to excise from clause 1, the words "or may be made," are not, we think, any better based. While the complaint does allege that petitioners are manufacturers of and sell assortments of candy to wholesale dealers, jobbers, and retail dealers, and there is no allegation that they sell to the public, the complained of paragraph of the order is yet within the scope of the complaint, which was aimed at preventing the sale and distribution of candy to the public by lottery or chance. It was entirely competent for the commission to embrace in its cease and desist order, a complete prohibition against doing the thing complained of, the use of gambling devices in selling candy, whether at wholesale or at retail, and no abuse of discretion, or injury to petitioners can be found in the complained of paragraph. *Federal Trade Commission v. Wallace*, 75 F. (2d) 733 [20 F. T. C. 713]; *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67 [18 F. T. C. 669]; *Hershey Chocolate Corporation v. Federal Trade Commission*, 121 F. (2d) 968 [33 F. T. C. 1798]; *Local 167 v. United States*, 291 U. S. 293; *Standard Container Manufacturers' Association v. Federal Trade Commission*, 119 F. (2d) 262 [32 F. T. C. 1879]; *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426.

Finally, we think the complaint of the use in paragraph 1 of, and the effort to strike from it, the words "or may be made," is without substance, because based upon an apprehension having no sound basis. In the first place, as we have pointed out, the prohibitions are prospective, not retrospective, and they may be made effective only in a proceeding to punish their violation. In any such proceeding it would be unreasonable to hold as petitioners claim might be held, that the words used would make petitioners liable for schemes or practices of persons to who they sold with which petitioners had nothing to do. It is our view that those decisions which declare that the order is not subject to the construction which petitioners fear,⁴ are more soundly based than those on which petitioners rely.⁵ These latter, we think, as a result of yielding to an unfounded apprehension, have the effect of leaving a loop[107]hole for evasion which is certainly closed and no more than closed, by the use of the words in controversy. For

⁴ *National Candy Co. v. Federal Trade Commission*, 104 F. (2d) 1003 [29 F. T. C. 1557]; *Ostler Candy Co. v. Federal Trade Commission*, 106 F. (2d) 262 [29 F. T. C. 1584].

⁵ *Federal Trade Commission v. Charles N. Miller*, 97 F. (2d) 563 [27 F. T. C. 1678]; *Helen Ardelle v. Federal Trade Commission*, 101 F. (2d) 718 [28 F. T. C. 1894]; *Sweets Co. of America v. Federal Trade Commission*, 109 F. (2d) 296 [30 F. T. C. 1625].

we think they must be construed as intending to prohibit and as prohibiting only those practices which petitioners have in some way, made themselves a party to, in some way assisted in carrying out. We find no error in the judgment. It is affirmed.

Affirmed.

LOUIS ESTRIN ET AL., TRADING AS HUDSON FUR DYEING COMPANY v. FEDERAL TRADE COMMISSION¹

No. 7826—F. T. C. Dock. 3951

(Circuit Court of Appeals, Third Circuit. Jan. 7, 1942)

Order dismissing, upon consent, petition to review order of Commission in Docket 3951, 33 F. T. C. 797, 803, requiring respondents, their representatives, etc., 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, to cease and desist from—

Using the word "Hudseal" as a trade name, etc, or any other word of similar significance or connotation, or any other word signifying Hudson Seal, either separately or in conjunction with any other word, to designate dyed rabbit peltries, and from describing peltries in any other way than by the use of the correct name of the fur as the last word of the description, such word in the event any dye is used simulating another fur to be immediately preceded by the word "dyed" or "blended" compounded with the name of the simulated fur, as in order in detail set forth.

Koehler, Augenblick & Freedman, of Newark, N. J., for petitioners.
Mr. W. T. Kelley, chief counsel, and *Mr. James W. Nichol*, special attorney, both of Washington, D C., for the Commission.

Before BIGGS, MARIS, and JONES, *Circuit Judges*.

ORDER DISMISSING PETITION TO REVIEW

Upon reading the consent hereto annexed, it is on this 7th day of January 1942

Ordered, That the petition filed by Louis Estrin, Charles Estrin, Sidney Estrin, Esther Estrin, and Belle Estrin, individuals trading as Hudson Fur Dyeing Co., to review the order to cease and desist heretofore made by the respondent, Federal Trade Commission on or about July 29, 1941, be and the same hereby is dismissed without further costs by either party as against the other.

¹ Not reported in Federal Reporter. For case before Commission, see 33 F. T. C. 797.

MITCHELL A. BAZELON, ET AL., TRADING AS EVANS
NOVELTY COMPANY AND PREMIUM SALES COMPANY v.
FEDERAL TRADE COMMISSION¹

No. 7698—F. T. C. Docket. 3711

(Circuit Court of Appeals, Seventh Circuit. Jan. 13, 1942)

Decision and decree affirming, on petition to review, order of Commission in Docket 3711, 32 F. T. C. 1159, 1165, which required said respondents, their representatives, etc., in connection with offer, etc., in commerce of radios, fishing tackle, clocks, or other merchandise, to cease and desist from (1) selling, etc., any merchandise so packed or assembled that sales thereof to the public are to be made or may be made by means of a game of chance, gift enterprise or lottery scheme; (2) supplying, etc., others with push or pull cards, punchboards or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, etc., are to be used or may be used in selling or distributing said merchandise to the public; and (3) sellings, etc., any merchandise by means of a game of chance, gift enterprise or lottery scheme, said order of the Commission and directing enforcement thereof as below ordered, adjudged and decreed.

Mr. Sidney Schneider, of Chicago, Ill., for petitioners.

Mr. W. T. Kelley, chief counsel, *Mr. Martin A. Morrison*, asst. chief counsel, *Mr. D. C. Daniel*, *Mr. L. P. Allen, Jr.*, and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for the Commission.

Before EVANS, KERNER and MINTON, *Circuit Judges*.

DECISION

The above cause, having been submitted to the Court as set forth in the first paragraph of the Court's decree below, the Court, after conclusion of oral argument, without opinion, affirmed from the bench the order of the Commission, and on Jan. 27, 1942, entered its decree affirming said order, etc., as below set forth (Statement by Editor).

DECREE

The petitioners herein, having filed with this Court on June 10, 1941, their petition to review and set aside an order to cease and desist issued by the Federal Trade Commission, respondent herein under date of April 11, 1941, under the provisions of the Federal Trade Commission Act, and a copy of said petition having been served upon the respondent herein, and said respondent having thereafter certified and filed herein, as required by law, a transcript of the entire record in the proceeding lately pending before it, in which said order to cease and desist was entered; and the matter having been heard by this Court on briefs and argument of counsel; and this Court thereafter, on January 13,

¹ Not reported in Federal Reporter. For case before Commission, see 32 F. T. C. 1159.

1942, having rendered its decision affirming said order of the respondent and directing the enforcement thereof—

Now, therefore, it is hereby ordered, adjudged, and decreed, That said order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of April 11, 1941, be, and the same hereby is, affirmed.

And it is hereby further ordered, adjudged, and decreed, That the petitioners, Mitchell A. Bazelon and Jacob L. Bazelon, their representatives, agents and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of radios, fishing tackle, clocks or any other merchandise, in commerce (as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

(1) Selling or distributing any merchandise so packed or assembled that sales of such merchandise to the public are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme;

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

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

And it is hereby further ordered, adjudged, and decreed, That the petitioners hereinabove named shall, within ninety (90) days after the entry of this decree, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which they have complied with this decree.

Without prejudice to the right of the United States, as provided in section 5 (1) of the Federal Trade Commission Act, to prosecute suits to recover civil penalties for violations of the said order to cease and desist hereby affirmed, this Court retains jurisdiction of this cause to enter such further orders herein from time to time as may become necessary effectively to enforce compliance in every respect with this decree and to prevent evasion thereof.

CANDYMASTERS, INC. v. FEDERAL TRADE COMMISSION ¹

No. 528—F. T. C. Docket. 4243

(Circuit Court of Appeals, Eighth Circuit. Jan. 19, 1942)

Order dismissing, pursuant to dismissal filed by petitioner, petition for review of order of Commission in Docket 4243, 32 F. T. C. 981, 987, requiring

¹ Not reported in Federal Reporter. For case before Commission, see 32 F. T. C. 981.

respondent, its officers, etc., in connection with offer, etc., in commerce, of candy or any other merchandise, to cease and desist from—

- (1) Supplying, etc., others with candy or any other merchandise together with push or pull cards, punchboards, or other lottery devices which are to be used or may be used in selling or distributing such candy or other merchandise to the public;
- (2) Supplying, etc., others with such push or pull cards, etc., either with assortments of candy or other merchandise or separately, which said push or pull cards, etc., are to be used or may be used as above set forth; and
- (3) Selling, etc., any merchandise by means of a game of chance, gift enterprise or lottery scheme; as in order in detail set forth.

Mr. Bruce W. Sanborn, Mr. Charles J. Andre, Mr. Clifton Parks, all of St. Paul, Minn., for petitioner.

Mr. W. T. Kelley, chief counsel, and *Mr. James W. Nichol,* special attorney, both of Washington, D. C., for the Commission.

ORDER

This matter came on to be heard on the dismissal filed by counsel for the petitioner. Petition for review of the order of the Federal Trade Commission, copy of which is attached as Exhibit C to said petition to review, was filed May 21, 1941, and now in pursuance of said dismissal—

It is ordered and adjudged by this Court, That the said petition to review herein be, and the same is hereby, dismissed without the taxation of costs in favor of either of the parties in this Court.

And it is further ordered by this Court, That a certified copy of this Order be forthwith transmitted to the said Federal Trade Commission.

DAVID KRITZIK, DOING BUSINESS AS GENERAL MERCHANDISE CO. v. FEDERAL TRADE COMMISSION¹

No. 7679—F. T. C. Dock. 3780

(Circuit Court of Appeals, Seventh Circuit. Jan. 28, 1942)

RULES OF PRACTICE OF COMMISSION—EFFECT.

The rules which the Federal Trade Commission is empowered to make for the purpose of carrying out the provisions of the Federal Trade Commission Act have the force and effect of "law." Federal Trade Commission Act, sec. 6 (g), 15 U. S. C. A., sec. 46 (g).

RULES OF PRACTICE OF COMMISSION—EFFECT—ALLEGATIONS—FAILURE TO DENY.

Under the rules of practice of the Federal Trade Commission, where an alleged fact found by the commission is left without denial, any issue with respect to that allegation is foreclosed by the pleadings, and a fact admitted by answer is no longer a fact in issue. Federal Trade Commission Act, sec. 6 (g), 15 U. S. C. A., sec. 46 (g).

¹ Reported in 125 F. (2d) 351. Rehearing denied Feb. 19, 1942. For case before Commission, see 32 F. T. C. 1109.

METHODS, ACTS AND PRACTICES—CRITERIA—PUBLIC POLICY.

The Federal Trade Commission Act condemns any method of competition in interstate commerce which is contrary to public policy. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

METHODS, ACTS AND PRACTICES—CRITERIA—PUBLIC POLICY—LOTTERY MERCHANDISING.

Where petitioner admitted that he sold his merchandise in competition with others engaged in selling like merchandise in interstate commerce, that in sale and distribution thereof he furnished devices involving the use of games and lottery schemes, and that his purchasers used the devices to conduct lotteries in disposing of his merchandise, petitioner's sales method was an injury to the public and competitors and was contrary to "public policy" within the condemnation of the Federal Trade Commission Act. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

CEASE AND DESIST ORDERS—EXTENT—LOTTERY MERCHANDISING—LOTTERY DEVICES WHICH "ARE TO BE USED, OR MAY BE USED" IN SELLING TO PUBLIC.

A cease and desist order of the Federal Trade Commission prohibiting distributor from supplying, either with merchandise or separately, lottery devices which "are to be used, or may be used" in selling or distributing merchandise to the public was not objectionable because of use of words "or may be used". Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

(The syllabus, with substituted captions, is taken from 125 F. (2d) 351.)

On petition to review order of Commission, petition denied and order affirmed.

Mr. Maurice Weinstein, of Milwaukee, Wis., for petitioner.

Mr. W. T. Kelley, chief counsel, *Mr. J. J. Smith, Jr.* and *Mr. Martin A. Morrison*, assistant chief counsels, *Mr. D. C. Daniel*, *Mr. L. P. Allen, Jr.*, *Mr. John W. Brookfield, Jr.*, and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for Commission.

Before EVANS, MAJOR, and KERNER, *Circuit Judges*.

KERNER, *Circuit Judge*:

Petitioner asks us to review and set aside a cease and desist order of the Federal Trade Commission on the ground that there is no competent evidence to support the findings of the Commission.

The order was based upon a complaint issued by the Commission alleging in substance that petitioner is engaged in the sale and distribution of blankets, radios, cig[352]rettes, candy, and other articles of merchandise in commerce between and among the various States of the Union in competition with other individuals, partnerships and corporations engaged in the sale and distribution of similar merchandise; that in the sale and distribution of his merchandise petitioner furnishes devices (described in the complaint) which involve the

operation of games of chance, gift enterprises or lottery schemes, by which the merchandise is sold and distributed to the consumers; the dealers or purchasers to whom petitioner furnishes the devices use them in selling and distributing his merchandise for the purpose of conducting lotteries in connection with the disposition of the merchandise, which has the tendency of inducing purchasers to purchase petitioner's merchandise in preference to that offered for sale and sold by petitioner's competitors; that the use of such methods is a practice contrary to the established public policy of the Federal Government and in violation of the criminal laws, and has a tendency to, and does, unfairly divert trade to petitioner from his competitors who do not use such methods; and that such methods are to the prejudice of the public and of petitioner's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act, 15 U. S. C. A. section 45.

Petitioner answered the complaint and after the matter involved in this appeal had been heard, upon the complaint and answer, the testimony of witnesses and supporting documentary evidence, the Commission made findings as to the facts and issued the order¹ now being reviewed.

Petitioner contends that the record fails to support the Commission's findings that petitioner's method of selling punchboards together with merchandise affects competition, affects interstate commerce, constitutes an unfair method, and is contrary to public policy.

By the Federal Trade Commission Act, 15 U. S. C. A. section 46g, the Commission is empowered to make rules and regulations for the purpose of carrying out the provisions of the Act. These rules have the force and effect of law. *National Candy Co. v. Federal Trade Commission*, 104 F. (2d) 999 [29 F. T. C. 1557] and *Hill v. Federal Trade Commission*, decided December 23, 1941, 124 F. (2d) 104 (C. C. A. 5th) [this volume, ante, p. 1800]. The Commission's findings of fact cover every fact alleged in the complaint and are within the issues tendered. Under the Commission's Rules of Practice, where an alleged fact is left without denial, any issue with respect to such allegation is foreclosed by the pleadings. *National Candy Co.* case, *supra*, 1003. A fact admitted by answer is no longer a fact in issue. *Hill* case, *supra*.

¹ (1) Supplying to or placing in the hands of others any merchandise together with punchboards, push or pull cards or other lottery devices, which said punchboards, push or pull cards or other lottery devices are to be used, or may be used, in selling or distributing such merchandise to the public;

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

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

A reading of petitioner's answer discloses that he admits he sold his merchandise in competition with others engaged in selling like merchandise in interstate commerce, that in the sale and distribution thereof he furnishes devices involving the use of games and lottery schemes, and that his purchasers use the devices for the purpose of conducting lotteries in disposing of his merchandise. The statute condemns any method of competition in interstate commerce which is contrary to public policy. *Ostler Candy Co. v. Federal Trade Commission*, 106 F. (2d) 962, 965 [29 F. T. C. 1584]. The use of a sales method which involves an element of chance is contrary to public policy, *Federal Trade Commission v. Keppel & Bro.*, 291 U. S. 304, 313 [18 F. T. C. 648], and such method is an injury to the public, *National Candy Co.*, *supra*, 1006, and injures competitors, *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, 494 [4 F. T. C. 610] and *International Art Co. v. Federal Trade Commission*, 109 F. (2d) 393, 397 [30 F. T. C. 1635].

Petitioner also complains of the use of the words "or may be used" in paragraphs 1 and 2 of the order. A like complaint was made in the *National Candy* and [353] *Hill* cases, *supra*, but was rejected. We think the conclusions reached in those cases were right.

The petition to set aside the order is denied and the order of the Federal Trade Commission is affirmed.

ETABLISSEMENTS RIGAUD, INC. ET AL. v. FEDERAL TRADE COMMISSION¹

No. 3—F. T. C. Docket 3337

(Circuit Court of Appeals, Second Circuit. Feb. 4, 1942)

CEASE AND DESIST ORDERS—EXTENT—MISREPRESENTATION—SOURCE OR ORIGIN OF PRODUCT—DOMESTIC AS IMPORTED—FOREIGN WORDS—PROHIBITION OF, ABSENT ACCOMPANYING ENGLISH TRANSLATION—PERFUMES WITH FRENCH INGREDIENTS.

The Federal Trade Commission could order manufacturer and distributor of perfumes to cease and desist from using words on labels, cartons, and stationery indicating that perfumes which were in fact made in the United States were made in France, but had no power to prohibit use of all French words or to require that French words be accompanied by English translation.

(The syllabus, with substituted caption, is taken from 125 F. (2d) 590.)

¹ Reported in 125 F. (2d) 590. For case before Commission, see 29 F. T. C. 1032.

On appeal from order of Commission, order modified, confirmed as modified, and enforcement granted.

Mr. Walter L. Post, of New York City, for petitioners.

Mr. W. T. Kelley, chief counsel, *Mr. Martin A. Morrison*, assistant chief counsel, *Mr. James T. Welch*, *Mr. S. Brogdyne Teu, II*, and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for the Commission.

Before SWAN, AUGUSTUS N. HAND, and FRANK, *Circuit Judges*.

AUGUSTUS N. HAND, *Circuit Judge*:

This is a petition to review an order of the Federal Trade Commission directing the petitioners which, for convenience, we shall speak of as Rigaud and Fougera, to cease and desist from specified acts of alleged unfair competition.

Rigaud is a New York corporation engaged in compounding perfumes and cosmetics which it sells solely to Fougera, another New York Corporation. Some of the merchandise thus sold by Rigaud is delivered to Fougera in New York, while some is shipped to the latter's customers on its order. The goods Fougera has so purchased it sells throughout the United States. The various ingredients used to make up the perfumes are combined by Rigaud with one another and with domestic alcohol at its place of business at 79 Bedford Street, New York City. When the ingredients are thus compounded they are bottled and packaged for sale. Some of Rigaud's officers and five of its eight directors reside in Paris and to a considerable extent direct the business policy of the company, but Rigaud does not maintain any office there as a corporation.

There was evidence before the Commission tending to show that the public has a preference for perfumes manufactured or compounded in France. It is established that Rigaud compounded all the perfumes it sold in the City of New York and made them from ingredients both domestic and imported.

In spite of this, it used labels and cartons for its perfumes on which was printed:

I Rigaud
G
O
Paris R
A

R

RIGAUD

Paris—New York

Eau De Toilette

Un Air Embaumé

Rigaud

Paris

On letterheads, statements, invoices and other business stationery Rigaud and Fougere placed the following:

Established 1849

E. FOUGERA & COMPANY, INC.

Parfumerie Division

79 Bedford St. at Barrow St.

New York

Sole Importer to RIGAUD-PARFUMEUR,

16 Rue de la Paix, Paris

ETABLISSEMENTS RIGAUD INC.

8, Rue Vivienne

16, Rue de la Paix, PARIS

Successor to

Parfumerie Rigaud Inc.

Laboratoire De Pharmacologie Inc.

R

RIGAUD

Paris—France

79 Bedford St., New York

[591] These inscriptions on labels, cartons, and stationery were found by the Commission to have indicated a French origin for the perfume itself, and not merely for the ingredients contained in it. They were found to have a tendency to mislead the public and to

have unfairly diverted trade to Rigaud and Fougera from their competitors. During the times embraced in the proceeding before the Commission Rigaud was not strictly a French concern even though some of its officers lived in France and essential oils used in the perfumes compounded in America were imported from France.

In view of the foregoing, the Commission made an order directing Rigaud and Fougera to cease and desist from the following:

“(1) Representing, through the use of the term ‘Paris,’ or ‘Paris, France’ or any other terms, words, symbols, or picturizations indicative of French or other foreign origin of such products, or in any manner that perfumes which are made or compounded in United States are made or compounded in France or in any other foreign country; *Provided, however,* That the country of origin of the various ingredients thereof may be stated when immediately accompanied by a statement that such products are made or compounded in the United States.

“(2) Using any French or other foreign terms or words, except as provided in paragraph (3) hereof, to designate, describe, or in any way refer to perfumes made or compounded in the United States, unless the English translation or equivalent thereof appears as conspicuously and in immediate conjunction therewith.

“(3) Using the terms ‘Un Air Embaume,’ ‘Rigaud,’ ‘Igora,’ or any other French or other foreign words or terms as brand or trade names for perfumes made or compounded in the United States without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are made or compounded in the United States.”

We think the order is too broad. The proceeding against Rigaud and Fougera was calculated to correct abuses which at best were trifling and but for the broad discretion lodged in the Commission we should regard as hardly worth serious consideration. It must, however, be remembered that the ingredients of the perfumes were mainly French and that the business to a great extent has been supervised by French directors and stockholders. It is notorious that French names are commonly used to describe perfumes and for some reason seem to be favorites with the trade. It is doubtless permissible to forbid the use of words which indicate a French origin and manufacture when *strictissimi juris* there is none, but we can see no reason for proscribing the use of all French words when designating the perfumes or for the rather fantastic requirement of the order that the price of retention must be an accompanying English translation. It is enough to insist upon the abandonment of the words “Paris” or “Paris, France” unless they are limited as, in clause 1 of the order. We think the most the Commission should require is that Rigaud and

Fougera cease and desist from the acts embraced in clauses 1 and 3. *Fioret Sales Co. Inc. v. Federal Trade Commission*, 100 F. (2d) 358 (C. C. A. 2) [27 F. T. C. 1702; decree as resettled, 28 F. T. C. 1955].

The order should be modified by the elimination of clause 2. As thus modified, the order is confirmed and enforcement thereof is granted.

DOUGLAS CANDY CO. v. FEDERAL TRADE COMMISSION¹

No. 12044—F. T. C. Dock. 3817

(Circuit Court of Appeals, Eighth Circuit. Feb. 9, 1942)

CEASE AND DESIST ORDERS—SCOPE—COMPLAINT—MATTERS NOT SPECIFICALLY EMBRACED—IF WITHIN COMPLAINT'S BROAD ALLEGATIONS—LOTTERY MERCHANDISING—NEW DEVICES.

The Federal Trade Commission's cease and desist order, prohibiting the use by manufacturer of described lottery devices or others in connection with distribution and sale of candy or other merchandise, prohibited the use of a new device which carried no reference to the manufacturer or brand of candy to be given, where complaint expressly stated that descriptions of devices set out did not include all of the details. Federal Trade Commission Act, secs. 1 *et seq.*, and 5, 15 U. S. C. A. secs. 41 *et seq.*, and 45.

CEASE AND DESIST ORDERS—EXTENT—LOTTERY MERCHANDISING—LOTTERY DEVICES—PUNCHBOARDS AND OTHERS—IF NAME NOT INCLUDED ON.

Manufacturer's distribution of candy under sales plan whereby sales were stimulated by the use of punchboards and other lottery devices, to which competitors would not resort, constituted "unfair method of competition," which Federal Trade Commission could properly prohibit, even though devices used bore no reference to the name of manufacturer. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

(The syllabus, with substituted captions, is taken from 125 F. (2d) 665)

On petition to review and set aside order of Commission, order affirmed.

Landis & Landis, of St. Joseph, Mo., for petitioner.

Mr. Joseph J. Smith, Jr., assistant chief counsel, of Washington, D. C. (*Mr. W. T. Kelley, Mr. Martin A. Morrison, Mr. William L. Penckle*, and *Mr. James W. Nichol*, all of Washington, D. C., on the brief), for Commission.

¹ Reported in 125 F. (2d) 665. For case before Commission, see 32 F. T. C. 1167.

[665] Before GARDNER, SANBORN, and WOODROUGH, *Circuit Judges*.

WOODROUGH, *Circuit Judge*:

Douglas Candy Company petitions for review of a cease and desist order issued against it by the Federal Trade Commission in accordance with findings and conclusions entered after full hearing on the complaint, answer, evidence and briefs.

The findings and conclusions, in which the Candy Company is designated respondent, were as follows:

"Respondent is a corporation organized and doing business under the laws of the State of Missouri, and having its principal place of business in the city of St. Joseph, in said State.

"Respondent, for some time last past, has been, and now is, engaged in the manufacture and sale of candy, and its distribution to wholesale and retail dealers, and jobbers, and causes its said product, when sold, to be shipped from its principal place of business to purchasers thereof located in various states of the United States.

"Respondent, in the conduct of its business as set forth in paragraph 2 hereof, [666] 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.

"Respondent, in the sale and distribution of its merchandise as described in paragraph 2 hereof, has furnished and furnishes to the purchasers thereof various devices and plans of merchandising same which involve the operation of games of chance, gift enterprises, or lottery schemes, by means of which said merchandise is sold and distributed to the ultimate consumer wholly by lot or chance. Typical of the methods used by the respondent are the following:

"(a) One of respondent's assortments consists of a number of candy bars, together with a device commonly called a 'push card.' This push card bears the caption:

5¢

WINNER BAR ASSORTMENT

5¢

(No Blanks)

Number 100—receives—5 Douglas Bars

Number 50—receives—3 Douglas Bars

Nos. 5-15-25-35-45-55-65-75-85—receive 2

Douglas Bars

All Other Numbers receive 1 Douglas Bar

Below this heading are ranged one hundred partially perforated disks, for which pushes are sold at five cents each; over each disk appears a feminine name and concealed beneath the disk is a number which is

not disclosed until the disk is pushed out; the number revealed entitles the purchaser of the push to the amount of candy indicated in the above-described caption.

“(b) Another of respondent’s combinations consists of a number of candy bars, together with a device commonly called a ‘punchboard,’ which bears the following caption :

PLAY BALL

ALL PLAYS—RECEIVE DOUGLAS BARS ONLY

Home Run	—receives—5 Bars
Three Base Hit	—receives—5 Bars
Two Base Hit	—receives—4 Bars
One Base Hit	—receives—2 Bars
Stolen Base	—receives—2 Bars
All Other Plays receive	—1 Bar

(with illustrations of two ball players and the additional words) :

Batter Up

Make a Hit

Below this caption are ranged three hundred covered tubes, concealed within each of which is a slip of paper bearing certain printed words or phrases which are not disclosed until the cover is punched and the slip is withdrawn; these punches are sold at 5 cents each, and each purchaser is entitled to one bar of candy, but the purchaser who punches out a slip containing words or phrases which correspond with one of the five specifically named awards appearing in the caption, receives the number of bars there indicated, without additional cost.

“(c) Another of respondent’s combinations consists of a number of candy bars, together with a punchboard bearing the following caption :

BASKET BALL

Play 5c Play

Tip-Off Goal	—rec's.---6 Bars
Set Play Goal	—rec's.---3 Bars
Rebound Goal	—rec's.---2 Bars
Side Court Goal	—rec's.---2 Bars
Long Shot Goal	—rec's.---2 Bars
Free Throw Goal	—rec's.---2 Bars
All Other Plays	—rec. ---1 Bar

—o—Make a Goal—o—

Under this caption are ranged three hundred covered tubes, concealed within each of which is a slip of paper bearing certain printed words or phrases which are not disclosed until the cover is punched and the slip is withdrawn. Each of these punches is sold for 5 cents, and each purchaser is entitled to one bar of candy, but the purchaser punching

out a slip containing words or phrases which corresponds with one of the six specifically named awards appearing in the caption receives the number of bars there indicated, without additional cost.

“Respondent’s salesman has urged the use of respondent’s ‘boards’ because they assist in the sale of the candy. The use of said boards does, in fact, promote such sales.

“Respondent, by its sales methods hereinbefore described, places in the hands of others various devices to be used in the distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme, and by the use of such devices said merchandise is distributed to the ultimate consumer wholly by lot or chance, and respondent’s said sales methods are [667] contrary to the established public policy of the Government of the United States.

“During all of the time herein mentioned, respondent has been in competition with other manufacturers and distributors of candy who are engaged in commerce between and among various states of the United States, and who are unwilling to use, and do not use, in the distribution of their merchandise, any method involving a game of chance, gift enterprise, or lottery scheme; and as a result of respondent’s said methods, trade has been unfairly diverted from such competitors to the respondent.

CONCLUSION.

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

The cease and desist order complained of is as follows:

“It is ordered that the respondent, Douglas Candy Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of candy or any other merchandise in commerce as ‘commerce’ is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

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

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

The candy company, petitioner herein, does not seriously (or at least persuasively) contend that the findings of the Commission are not sustained by the evidence and its admission, or that the cease and desist order issued against it is not "drawn to conform to the language approved by the courts." It says that it frankly admitted in its answer that it had formerly used such boards as were shown in evidence and the record shows that it offered no evidence that it had ever discontinued such use. Neither did it specify in its very extended answer any particular date when it claims to have decided to, or when it claims that it did, discontinue to use the devices particularly described in the complaint as those which petitioner "has been or is using in the sale and distribution of candy by lot or chance." But the gist of the contention in this court is that the petitioner became apprised by holdings of the Commission and the courts on cases appealed "that the use of punchboards generally, where they were a part of a scheme to sell the concern's own candy, would be held to be unfair trade practice," and that it had accordingly adopted a new punchboard method, free from offense against the act, which it had described in its answer. The gist of the distinction between the devices particularly described in the complaint against the candy company and those which the company described with great elaboration in its answer is that the former carried legends and directions to the effect that the candy on which the chance to win was given was Douglas candy, whereas the new devices were entirely blank as to the make of the candy and the name Douglas nowhere appeared thereon. Petitioner complains here that the Commission did not make specific findings in respect to the new method and did not prohibit the new method with particularity in the cease and desist order. It is argued that the complaint and findings "refer only to the old type of punchboard" and petitioner says it might conclude on advice of counsel that the cease and desist order was intended to "refer only to the same type of board" which it had previously used, but petitioner would incur "hazard of being prosecuted." It urges that legal technicalities be overlooked and that this court pass upon the [668] "new type of punchboard which in no way refers to the Douglas Candy Company by name," and hold it to be beyond the power of the Commission to prohibit.

There is no merit in the contention that the Commission did not pass upon and indicate the intent of its order with respect to peti-

tioner's alleged "new type of device" used for selling its candy. The complaint charged that the accused "distributes and has distributed various push cards and punchboards for use in the sale and distribution of its candy to the consuming public by means of a game of chance, gift enterprise or lottery scheme" and it was expressly asserted that the particular descriptions given in the complaint did not include all of the details. In the light of petitioner's answer, setting up an alleged new method, the Commission received in evidence on the hearing Exhibit 6, a punchboard or push board for selling candy bars which exemplifies all petitioner's claimed novelty of method. The device carries no reference to Douglas Candy Company or its product and refers only to "bars" to be given in amounts dependent upon chance. The Commission described the device exemplified by Exhibit 6 and its use by the company with particularity in its findings, and found such use to be typical of the company's methods. Manifestly, therefore, the cease and desist order forbids it.

As to petitioner's argument that its use of the devices which do not bear its name ought not to be prohibited as unfair competition. Conceding as it must, in the light of *Federal Trade Commission v. Keppel & Bros.*, 291 U. S. 304 [18 F. T. C. 684], that the advantages it took of the element of chance by use of its old boards resulted in unfair competition within section 5 of the Federal Trade Commission Act, 15 U. S. C. A. 45, when its devices carried its name and specified its candies, petitioner argues that a different result should follow on the omission of its name from the devices. It is pointed out that the retailer is now left entirely free to make his "pay-off" to the players in any make of candy, so that whatever advantage there may be in stimulating sales may now inure to all candy bar producers alike. The argument is elaborated not without ingenuity and if it could be believed that the petitioner is distributing its devices for the common stimulation of the candy bar trade in general, with no special advantage to itself, it might well follow that nothing but the gambling laws could be invoked against it. But it was in evidence that salesmen from the company called on retail dealers when soliciting orders for Douglas candy and urged them to use the punchboards to augment their sales. Bearing in mind that competing companies refrain entirely from making any use of methods involving a game of chance, or lottery scheme, or any method contrary to public policy, we cannot doubt that the real intent and the inevitable effect of petitioner's method and practices is to connect up its customers to some extent at least with its methods. There was satisfactory proof that even under the system of petitioner where its devices were plainly marked "Douglas bars only," its dealers could and sometimes did pay off in candy bars of other makes. Liberality astonishing to conventional traders often

marks the operations of games of chance. But the retailer who has his price and profit set up adjusted to make his money out of the Douglas candy sold by use of the Douglas devices could pretty safely be relied on, by and large and in the main, to pass out the candy that comes with the device, and there is no doubt that the petitioner carries on its business in that reasonable expectation. The essence of all of petitioner's unfair methods of competition by its use of gambling devices for selling its make of candy was sufficiently alleged in the complaint and established by the admissions and evidence. The Commission properly embraced them all in its cease and desist order. *Hill, et al. v. Federal Trade Commission*, No. 9849, 5 Cir., decided December 23, 1941, 124 F. (2d) 104 [34 F. T. C. 1800]; see *National Candy Co. v. Federal Trade Commission*, 7 Cir., 104 F. (2d) 999 [29 F. T. C. 1557]; *Ostler Candy Co. v. Federal Trade Commission*, 10 Cir., 106 F. (2d) 962 [29 F. T. C. 1584]; *Federal Trade Commission v. Martoccio Co.*, 8 Cir., 87 F. (2d) 561 [24 F. T. C. 1608]; *Arkansas Wholesale Grocers' Assoc., v. Federal Trade Commission*, 8 Cir., 18 F. (2d) 866, 871 [11 F. T. C. 646, 653, 654.]

The order is affirmed.

D. D. D. CORPORATION v. FEDERAL TRADE COMMISSION ¹

No. 7694—F. T. C. Dock. 3972

(Circuit Court of Appeals, Seventh Circuit. Feb. 12, 1942)

CEASE AND DESIST ORDERS—EXTENT—MISREPRESENTATION—QUALITIES OF PRODUCT—MEDICINAL PREPARATIONS—ITCHING—ADVERTISING REPRESENTATIONS.

Evidence sustained Federal Trade Commission's findings that statements, in petitioner's advertising respecting petitioner's medicinal product consisting of an external liquid application for relief of itching, were misleading and deceptive to the public and justified commission's order, with exception of certain language therein, directing petitioner to cease making certain representations concerning product.

METHODS, ACTS AND PRACTICES—UNFAIR OR DECEPTIVE ACTS—CRITERIA—FRAUD.

The false, unfair, or deceptive acts defined in the Federal Trade Commission Act need not be such as would constitute fraud, as that term is ordinarily understood in law.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISEMENTS—CRITERIA—ADVERTISEMENT AS A WHOLE—MEDICINAL PRODUCT.

The Federal Trade Commission could consider in its entirety an advertisement [680] respecting petitioner's medicinal product in determining whether statements in advertisement were false.

¹ Rehearing denied Mar. 5, 1942. The case is reported in 125 F. (2d) 679. For case before Commission, see 32 F. T. C. 1227. Commission's petition for rehearing denied March 25, 1942.

CEASE AND DESIST ORDERS—EXTENT—MISREPRESENTATION—QUALITIES OF PRODUCT—
 MEDICINAL PREPARATION—ITCHING—“TEMPORARY” RELIEF—PROHIBITION OF REP-
 RESENTATION, IF IN FACT AFFORDED.

Where petitioner's medicinal product, although it did not cure the itcl or its cause, afforded relief against itching, petitioner was entitled to repre sent product as a relief for itching, and that part of Federal Trade Com- mission's order directing petitioner to cease representing that use of prod- uct afforded “temporary” relief against itching was improper as to quoted word.

(The syllabus, with substituted captions, is taken from 125 F. (2d) 679)

On petition to review order of Commission, order modified, and as modified, affirmed.

Mr. Geo. I. Haight and *Mr. Wm. E. Lucas*, both of Chicago, Ill., and *Mr. R. G. Sappenfield*, of Geneva, Ill., for petitioner.

Mr. W. T. Kelley, chief counsel, *Mr. J. J. Smith, Jr.*, *Mr. Martin A. Morrison*, assistant chief counsel, *Mr. Clark Nichols*, and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for Commis- sion.

Before MAJOR, KERNER, and MINTON, *Circuit Judges*; MINTON dis- senting.

MAJOR, *Circuit Judge*:

This is a petition for review of a cease and desist order, entered by the Federal Trade Commission, April 19, 1941. It is directed at petitioner's medicinal product, “D. D. D. Prescription,” an external liquid application for the relief of itching. The controversy revolves largely around petitioner's advertising in newspapers, periodicals, and by radio of the medicinal qualities of the product, which the Commis- sion charged, found, and now contends was false and misleading, and calculated to deceive a substantial portion of the purchasing public.

There is no dispute but that the product affords relief for itching. There is a dispute as to the extent of the relief and whether it is merely temporary or permanent. Two doctors, both specialists in the field of dermatology, testified before the Commission, one for the Commis- sion and the other for petitioner. The Commission's doctor appraised the value of petitioner's product in a limited manner, while the peti- tioner's doctor ascribed a beneficial attribute of wider scope.

Itching is defined by one of the medical witnesses as follows:

“A peculiar stimulation of the cutaneous nerve terminals which is referred to the central brain as a sensation which is unpleasant to the organism, and demanding certain physical response, such as scratching or rubbing.”

Petitioner's product acts as an anesthetic on the nerve terminals and prevents transmission to the brain of the unpleasant, and sometimes distressing, sensation caused by itch. The medical testimony seems to be agreed that itching in itself is not a disease but is the result or symptom of a disease. The Commission admits, and so found, that petitioner's product has some value as an antipruritic, antiseptic, and astringent with possible mild germicidal properties, but finds that the representations made by petitioner are grossly exaggerated, misleading and untrue.

Inasmuch as the Commission's findings and order depend largely upon petitioner's advertising matter used in connection with the sale and distribution of its product, it appears essential to set forth typical illustrations of such matter:

Stop Itching

Torture This Quick Way.

For quick relief from the itching of eczema, blotches, pimples, athlete's foot, scales, rashes and other externally caused skin eruptions, use cooling antiseptic, liquid D. D. D. Prescription. Original formula of Doctor Dennis. * * *

Itch

Stopped in a Hurry by D. D. D.

Are you tormented with the itching tortures of eczema, rashes, athlete's foot, eruptions, or other externally caused skin afflictions? For quick and happy relief, use cooling, antiseptic, liquid D. D. D. Prescription.

Itch

of Eczema, Rashes and Other Externally Caused Skin Troubles Stopped Quickly.

Use
D. D. D.
Prescription.

It's time to realize the D. D. D. Prescription will Stop the misery of an Itching [681] Skin in a Jiffy. Try it for hives, eczema, winter rash and other externally caused Skin Itching.

For the itching of skin irritations such as rashes, hives, and insect bites, as well as minor cases of ivy and oak poisoning, D. D. D. Liquid, ordinary strength, is recommended as an effective and ideal remedy.

Such advertising was found by the Commission to contain false, deceptive, and misleading statements and representations as to the therapeutic value of petitioner's product, with the capacity and

tendency to, and does, mislead and deceive a substantial portion of the purchasing public, and, as a result thereof, they are induced to purchase the product. Upon such findings, petitioner was ordered to cease and desist from representing, directly or through inference—

“(a) That respondent’s preparation D. D. D. Prescription is a cure or remedy for eczema, or that it has any therapeutic value in the treatment thereof in excess of affording temporary relief from the symptom of itching.

“(b) That respondent’s preparation, D. D. D. Prescription is a cure or remedy for pimples or hives, or that it has any therapeutic value in the treatment thereof, in excess of affording temporary relief from the symptom of itching.

“(c) That respondent’s preparation has any therapeutic value in the treatment of any disorder of the skin caused by internal or systemic conditions, in excess of affording temporary relief from the symptoms of itching.

“(d) That said preparation has any therapeutic value in the treatment of blotches or rashes appearing on the skin, when due to systemic or constitutional conditions.

“(e) That respondent’s preparation has any therapeutic value in the treatment of athlete’s foot, insect bites, and cases of ivy and oak poisoning, in excess of that afforded by the temporary alleviation of the symptom of itching, or that afforded by the use of an antipruritic, astringent, antiseptic, and mildly germicidal agent.

“(f) Through the use of the words ‘and other externally caused skin eruptions,’ or other words or phrases of similar import or meaning in connection with diseases or conditions which may be of a systematic or internal origin, that such diseases and conditions are, in fact, solely of external origin or that respondent’s preparation has therapeutic value in the treatment of such diseases and conditions regardless of their origin.

“(g) Through the use of the words ‘stop itching’ or other words or phrases of similar import or meaning, that respondent’s preparation will either permanently or temporarily eliminate the disease or condition causing the symptom of itching or has any therapeutic value in excess of that afforded by the temporary alleviation of the symptom of itching, or that afforded by the use of an antipruritic, astringent, antiseptic, and mildly germicidal agent.”

Petitioner strenuously insists that it has made no false or deceptive statements concerning its product and it is, therefore, ordered to cease and desist from doing that which it has not done. The soundness of this contention must be appraised by keeping in mind that the product is not a remedy or cure for any disease, and that its beneficial qualities are limited solely to the relief which it affords to the itching skin. It

will be noted that the phrase "and other externally caused skin eruptions" often appears. Of course, this is a plain implication that the diseases enumerated in connection with this phrase are externally caused when, as a matter of fact, they are usually of internal origin. That this is a misstatement is practically conceded by petitioner's medical expert. The Commission contends that the phrase "for quick relief from the itching of eczema, blotches, pimples, athlete's foot, scales, rashes, etc.," is a representation that the product is a remedy for the diseases or ailments thus named. Petitioner argues this phrase can only refer to itching, and that there is no implication the product is a remedy or relief for such diseases. We think there is merit in petitioner's contention that this and similar statements, when carefully scrutinized, may be thus construed. The weakness of this position, however, lies in the fact that such representations are made to the public, who, we assume, are not, as a whole, experts in grammatical construction. Their education in parsing a sentence has either been neglected or forgotten. We agree with the Commission that this statement is deceptive and calculated to be deceiving to a substantial portion of the public.

[682] Another statement even more deceptive, is: "It's time to realize that D. D. D. Prescription will stop the misery of itching skin in a Jiffy! Try it for hives, eczema, winter rash and other externally caused skin itching." Here again is a representation that hives, eczema and winter rash are of external origin. It comes near being a plain representation that the product is a remedy for such diseases. Also, the word "Stop" carries with it an implication that the product is a remedy or cure and affords permanent relief.

Another statement which we think is grossly exaggerated is "For the itching of skin irritations such as rashes, hives, * * * D. D. D. Liquid, ordinary strength, is recommended as an effective and ideal remedy." This language carries the implication that the product is a remedy or cure for the named conditions.

The illustrations to which we have referred are typical and there is no occasion to refer to others. We are convinced that the meaning attributable to such statements by the Commission is justified. Especially is this true when they are considered in connection with the testimony of the Commission's expert medical witness and with the conceded fact that the efficacy of petitioner's product is limited to the relief of a symptom rather than the disease giving rise thereto.

It must be kept in mind that the false, unfair or deceptive acts defined in the Federal Trade Commission Act need not be such as would constitute fraud, as that term is ordinarily understood in law. As was said in *F. T. C. v. Algoma Company*, 291 U. S. 67, 81 [18 F. T. C. 669, 679]:

“* * * Indeed there is a kind of fraud, as courts of equity have long perceived, in clinging to a benefit which is the product of misrepresentation, however innocently made. (Citing cases.) That is the respondents' plight today, no matter what their motives may have been when they began. They must extricate themselves from it by purging their business methods of a capacity to deceive.”

We think that this pronouncement is peculiarly appropriate to the instant situation.

Petitioner complains that the Commission erroneously found as false the statements contained in petitioner's advertisements—“Doctor Dennis' original formula” and “Original formula of Doctor Dennis.” The Commission makes no contention that these isolated statements are false—in fact, petitioner completely established their verity. These statements, however, were merely part of an advertisement which was found to be false, and which we think the Commission had a right to consider in its entirety. Furthermore, there is nothing in the order which restrains petitioner from making such statements.

We are also of the view that the word “temporary” as used in Paragraphs 1 (a), (b), (c), (e), and (g) of the Commission's order should be eliminated. We see no reason why petitioner should not be permitted to represent its product as a relief for itching. It does not cure either the itch or its cause, but it does afford relief. One of the definitions given by Webster for the word “relief” is “lessens evil, pain, etc.” The words “relief from itching” could, in our minds, carry no implication to the public that the product was a permanent cure either for the symptom or the disease. The word “temporary” carries an uncertain meaning. As the Commission's doctor stated: “It might mean a few minutes, or an hour or so.” To require its use would serve no purpose in the protection of the public, but might limit petitioner in truthfully representing its product.

The Commission's order is modified accordingly, and, as so modified, is affirmed, and the Commission may present a form of decree in conformity with our conclusion.

MINTON, *Circuit Judge*, dissenting:

In my opinion, the word “temporary” should remain in the order of the Commission. The representation is that petitioner's product relieves itching. Permanently? Certainly not. There is no dispute in the evidence that it does not relieve permanently. The evidence is that the relief lasts just as long as the nerves in the vicinity of the application are anesthetized. “Temporary” describes that condition. Webster defines “temporary” as meaning “Lasting for a time only, not permanent, transitory, as temporary relief.”

Unless the effect of petitioner's product is limited by the word “temporary” the relief given is not accurately described. I do not believe the word “relief” means permanent relief alone, but I do think

that without the modifying word "temporary" used with the word "relief," you do [683] not accurately describe the relief petitioner's product gives. It seems to me to work no hardship upon a business concern that wants to be fair in its dealings with the public to require it so to construct the wording of its advertisements as to describe accurately the virtues of its product. That is all the Commission's order does in this case. It simply divorces petitioner's representation of a product for temporary relief from words that might very easily mislead the public into believing they were representations as to cure and permanency. I think the Board's order as drawn is reasonable and supported by substantial evidence, and should be affirmed as written.

FRESH GROWN PRESERVE CORPORATION ET AL. v.
FEDERAL TRADE COMMISSION¹

No. 51—F. T. C. Dock. 3682

(Circuit Court of Appeals, Second Circuit. Feb. 16, 1942)

COMMISSION ACTION AND JURISDICTION—VEHICLES OF UNFAIR COMPETITION, ETC.—
MISBRANDING OR MISLABELING—KIND OF PRODUCT—"FALSE ADVERTISING" UNDER
SECTION 12 (a)—WHETHER LIMITATION.

The Federal Trade Commission has jurisdiction to prevent unfair competition by means of false labeling and misbranding, regardless of the kind of the product, and even though such methods of unfair competition may not fall within statutory definition of false advertisement for which violator may be liable to criminal prosecution. Federal Trade Commission Act, secs. 5, 5 (c), 12-15 (a), 15 U. S. C. A., secs. 45, 45 (c), 52-55 (a).

FEDERAL TRADE COMMISSION ACT—SECTION 5—"UNFAIR METHODS OF COMPETITION"—
WHEELER-LEA AMENDMENT—"UNFAIR OR DECEPTIVE ACTS OR PRACTICES", ETC.—
EFFECT.

The amendment to Federal Trade Commission Act, making "unfair or deceptive acts or practices in commerce" unlawful, was not intended to modify previous provision of act declaring "unfair methods of competition in commerce" unlawful, but rather enlarged the scope of Federal Trade Commission's jurisdiction. Federal Trade Commission Act, secs. 5, 12-15 (a), 15 U. S. C. A., secs. 45, 52-55 (a).

FEDERAL TRADE COMMISSION ACT—SECTION 5—"UNFAIR METHODS OF COMPETITION"—
WHEELER-LEA AMENDMENT—"FALSE ADVERTISING"—DEFINITION UNDER
SECTION 12 (A)—EFFECT.

The definition of false advertisement contained in Federal Trade Commission Act is relevant only in criminal prosecutions for violation of provisions of the act with respect to the advertising of food, drugs, cosmetics, etc., and is not applicable in a proceeding to enjoin the use of unfair methods of competition in commerce. Federal Trade Commission Act, secs. 5, 5 (c), 12-15 (a), 15 U. S. C. A., secs. 45, 45 (c), 52-55 (a).

¹ Reported in 125 F. (2d) 917. For case before Commission, see 31 F. T. C. 952.

EVIDENCE—EXCLUSION—“FAIR HEARING”—STANDARDS—MANUFACTURING PRACTICE—“PRESERVES”—USE PECTIN—ADMISSIBILITY.

In proceeding to restrain distributors from labeling and advertising their products as “preserves” or “pure preserves,” unless they contained a fruit content in proportion to sugar of at least 45 to 55 by weight, evidence that the use of pectin in the manufacture of preserves rendered the standard adopted by the commission unacceptable was admissible, and the exclusion of such evidence prevented a “fair hearing” and required that case be sent back to commission for a finding as to a standard after giving distributors an opportunity to introduce relevant evidence on the subject. Federal Trade Commission Act, sec. 5 (c), 15 U. S. C. A., sec. 45 (c).

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—STANDARDS—COMPOSITION OF PRODUCT—GOVERNMENT REGULATIONS—IF NOT THEN IN EFFECT—“PRESERVES”.

It was immaterial that at the time Federal Trade Commission issued order, directing distributors to cease and desist from labeling or advertising their products as “preserves” or “pure preserves” unless they contained a fruit content in proportion to sugar of at least 45 to 55 by weight, there was in effect a Department of Agriculture regulation, establishing a standard content for preserves, where such regulation was not in effect during the time of alleged violation by distributors of the Federal Trade Commission Act and there was no proof that distributors had failed to comply with such regulation since its promulgation. Federal Trade Commission Act, sec. 5 (c), 15 U. S. C. A., sec. 45 (c).

(The syllabus, with substituted captions, is taken from 125 F. (2d) 917)

On petition to set aside a cease and desist order of Commission, cause remanded to the commission or for further proceedings in accordance with opinion.

Mr. Louis Halle, of New York City (Mr. Edward Halle, of New York City on the brief), for petitioners.

Mr. W. T. Kelley, chief counsel, *Mr. Martin A. Morrison*, assistant chief counsel, *Mr. James W. Nichol* and *Mr. Earl J. Kolb*, special attorneys, all of Washington, D. C., for the Commission.

[918] Before SWAN, AUGUSTUS N. HAND, and CHASE, *Circuit Judges*.

CHASE, *Circuit Judge*:

This petition, under 15 U. S. C. A. section 45 (c), puts in issue for purposes of review an order made by the Federal Trade Commission requiring the petitioners to cease and desist from labeling, marking or advertising their products as “preserves,” or “pure preserves” unless they contain a fruit content in proportion to sugar of at least 45 to 55 by weight; from representing that their products, not having such proportions, are “preserves” or “pure preserves”; and from representing that their products are composed of named fruits when in

fact they contain a mixture of fruits other than those stated. The pertinent part of the order appears in the margin.¹

The order was made after hearing and report by a trial examiner on a complaint by the Commission. The complaint charged that all the petitioners were selling and distributing in interstate commerce to wholesale and retail dealers various kinds of fruit "preserves" which were represented by the petitioners to be "pure fruit preserves" by means of labels, tags and markers attached to the jars and containers in which the preserves were packed; that the preserves were not preserves or "pure fruit preserves" within the popular meaning of those words in that they did not have a fruit content of at least 45 pounds of fruit to 55 pounds of sugar; and that such products contained mixtures of fruits other than as represented by the petitioners. It was further charged that the petitioners also made such false representations by means of advertising and sales literature. And it was alleged that, as a direct result of such conduct by the petitioners, trade had been unfairly diverted to the petitioners from their competitors which injured competition in interstate commerce in violation of the provisions of the Federal Trade Commission Act. (15 U. S. C. A. sec. 45.)

The petitioners answered the complaint by admitting that they were engaged in interstate commerce in selling fruit preserves in competition with others so engaged; that they labeled their products "pure fruit preserves"; and denied that they did any advertising. They admitted that the terms "fruit preserves" and "pure fruit preserves" were synonymous in the trade but denied that they were commonly understood to mean a product made from at least 45 pounds of fruit to 55 pounds of sugar; and denied the allegation that their products were not fruit preserves or pure fruit preserves within the popular meaning and acceptance of those terms. They denied that a fruit preserve was known and understood by the trade and purchasing public as a product prepared or manufactured in the above proportion of fruit to sugar; that their products contained any mixture of fruits other than as specified; and also denied generally any violation of the Act.

¹ "(1) Using the terms 'preserves' or 'pure preserves' on labels, tags, markers, or in advertising material, or in any other manner, to in any way designate, describe or refer to preserve products which are not prepared from a mixture of clean, sound fruit with sugar in the proportion of at least 45 pounds of fruit to 55 pounds of sugar cooked to an appropriate consistency;

(2) Representing, in any manner, whatsoever, that a product which contains a fruit content in a proportion of less than 45 pounds of clean, sound fruit to 55 pounds of sugar is a pure preserve or a preserve, or is anything other than an imitation or substandard preserve;

(3) Representing, in any manner whatsoever, that respondent's products are composed of certain specified fruits when in fact, such products contain a mixture of fruits other than those represented."

Two affirmative defenses were alleged. The first of them appears to have been [919] abandoned and will be disregarded. The second was to the effect that the alleged acts of the petitioners are not, if proved, violations of the Federal Trade Commission Act but that they at most call for proceedings against the petitioners only under the Food and Drug Act. (21 U. S. C. A. sec. 1 *et seq.*)

The evidence introduced was sufficient to support findings which the Commission made to the effect that all the material allegations in the complaint, except as to advertising, were proved; and the petitioners now rely (1) upon error in the exclusion of evidence, and the curtailment of the cross examination of witnesses who testified as to the existence of a standard formula of not less than 45 pounds of fruit to 55 pounds of sugar in the manufacture of fruit preserves; (2) upon failure of evidence of advertising; and (3) upon the affirmative defense that if their conduct subjects them to any proceedings at all, such proceedings must be under the provisions of the Food and Drug Acts.

We will deal with this affirmative defense first. It is based on the contention that, as the definition of "false advertisement" in section 15 (a) of the Act [15 U. S. C. A. 55 (a)] excludes labeling, and petitioners have at most but labeled their products, they cannot by so doing have violated the Federal Trade Commission Act. If they are right, of course the Commission had no jurisdiction. This argument, however, fails to take due account of two things. One is that the petitioners' conduct as found by the Commissioner amounted to unfair methods of competition in commerce in violation of section 5 of the Act (15 U. S. C. A. sec. 45) and the other, that the definition of false advertisement in section 15 is expressly limited to that term as used in sections 12, 13, and 14. The courts have repeatedly upheld the jurisdiction of the Commission to prevent unfair competition by means of false labeling and misbranding regardless of the kind of the product. *F. T. C. v. Winsted Hosiery Co.*, 258 U. S. 483 [4 F. T. C. 610]; *Royal Baking Powder Co. v. F. T. C.*, 281 Fed. 744 (C. C. A. 2) [4 F. T. C. 614]; *F. T. C. v. Morrissey*, 47 F. (2d) 101 (C. C. A. 7) [14 F. T. C. 716]; *F. T. C. v. Good-Grape Co.*, 45 F. (2d) 70 (C. C. A. 6) [14 F. T. C. 695]. The last three of the cited cases dealt with unfair competition in the sale of food products. Since the Wheeler-Lea amendment of March 21, 1938, we have three times upheld this jurisdiction of the Commission. *Fioret Sales Co. Inc. v. F. T. C.*, 100 F. (2d) 358 [27 F. T. C. 1702]; *Justin Haynes & Co. Inc. v. F. T. C.*, 105 F. (2d) 988 [29 F. T. C. 1578]; *Parfums Corday, Inc. v. F. T. C.*, 120 F. (2d) 808 [33 F. T. C. 1797]. One of these cases dealt with a drug and the other with cosmetics. See also, *Federal Trade Commission v. Kay*, 35 F. (2d) 160 (C. C. A. 7), another drug case [13 F. T. C. 575].

The amendment to section 5 (15 U. S. C. A. 45) of the act did not modify the term "unfair methods of competition in commerce," but made unlawful what were called "unfair or deceptive acts or practices in commerce," and by so doing enlarged instead of lessened the scope of the jurisdiction of the Commission. The additions found in sections 12 to 15 inclusive were also to give the Commission greater control over the advertising of food, drugs, cosmetics, and the like by providing for criminal action as well as injunction; and only in proceedings under such sections is the definition of false advertisement in section 15 relevant, not in a proceeding like this under section 5.

The only proof of advertising was the interstate sending by the petitioners of price lists to their customers in the wholesale and retail trade describing their products as pure fruit preserves, and the representations to like effect by salesmen to such customers. We need not now decide whether that was advertising in violation of sections 12 to 15 inclusive. Like false labeling, it may have been deceptive and have amounted to unfair competition under section 5, and we need now be concerned with nothing more.

But whether anything the petitioners did was deceptive and in violation of section 5 depends basically upon whether the proceedings which resulted in the finding that there was a known standard for the manufacture of fruit preserves, were conducted without harmful error. We do not think they were and consequently there must be a remand to the Commission for findings after hearings which do afford the petitioners a fair opportunity to develop all the pertinent facts. *Fashion Originators Guild v. F. T. C.*, 114 F. (2d) 80, 83 [31 F. T. C. 1837].

During the hearings before the examiner the petitioners attempted to make it appear that the addition of pectin during the manufacture of preserves, a practice [920] which has prevailed for years in both commercial and domestic preserve making, changed the requirement for a fixed proportion of sugar to fruit, and made it impossible fairly to arrive at the standard the Commission found to have been established. A Dr. Osborn who had testified to this standard had stated on direct examination that some pectin was added in the commercial manufacture of preserves and that the usual domestic practice was to use a cup of fruit to a cup of sugar. On cross examination the attempt to examine him regarding the home use of a pectin product sold under the trade name of "Certo" was blocked by objections the examiner sustained. The purpose was to show that the recipe widely distributed with this product called for the use of less fruit in proportion to sugar than he had previously testified was used in the home. Similar efforts to show that the standard the Commission found was

by no means to be accepted as such because of the varying use of added pectin were made during the examination of witnesses Wallace, Kirkpatrick and Hader and were frustrated in the same way. The evidence which the petitioners tried to place before the examiner was all relevant and of great importance in deciding what was really the most important issue. This cutting off the right of the petitioners to make clear what the decisive facts were prevented a fair hearing and makes it necessary to send the case back to the Commission for a finding as to a standard after giving the petitioners an opportunity to introduce for consideration whatever material and relevant evidence on that subject they may offer.

It is immaterial that the Department of Agriculture did promulgate a regulation on September 5, 1940, which was in effect when the Commission issued this cease and desist order on September 20, 1940, establishing for preserves or jams a standard content, with stated optional variations, of not less than 45 parts of fruit ingredients by weight to 55 parts by weight of optional saccharine ingredients. That was not an effective standard during the time of the alleged violations by the petitioners of the Federal Trade Commission Act and there is no proof that the petitioners have failed to comply with the regulation since it was promulgated.

Cause remanded for proceedings in accordance with this opinion.

COTY, INC. AND COTY SALES CORPORATION v. FEDERAL TRADE COMMISSION¹

No. 7276—F. T. C. Dock. 3325

(Circuit Court of Appeals, Third Circuit. Feb. 17, 1942)

Proceeding, pursuant to stipulation of parties, dismissing petition to review cease and desist order of Commission in Docket 3325, 29 F. T. C. 1116, 1126, requiring respondents, their officers, etc., in connection with offer, etc., in commerce of perfumes, to cease and desist from

- (1) Representing, through use of the term "Paris," etc., or any other terms, words, etc., indicative of French or other foreign origin, that perfumes made or compounded in the United States are made or compounded in France or in any other foreign country;
- (2) Using any French or other foreign terms, etc., except as provided in the order, to designate, etc., such perfumes; and
- (3) Using the terms "Coty Parfums deLuxe," or any other French or other foreign words, etc., as brand or trade names for such perfumes, etc., as in detail in order set forth, and subject to proviso therein.

Coudert Bros., of New York City, *Mr. Hirsh W. Stalberg*, of Philadelphia, Pa., and *Mr. Lewis G. Bernstein*, of New York City, for petitioners.

¹ Not reported in Federal Reporter. For case before Commission, see 29 F. T. C. 1116.

Mr. W. T. Kelley, chief counsel, *Mr. James W. Nichol* and *Mr. S. Brogdyne Teu II*, special attorneys, all of Washington, D. C., for the Commission.

ENTRY OF DISMISSAL

Said proceeding, in accordance with agreement of the parties, was entered dismissed by the Clerk under the authority conferred upon him by Rule 31, paragraph 9, without cost to either party.

JOHN H. DAVIS ET AL., TRADING AS NORMANDIE ET CIE
v. FEDERAL TRADE COMMISSION¹

No. 3743—F. T. C. Dock. 3341

(Circuit Court of Appeals, First Circuit. Feb. 18, 1942)

Consent decree, on petition to review order of Commission in Docket 3341, 33 F. T. C. 1442, 1448, affirming said order of the Commission and, as there set forth, requiring respondents, their representatives, etc., in connection with offer, etc., in commerce, of perfumes and kindred products, to cease and desist from—

- (1) Using the terms "Paris," "France," "Made in France" or "Imported," etc., to designate products made or compounded in the United States, or otherwise representing that such products are made in or imported from France, or any other foreign country; subject to proviso that country of origin of various ingredients may be stated if immediately accompanied by statement that the products are made or compounded in the United States.
- (2) Using any French or other foreign words or terms to designate or describe such products unless accompanied by English words clearly stating that they 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 their trade name or otherwise representing that they have a place of business in France or in any country other than the United States; and
- (4) Representing in any manner that products made or compounded in the United States are made in or imported from other countries; the Court retaining jurisdiction of the cause as therein set forth.

Shair & Gorfinkle, of Boston Mass., for petitioners.

Mr. W. T. Kelley, chief counsel, and *Mr. James W. Nichol*, special attorney, both of Washington D. C., for the Commission.

DECREE

The petitioners herein, having filed with this Court on December 5, 1941, their petition to review and set aside an order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of October 6, 1941, under the provisions of Section 5 of

¹ Not reported in Federal Reporter. For case before Commission, see 33 F. T. C. 1442.

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; and the parties hereto having agreed that this proceeding may be terminated by the entry by this Honorable Court of a decree affirming said order to cease and desist, and commanding obedience to the terms thereof—

Now, therefore, it is hereby ordered, adjudged, and decreed, That the order to cease and desist entered by the Federal Trade Commission, respondent herein, under date of October 6, 1941, be, and the same hereby is, affirmed.

And it is hereby further ordered, adjudged, and decreed, That the petitioners, 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, 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 petitioners' trade name, or otherwise representing that petitioners 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.

And it is hereby further ordered, adjudged, and decreed, That the petitioners hereinbefore named shall, within ninety (90) days after the entry of this decree, file with the Federal Trade Commission a

report in writing setting forth in detail the manner and form in which they have complied with this decree.

Without prejudice to the right of the United States, as provided in Section 5 (1) of the Federal Trade Commission Act, to prosecute suits to recover civil penalties for violations of the said order to cease and desist as hereby affirmed, this Court retains jurisdiction of this cause to enter such further orders therein from time to time as may become necessary effectively to enforce compliance in every respect with this decree and to prevent evasion thereof.

CAROLINE R. MACHER AND ROBERT J. MACHER, DOING
BUSINESS AS MACHER WATCH & JEWELRY CO., ETC. v.
FEDERAL TRADE COMMISSION¹

No. 167—F. T. C. Dock. 4087

(Circuit Court of Appeals, Second Circuit. Feb. 26, 1942)

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—
BUSINESS STATUS, ADVANTAGES OR CONNECTIONS—RETAILERS AS WHOLESALERS—
TIME IN BUSINESS.

Where it appeared that petitioners were holding themselves out as wholesalers of jewelry, selling at wholesale prices, whereas actually their business and prices were retail, and that petitioners by representing that business had continued for more than 50 years were seeking mantle of an old wholesale house as part of same scheme of deception, an order of Federal Trade Commission directing petitioners to cease and desist from unfair and deceptive acts of holding themselves out as wholesalers of jewelry and placing ban on representation that business had continued for more than 50 years would be affirmed and an enforcement order entered. Federal Trade Commission Act, sec. 5 (a), 15 U. S. C. A., sec. 45 (a).

(The syllabus, with substituted caption, is taken from 126 F. (2d) 420.)

On petition to review order of Commission, order affirmed and enforcement ordered.

Mr. Edward E. Reichman, of New York City (*Carb, Reichman & Luria* and *Sydney A. Luria*, all of New York City, on the brief), for petitioners.

Mr. Joseph J. Smith, Jr., assistant chief counsel, of Washington, D. C. (*Mr. W. T. Kelley*, chief counsel, and *Mr. W. T. Chantland*,

¹ Reported in 126 F. (2d) 420. For case before Commission, see 32 F. T. C. 763.

Mr. James W. Nichol, and Mr. R. E. Schrimsher, special attorneys, all of Washington, D. C.), for Commission.

Before SWAN, AUGUSTUS N. HAND, and C. E. CLARK, *Circuit Judges.*

Per Curiam:

Notwithstanding their claims in the petition to review, petitioners do not directly attack the Commission's basic finding—supported by quite credible testimony—that they had persisted in advertising themselves in catalogues, circulars, and customers' discount cards as wholesalers of jewelry, selling at wholesale prices, whereas actually their business and prices were retail. An order must therefore issue, and we are not disposed to make emendations in the one framed by the Commission in order possibly to soften the blow, but more probably to breed trouble by creating new ambiguities or at least illusory hopes in the petitioner's minds.

Petitioners are not wholesalers or jobbers and only deceive their customers as to their prices when they so claim. Nor is the phrase "industrial jobbers" less misleading, or saved by the fact that they look for their customers among industrial workers, with the help of industrial personnel offices. That they entered into a stipulation with the Commission a year earlier wherein their business was inadvertently described as "industrial jobbing" cannot protect them, for the stipulation by its terms was not to prevent proceedings in the event of fresh deception—even if we overlook the Commission's claims that the stipulation was not in evidence and that no law makes such an agreement into a formal order or *res judicata*.

The Commission, under the facts disclosed and put in issue by the complaint, was not required to add the words "when such is not the fact" to the order against claims of wholesaling. When and if petitioners *bona fide* enter upon a different form of business, they will not be restricted by an order directly applicable to a different situation; petitioners' persistence, notwithstanding even their stipulation, hardly indicates a need to anticipate that change. The ban on the representation that the business had continued for more than fifty years was also justified. Apart from the question whether petitioners could claim continuity, despite an intermediate bankruptcy, with a business originated by the father of one of them, it is patent that here they seek the mantle of an old *wholesale* house as part of the same scheme of deception. No objection is made to the order forbidding the sale of synthetic stones as real.

The order of the Commission is affirmed and an enforcement order of this Court will be entered.

JOSEPH A. PIUMA v. UNITED STATES¹

No. 9934—F. T. C. Dock. 2229

(Circuit Court of Appeals, Ninth Circuit. March 9, 1942)

CEASE AND DESIST ORDERS—VIOLATION—PENALTY PROCEEDINGS—FAILURE TO PETITION REVIEW SEASONABLY—ADMISSIONS—APPEAL FROM JUDGMENT ON.

Where Federal Trade Commission's order requiring defendant to cease and desist from making certain representations regarding defendant's product became final because of defendant's failure to petition for a review within time prescribed by Federal Trade Commission Act, and in action by the United States to recover civil penalties prescribed by the act for violation of the order, defendant admitted all material allegations of the complaint, and there being no issue as to any material fact, court granted motion for summary judgment, the appeal from such judgment was "frivolous". Federal Trade Commission Act, sec. 5 (a, c, g, 1) as [602] amended, 15 U. S. C. A., sec. 45 (a, c, g, 1); Federal Rules of Civil [602] Procedure, rule 56, 23 U. S. C. A. following section 723c.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—FAILURE TO PETITION REVIEW SEASONABLY—FINDINGS OF COMMISSION—REVIEW.

Where Federal Trade Commission's order requiring defendant to cease and desist from making certain representations regarding defendant's product became final because of defendant's failure to petition for a review within time prescribed by Federal Trade Commission Act, findings of facts by the commission essential to its jurisdiction were not open to review. Federal Trade Commission Act, sec. 5 (a, c, g, 1) as amended, 15 U. S. C. A., sec. 45 (a, c, g, 1).

CEASE AND DESIST ORDERS—VIOLATION—PENALTY PROCEEDINGS—MISREPRESENTATION—QUALITIES OF PRODUCT—MEDICINAL PREPARATIONS—"GLENDAJE" "GLAND TONIC"—ADVERTISEMENT AFTER ORDER FINAL.

Where cease and desist order of Federal Trade Commission required defendant to refrain from representing that his product "Glendaje" was a gland tonic, and that preparation was best gland remedy known, and order became final upon defendant's failure to petition for a review 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. Federal Trade Commission Act, sec. 5 (a, c, g, 1) as amended, 15 U. S. C. A., sec. 45 (a, c, g, 1).

CEASE AND DESIST ORDERS—VIOLATION—PENALTY PROCEEDINGS—STATUTORY AUTHORITY—IF ORDER PRIOR TO BUT VIOLATION AFTER.

The award of civil penalties to the United States for violation of Federal Trade Commission's cease and desist order was not void as "ex post facto"

¹ Reported in 126 F. (2d) 601. For case before Commission, see 24 F. T. C. 939. Rehearing denied Apr. 15, 1942. Certiorari denied October 12, 1942. For decision of court below, here affirmed, see 40 F. Supp. 119, 33 F. T. C. 1827.

because order was issued prior to enactment of Federal Trade Commission Act provision authorizing the recovery of civil penalties, where although order was prior defendant's violations of the order were subsequent to the enactment of the provision for penalties. Federal Trade Commission Act, sec. 5 (1), as amended, 15 U. S. C. A., sec. 45 (1).

(The syllabus, with substituted captions, is taken from 126 F. (2d) 601.)

On appeal from a judgment for plaintiff by the District Court for the Southern District of California, Central Division, in an action by the United States against defendant to recover civil penalties prescribed by the Federal Trade Commission Act, judgment for court below affirmed. [See 40 F. Supp. 119, 33 F. T. C. 1827.]

Canepa & Castruccio, of Los Angeles, Cal. (*Mr. Horace W. Danforth*, of Los Angeles, Cal., of counsel), for appellant.

Mr. Wm. Fleet Palmer, United States attorney, and *Mr. James L. Crawford*, and *Mr. John M. Gault*, assistant United States attorneys, all of Los Angeles, Cal., for appellee.

Before DENMAN, MATHEWS, and STEPHENS, *Circuit Judges*.

MATHEWS, *Circuit Judge*:

On April 6, 1937, in a proceeding under § 5 of the Federal Trade Commission Act, 15 U. S. C. A. § 45, the Commission ordered appellant, Joseph A. Piuma, to cease and desist from directly or indirectly representing that Glendage—a nostrum sold and distributed by appellant in interstate commerce—(1) is a gland tonic; (2) will restore vigorous health; (3) is the best gland remedy known; (4) constitutes a remedy for glands; (5) is the last word in modern science in gland remedies, and stimulates all the glands to healthy activity; (6) is entirely unlike other so-called gland remedies; (7) stands superior as a tonic; (8) is a remedy for cases of nervousness, overwork, lack of vim, and lack of vigor; (9) will return one to the full vigor of manhood or womanhood; (10) is a competent and effective treatment or corrective for use in remedying the ailments and conditions hereinabove mentioned. The order was served on appellant on April 10, 1937. No petition to review it was ever filed. It therefore became final on May 20, 1938,¹ and was at all times thereafter in full force and effect.

On April 24, 1940, appellee, the United States, brought an action against appellant under § 5 (1) of the Federal Trade Commission Act,

¹ Federal Trade Commission Act, §§ 5 (c) and 5 (g), as amended by § 3 of the Act of March 21, 1938, c. 49, 52 Stat. 111, 15 U. S. C. A. §§ 45 (c) and 45 (g). See, also, § 5 (a) of the Act of March 21, 1938, c. 49, 52 Stat. 117.

as amended by § 3 of the Act of March 21, 1938, c. 49, 52 Stat. 111, 15 U. S. [603] C. A. § (45).² The complaint charged thirteen violations of the order, in that, between September 15, 1938, and January 30, 1940, appellant had published thirteen newspaper advertisements, each of which was 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, Diabetes, Rheumatism, Constant Tiredness, Low Blood Pressure, Prostate Gland Trouble, Nervousness, and others are ailments frequently caused by gland disorders. You owe it to yourself and family to try this new gland tablet. It is a real gland product and carries an unlimited money-back guarantee if it does not give complete satisfaction. 30-day treatment, \$3.00."

Answering, appellant admitted all material allegations of the complaint. There being no issue as to any material fact, appellee moved for a summary judgment.³ The motion was granted and judgment was entered in appellee's favor for \$3,250 (\$250 for each violation of the Commission's order) and for costs. From that judgment this appeal is prosecuted.

The appeal is a frivolous one. Facts warranting the judgment were alleged in the complaint and admitted in the answer. Thus, instead of a defense, the answer was, in effect, a confession of judgment. There was and is no basis for an appeal.

The answer stated appellant's conclusion that the Commission had no jurisdiction to make the order, but stated no facts warranting the conclusion. Instead, it admitted facts showing the conclusion to be unwarranted and false. The complaint alleged and the answer admitted that the Commission issued its complaint and notice of hearing on September 5, 1934, and caused the same to be served on appellant on September 10, 1934; that appellant answered the Commission's com-

²"Any person * * * who violates an order of the Commission to cease and desist after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States."

³Federal Rules of Civil Procedure (28 U. S. C. A. following § 723c), Rule 56.

plaint on October 2, 1934; and that, after a hearing at which evidence was received in support of the Commission's charges (no evidence being offered by appellant), the Commission made its report, stating its findings as to the facts, and thereupon made the order first hereinabove mentioned. Copies, admitted to be true copies, of the Commission's complaint and report are attached to and made part of appellee's complaint. Therefrom it appears that the Commission charged and found all facts⁴ essential to its jurisdiction. Its findings are not here open to review.

The answer stated appellant's conclusion that his admitted publication of the thirteen above mentioned newspaper advertisements did not constitute a violation of the order—a conclusion which a reading of the advertisements shows to be false. Each advertisement was, in substance and effect, a representation that Glendage constitutes a remedy for glands. Thus, in each of the thirteen publications, appellant made at least one of the representations from which the order required him to cease and desist.

Because the Commission's order was prior to the enactment of § 5 (1) of the Fed[604]eral Trade Commission Act, 15 U. S. C. A. § 45 (1), under which this action was brought, appellant contends that "the award of penalties was *ex post facto* and constitutionally void." There is nothing in the point; for, although the order was prior, appellant's violations of the order were subsequent to the enactment.

Other contentions made by appellant are so devoid of merit as to require no discussion.

Judgment affirmed.

SAMUEL NITKE v. FEDERAL TRADE COMMISSION⁵

No. 8029—F. T. C. Docket 3567

(Circuit Court of Appeals, Dist. of Columbia. Apr. 6, 1942)

Order dismissing, for failure to file brief seasonably, petition for review of order of Commission in Docket 3567, 33 F. T. C. 417, 425, requiring respondent, his representatives, etc., in connection with offer, etc., in commerce, of electric razors, clocks, and various other articles of merchandise, to cease and desist from—

⁴The Commission charged and found that appellant was engaged in the business of selling and distributing Glendage in interstate commerce in competition with persons, firms, partnerships, and corporations engaged in the interstate sale and distribution of other preparations used and useful in the treatment of ailments and conditions for which Glendage was represented by appellant to be an effective treatment; that appellant, in the conduct of his business, had made and was making the representations from which the Commission ordered him to cease and desist; that these representations were false and misleading and constituted unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act; and that a proceeding in respect thereof was in the interest of the public.

⁵Not reported in Federal Reporter. For case before Commission, see 33 F. T. C. 417.

1. Supplying, etc., others with push cards or other devices "which are to be used or may be used" in the sale of said merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.
2. Shipping, etc., to members of the purchasing public push cards or other devices for use as aforesaid; and
3. Selling, etc., any merchandise by means of a game of chance, gift enterprise or lottery scheme.

Nash & Donnelly, of Washington D. C., for petitioner.

Mr. W. T. Kelley, chief counsel, of Washington D. C., for the Commission.

Before GRONER, *Chief Justice*.

ORDER

Petition for review of order of the Federal Trade Commission.

It appearing to the Court that the time within which the petitioner is required to file brief in the above entitled cause having elapsed, and he having failed to file the same,

It is now here ordered, That this petition for review be, and the same is hereby, dismissed pursuant to Rule 19 (*i*) of this Court.

ISIDORE HALPERIN ET AL., TRADING AS WELLWORTH SALES COMPANY v. FEDERAL TRADE COMMISSION¹

No. 17896—F. T. C. Docket 3470

(Circuit Court of Appeals, Second Circuit. Apr. 14, 1942)

Order, on motion of Commission, dismissing petition for review of order of Commission in Docket 3470, 33 F. T. C. 405, 415, requiring respondents, their representatives, agents, etc., in connection with offer, etc., in commerce, of watches, cameras, china, silverware, and other articles of merchandise, to cease and desist from—

1. Supplying, etc., others with pull cards or other devices which are to be used or may be used in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.
2. Shipping, etc., to agents, distributors, or to members of the public pull cards or other devices which are to be used as aforesaid in such sale or distribution.
3. Selling, etc., any merchandise by means of a game of chance, gift enterprise or lottery scheme.
4. Using the term "free" or other similar term to describe or refer to goods, etc., given as compensation for services rendered; and
5. Using unqualified term "silverware" to designate or describe tableware or other articles only plated therewith.

¹ Not reported in Federal Reporter. For case before Commission, see 33 F. T. C. 405.

Mr. Arthur D. Herrick, of New York City, for petitioners.

Mr. W. T. Kelley, chief counsel, and *Mr. James W. Nichol*, special attorney, both of Washington D. C., for the Commission.

Before AUGUST N. HAND and HARRIE B. CHASE, *Circuit Judges*.

ORDER

This matter coming on to be heard upon the motion of respondent, and the Court being fully advised in the premises—

It is ordered, That the motion of the respondent to dismiss the petition for review herein be and the same hereby is granted.

ROBERT HOFELLER TRADING AS BOB HOFELLER CANDY
COMPANY v. FEDERAL TRADE COMMISSION¹

No. 5547—F. T. C. Dock. 2187

(Circuit Court of Appeals, Seventh Circuit. April 21, 1942)

Order denying, as below set forth, motion by Commission for rule to show cause why petitioner Hofeller should not be adjudged guilty of criminal contempt of the court's decree in aforesaid matter, which followed the court's opinion in *Hofeller v. Federal Trade Commission*, 82 F. (2d) 647, 22 F. T. C. 1138, and affirmed the Commission's order in 20 F. T. C. 383, directing said Hofeller, his agents, etc., to cease and desist from lottery merchandising in connection with offer and sale of candy in interstate commerce, as there set out; and for other relief as therein set forth.

Mr. William Friedman and *Mr. Lloyd C. Whitman*, both of Chicago, Ill., for petitioner.

Mr. J. J. Smith, Jr., assistant chief counsel, of Washington, D. C., for the Commission.

Before EVANS, SPARKS, and MAJOR, *Circuit Judges*.

ORDER

It is ordered by the Court that the motion of counsel for the Federal Trade Commission for rule to show cause why petitioner should not be adjudged guilty of and punished for criminal contempt, and for other relief, be, and the same is hereby, denied.²

¹ Not reported in Federal Reporter. For case before Commission, see 20 F. T. C. 383.

² Specifically, the Commission moved the Court—

“A. To issue and cause to be served upon Robert Hofeller, petitioner, a rule to show cause, if any he can, why he should not be adjudged guilty of criminal contempt of this Honorable Court, and punished, for having violated this Court's aforesaid decree entered herein on March 25, 1936.

FEDERAL TRADE COMMISSION *v.* RALADAM CO.¹

No. 826—F. T. C. Dock. 2406

(Supreme Court of the United States. Apr. 27, 1942)

CEASE AND DESIST ORDERS—PRIOR PROCEEDINGS—SUPREME COURT ADJUDICATIONS—PARTIES—IF IDENTICAL BUT WITH DIFFERING FACTS AND RECORD.

Where United States Supreme Court determined that findings and proof were insufficient to justify enforcement of cease and desist order of Federal Trade Commission, such reasons were not controlling in subsequent proceeding between same parties but presented different facts and different record for consideration. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—BASIS FOR—DECEPTIVE CAPACITY AND TENDENCY—COMPETITIVE EFFECT—FAT REDUCING PREPARATION.

The Federal Trade Commission's findings that seller of fat-reducing remedy had made misleading and deceptive statements to further sales, that the product had many active rivals, and that the misstatements had tendency and capacity to induce people to purchase seller's product to exclusion of products of competitors were adequate basis for cease and desist order. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—UNFAIR METHOD OF COMPETITION—CRITERIA—COMPETITIVE EFFECT—LOSSES RESULTING—SHOWING OF.

To justify cease and desist order against unfair method of competition, it is not necessary that the evidence show specifically that losses to any particular trader or traders arise from the allegedly unfair [967] competitor's success in capturing part of the market. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

FEDERAL TRADE COMMISSION ACT—SCOPE—PREVENTIVE PURPOSE.

One of the objects of the Federal Trade Commission Act is to prevent potential injury by stopping unfair methods of competition in their incipency. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

"B. To authorize and direct the Federal Trade Commission, by its attorneys, to prosecute said rule to show cause for and on behalf of the Court.

"C. To take evidence, by one or more members of the Court, upon the question whether or not petitioner has violated the Court's said decree, or in lieu thereof to refer the matter to the Federal Trade Commission as special master to take such evidence for the Court, by one of the Federal Trade Commission's Trial Examiners, and to report thereon to the Court with the evidence taken.

"D. Alternatively, if the Court should be of the opinion that its said decree of March 25, 1936, is not, in its present form, a decree upon which a contempt proceeding can be maintained, then and in that event, to amend said decree by adding thereto an appropriate and specific command to petitioner forthwith and henceforth to obey and comply with the aforesaid order to cease and desist, and to take such other action as the Court may deem necessary, suitable and proper to compel petitioner to obey and comply with the said order to cease and desist."

¹ Reported in 62 Sup. Ct. Rep. 966, 316 U. S. 149. For case before Commission, see 24 F. T. C. 475.

EVIDENCE—INFERENCE—MISREPRESENTATION—COMPETITIVE EFFECT—IF GOODS MISREPRESENTED COMPETITIVE WITH OTHER.

Where the Federal Trade Commission finds that misleading and deceptive statements were made with reference to the quality of merchandise in active competition with other merchandise, it is authorized to infer that trade will be diverted from the competitors who do not engage in such unfair methods. Federal Trade Commission Act, sec. , 15 U. S. C. A., sec. 45.

CEASE AND DESIST ORDERS—MISREPRESENTATION—COMPETITIVE EFFECT—IF GOODS MISREPRESENTED COMPETITIVE WITH OTHER—OBESITY REMEDY.

Evidence sustained finding of Federal Trade Commission that seller's misleading and deceptive statements regarding preparation used in treatment of obesity injured or tended to injure business of competitors and justified cease and desist order. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

CEASE AND DESIST ORDERS—PRIOR PROCEEDINGS—SUPREME COURT ADJUDICATIONS—RES JUDICATA—WHETHER ISSUES, ON HOLDING INSUFFICIENT EVIDENCE AND FINDINGS, AND REFUSAL COURT BELOW TO PERMIT OFFER ADDITIONAL EVIDENCE.

The United States Supreme Court decision that evidence and findings of Federal Trade Commission were insufficient to justify cease and desist order against seller of preparation used in treatment of obesity, and refusal of Circuit Court of Appeals to permit commission to offer additional evidence with respect to competitors and injury to competition, did not make issues presented in subsequent proceeding by the commission against the seller "res judicata" and decision on merits of subsequent proceeding was appropriate. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.

(The syllabus, with substituted captions, is taken from 62 Sup. Ct. Rep. 966.)

On Writ of Certiorari by the Commission to review judgment of Circuit Court of Appeals for the Sixth Circuit setting aside Commission's cease and desist order against respondent Raladam Co., judgment of court below reversed with directions.²

Mr. Robert L. Stern, of Washington, D. C., for petitioner.

Mr. Rockwell T. Gust, of Detroit, Mich., for respondent.

[149] Mr. Justice BLACK delivered the opinion of the Court.

The Circuit Court of Appeals set aside a cease and desist order of the Federal Trade Commission upon the ground that certain findings were not supported by evidence. 123 F. (2d) 34. The refusal of the court to enforce the Commission's order rested in part upon an interpretation of this Court's decision in a prior controversy between the same parties. *Fed. Trade Comm. v. Raladam Co.*, 283 U. S. 643. Because of the importance of questions raised, we granted certiorari.

Section 5 of the Federal Trade Commission Act, 38 Stat. 719, 15 U. S. C. § 45, declares unfair methods of competition in commerce to

² For decision of court below, see 123 F. (2d) 34; 33 F. T. C. 1820.

be unlawful; empowers the Commission to prevent such methods; and authorizes the Commission after hearings and findings of fact to issue orders requiring violators "to cease and desist from using such method of competition." In 1929, the Commission, after hearings, found that the Raladam Company had used unfair methods of competition in selling a preparation called Marmola by making misleading and deceptive statements concerning its qualities as a remedy for overweight. The Commission issued a cease and desist order which the Circuit Court of Appeals vacated. 42 F. (2d) 430. This Court affirmed the Court of Appeals' judgment saying that there was "neither finding nor evidence from which the conclusion legitimately can be drawn that these advertisement substan[968]tially injured or tended * * * to injure the business of any competitor or of competitors generally, whether legitimate or not. * * * It is impossible to say whether, as a result of respondent's advertisements, any business was diverted, or was likely to be diverted, from others engaged in like trade, or whether competitors, identified or unidentified, were injured in their business, or were likely to be injured, or, indeed, whether any other anti-obesity remedies were sold or offered for sale in competition, or were of such a character as naturally to come into any real competition, with respondent's preparation in the interstate market." *Fed. Trade Comm. v. Raladam Co.*, *supra*, 652-653. It is clear that the reasons for refusing to enforce the Commission's order are grounded upon the inadequacy of the findings and proof as revealed in the particular record [151] then before this Court. Hence, these reasons are not controlling in this case, arising as it does out of different proceedings and presenting different facts and a different record for our consideration.

In 1935, the Commission instituted the present proceedings against Raladam, charging unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. Hearings were held and much evidence was heard concerning Raladam's trade methods since the date of the earlier cease and desist order. This time the Commission found with meticulous particularity that Raladam had made many misleading and deceptive statements to further sales of Marmola; that Marmola had many active rivals for the trade of those who were interested in fat-reducing remedies; that Raladam's misleading statements had the "tendency and capacity" to induce people "to purchase and use respondent's * * * preparation or medicine for reducing purposes * * * in preference to and to the exclusion of the products of competitors, * * * and to divert trade to respondent from such competitors engaged in the sale in interstate commerce of medicines, preparations, systems, methods, books of instruction, and other articles and means designed, intended and used for the purpose of reducing weight."

These findings were an adequate basis for the Commission's order. The court below, however, was of the opinion that there was no substantial evidence to support the finding that the alleged unfair methods "substantially injured or tended to injure the business of any competitor." The evidence shows that sales of Marmola to the consuming public are made at retail drug stores throughout the country; that Raladam distributes Marmola both to wholesalers and retailers; that the wholesalers and retailers who sell Marmola also sell numerous other remedies for taking off fat; that the essential fat-reducing element in Marmola is desiccated thyroid, which is also an [152] element in some of the other remedies sold to the public with or without doctors' prescriptions; that many books of instruction on methods of reducing weight are sold in interstate commerce; and that the gross sales of Marmola were from \$350,000 to \$400,000 a year. From this and other evidence the Commission concluded that numerous antifat remedies were offered for sale in the same market as Marmola, and that Marmola was in active competition with them for the favor of the remedy purchasing public.

It is not necessary that the evidence show specifically that losses to any particular trader or traders arise from Raladam's success in capturing part of the market. One of the objects of the Act creating the Federal Trade Commission was to prevent potential injury by stopping unfair methods of competition in their incipiency. *Fashion Guild v. Trade Commn.*, 312 U. S. 457, 466. And when the Commission finds as it did here that misleading and deceptive statements were made with reference to the quality of merchandise in active competition with other merchandise it is also authorized to infer that trade will be diverted from competitors who do not engage in such "unfair methods." *Federal Trade Comm. v. Winsted Co.*, 258 U. S. 483, 493. The findings of the Commission in this case should have been sustained against the attack made upon them.

Raladam contends here as it did before the Commission and the Circuit Court of Appeals that the judgment of this Court [969] in the first case makes the issues here in controversy *res judicata*, and therefore bars these proceedings. It also contends that the denial by this Court and the Circuit Court of Appeals in the earlier proceedings of the Commission's motion to offer additional evidence with respect to competitors and injury to competition should have a like effect. We think these contentions are without merit, and therefore agree with the court below in [153] its determination that a decision on the merits was appropriate.

The respondent has not sought in this Court to sustain the judgment of the court below on any other ground. Accordingly, the judgment is reversed with directions that the order of the Federal Trade Commission be affirmed.

It is so ordered.

THE RABHOR COMPANY, INC. v. FEDERAL TRADE
COMMISSION¹

No. 17711—F. T. C. Dock. 3619

(Circuit Court of Appeals, Second Circuit. May 1, 1942)

Consent decree on petition to review Commission's order in Docket 3619, 32 F. T. C. 788, 795, requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of its men's robes, jackets, lounge suits, and other wearing apparel, to cease and desist from the use of certain words and practices, by modifying the same by striking therefrom paragraph 5 requiring that it desist from representing that its products are composed of fibers or materials other than those of which they are actually composed; and affirming, as thus modified, said order, and requiring that said petitioner, its officers, etc., as above set out, cease and desist from—

- (1) Using the word "silk" or other word or term descriptive thereof to describe, etc., any fabric or product not composed wholly of silk, product of the cocoon of the silk worm, subject to proviso set forth in case of fabrics or products composed in part of silk;
- (2) Using unqualified term "satin," or other term indicative of silk to describe, etc., any fabrics or products not composed wholly of silk as aforesaid, subject to proviso that if word or term is used truthfully to describe the type of weave, etc., it is to be qualified as below set forth by statement clearly and accurately naming the fibers or materials of which the products are made;
- (3) Advertising fabrics, etc., composed in whole or in part of rayon without clearly disclosing rayon content thereof, and subject to disclosure set forth in the event that such fabrics or products are composed in part of rayon and other fabrics or materials; and
- (4) Representing in any manner that fabrics or products offered, etc., by it contain silk in greater quantities than is actually the case; the Court retaining jurisdiction of the cause as therein set forth.

Mr. Erwin Feldman, of New York City, for petitioner.

Mr. W. T. Kelley, chief Counsel, *Mr. James W. Nichol*, and *Mr. Edw. W. Thomerson*, special attorneys, all of Washington, D. C., for the Commission.

Before LEARNED HAND and AUGUSTUS N. HAND, *Circuit Judges*

DECREE

The petitioner herein, having filed with this Court on April 29, 1941, its petition to review and set aside an order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of February 28, 1941, under the provisions of the Federal Trade Commission Act; and a copy of said petition having been served upon the

¹Not reported in Federal Reporter. For case before Commission, see 32 F. T. C. 788.

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; and the parties hereto, having filed herein their joint motion asking this Court to enter a decree modifying said order by striking paragraph 5 therefrom, affirming said order as so modified, and commanding obedience to the terms thereof as so modified and affirmed—

Now therefore, it is hereby ordered, adjudged, and decreed, That said order to cease and desist be modified by striking therefrom paragraph 5 thereof, reading as follows:

5. Representing in any manner or by any means that respondent's [petitioner's] products are composed of fibers or materials other than those of which such products are actually composed.

and that said order, as so modified, be, and the same hereby is, affirmed:

And it is hereby further ordered, adjudged, and decreed, That the petitioner, Rabhor Corp., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its men's robes, jackets, lounge suits, and other wearing apparel, in commerce as "commerce" is defined in the Federal Trade Commission Act, to do forthwith cease and desist from:

1. Using the word "silk" or any other word or term descriptive of silk to describe, designate, or in any way refer to any fabric or product which is not composed wholly of silk, the product of the cocoon of the silk worm; *Provided, however,* That in the case of fabrics or products composed in part of silk and in part of other fibers such term or similar terms may be used as descriptive of the silk content if there is used in immediate connection or conjunction therewith in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof;

2. Using the unqualified term "satin" or any other descriptive term of similar import or meaning indicative of silk to describe, designate, or in any manner refer to any fabrics or product which is not composed wholly of silk, the product of the cocoon of the silk worm; *Provided, however,* That when said word or descriptive term is used truthfully to designate or describe the type of weave, construction, or finish, such word shall be qualified by using in immediate connection and conjunction therewith, in letters of at least equal size or conspicuousness, a word or words clearly and accurately naming or describing the fibers or materials from which said products are made;

3. Advertising, offering for sale, or selling fabrics, garments, or other products composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such fabrics or prod-

ucts are composed of rayon, and when such fabrics or products are composed in part of rayon and in part of other fabrics or materials, such fabrics or materials shall be designated in immediate connection or conjunction with the word "rayon" in letters of at least equal size and conspicuousness which shall truthfully describe and designate each constituent fiber or material thereof;

4. Representing in any manner that fabrics or products offered for sale or sold by it contain silk in greater quantity than is actually the case;

And it is hereby further ordered, adjudged, and decreed, That the petitioner herein shall, within ninety (90) days after the entry of this decree, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with this decree.

Without prejudice to the right of the United States, as provided in section 5 (1) of the Federal Trade Commission Act, to prosecute suits to recover civil penalties for violations of the said order to cease and desist hereby modified and affirmed, this Court retains jurisdiction of this cause to enter such further orders herein from time to time as may become necessary effectively to enforce compliance in every respect with this decree and to prevent evasion thereof.

MORETRENCH CORPORATION v. FEDERAL TRADE COMMISSION¹

No. 2—F. T. C. Dock. 3262

(Circuit Court of Appeals, Second Circuit. May 4, 1942)

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—DISPARAGEMENT—GOOD FAITH—WELL-POINTS.

Evidence sustained finding that advertisement of well-point used in draining wet places preparatory to building or engineering operations, grossly understated the unobstructed water-passing screen areas of competing products as compared with the advertised well-point, justifying cease and desist order, although apparently misstatement was due to mistake, and put forward in good faith.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—DISPARAGEMENT—TRADE UNDERSTANDINGS—WELL-POINTS—"BACKWASH".

Evidence sustained finding that advertisement of well-point used in draining wet places, preparatory to building or engineering operations, disparaging competitors' products for their failure to prevent "backwash" of jetted water forced through well-point in order to sink it were misleading, justifying cease and desist order, where it appeared the trade differed as to the value of preventing "backwash."

¹ Reported in 127 F. (2d) 792. For case before Commission, see 28 F. T. C. 297.

FINDINGS OF COMMISSION—IF SUPPORTED BY EVIDENCE.

Findings of the Federal Trade Commission, if supported by substantial evidence, are conclusive as to the facts.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—COMPARATIVE MERITS—ATTRIBUTED QUOTED STATEMENTS—WELL-POINTS.

The use of quoted statement attributed to "experienced contractors" that advertised well-point was as good as any five others, and never clogged, was properly forbidden by cease and desist order, even though unlikely to mislead buyers of such machinery.

METHODS, ACTS AND PRACTICES—ENDORSEMENTS AND TESTIMONIALS—ATTRIBUTED QUOTED MATTER—USE AFTER FALSITY KNOWN.

In the use of testimonials, attributed to satisfied customers, literal truthfulness should be insisted upon, and it is no excuse for a statement after it is known to be false, that it is put forward as a quotation.

CEASE AND DESIST ORDERS—PUBLIC INTEREST—MISREPRESENTATION—COMPARATIVE MERITS OF PRODUCT—WHERE ISSUE PRESSED BY COMPETITORS—WELL-POINTS.

Where manufacturer of systems of pumps, piping, and well-points used to drain wet places preparatory to building or engineering operations, went to considerable expense to defend its right to use certain statements comparing its product with competing products in advertising, and competitors considered matter of sufficient importance to instigate a proceeding before Federal Trade Commission to prevent such advertising, there was sufficient "public interest" in the controversy as would justify commission's action in ordering manufacturer to cease and desist from alleged unfair trade practices. Federal Trade Commission Act, sec. 5 (b), as amended, 15 U. S. C. A., sec. 45 (b).

(The syllabus, with substituted captions, is taken from 127 F. (2d) 792)

On petition to review cease and desist order of Commission, order, as modified by Commission, affirmed.

Mr. Samuel J. Reid, of New York City, and *McCole & Reid*, of New York City, for petitioner.

Mr. Cyrus B. Austin, special attorney, and *Mr. W. T. Kelley*, chief counsel, both of Washington, D. C., for Commission.

[793] Before L. HAND, SWAN, and CHASE, *Circuit Judges*.

L. HAND, *Circuit Judge*:

The Moretrench Corp. complains of an order of the Federal Trade Commission which found that certain statements occurring in its advertising were false, and which ordered it to "cease and desist" from repeating them in the future. The Commission now concedes that its original order should be modified, and the only question before us is whether as modified it finds support in the findings, and whether the evidence supports the findings. To an understanding of this

question, some account of the Moretrench Corp.'s business is necessary. It makes, sells, and installs systems of pumps, piping and well-points which are used to drain wet places preparatory to building or engineering operations. The well-points about which this controversy turns are the means by which the water is sucked up which the piping discharges away from the *locus in quo*. The Moretrench well-point is a metal nozzle about three and a half feet long, made up of an inner solid pipe surrounded by seven longitudinal metal rods, which are enclosed by a copper screen of wide mesh and heavy wire. Outside of this screen is a screen of fine wire and small mesh, and outside of the fine screen is a third screen of the same size wire and mesh as the first. The fine screen is thus held between the two coarse screens; it is known as the "water-passing screen." In operation, the lower end of the well-point is sunk into the ground and the water is sucked through the three screens, whence it passes up between the metal rods outside the solid pipe, and is carried away through the piping. To sink the well-point into position, water is "jetted" through the hollow pipe, at the bottom of which is a rubber ball arranged as a valve to open when water is forced through it, and to close when water is sucked into it. All well-points have such a valve but the Moretrench has an added valve set between the screen and the solid pipe so as to close during "jetting," and to prevent all "jetting" water from flowing up ("backwashing") into the draining space.

The Moretrench Corp. put out an advertising pamphlet in which it compared its system with that of its competitors, of which only two are in question here: the Complete and the Griffin. The pamphlet contained photographs of its screen and of a section of its well-point, together with photographs of the screen of other makers; also a photograph of five well-points side by side in elevation, including its own, the Complete and the Griffin. Below the last photograph was a table professing to give statistics as to the well-points shown, in the first line of which was the legend: "Unobstructed water-passing screen area in square inches." The Moretrench well-point was credited with 350 inches, the Complete with 40, and the Griffin with 85. The Commission has found that this statement was untrue and has directed its discontinuance. The second statement which it forbade was that the Complete and Griffin well-points "have only a limited use as jetting points, because they lack a valve to prevent back waste of the jetting water, and cannot wash the jetted hole out as thoroughly as it should be done to get the best service with the water pressure available." On another page of the Moretrench pamphlet appeared photographs of its well-point and another of the Complete, while both were "jetting"; below was the statement that the Complete well-point "back-wasted nearly all of the jetting pressure." The third statement forbidden is that a Moretrench well-point was equal or superior to five

of any other well-points; the fourth, that it never "clogs"; the fifth, that "contractors all over the world testify" that the cost of its operation is always fifty percent lower than that of competitors'.

The Complete well-point is made of a hollow pipe like the Moretrench, but instead of being circular in section its outer surface is fluted. When the fine screen is wrapped outside the pipe, it necessarily touches it only at the outer turns of the flutings, leaving vertical grooves for draining the water between pipe and screen. Around the outside of the fine screen is wrapped a perforated casing against the inside of which the inner screen fits snugly when the well-point is delivered, but from which it backs away a little in use, except [794] where the casing holds it close to the outer turns of the flutings. The Griffin well-point has an inner pipe whose outer surface is circular in section like the Moretrench; and in order to make a draining space between it and the screen, a convoluted perforated sheet of metal is interposed between the two, which presents a surface to the fine screen like the flutings of the Complete well-point except for the perforations. Around this sheet the fine screen is wrapped, making vertical draining passages between the two; and also between the pipe and the inner side of sheet, for so much of the water as passes through the perforations. Around the fine screen is finally wrapped a perforated casing like that in the Complete. As in the case of the Complete well-point, the fine screen when delivered fits snugly against the inside of the casing, but in use it backs off a little except where it is held against a convolution of the inner sheet. Neither well-point has a second valve to stop the "backwash" during "jetting."

The first question is as to the meaning of the phrase: "Unobstructed water-passing screen area." The witnesses for the Moretrench Corp. understood this to mean the whole area of the fine screen so far as the inner and outer coarse screens did not block it off. They therefore subtracted from its gross area the aggregate area of the points at which the coarse screens touched it, and that of the solder spots by which the two edges of the outer coarse screen were held together. The Commission did not accept this definition; it thought it misleading to disregard the size of the mesh of the fine screen, since a screen can drain water only through its openings. However, it was content *arguendo* to accept the experts' definition, because it concluded that they did not apply it consistently to the Complete and Griffin well-points. They had computed the unobstructed area as though the fine screens remained in service snugly pressed against the inner surface of the casings as they were when delivered. This was a very natural mistake, and except for it the conclusion would have been right; perhaps the Moretrench Corp. did not know that the fine screen backed away; in any event there is no reason to suppose that the advertisement was not put forward in good faith.

However, as we have said, the fine screen does back away (this becomes apparent upon an examination of the physical exhibits), and it is not disputed that—when dealing with such slowly moving water as passes through the screens when the pumps are sucking—the separation is enough to eliminate any blockage by the casings, except where the fine screen is held fast against the flutings or convolutions. If the “unobstructed water-passing screen areas” of either the Complete, or the Griffin, well-point be computed upon that basis, the advertisement allowed them much too little. It does not indeed appear how great that understatement was, and it would be difficult if not impossible to estimate it with accuracy, for the fine screen will not back away from the casing uniformly everywhere. Perhaps it was for this reason, that the Commission made no attempt to find what were the unblocked areas of the Complete and Griffin well-points, contenting itself with merely finding that the advertisement was misleading, as it unquestionably was, if it be read as referring to the well-points after they have been in service. It seems to us clear that it should be so read; buyers would obviously only care about the operation of the well-point, not about its condition upon delivery. We conclude therefore that the first part of the order was justified and it is affirmed *pro tanto*, as modified.

The second question is of the effect of not introducing a second valve to prevent “backwash.” The second valve does do just that, and the Commission now concedes that the Moretrench Corp. should be allowed to proclaim the advantages of its own construction; for this reason its order only forbids “disparaging” the Complete or Griffin well-points because they do not prevent “backwash.” Apparently the trade differs as to the value of this feature; particularly in the case of a pointed well-point, like the Complete and the Griffin; some people believe it to be an advantage to have some of the “jetting” water flow back into the draining space and out through the holes in the side of the point. They think that it “lubricates” the surrounding soil and makes it easier to sink the well-point. Moreover, they believe that the “backwash” helps clear the screen as it sinks, and that it is otherwise likely to become clogged. There was testimony to that effect which the Commission might accept, as it did in preference to the contrary testimony of the Moretrench Corp.’s experts. On the record we doubt [795] whether we should have concluded that the “disparaging” statements were misleading; but since our office ends as soon as we find substantial support for the finding, this part of the order must also be affirmed.

The next statement challenged is that one Moretrench well-point is as good as any five others and never clogs. This was part of an insignificant advertisement which appeared over five years ago and had been discontinued before the complaint was filed. It was put in

quotes and followed by the words: "say experienced contractors." It is not apparent how it is important now to forbid its repetition. Nevertheless, the Commission thought it otherwise, took evidence upon the issue, found that it was untrue—which literally it was—and now presses this part of the order. The only point which can be made against it is that it was put forward as an opinion of others, and not as emanating from the Moretrench Corp. itself. It is extremely hard to believe that any buyers of such machinery could be misled by anything which was patently no more than the exuberant enthusiasm of a satisfied customer, but in such matters we understand that we are to insist upon the most literal truthfulness. *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 116 [25 F. T. C. 1715]. Nor is it an excuse for a statement after it is known to be false, that it is put forward as a quotation. *United States v. John J. Fulton Co.*, 33 F. (2d) 506, 507 (C. C. A. 9).

The last of the misleading statements is that "contractors all over the world testify" that operating cost of the Moretrench system is fifty percent lower than that of any other. This was part of the same obscure advertisement we have just mentioned, and of another, equally obscure, published 13 months later. Literally speaking, it was of course untrue; contractors "all over the world" did not testify as they were quoted. As this was the only part found to have been false, it is again hard to imagine how anyone reading it could have understood it as more than puffing; yet for the reasons we have just given, if the Commission saw fit to take notice of it, we may not interfere.

The final complaint is that the "proceeding" before the Commission does not "appear" to have been "to the interest of the public" (sec. 45 (b) of Title 15, U. S. Code). *Federal Trade Commission v. Klesner*, 280 U. S. 19 [13 F. T. C. 581], did indeed decide that the public interest in the controversy was a justiciable issue, and that it had no interest in the proceeding there at bar. The dispute concerned the use of a trade-mark which the respondent Klesner had adopted out of spite against its owner, Sammons; and the discussion left it not altogether clear why the public had no interest in its settlement. One might perhaps infer that if the only interest at stake is that customers shall get goods from the seller of whom they supposed they are buying, it is not enough, provided the quality is as good as what they think they are receiving; but it seems clear from what the court has said later that this is not so. *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, 216, 217 [17 F. T. C. 664]; *Federal Trade Commission v. Algoma Co.*, 291 U. S. 67, 78 [18 F. T. C. 669]. In the last case Cardozo, *J.*, went indeed so far as to say: "the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance." It would seem, therefore, that *Federal Trade Commission v. Klesner*, *supra* (280 U. S. 19)

is to be put down as deciding that the court may consider whether the controversy is not in general too trivial to justify the attention of the Commission. If so, it is doubtful whether today the same answer would be given; and even if it would, the result is the same in the case at bar for the interest here was not necessarily trivial. Certainly the Moretrench Corp. did not think it so, else it would not have gone to the trouble and expense which it did; nor did its competitors think so for it was they that stirred up the proceeding. True, one might suppose that the customers were of a kind not to be influenced by such advertising; but once more, the attitude of the manufacturers proves the opposite. If the controversy concerned only such statements as the third, fourth and fifth, it would indeed be hard to resist the argument that the whole affair was too tenuous for even that minimum which will justify the Commission's action. But for the reasons we have just given, we cannot say that the public has no interest in the truth about those features of the well-points with which the [795] first and second statements were concerned. That interest was enough to support the proceeding.

Order affirmed, as modified by the Commission.

HASKELITE MANUFACTURING CORPORATION v.
FEDERAL TRADE COMMISSION¹

No. 7832—F. T. C. Dock. 4442

(Circuit Court of Appeals, Seventh Circuit. May 7, 1942)

CEASE AND DESIST ORDERS—EXTENT—PREVENTIVE ADEQUACY.

Where manufacturer had been dealing unfairly, the Federal Trade Commission had authority to prescribe reasonable requirements for the manufacturer to meet in the interest of fair dealing, which requirements would act as guarantees against a recurrence of past unfair and deceptive acts. Federal Trade Commission Act, sec. 5 (a), 15 U. S. C. A., sec. 45 (a).

CEASE AND DESIST ORDERS—EXTENT—PREVENTIVE ADEQUACY—MISREPRESENTATION—COMPOSITION OF PRODUCT—TRAYS—WHERE PAPER SURFACE IN SIMULATION OF WOOD—DISCLOSURE REQUIREMENT BY LEGEND ON ARTICLE OR CARTON.

Where complaint of Federal Trade Commission charged manufacturer with unfair and deceptive practices with regard to marketing of trays as all wooden structures when surface was paper and manufacturer had been found guilty, commission's order requiring manufacturer to desist from selling trays having surfaces of paper which simulate wood without clearly disclosing, by legend printed upon the trays or upon cartons, that surfaces were made of paper, was justified and did not place an unfair burden upon the manufacturer. Federal Trade Commission Act, sec. 5 (a), 15 U. S. C. A., sec. 45 (a).

(The syllabus, with substituted captions, is taken from 127 F. (2d) 765)

¹Reported in 127 F. (2d) 765. For case before Commission, see 33 F. T. C. 1212

On petition to review cease and desist order of Commission, petition denied, and order of enforcement directed.

Mr. John Harrington, of Chicago, Ill., for petitioner.

Mr. W. T. Kelley, chief counsel, *Mr. Joseph J. Smith, Jr.*, assistant chief counsel, and *Mr. Eldon P. Schrup* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for Commission.

Before EVANS, KERNER, and MINTON, *Circuit Judges*.

MINTON, *Circuit Judge*.

This petition seeks to review a paragraph of a cease and desist order entered by the respondent Commission against the petitioner.

The petitioner is engaged in the manufacture and sale to dealers of a line of buffet or lap trays. Some of the trays are made of wood, and some are made with a hardwood core and surface with a processed paper to simulate walnut and Mexican capomo wood. It was charged in the complaint that the petitioner had advertised its synthetic product as manufactured of hardwood and of hardwood surface, whereas in truth and in fact the surface was made of processed, lithographed paper, so as to stimulate walnut and Mexican capomo; that such practices were unfair and deceptive within the meaning of section 5 (a) of the Federal Trade Commission Act. (15 U. S. C. A. 45 (a).) After a hearing, an order was issued against petitioner, directing that it 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 "capomo," 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.

The petitioner objected to paragraph 3 of the order, contending that it goes beyond the practices complained of by the Commission and testified to by the witnesses, and that it has no relation to advertising or [766] representation. In this we think the petitioner is mistaken.

The gravamen of the complaint is the unfair and deceptive acts and practices with regard to the marketing of the trays as all wood structures when the surface was paper. The petitioner has been found guilty of such practices, as evidenced by the first two paragraphs of the order, against which the petitioner makes no complaint. It has therefore been found guilty of the deceptive practices and acts alleged in the complaint.

It was the duty of the petitioner to deal fairly, and it had been dealing unfairly. Under such circumstances, we think the Commission had authority to prescribe reasonable requirements for the petitioner to meet in the interest of fair dealing, which requirements would act as guarantees against a recurrence of the past unfair and deceptive acts. *National Labor Relations Board v. Express Publishing Co.*, 312 U. S. 426, 61 S. Ct. 693, 85 L. Ed. 930; *Local 167 v. United States*, 291 U. S. 293, 54 S. Ct. 396, 78 L. Ed. 804; *Hill v. Federal Trade Commission*, 124 F. (2d) 104 [this volume, ante, p. 1800]; *Hershey Chocolate Corporation v. Federal Trade Commission*, 121 F. (2d) 968 [33 F. T. C. 1798].

The requirements of paragraph 3 were calculated to aid in dispelling for the future the unfair and deceptive practices of the past, and place no unfair burden upon the petitioner; and they are well within the power of the respondent Commission.

The process used by the petitioner to simulate woods does great credit to the ingenuity of the petitioner, and is so skillfully carried out that the physical exhibits shown us in court were distinguishable from the real wooden trays only after the most careful scrutiny. The trays themselves were the best evidence of the possibility of confusion. Without some warning, the trays of themselves are almost certain to deceive the buying public. The Commission had a right to consider this fact, so forcefully apparent upon an examination of the physical exhibits. We think this is all paragraph three of the Commission's order attempts to meet.

The petition to review is denied. The Commission is entitled to the enforcement of its order. It is directed to present a proposed order of enforcement to this court, a copy of which shall be given to opposing counsel at least 72 hours before presentation to this court.

LEE BOYER'S CANDY v. FEDERAL TRADE COMMISSION¹

No. 9938—F. T. C. Dock. 4265

(Circuit Court of Appeals, Ninth Circuit. May 25, 1942)

CEASE AND DESIST ORDERS—EXTENT—LOTTERY MERCHANDISING—SELLING, ETC., ASSORTMENTS SO PACKED, ETC., THAT SALES TO PUBLIC "ARE TO BE MADE OR MAY BE MADE BY MEANS OF GAME OF CHANCE," ETC.—WHETHER TOO BROAD.

A cease and desist order of Federal Trade Commission requiring petitioner to cease and desist from "selling, or distributing any merchandise so packed and assembled that sales of such merchandise to public are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme", was too broad, and would be modified by striking therefrom the phrase "or may be made."

¹ Reported in 128 F. (2d) 261. For case before Commission, see 33 F. T. C. 881.

(The syllabus, with substituted caption, is taken from 128 F. (2d) 261)

On petition to review cease and desist order of Commission, order modified, and as modified, affirmed.

Mr. Robert W. Gilley and *Mr. F. M. Sercombe*, both of Portland, Oregon, for petitioner.

Mr. W. T. Kelley, chief counsel, *Mr. Joseph J. Smith, Jr.*, assistant chief counsel, and *Mr. James W. Nichol* and *Mr. D. C. Daniel*, special attorneys, all of Washington, D. C., for Commission.

Before GARRECHT, MATHEWS, and STEPHENS, *Circuit Judges*.

MATHEWS, *Circuit Judge*:

This is a petition to review an order of the Federal Trade Commission. Petitioner's brief specifies as error,¹ not the entire order, but only so much thereof as requires petitioner to 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."

Other paragraphs of the order—paragraphs (2), (3) and (4)—are not here challenged. As to paragraph (1), petitioner's only objection is to the phrase "or may be made." This phrase, petitioner contends, makes the order too broad. Supporting petitioner's contention are: *Helen Ardelle, Inc. v. Federal Trade Commission*, 9 Cir., 101 F. (2d) 718 [28 F. T. C. 1894]; *Federal Trade Commission v. A. McLean & Son*, 7 Cir., 84 F. (2d) 910 [22 F. T. C. 1149]; *Federal Trade Commission v. Charles N. Miller Co.*, 1 Cir., 97 F. (2d) 563 [27 F. T. C. 1678]; *Sweets Co. v. Federal Trade Commission*, 2 Cir., 109 F. (2d) 296 [30 F. T. C. 1625]. Opposed are: *National Candy Co. v. Federal Trade Commission*, 7 Cir., 104 F. (2d) 999 [29 F. T. C. 1557];² *Ostler Candy Co. v. Federal Trade Commission*, 10 Cir., 106 F. (2d) 962 [29 F. T. C. 1584]; *Hill v. Federal Trade Commission*, 5 Cir., 124 F. (2d) 104 [See this volume, *ante* p. 1800]; *Kritzik v. Federal Trade Commission*,⁷ 7 Cir., 125 F. (2d) 351 [See this volume, *ante* p. 1808].

We are asked by the Commission to overrule our decision in *Helen Ardelle, Inc. v. Federal Trade Commission*, *supra*. This we decline to do; for, although some courts have refused to follow it,³ we still believe our decision was correct.

¹ See rule 20 (2) (d) of our rules governing appeals and rule 5 of our rules governing petitions for review or enforcement of orders of boards or commissions.

² Overruling *Federal Trade Commission v. A. McLean & Son*, *supra*.

³ *National Candy Co. v. Federal Trade Commission*, *supra*; *Ostler Candy Co. v. Federal Trade Commission*, *supra*; *Hill v. Federal Trade Commission*, *supra*; *Kritzik v. Federal Trade Commission*, *supra*.

The order is modified by striking from paragraph (1) thereof the phrase "or may be made." As thus modified, the order is affirmed.

FREDERICK A. CLARKE v. FEDERAL TRADE
COMMISSION¹

No. 9948—F. T. C. Docket. 3660

(Circuit Court of Appeals, Ninth Circuit. May 29, 1942)

DISTRICT COURT—ORDERS TO TESTIFY BEFORE COMMISSION—WHETHER "FINAL
DECISION"—EFFECT.

A District Court order, requiring one, charged by Federal Trade Commission with unfair and deceptive practices in advertising a drug, to testify before commission's trial examiner as to proportions of different ingredients in such drug, was not void, but at most erroneous, and hence was a "final decision," reviewable only on direct appeal and not subject to "collateral attack," nor reviewable on appeal from subsequent order adjudging accused in contempt for refusal to answer such questions. Federal Trade Commission Act, secs. 5, 9, 15 U. S. C. A., secs. 45, 49; Jud. Code, sec. 128, 28 U. S. C. A., sec. 225.

DISTRICT COURT—ORDERS TO TESTIFY BEFORE COMMISSION—REFUSAL TO OBEY—
CONTEMPT.

A defendant who refused to obey a District Court order to testify before trial examiner was properly held in "contempt."

(The syllabus, with substituted captions, was taken from 128 F. (2d) 542.)

On appeal from order by District Court adjudging defendant Clarke in contempt of order requiring him, in proceeding by Commission against him for unfair and deceptive practices in commerce in the advertising of a drug, to answer questions as to proportions of different ingredients thereof, order affirmed.²

Mr. Oliver O. Clark and *Mr. Robert A. Smith*, both of Los Angeles Cal., for appellant.

Mr. W. T. Kelley, chief counsel, *Mr. Martin A. Morrison*, and *Mr. Joseph J. Smith, Jr.*, assistant chief counsels, *Mr. Merle P. Lyon*, and *Mr. James W. Nichol*, special attorneys, all of Washington D. C., for Commission.

¹ Reported in 128 F. (2d) 542. For decision of court below, not reported in Federal Reporter, see 33 F. T. C. 1812.

² Complaint in question, now pending, in the matter of Frederick A. Clarke, trading as Bonquet 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 "Bonquet Blood Building Tablets," also known as "Bonquet Tablets" or "Bonquet 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.

Before HANEY, STEPHENS, and HEALY, *Circuit Judges*.

HEALY, *Circuit Judge*:

The Federal Trade Commission issued a formal complaint charging appellant with unfair and deceptive practices in commerce¹ in the advertising of a drug called Boncquet Tablets. Appellant answered the complaint and appeared at the hearing in response to a subpoena, but declined to answer any questions put to him. Thereupon the Commission, proceeding under § 9 of the Federal Trade Commission Act, 15 USCA § 49,² obtained from the district court an order requiring him to answer all relevant and material questions. Appellant appeared before the Commission's trial examiner in response to the order, but upon being questioned in that connection he refused to state the quantitative analysis or proportions of the various ingredients used in the manufacture of his tablets, contending that the information was a trade secret which he was not obliged to reveal.

Subsequently there was a contempt proceeding in the district court pursuant to an order to show cause; and after notice and hearing the court again directed appellant to appear as a witness in the proceeding and specifically to answer the question "What are the proportions of the different ingredients in the product Boncquet Tablets?" On the resumption of the hearing before the examiner, appellant appeared but declined to answer the question. Thereupon, on application of the Commission, the district court ordered appellant to show cause why he should not be adjudged in contempt; and after hearing he was held in contempt of the previous orders and was committed until he should purge himself [543] thereof. From this order adjudging him in contempt appellant prosecutes this appeal, alleging that the court was in error in requiring him to testify concerning the proportions of the ingredients used in his compound.

At the outset the query presents itself whether, upon this appeal from the order adjudging him in contempt, the appellant may question the propriety of the order requiring him to testify. If the latter order was itself appealable—that is to say, if it was a "final decision" within the meaning of § 128 of the Judicial Code, USCA § 226³—then it is reviewable only upon direct appeal. It may not be attacked collaterally for mere error or reviewed upon an appeal from the

¹ 15 USCA § 45.

² The pertinent part of the statute is as follows:

"Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof."

³ "The circuit courts of appeal shall have appellate jurisdiction to review by appeal final decisions. * * *

subsequent order adjudging the party in contempt. 5 C. I. S. § 1496, p. 153; 17 C. J. S. § 14, p. 19; *Howat v. Kansas*, 258 U. S. 181, 189-190; *Brougham v. Oceanic Steam Navigation Co.*, 2 Cir., 205 Fed. 857, 860; *Brotherhood of Railway & S. S. Clerks v. Texas N. O. R. Co.* (D. C. Tex.), 24 F. (2d) 426, 427. Cf. *Beauchamp v. United States*, 9 Cir., 76 F. (2d) 663, 668. Of course, if the order directing appellant to answer the question was void, it could safely be disregarded and would be open to collateral attack. *Ex parte Fisk*, 113 U. S. 713; *Alemite Mfg. Corp. v. Staff*, 2 Cir., 42 F. (2d) 832, 833; *Beauchamp v. United States*, supra. But the order was not void. At most it was erroneous. The Commission had jurisdiction of the subject matter of the investigation. The court had jurisdiction over appellant personally and had statutory authority to order him to testify in the proceeding before the Commission.

In judicial inquiries generally, it has been thought that an order directing a party or a witness to testify or to produce documents in interlocutory, hence not appealable. The party or the witness has no alternative but to obey or be held in contempt. Upon commitment for contempt a right of review for the first times arises. *Alexander v. United States*, 201 U. S. 117. Cf. *Hale v. Henkel*, 201 U. S. 43; *Wilson v. United States*, 221 U. S. 361. This principle, or rule of policy as it may with propriety be called is elaborately discussed in *Cobbledick v. United States*, 309 U. S. 323, where it was held that an order denying motions to quash subpoenas directing persons to appear and produce documents before a grand jury was not a final decision.

But in situations analogous to the present a different rule is applied. A number of cases have arisen under § 12 of the Interstate Commerce Act, 49 U. S. C. A. § 12, which, like § 9 of the Federal Trade Commission Act,⁴ authorizes a proceeding in the district court to compel contumacious witnesses to make disclosures before the Commission. In this class of cases the order of the district court directing the witness to answer is final and reviewable. *Interstate Commerce Commission v. Brimson*, 154 U. S. 447; *Harriman v. Interstate Commerce Commission*, 211 U. S. 407; *Ellis v. Interstate Commerce Commission*, 237 U. S. 434. In *Cobbledick v. United States*, supra, the court took note of these decisions, expressing the opinion that there is sufficient justification for treating them differently from those "arising out of court proceedings unrelated to any administrative agency." The court thought that a proceeding under a statute of this type may be likened to "an independent suit in equity in which appeal will lie from an injunction without the necessity of waiting for disobedience," *Cobbledick v. United States*, supra, p. 330. It is, of course, settled law that the propriety of an injunction can not be tested by appeal from a

⁴ The pertinent provisions of the two statutes are virtually identical.

subsequent judgment in contempt. *Howat v. Kansas, supra; Brougham v. Oceanic Steam Navigation Co., supra; Brotherhood of Railway & S. S. Clerks v. Texas N. O. R. Co. (D. C. Tex.), 24 F. (2d) 426, 427.*

Since the order requiring appellant to make the disclosure was a final decision, it may be reviewed only on direct appeal. "Errors must be corrected by appeal and not by disobedience," *Brougham v. Oceanic Steam Navigation Co., 2 Cir., 205 Fed. 857.* Appellant confessedly refused to obey the order, so there was no error in holding him in contempt of it.

Affirmed.

THE GERRARD COMPANY, INC. AND THE AMERICAN
STEEL AND WIRE COMPANY OF NEW JERSEY v. FED-
ERAL TRADE COMMISSION¹

No. 7903—F. T. C. Docket 3498

(Circuit Court of Appeals, Seventh Circuit. June 1, 1942)

Order dismissing, pursuant to stipulation of counsel, petition to review order of Commission in Docket 3498, 33 F. T. C. 1036, 1047, requiring respondents, their officers, etc., in connection with the leasing, sale, or making of any contract for the sale of their metal tying machines and appliances, in commerce, to cease and desist from—

1. Leasing, selling, or making any contract for the sale thereof on the condition, etc., that the lessee or purchaser shall not use in or with such machines, etc., any wire other than that acquired from respondents or from any other source designated by respondents; and
2. Enforcing or continuing in operation or effect any condition, agreement, etc., in or in connection with any existing lease or sale contract, which condition, etc., is to the effect that the lessee or purchaser shall not use in or with such machines or appliances any wire other than that acquired from respondents.

Mr. Kemper K. Knapp, Mr. John H. Hirschberger, and Mr. Charles B. Baker, all of Chicago Ill., for petitioners.

Mr. W. T. Kelley, chief counsel, and *Mr. Geo. W. Williams*, special attorney, both of Washington D. C., for the Commission.

Before EVANS, *Circuit Judge.*

ORDER

Pursuant to stipulation of counsel, it is ordered that this petition for review of a cease and desist order of the Federal Trade Commission be, and it is hereby, dismissed, without costs to either party.

¹ Not reported in Federal Reporter. For case before Commission, see 33 F. T. C. 1036.

PHILIP HARRY KOOLISH; ET AL., TRADING AS STANDARD DISTRIBUTING COMPANY v. FEDERAL TRADE COMMISSION¹

No. 7814—F. T. C. Dock. 4135

(Circuit Court of Appeals, Seventh Circuit. June 9, 1942)

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—SPECIFIC LOSSES—SHOWING OF INDIVIDUAL.

To justify cease and desist order against unfair method of competition, it is not necessary that the evidence show specifically that losses to any particular trader arise from allegedly unfair competitor's success in capturing part of the market. Federal Trade Commission Act, Sec. 5, 15 U. S. C. A. Sec. 45.

FEDERAL TRADE COMMISSION ACT—SCOPE—PREVENTIVE PURPOSE.

One of the objects of the Federal Trade Commission Act is to prevent potential injury by stopping unfair methods of competition in their incipiency.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—LOTTERY MERCHANDISE—SUPPLYING, WITH GOODS, MEANS OF, TO BUYER-CUSTOMERS—COMPETITIVE EFFECT—EVIDENCE.

Evidence sustained finding of Federal Trade Commission that petitioners' placing in hands of others the means of conducting lotteries in sale of merchandise by furnishing them with push cards and pull cards to be used in distribution of merchandise tended to injure business of competitors, and justified cease and desist order.

(The syllabus, with substituted captions, is taken from 129 F. (2d) 64.)

On petition to review order of Commission, order affirmed.

Mr. Albert A. Jones, of Washington, D. C., and *Mr. Irvin H. Fathchild*, *Mr. Edmund A. Adcock*, and *Mr. Louis Cohen*, all of Chicago, Ill., for petitioners.

Mr. Wm. T. Kelley, *Mr. Martin A. Morrison*, *Mr. D. C. Daniel*, *Mr. James W. Nichol*, and *Mr. Joseph J. Smith, Jr.*, all of Washington, D. C., for the Commission.

[65] Before SPARKS, KERNER, and MINTON, *Circuit Judges*.

SPARKS, *Circuit Judge*.

We are asked to review and set aside an order of the Federal Trade Commission relating to the use of push cards and pull cards in the distribution of merchandise. Petitioners vigorously deny the right of the Commission to enter the order for the reason that, they assert,

¹ Reported in 129 F. (2d) 64. For case before Commission, see 33 F. T. C. 1098. Rehearing denied July 16, 1942.

no element of chance enters into the sale of merchandise by themselves, and there is no showing of injury to competition, essential to the jurisdiction of the Commission.

The plan of operation here used differs from the one studied by us in *Chicago Silk Co. v. F. T. C.*, 90 F. (2d) 689, in that whereas in that case, the money for the purchase of the goods was transmitted after collection by the push card method, here, petitioners sell their merchandise to their customers who have received the push or pull cards which they may or may not use for its final distribution. In other words, petitioners contend in effect that they are insulated against the charge of using the cards in their distribution of goods by the fact that there is no lottery or chance in their sale of the goods; that their customers receive exactly what is described in their order; and petitioners have no control of the mode of distribution after the goods leave their hands. They deny injury to competition, asserting that "distribution is not a commercial distribution over retail counters where it might compete with other sales but is a private distribution among the purchaser's friends, relatives, fellow employees, fellow lodge or club members, and the like and the customer is not under any commitment with the shipper so to distribute the merchandise."

The Commission found, and we find evidence in the record to support its finding, that petitioners supplied to and placed in the hands of others, means of conducting lotteries in the sale of merchandise, and that the use of the plan of sale and distribution was a practice contrary to the established public policy of the United States; that in the sale and distribution of their various articles of merchandise petitioners were in competition with many other persons, firms, and corporations who sell and distribute like merchandise; that many persons are attracted by the sales plan and the element of chance involved therein and are thereby induced to buy and sell petitioners' merchandise in preference to merchandise offered for sale by competitors who do not use the same or equivalent methods; and that the use of the method has a tendency and capacity to, and does unfairly divert to petitioners from their said competitors substantial trade in commerce among the various states, and as a result, substantial injury has been done to competition.

The Supreme Court has recently ruled that, "It is not necessary that the evidence show specifically that losses to any particular trader or traders arise from Raladam's (the alleged unfair competitor) success in capturing part of the market. One of the objects of the Act creating the Federal Trade Commission was to prevent potential injury by stopping unfair methods of competition in their incipiency." *F. T. C. v. Raladam Co.*, April 27, 1942. In view of that ruling, and the rulings of this court in *Chicago Silk Co.*, *supra*, certiorari denied, 302 U. S. 753; *Kritzik v. F. T. C.*, 125 F. (2d) 351; and *Bazelon, et al.*

v. *F. T. C.*, 7698, decided by this court January 13, 1942, without opinion, we are convinced that the cease and desist order of the Federal Trade Commission was within its authority to issue, and that no good purpose would be served by further discussion by us of the methods here employed by petitioners or the Commission's motives in taking the action here complained of, which questions petitioners seek to raise.

The order of the Federal Trade Commission is affirmed, and petitioners are hereby ordered to comply with it.

CHARLES BRUNING COMPANY, INC. ET AL. v. FEDERAL
TRADE COMMISSION¹

No. 7821—F. T. C. Dock. 3092

(Circuit Court of Appeals, Seventh Circuit. June 26, 1942)

Motion by petitioners for leave to adduce additional evidence denied without prejudice to renewal at time of hearing on the merits, in proceeding on petition to review order of Commission in Scientific Apparatus Makers of America, et al., Docket 3092, 33 F. T. C. 1130, 1151, requiring respondent Association members, their officers, etc., to cease and desist from entering into, etc., any understanding, etc., to restrict, etc., competition in the sale or distribution in commerce of prepared tracing papers, blueprint papers, etc., through practices there set out, and requiring respondent Association, the Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, its manager, etc., to cease and desist from aiding and assisting the members of said Association in carrying out acts and practices set forth and performing any service or function in furtherance thereof.

Mr. Howard P. Beckett and *Mr. Richard W. Thorington*, both of Philadelphia Pa., for petitioners.

Mr. J. J. Smith, Jr., assistant chief counsel, of Washington D. C., for the Commission.

ORDER

Order of the Court denied, without opinion, said motion, which was based, as gathered from the petition for leave to adduce additional evidence and the Commission's answer opposing the same, on the grounds, among others, that the Emergency Price Control Act of 1942 and the maximum price regulations established by the Price Administrator thereunder, along with present condition of economic scarcity with rising prices, placed petitioners in the position in which they were unable to increase their prices without violating said Act and

¹ Not reported in Federal Reporter. For case before Commission, see 33 F. T. C. 1130.

regulations, or to maintain existing prices without risk of prosecution by the Commission for alleged violation of its order.¹ (Statement by Editor.)

¹ The Commission's answer set forth, among other things, that the Price Control Act and regulations thereunder constitute matters of which the court will take judicial notice irrespective of evidence and determine if any inconsistency or conflict exists; and that a price fixing conspiracy under the *Socony-Vacuum* decision, 310 U. S. 150, 218, 224, 225, is illegal *per se*, as are unlawful restraints on commerce, and cannot be justified by pleas in the nature of confession and avoidance.

As to any such conflict referred to, it quotes from a letter dated June 4, 1942, by the general counsel of the Office of Price Administration in which it was stated that it is not the policy of that Office nor the effect of said Price Control Act to sanction the establishment of uniform prices agreed upon to eliminate price competition; that such competition has a sound deflationary effect which can contribute to the implementation of the anti-inflationary program of said Office, and of the Congress as expressed in the Act; and that the Act and regulations thereunder, and the Commission's order in question, are parallel and complementary and not in any way inconsistent or conflicting.

As respects petitioner's apprehension, it set forth that the Commission is competent to determine whether evidence in a given situation warrants corrective action, but that in any case it will be for the court of appeals, in the event of affirmance and institution of contempt proceedings by the Commission, and for the district court, in event of penalty proceedings, to determine whether or not the order has been violated and, if so, the penalty to be imposed.

RESTRAINING AND INJUNCTIVE ORDERS OF THE
COURTS UNDER THE PROVISIONS OF SECTION 13 OF
THE FEDERAL TRADE COMMISSION ACT

FEDERAL TRADE COMMISSION v. WILLIAM F. KOCH,
LOUIS G. KOCH, AND KOCH LABORATORIES, INC.

Civil Action No. 3387

(District Court, Eastern District of Michigan, Southern Division.
May 22, 1942)

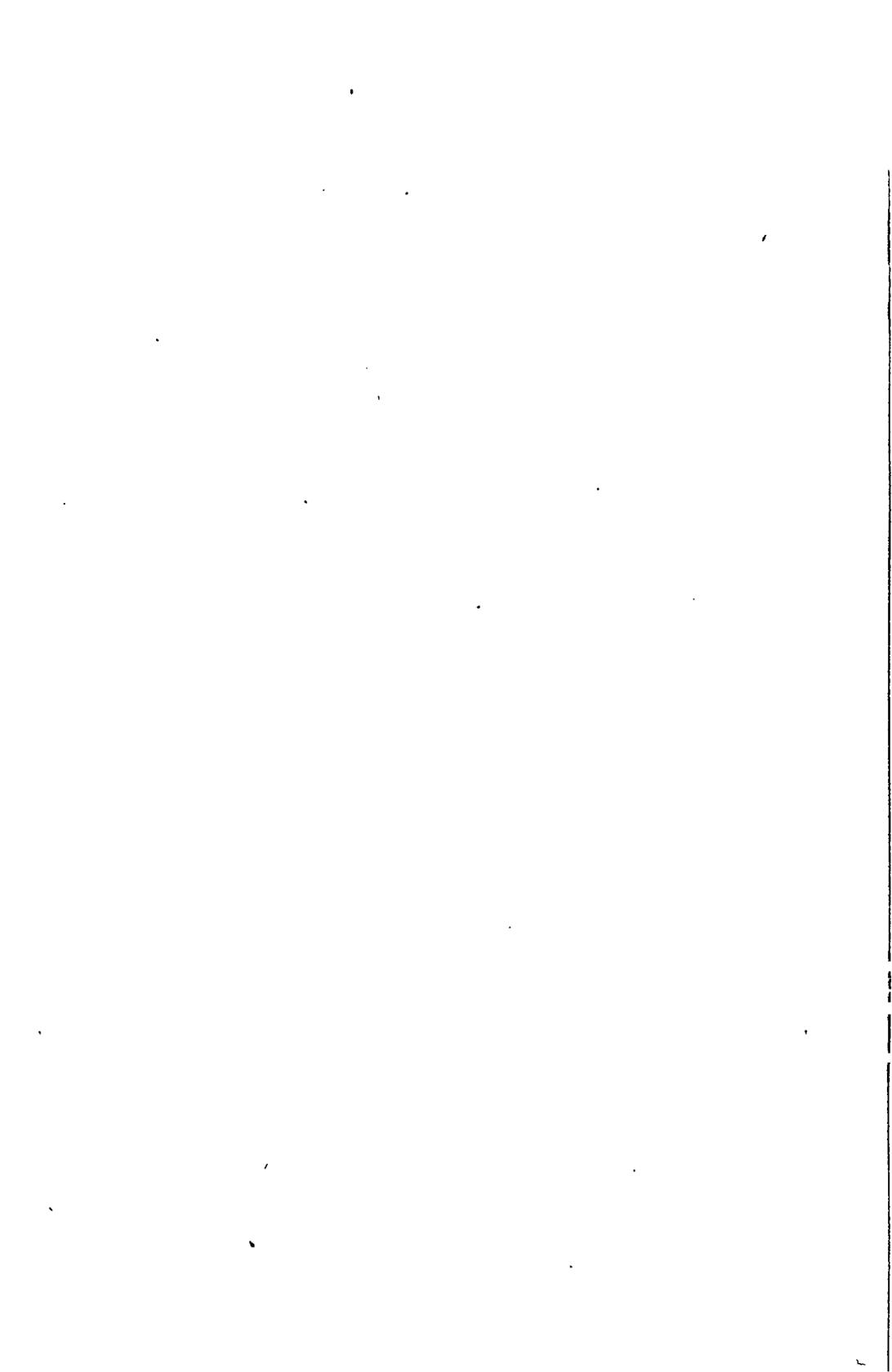
Temporary restraining order by District Judge Ernest P. O'Brien requiring defendants to cease disseminating false advertisements concerning their medical preparations "Glyoxylyde", "B-Q" and "Malonide Ketene Solution", as more fully set forth below.

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, and *Mr. L. E. Creel, Jr.*, Special Attorney, both of Washington, D. C., for the Commission.

Voorhies, Long, Ryan and McNair, of Detroit, Mich., and *Mr. Richard Steel*, of New York City, and *Mr. William Henry Gallegher*, of Detroit, Mich., for defendants.

As a result of a proceeding filed in the United States District Court for the Eastern District of Michigan, Southern Division, Judge O'Brien, on May 22, 1942, granted a temporary restraining order requiring William F. Koch, Louis G. Koch and Koch Laboratories, Inc., of Detroit, to cease disseminating false advertisements concerning certain medical preparations which they made and offered and sold under the designations "Glyoxylyde", "B-Q" and "Malonide Ketene Solution", and which, as charged in the complaint issued by the Commission in the Matter of Koch Laboratories, Inc., et al., Docket 4772, on June 13, 1942, they represented in their advertisements as adequate treatments, as the case might be, for numerous ailments and conditions including cancer, leprosy, thrombosis, epilepsy, diabetes, arthritis, the degenerative diseases, and all infections and allergies; when in fact, as alleged in said complaint, such preparations possessed no therapeutic value and would benefit no disease. (Statement by editor).¹

¹ Subsequent to the period covered by this volume, i. e., from November 1, 1941, to June 30, 1942, inclusive, the court, on July 28, 1942, the defendants having been directed to appear and show cause why preliminary injunction should not issue restraining them from disseminating the alleged advertisements pending final disposition of the Commission's complaint against them, granted the preliminary injunction sought by the Commission, but due to ensuing sickness of Judge O'Brien the actual writing of the order has not been completed.



PENALTY PROCEEDINGS ¹

Civil penalties amounting to \$4,000 were collected within the period embraced by volume 34, i. e., November 1, 1941, to June 30, 1942, as the following cases, in which alleged violations of cease and desist orders had been certified to the Attorney General, were disposed of:

United States v. Midwest Studios, Inc.; United States District Court for the District of Oregon; judgment entered for \$1,500 and satisfied January 14, 1942.

The Commission had ordered Midwest Studios, Inc., et al., their representatives, etc., in connection with the offer, etc., in interstate commerce of colored or tinted photographs or colored enlargements thereof having a photographic base, to cease and desist from:

1. Representing, directly or in any manner, that colored or tinted pictures, photographs, or photographic enlargements are hand-painted or are paintings.

2. Using the terms "free hand painted portrait," "oil painting," or the word "painting," either alone or in conjunction with any other terms or words or in any way to designate, describe or refer to colored or tinted pictures, photographs or photographic enlargements or other pictures produced from a photographic base or impression.

3. Misrepresenting that any specified sum is the actual cost of "handling" a picture, "wrapping," or "parcel post," or the "painter's time," or otherwise misrepresenting the actual cost of either materials or delivery.

4. Representing that a picture similar to same displayed will be delivered unless the picture so delivered is of the same kind, quality, design, and workmanship.

5. Representing that respondents are conducting any special or advertising campaign in any particular place or locality for the purpose of obtaining special exhibitors, or otherwise, unless such cam-

¹ During the period covered by this volume, the Circuit Court of Appeals for the Ninth Circuit, in *Joseph A. Piuma v. United States*, 126 F. (2d) 601, reported ante at page 1837, unaniously affirmed the judgment of the District Court for the Northern District of California in *United States v. Piuma*, reported in 40 Fed. Supp. 119, 33 F. T. C. 1827, in which that court imposed civil penalties amounting to \$3250 upon defendant Piuma for violation of the Commission's order in Docket 2229, 24 F. T. C. 939, requiring said defendant or respondent to cease and desist from representing his medicinal preparation or nostrum "glendage" as a gland tonic, which will restore vigorous health, etc., as in said order set forth.

Shortly after the close of the period covered by this volume, on July 14, 1942, judgment was entered in the United States District Court for the Southern District of New York in the case of *United States v. Gynex Corp. (Bureau of Hygiene)*, and civil penalty collected in the amount of \$500, for violation of Commission's order in Docket 3042, 24 F. T. C. 1193.

paign or such special offer is in fact then being conducted or made in such locality for such purpose.

6. Representing that said pictures are being, or will be, sold only to a limited number of customers, or otherwise misrepresenting any material fact concerning the terms and conditions of sale, or the extent to which the sale of such pictures is limited.

7. Misrepresenting through the use of a "draw," or drawing contest, or through the use of "lucky" blanks, slips, coupons, or certificates, or through the use of any other device, plan or scheme, or through any introductory or advertising offer, or otherwise, that any customer thereby would obtain a financial advantage or would be entitled to receive any picture free or would receive a substantial discount or reduction in the price of any picture or pictures.

8. Concealing from or failing to disclose to customers upon initial contact that the finished picture when delivered will be so shaped and designed that it can only be used in a specially designed, odd style of frame which can be obtained from Midwest Studios only.

9. Representing to customers in any manner that suitable frames for pictures may be purchased elsewhere unless such odd design of frame can in fact be readily purchased in the customary marts of trade.

10. Representing as the customary or regular prices or values of frames prices, and values which are in excess of the prices at which frames are regularly and customarily sold in the normal and usual course of business.

11. Obtaining promissory notes which recite that there is an outstanding "balance due on portrait," or otherwise misrepresenting that any sum or balance is due on a picture, when in fact the purchaser has previously paid the full prescribed contract price for said picture.

12. Retaining the original photograph loaned to respondent for use in making its picture, or retaining the pictures made by it therefrom, after full payment has been made therefor, unless all of the terms and conditions upon which said original photograph or said picture made by respondent is to be retained in connection with the purchase and payment for a frame, or for any other purpose, are fully and adequately revealed to the purchaser at the time the original photograph is obtained from such purchaser.²

United States v. Carl E. Koch, et al.; United States District Court for the Northern District of Illinois; judgment for \$2,500 entered and satisfied April 24, 1942, including injunction in terms of the cease and desist order.

Carl E. Koch, et al., trading as Co-Operative Buyers' Service, etc., their representatives, etc., in connection with the offering, etc., of

² Docket 3011, May 11, 1939, 28 F. T. C. 1583.

beauty and barber supply products in interstate commerce, or in the District of Columbia were ordered forthwith to cease and desist from:

1. Representing, through use of the trade name "Co-Operative Buyers' Service," or of any other name of like import and meaning, or through any other means or device, or in any other manner, that the business conducted by the respondents is that of a cooperative.

2. Representing that such products are sold at cost prices or at prices substantially less than those at which products of equal grade and quality may be purchased from others or under a plan eliminating the profits and other charges of middlemen with resultant savings to the purchasers.

3. Representing that respondents maintain branches in San Francisco, Calif., and Paris, France, or in any other place in which they do not maintain such branch.

4. Representing, through listing and offering for sale well-known or trade-marked products of others who refuse to sell to respondent which they do not have on hand and are unable to purchase in the regular channels of trade, or through any other means or device, or in any manner, that respondents are able to service and fill orders for such products unless and until they have on hand, or can secure through the normal channels of trade, a sufficient quantity of such products to be able to service and fill a normal number of orders or demands for such products;

5. Substituting products of a different grade and quality for well-known or trade-marked products;

6. Using trade or brand names, or cartons, packages, bottles, designs, labels, and slogans, in connection with the sale of respondents' products, which simulate and imitate those long used in connection with the manufacture, sale, and distribution of well-known or trade-marked competing products through similarity of letters, sound, or appearance, or in any other manner, or which have the tendency and capacity to confuse and deceive the purchasing public in relation to the origin, identity, or quality of the products so designated and described;

7. Representing that the respondent corporation is the manufacturer of any of said products, or that purchasers therefrom deal direct with the manufacturer;

8. Representing that the respondent corporation is an importer, or that any substantial portion of the products offered for sale by it is of foreign origin.

9. Representing that merchandise will be given free, or without additional charge to purchasers of designated quantities of respondents' products, or that offers of designated products are limited as to time or quantity, or any other respect, when such is not the fact.

10. Representing through use of purported special sale prices which are in fact respondents' regular prices, or through any other means or device, that such products have regular retail values or prices, and are customarily sold for sums in excess of the prices charged for such products by respondents.

11. Representing that such products are of exactly the same or substantially the same nature, quality, and substance as well-known or trade-marked competing products when such is not the fact.

12. Circulating, representing, or publishing, or causing to be circulated, represented, or published in the trade, any false or deceptive or misleading statement respecting or concerning the business methods of competitors, or the character or integrity of the managements of competitors.³

³ Docket 2529, March 7, 1938, 26 F. T. C. 877.

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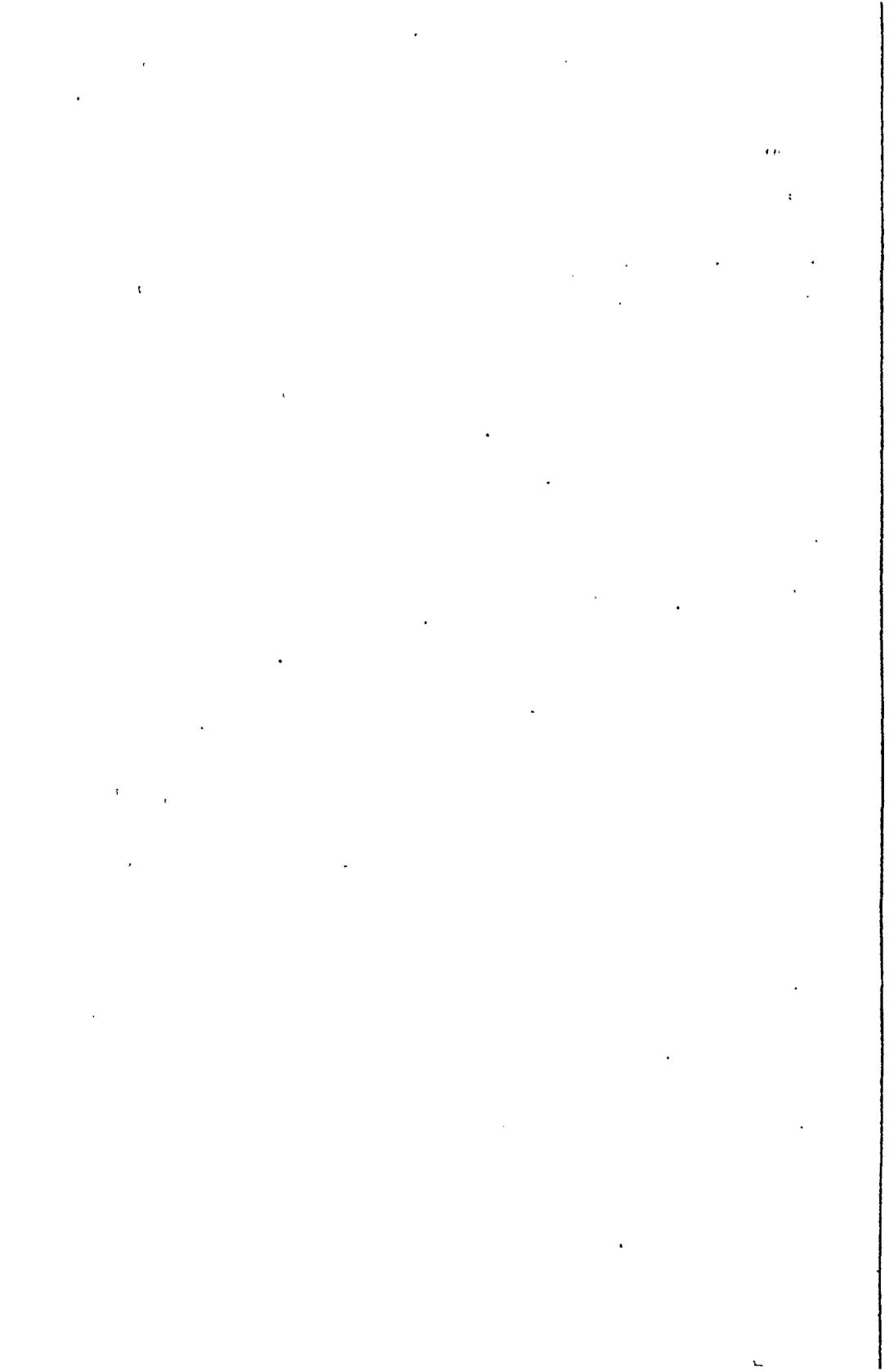
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Claiming or using indorsements or testimonials falsely or misleadingly.

Coercing and intimidating.

Concealing or obliterating foreign source of product.

Disparaging or misrepresenting competitors or their products.

Enforcing and exacting, wrongfully, payment.

Enforcing and exacting, wrongfully, customer dealing.

Furnishing means and instrumentalities of misrepresentation and deception.

Injuring product of competitor.

Misbranding or mislabeling.

Misrepresenting business status, advantages or connections.

Misrepresenting directly or orally by self or representatives.

Misrepresenting prices.

Neglecting, unfairly or deceptively, to make material disclosure.

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